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Assessment Report of corruption risks in public procurement in the Republic of Moldova

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The opinions expressed in this document are the sole responsibility of the authors and do not necessarily represent the official position of the UNDP, the Government of Moldova or any of its affiliates.

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ACRONYMS

ACSR	Curative sanatorium association for recovery
AGER	Association for Efficient and Responsible Governance
ATU	Administrative Territorial Unit
CA	Contracting Authority
CoA	Court of Accounts
DCFTA	Deep and Comprehensive Free Trade Areas
EU	European Union
FMIS	Financial Management Information System
GD	Government Decision
GPA	Government Procurement Agreement
IACRC	International Anti-Corruption Resource Center
IT	Information technology
MAC	media access control Methodology for assessment of national procurement systems
MAPS	
MDL	Moldovan lei
MoF	Ministry of Finance
NAC	National Anti-Corruption Center
NGO	Non-governmental organization
NIC	National Integrity Center
NMAISP	Methodological norms on internal audit in public sector
OECD	Organisation for Economic Co-operation and Development
OLAF	European Anti Fraud Office
PIFC	Public Internal Financial Control
PPA	Public Procurement Agency
PPL	Public Procurement Law
PPP	Public–private partnership
RM	Republic of Moldova
SOE	State-owned enterprise
UN	United Nations
US	United States
USD	United States Dollar
WB	World Bank
WG	Working Group
WTO	World Trade Organization

1 Executive summary

This assessment addresses corruption prevention in the area of public procurement in the Republic of Moldova and analyzes the functions of the National Anticorruption Center in this regard. The assessment was carried out in the period November 2015 to January 2016, based on a review of background documentation, including the national legal regulatory framework for public procurement and for civil service, with focus on integrity related issues. International regulatory framework, in particular the new EU Directives on public procurement, have been taken into account for best practice evaluation. The assessment included an evaluation of the institutional framework in the field, including its operational capacities, efficiency of integrity mechanisms, control and sanctions. Individual interviews have been held with the stakeholders of the national procurement (regulators, contracting authorities, control bodies and civil society organizations) to identify problems and risk sectors.

The present report consist of two parts:

1. An assessment of corruption risks characteristic to the national system of public procurement, including mapping of integrity risk areas and recommended measures for integrity/corruption risks mitigation. This assessment uses the OECD Methodology for assessment of national procurement systems (MAPS);
2. An optimal risk indicator system based on the “red flag” concept.

The following conclusions have been made:

The new Public Procurement Law is oriented at the transposition of EU Directives. The establishment of a complaints review body is the only innovation which is relevant to corruption fight. However, the legal framework for preventing corruption in the area of public procurement is sound and follows international best practice. Comprehensive provisions in the civil service legislation and in the Penal Code define corruption acts and corruptive behavior, and stipulate appropriate sanctions. The only major legal gap results from the fact that public enterprises and private-public partnerships are not subject to the Public Procurement Law.

However, the institutional framework shows significant weaknesses: The limited role of the Public Procurement Agency, which lacks control mechanisms to detect corruption, in particular ex-post control of contract execution; the weak technical capacities of the members of the working groups in the contracting authorities, especially at local level, and the frequent cases of conflict of interest of their members; and an ineffective complaints and weak law enforcement system, characterized by a high level of corruption in the judiciary.

The low level of participation of economic operators in public procurement – which results from the small size of the business community in the Republic of Moldova and limited experience of its economic operators – is a barrier to competition and leads to an excess of contracts awarded to a small number of economic operators. This reinforces the presence of conflicts of interest and collusion, and further discourages economic operators in participating in public procurement.

Corruption in public procurement is “embedded” in an overall system of corruptive behavior that covers all areas of business and private life in the country. It can therefore not be treated in an isolated way. However, little attention has to date been given to corruption in public procurement (as compared to other fields of corruption), partially due to the technical complexity of the matter.

The present report seeks therefore to provide – in its second part – a practical approach in form of an optimal risk indicator system based on the “red flag” concept. For elaborating this system,

international experience from EU and World Bank has been used and adapted to the circumstance in the republic of Moldova. The main red flags identified are: Bribery and kickbacks; conflict of interest; collusive bidding; bid rigging; shell companies; leaking bid data; unbalanced bidding; manipulation of the bidding procedure; unjustified sole source procurement and split purchases; rigged specifications; excluding qualified bidders; unnecessary purchases and procurement fraud in contract implementation. Collusion is particularly marked by a territorial division among a limited number of companies. A link between donations to political parties and the award of tenders was observed in civil society monitoring reports, and may indicate a serious problem in Rep. Moldova.

The Report contains examples of penal cases as well as the results of an anonymous questionnaire sent to selected companies. The most spectacular cases demonstrate that fraud often becomes visible only during contract implementation (substitution of products, non-delivery) and is therefore not recognized by the Public Procurement Agency during the tender.

In order to make this red flag indicator system operational, techniques for data collection and analysis are presented at the end of the Report, and provide replies to the question of how red flags should be identified and by which institutional procedures.

This leads finally to recommendations in regard to the legal framework, business practices, institutional framework and technology improvement. The most significant recommendations would be the following: Limiting and strictly regulating subcontracting and post-award contract amendments; establishing a “White List” of eligible companies authorized to participate in public procurement tenders, and furthermore limiting the delivery of sensitive goods or services to licenced companies. On the institutional level, the preparation of annual procurement plans, with cost estimates at item level, as well as and capacity building and rotating of working group members, would be the main initiatives. The implementation of a procurement module in the FMIS, linked to the e-procurement system (which is still to be rolled out), would rule out a number of current loopholes for fraud.

These measures require strengthening of the audit and control institutions, in particular training of auditors in the Court of Accounts and in the Financial Inspection in the area of public procurement, to enable them to better focus on audit and control of contract implementation, as well as a strong independent Procurement Complaints Agency.

However, there are a few steps in the procurement process where internal controls in the Contracting Authorities can be strengthened to prevent and detect fraud and corruption. Overall, this is the case for the initiation and the finalization of the procurement process, by proper management of procurement plans, in the beginning, and invoice controls, at the end of the process.

For operationalizing these internal controls, IT support would be needed, primarily in terms of a procurement module in the FMIS. Also, the role of the Treasury Offices in controlling procurement documents and invoices should be strengthened, to be not only focused on formal compliance, but also to include some value-for-money checks.

This report was presented on 28 January 2016 at the National Anti-Corruption Center to an audience comprised of representatives of the main concerned institutions and organisms.

2 Institutional and legal framework

This section describes the institutional and legal framework for public procurement with focus on corruption prevention and detection.

2.1 Legal framework

The present assessment is based on the new **Law no. 131 of 03 July 2015 on Public Procurement**, (Monitorul Oficial Nr. 197-205 of 31 July 2015) which will enter into force on 01 May 2016. The Law regulates decentralization of the procurement function to the public authorities, brings public procurement in line with international standards and provides for more transparency.

This new law ensures full transposition of EU Directives No 18/2004/CE (*“On the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts”*, 31 March 2004), ensuring thus transparency, comprehensiveness and competition in accordance with EU standards. The previous Law on Public Procurement (no. 96-XVI from 13 April 2007)¹, in force since 27 October 2007 (and still in force at the time of writing the present report) did not meet all stipulations of this Directive. Main issues were the domestic preference, the electronic procedure (e-procurement), short deadlines for tender submission and the complaints procedure. The new Law also transposes EU Directive No 66/2007/CE (Remedies Directive) which provides for rules aiming at clear and effective procedures by seeking redress where bidders consider contracts have been unfairly awarded. Specifically, it establishes an appeals body (Complaint Settlement Agency). However, this agency is not independent, since it is an administrative authority subordinated to MoF according to Art. 1 (3) of the Law. This issue has been pointed out in the 2015 SIGMA assessment as well as in Transparency International surveys. An amendment of the Law is envisaged, in order to provide further guarantees for the independence of this agency.

Secondary legislation for the implementation of the new law, regulating the different procurement methods, is under development.

The main provisions in this Law relating to corruption in public procurement are the following:

- **Article 18. Personal situation of the tenderer or candidate.** (1) The contracting authority shall exclude from the procedure for awarding the contract any bidder or candidate for which it is known that in the past 5 years, he/she has been convicted by final judgment of a court, for participating in activities of a criminal organization or criminal groups, for corruption, fraud and / or money laundering.
- **Article 40. Corruption in the public procurement procedure**
(1) The contracting authority shall reject the offer if it finds that the economic operator who proposes or agrees to propose, directly or indirectly, any person with an official function or employee of the contracting authority, or has offered a favor in any form, an employment or any other service to reward certain actions, decisions or implementation of public procurement procedures to his advantage.
(2) Rejection of the bid and the reasons for rejection shall be recorded in the report on the procurement procedure and will be communicated immediately to the economic operator concerned.
(3) Public Procurement Agency / Contracting Authority and / or economic operator shall promptly report to the competent bodies each case of corruption or attempted corruption committed by the economic operator and/or the representative of the contracting authority.

¹ Amended by Law no. 109 of 04 June 2010 and Law no. 124 of 18 June 2010

(4) Public procurement contracts obtained by corruption confirmed by the final judgment of the court, shall be void.

- **Article 65. Examination, evaluation and comparison of tenders**

(3) The contracting authority shall not accept the offer if:

e) the tender is abnormally low according to art. 66;

f) was found acts of corruption.

- **Article 67. Cancellation of the procurement procedure**

(1) The contracting authority - on its own initiative and at the request of the Public Procurement Agency, following a control - will cancel the award of a contract if it takes this decision before the transmission of the communication regarding the result of the public procurement procedure in the following cases:...

e) it was constated an act of corruption found, confirmed by the final judgment of the court;

The main provisions in this law relating to conflict of interest in public procurement are the following:

- **Article 74. Rules to avoid conflict of interest**

(1) During the application procedure for awarding public procurement contracts, the contracting authority shall take all necessary measures to avoid situations likely to result in a conflict of interest and / or unfair competition.

(2) a natural or legal person who participated in the preparation of the tender documentation is entitled, as operator, to be tenderer, associate tenderer or subcontractor, but only if his/her involvement in drafting the tender documentation is not likely to distort competition.

(3) a natural or legal person directly involved in the verification and evaluation of candidates/offers is not entitled to be a candidate, tenderer, associate tenderer or subcontractor, under penalty of exclusion from the tender process.

(4) every member of the working group is required to sign, under own responsibility, the declaration of confidentiality and impartiality with which they unconditionally commit themselves to respect this law and acknowledging, at the same time, that:

a) he/she is not husband/wife, relative or in-law up to the third degree with one or more employees of the bidder(s) or with one or more founders thereof;

b) in the past 3 years, did not work under individual employment contract or other agreement proving a working relationship with one of the bidders, and was not part of the board or any other governing body or the administration thereof ;

c) does not hold shares or part of the share capital of the bidders.

(5) If a member of the working group notes, up to or after the bid opening meeting, to be in one or more of the situations specified in para. (4), he/she shall immediately request his replacement in the group by another person.

(6) in case of non-respect of par. (4) and (5), the Public Procurement Agency has the right to cancel the tendering procedure.

(7) The working group operates under this law and the regulations approved by the Government.

Furthermore, the following legislation is relevant for this assessment:

- Law no. 90 of 25 April 2008 on Prevention and Combatting Corruption [hereinafter: Anti-corruption Law]
- Law no. 1104 of 06 June 2002 on the National Anti-Corruption Center
- Law 180 of 19 December 2011 on the National Integrity Center
- Law 1264 of 19 July 2002 on declaration and control of the income and ownership of the state dignitaries, judges, prosecutors, public officials and certain persons vested with managerial functions
- Law no. 158-XVI of 04 July 2008 on Public function and statute of the public official

- Law no. 16-XVI of 15 February 2008 on Conflict of interest
- Contravention Code no. 218 of 24 October 2008
- Law no. 25 of 22 February 2008 on Code of conduct of public officials
- Penal Code no. 985 of 18 April 2002
- Law no.252 of 25 October 2013 on Approval of Regulation on functioning of anticorruption hotlines
- Government Decision no.45 of 24 January 2008 for approval of Regulation on compilation and evidence of list of prohibited economic operators

Of secondary relevance are also the following:

- Law on Competition no. 183 of 11 July 2012
- Law no. 982 of 11 May 2000 on access to information
- Action Plan for implementation of the Association Agreement Rep. Moldova-EU for the years 2014-2016, approved by GD no.808 of 7 October 2014

Further texts, in an international context, that are relevant for this assessment are the following:

- Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC
- The DCFTA Title V Chapter 8 on Public Procurement, considering that the R. Moldova has signed this agreement on 27 June 2014
- The WTO Government Procurement Agreement (GPA), considering that the R. Moldova is a full-right member of the WTO since 2001.

2.2 Institutional framework

The Law on Public Procurement regulates decentralization of the procurement function to the **public authorities**. Related secondary legislation is comprised of about 25 Government Decisions regulating the implementation of the (current) Law.

The **Public Procurement Agency**, an independent agency under the Ministry of Finance (MoF), is responsible for regulation, supervision, control and inter-institutional coordination in the area of public procurement. Its mandate includes the review and approval of all contracts.

The main agencies with a clearly specified role in the area of anti-corruption are the National Anti-Corruption Centre, the National Integrity Commission, the Anti-Corruption Prosecution, the Court of Accounts, and the Information and Security Centre. The main document which regulates the actions in the field is the National Anti-Corruption Strategy.

According to Article 5 of the Anti-Corruption Law, the **National Anti-Corruption Center (NAC)** is the main institution responsible for investigating corruption cases and bringing them to justice. The legal status of NAC is stipulated in Law 1104 on the NAC. It mandates the NAC with prevention and fight against corruption. Its duties include: prevention, discovery, research and suppression of corruption; prevention of money laundering and combating the financing of terrorism; ensuring that corruption risk assessments are carried out within authorities and public institutions; data monitoring and assessment of corruption risks as well as coordinating and implementing an integrity plan development. The NAC is led by a director appointed by the president of Rep. Moldova at the proposal of the prime minister for a four-year mandate. The NAC is subordinated to the Parliament.

Law enforcement with regard to corruption is under the competence of the prosecution organs. According to art. 25 of Law no. 294/2008 on Prosecution, specialized prosecution organs are involved in certain specific areas, one of which is the **Anti-Corruption Prosecutor's Office** which was

established shortly after NAC in 2002. Apart from NAC, the Anti-Corruption Prosecutor's Office is the main institution for investigating corruption cases, and is responsible for following up on all criminal investigations conducted by NAC officers, but may also conduct its own investigations.

The **National Integrity Commission (NIC)** is a public authority with the objective of implementing the verification and control of declarations submitted in accordance with Law 1264 on declaration and control of the income and ownership of the state dignitaries, judges, prosecutors, public officials and certain persons vested with managerial functions and Law 16 on Conflicts of Interest. The legal status of NIC is stipulated in Law 180 on the NIC. Main duties of the NIC are to determine significant discrepancies between the assets and property gained during official functions that cannot be justified and to inform the public prosecution or tax service; to detect conflicts of interest and incompatibility. The NIC is a collegial entity consisting of five members, who are appointed by parliament for a five-year mandate. The NIC's budget and its human resources severely limit its capacity. Its annual budget is of only EUR 200,000 and its 26 staff members are supposed to control assets and incompatibilities of tens of thousands of officials. NIC receives about 100,000 declarations annually: one on income and property, and one on conflicts of interest from every person that is obliged to submit declarations, i.e. Members of Parliament, Ministers, judges and prosecutors. 5,000-6,000 of these declarations are verified annually against eight official databases (civil register, etc.) and accounts in commercial banks, if needed.

The **ex-post control function** in Rep. Moldova is carried out by the **Court of Accounts (CoA)**, which is the Supreme Audit Institution of Rep. Moldova and accountable to the Parliament., and by the **Financial Inspection** (former Financial Control and Revision Service) which is subordinated to the MoF.

Public procurement transactions of central public authorities are audited by the CoA. The CoA audits compliance of procurement transactions within regularity audits and also carries out performance audits of the public procurement system (in 2009 and 2015). Additionally, public procurement transactions of public authorities are subject to control by the Financial Inspection. The respective roles and functions of the CoA and of the Financial Inspection are reflected in the Law on the Court of Accounts no. 261-XVI of 05 December 2008 and the Law on Public Finances and Budgetary-Fiscal Accountability (No 181 of 25 July 2014), as well as by GD no 1026 of 2 November 2010 on the Organization of financial inspection activity.

In order to strengthen the **internal control system**, internal audit units have been established in public authorities, and their organization and functioning is regulated by the Law on Public Internal Financial Control (PIFC) No 229 of 23 September 2010. The internal audit function is still weak, and no specific training on auditing public procurement has been undertaken so far. A **Division for Harmonisation of the Public Internal Financial Control System** has been established in the MoF, for regulating and monitoring the system of financial management and control and internal audit activities.

The audit and control organisms refer suspected corruption cases to the law enforcement agencies, including NAC and the General Prosecutor's Office: The PIFC Law² mandates the heads of internal audit units to inform the respective head of the public authority about fraud suspicions. The latter is responsible and authorized³ to further transmit those cases to the competent authorities. Reporting to law enforcement agencies by the CoA is regulated by the Law on the Court of Accounts.

² art.22 (2), lit.i),

³ MoF Order nr.105 of 15 July 2013 (NMAISP 14, pct.10)

3 MAPS assessment

3.1 Overview of the assessment

Table 1 – MAPS indicators

Sub-Indicators	Score 2015	Text	Score 2010
Indicator 12. The country has ethics and anticorruption measures in place.			
12(a) – The legal and regulatory framework for procurement, including tender and contract documents, includes provisions addressing corruption, fraud, conflict of interest, and unethical behavior and sets out (either directly or by reference to other laws) the actions that can be taken with regard to such behavior.	2	<i>The procurement law or the regulations specify this mandatory requirement but leaves no precise instruction on how to incorporate the matter in tendering documents leaving this up to the procuring agencies. Tender documents generally cover this but without consistency.</i>	2
12(b) – The legal system defines responsibilities, accountabilities, and penalties for individuals and firms found to have engaged in fraudulent or corrupt practices.	1	<i>The legal/regulatory framework has general anti-corruption and fraud provisions but does not detail the individual responsibilities and consequences which are left to the general relevant legislation of the country.</i>	1
12(c) – Evidence of enforcement of rulings and penalties exists.	1	<i>Laws exist, but evidence of enforcement is weak</i>	1
12(d) – Special measures exist to prevent and detect fraud and corruption in public procurement.	2	<i>The government has in place an anticorruption program but it requires better coordination or authority at a higher level to be effective. No special measures exist for public procurement.</i>	2
12(e) – Stakeholders (private sector, civil society, and ultimate beneficiaries of procurement/end-users) support the creation of a procurement market known for its integrity and ethical behaviors.	1	<i>There are only a few organizations involved in the matter, the dialogue with the government is difficult and the contributions from the public to promote improvements are taken in an insignificant way.</i>	2
12(f) – The country should have in place a secure mechanism for reporting fraudulent, corrupt, or unethical behavior.	2	<i>There is a mechanism in place but accessibility and reliability of the system undermine and limit its use by the public.</i>	2
12(g) – Existence of Codes of Conduct/Codes of Ethics for participants that are involved in aspects of the public financial management systems that also provide for disclosure for those in decision making positions	3	<i>(a) There is a code of conduct or ethics for government officials with particular provisions for those involved in public financial management, including procurement. (b) The code defines accountabilities for decision making and subjects decision makers to specific financial disclosure requirements. (c) The code is of obligatory compliance and consequences are administrative or criminal</i>	3

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Sub-Indicators	Score 2015	Text	Score 2010
Related sub-indicators			
Sub-indicator 1(d) – Rules on participation	2	<p><i>The law and regulations meet the conditions of (a) and (b) plus one of the remaining conditions.</i></p> <p><i>The legal framework meets the following conditions:</i></p> <p><i>(a) Establishes that participation of any contractor or supplier or group of suppliers or contractors is based on qualification or in accordance with international agreements; requires the use of pass/fail basis for determining qualifications to extent possible; limits domestic price preferential, if allowed, to a reasonable amount (e.g.15% or less); and requires justification for set asides that limit competition.</i></p> <p><i>(b) Ensures that registration if required does not constitute a barrier to participation in tenders and does not require mandatory association with other firms.</i></p> <p><i>(c) Provides for exclusions for criminal or corrupt activities, administrative debarment under the law subject to due process or prohibition of commercial relations.</i></p> <p><i>(d) Establishes rules for the participation of government owned enterprises that promote fair competition.</i></p> <p>--- Note: (d) is not met</p>	2
Sub-indicator 6(c) – There are established norms for the safekeeping of records and documents related to transactions and contract management	2	<p><i>The procurement system complies with requirements (a), plus two of the remaining conditions</i></p>	2
Sub-indicator 9(a) – A legal framework, organization, policy, and procedures for internal and external control and audit of public procurement operations are in place to provide a functioning control framework.	1	<p><i>The system in the country provides for:</i></p> <p><i>(a) Adequate independent control and audit mechanisms and institutions to oversee the procurement function.</i></p> <p><i>(b) Implementation of internal control mechanisms in individual agencies with clearly defined procedures.</i></p> <p><i>(c) Proper balance between timely and efficient decision making and adequate risk mitigation.</i></p> <p><i>(d) Specific periodic risk assessment and controls tailored to risk management.</i></p> <p>Note: The system meets a) but controls are unduly burdensome and time-consuming hindering efficient decision making.</p>	1

3.2 Indicator 12 – Ethics and anticorruption measures

This indicator assesses the nature and scope of the anticorruption provisions in the procurement system. There are seven sub indicators (a-g) contributing to this indicator.

3.2.1 Sub-indicator 12(a)

Text: The legal and regulatory framework for procurement, including tender and contract documents, includes provisions addressing corruption, fraud, conflict of interest, and unethical behaviour and sets out (either directly or by reference to other laws) the actions that can be taken with regard to such behavior.

This sub indicator assesses the extent to which the law and the regulations compel procuring agencies to include fraud and corruption, conflict of interest and unethical behavior references in the tendering documentation

Rejection of offers in case of corrupt acts: The Public Procurement Law (PPL) imposes in Article 40 (1) (*“Corruption in the public procurement procedure”*) the rejection of offers submitted by economic operators who have been found to be involved in corrupt acts.

Moreover, the PPL establishes in Article 18 (*“Personal situation of the tenderer or candidate”*) that the contracting authority shall exclude from the procedure of awarding of a public procurement contract any bidder or candidate *“(1) known, in the past 5 years, to have been convicted by final judgment of a court for participating in activities of a criminal organization or group, corruption, fraud and/or money laundering” or “(2) ... c) has been convicted in the last 3 years by a final judgment of a court for an act affecting professional ethics or for committing a professional error; d) has submitted false information or has not submitted the information required by the contracting authority for demonstrating fulfillment of the qualification and selection criteria; or e) is included in the list of prohibited suppliers.”*

Definitions:

- Article 40 (1) of the PPL defines corruption acts as follows: *“the economic operator who proposes or agrees to propose, directly or indirectly, any person with an official function or employee of the contracting authority, or has offered a favor in any form, an employment or any other service to reward certain actions, decisions or implementation of public procurement procedures to his advantage.”* This is broadly in line with the definition of active corruption in Article 3 of the EU Convention on the fight against corruption (*“the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties”*).
- Furthermore, the Law on Prevention and Combatting Corruption defines in Article 15 corruptional behavior and in Article 16 (2) corruption acts, pointing equally at active and passive corruption.

Consequences: Consequences of corruption acts are stipulated in Article 40 (3) of the PPL, namely obliging the parties (PPA, Contracting Authority and/or economic operators) to report cases of corruption or attempted corruption to the competent bodies.

Conflict of interest provision: Article 74 of the PPL defines conflicts of interest, and stipulates how they shall be prevented.

References in the tendering documentation: Due to lack of instructions on how to incorporate fraud and corruption related provisions into the bidding and contract documents and lack of conflict of interest provisions, a score of 2 was assigned in the 2010 Assessment. The new law still does not provide precise instructions on how to incorporate the matter in bidding documents, and the score therefore remains the same. It should however be noted that the existing sample bidding documents reiterate the legal provisions.

3.2.2 Sub-indicator 12(b)

Text: The legal system defines responsibilities, accountabilities, and penalties for individuals and firms found to have engaged in fraudulent or corrupt practices.

This indicator assesses the existence of legal provisions that define fraudulent and corrupt practices and set out the responsibilities and sanctions for individuals or firms indulging in such practices. These provisions should address issues concerning conflict of interest and incompatibility situations.

Reporting corruption: Art. 40 (3) of the PPL requires the PPA, the Contracting Authority and/or the economic operators to report to the competent bodies each case of corruption or attempted corruption committed by an economic operator and/or a representative of the contracting authority. The “competent body” is not explicitly specified in the PPPL, and the PPL does not include an explicit reference to other laws.

Anti-corruption legislation: Law no. 90 on Preventing and Combating Corruption is the main element of anti-corruption legislation. It specifies the National Anti-Corruption Center (NAC) as the main institution responsible for investigating corruption cases and bringing them to justice. According to Article 5 of the Anti-Corruption Law, NAC reports to Government and Parliament.

Conflict of interest provision: Article 74 of the PPL defines conflicts of interest, and stipulates how they shall be prevented.

Sanctions: Article 16 (1) of the Anti-Corruption Law (“*Responsibility for corruption acts*”) specifically refers to the Penal Code: “*In case of corruption or corruptive behavior, individuals and legal entities shall be held responsible in accordance with the Penal Code for committing corruption acts.*”

Individual responsibilities and consequences for government employees and private firms or individuals found guilty of fraud or corruption in procurement are extensively defined and regulated in the following legislation:

Table 2 - Civil service legislation on corruption

Law	Article
Law no. 158-XVI of 04 July 2008 on Public function and statute of the public official	<ul style="list-style-type: none"> • Art. 24. Declaration on income, property and personal interests • Art. 25. General incompatibilities for public office • Art. 57. disciplinary violations
Law no. 16-XVI of 15 February 2008 on Conflict of interest	<ul style="list-style-type: none"> • Art. 2: Definitions • Art. 3 Subjects of declaration of personal interest

	<ul style="list-style-type: none"> • Art. 6. Ensuring transparency and public control of activities • Art. 8. Identification of conflicts of interest • Art. 12. Legal consequences of documents issued, adopted or concluded in violation of the legal stipulations on conflict of interest
Contravention Code no. 218 of 24 October 2008	<ul style="list-style-type: none"> • Art. 313. Failure to declare conflict of interest • Art. 314. Concealment of a corruption act or a related act or failure to take appropriate measures • Art. 314. Failure to take measures for protecting public officials • Art. 315. Receiving an illegal reward or material benefit • Art. 298. Violation of procedures for calculating, approval, use of budget funds and management of public assets • Art. 327. Violation of rules for initiation and conducting of public procurement procedures
Law no. 25 of 22 February 2008 on Code of conduct of public officials	<ul style="list-style-type: none"> • Art. 12. Conflict of interest • Art. 13. Obligations of Civil Servants in leadership function
Penal Code no. 985 of 18 April 2002	<ul style="list-style-type: none"> • Art. 324. Passive Corruption • Art. 325. Active corruption • Art. 326. Influence trafficking • Art. 327. Abuse of power or abuse of service • Art. 328. Official excess or excess of service • Art. 329. Service negligence • Art. 330. Illicit Enrichment • Art. 332. Forgery of public documents • Art. 333. Bribery taking • Art. 334. Bribery giving • Art. 335. Abuse of service

Furthermore, Article 17 (“Other responsibility”) of the Anti-Corruption Law stipulates that “*Violation of this law entails civil, disciplinary, administrative, as appropriate, as required by law, including:*

a) corruption or corrupt behavior committed by individuals or legal persons, if these actions do not constitute an infraction;

b) failure to comply with restrictions and exclusions established by laws governing the special status of civil servants, political appointees and other people providing public services”

Due to lack of specific provisions in the previous PPL, a score of 1 was assigned in 2010. Although Article 40 of the new PPL makes reference to different types of sanctions in corruption cases, a reference to other laws is still lacking, and the score is maintained.

The “Action Plan for the years 2014-2015 on implementation National Anticorruption Strategy” contains an item regarding improvement of the legal framework, which is oriented at establishing collective responsibility of procurement working groups for corruption acts and other types of procurement fraud. This action item is still outstanding.

3.2.3 Sub-indicator 12(c)

Text: Evidence of enforcement of rulings and penalties exists.

This indicator is about the enforcement of the law and the ability to demonstrate this by actions taken. Evidence of enforcement is necessary to demonstrate to the citizens and other stakeholders that the country is serious about fighting corruption

According to the NAC Annual Report 2014, NAC has detected and investigated 668 offenses, which represents an increase of 17.4 % compared to 2013. These offenses include:

- Corruption and corruption related offenses: 498, i.e. an increase of 21.17% compared to 2013.
- Money laundering: 45 cases, representing an increase of 12.50% compared to 2013.
- Other types of crimes: 125 cases, including 47 cases of forgery of official documents; 20 cases of acquisition of assets by deception or abuse of confidence; and 58 other crimes (non-enforcement of court decisions, favouring criminal offenses, stolen assets, economic crime, etc).

According to the same report, NAC has brought to justice in 2014:

- 463 criminal cases related to corruption and cases connected to them
- 44 economic and financial cases, and
- 110 other cases

Among the corruption cases, 10 related to public procurement activities.

Of the total 1,849 criminal cases under procedure, 646 cases have been judged.

Table 3 – Corruption cases in 2014, by type of offense

Type of offense	Penal Code	Number of cases in total	Number of cases in PP
Passive corruption	Art. 324	139	-
Influence trafficking	Art. 326	106	-
Exceeding power or office	Art. 328	81	3
Abuse of power or abuse of office	Art. 327	36	3
Active corruption	Art. 325	45	1
Forgery of public documents	Art. 332	28	1
Negligent service	Art. 329	26	1
Abuse of service	Art. 335	20	1
Acquiring foreign assets, using official position		12	-
Bribery	Art. 333	4	-
Illicit enrichment	Art. 330	1	-
TOTAL		498	10

Source: NAC Annual Report p.6

Table 4 – Corruption cases in 2014, by sector of activity

Sector of activity	Corruption cases in total	Corruption cases in PP
Law enforcement and justice organisms	131	3
SOEs	89	2
Local government (municipalities)	82	1
Commercial organizations	62	-
Law firms	25	-
Public Health	19	1
Public transport institutions	19	-
Educational institutions	16	-
Tax audit and review bodies	12	-
Bailiffs offices	10	-
National defense	8	-
Customs institutions	5	3
TOTAL	478	10

Source: NAC Annual Report p.7

Table 5 –Penal cases initiated by NAC in 2014, by type of post

Type of post	Total cases	Cases in PP
Judges	7	-
Justice inspector, Superior Council of Magistrates	1	-
Prosecutors	1	-
Ministers, deputy ministers	4	-
Directors, deputy directors of agencies	3	-
Heads of autonomous institutions of the public authorities	3	-
Heads and deputy heads of department in public authorities	14	2
Mayors	12	1
Criminal investigators	10	-
Police inspectors	75	-
Lawyers	27	-
Bailiffs	10	-
Directors, deputy directors of organizations	56	-
Medical doctors	10	-
Lecturers, teachers	10	-
Tax inspectors, auditors	11	-
TOTAL	254	3

Source: NAC Annual Report p.7-8

Compared to the 2010 assessment, in which 9 penal cases of corruption in public procurement had been initiated by NAC, there is no significant increase in enforcement, and the score of 1 is therefore maintained.

3.2.4 Sub-indicator 12(d)

Text: Special measures exist to prevent and detect fraud and corruption in public procurement.

This sub indicator looks to verify the existence of an anticorruption program and its extent and nature or other special measures which can help prevent and/or detect fraud and corruption specifically associated with public procurement.

Anti-corruption programme

- The responsible body for fighting corruption is NAC which was established by Law Nr. 1104 of 06 June 2002 on the National Anti-Corruption Center
- A National Anticorruption Strategy for 2011-2015 is in place, approved with Parliament Decision no. 154 of 21.07.2011
- An Action Plan for the years 2014-2015 on implementation National Anticorruption Strategy for 2011-2015 was approved with Parliament Decision no. 76 of 16.05.2014. It will be extended to 2016.
- A new Draft Strategy 2017-2019 and an Action Plan for implementation of that Strategy is under preparation.

Stakeholders

The Action plan identifies stakeholders in anti-corruption and assigns them responsibilities. The main stakeholders are:

- The National Anti-Corruption Center (NAC)
- The National Integrity Commission

- The General Prosecutor's Office,
- The Ministry of Interior
- The Ministry of Justice
- The Ministry of Finance and its subordinated services (including the Public Procurement Agency)
- The Supreme court
- The Superior Council of Magistracy
- Specialized Parliamentary committees
- Specialized civil society organizations
- Central Public Authorities
- The Court of Accounts

Legislative oversight bodies (Parliament) and civil society organizations (NGOs, Chamber of Commerce) are therefore included explicitly in the Action Plan.

The judiciary also participates. The special investigative body that is responsible for investigating and prosecuting cases of corruption is the Anti-corruption Prosecutor's Office which investigates corruption cases of smaller scale. The General Prosecutors Office investigates cases of larger scale covered by the media.

In regard to public procurement, the Action plan 2014-2015 contains only two activities:

Table 6 - Ant-corruption Strategy: Actions on public procurement

Action	Responsible	Expected result
Drafting, amending and supplementing GD No. 188 of 3 April 2012 on official websites of public administration authorities in the Internet	Ministry of Communications and Information Technology, the State Chancellery (Government Center, the Center for Special Telecommunications)	Quality of websites of public authorities improved by completing the list of mandatory information by: <ul style="list-style-type: none"> • Declarations of personal interests of management; • Procurement (annual procurement plan, letters of intent, etc.); • Anti-corruption module (responsible person, integrity plan and report on execution etc.)
Establishing an independent national body responsible for examining and resolving complaints submitted in the procedures for awarding public contracts	Ministry of Finance, PPA	Independent national examination and functional settlement of disputes. Conflict of interest is avoided to the extent where the PPA review board examines complaints and records the examination results

Source: Action Plan for the years 2014-2015 on implementation National Anticorruption Strategy for 2011-2015

- GD No. 188 of 3 April 2012 has not yet been amended. For the vast majority of all Ministry websites, declarations of personal interests of management and up-to-date annual procurement plans are not published. However, PP announcements and/or letters of intent are published in several cases, as well as anti-corruption modules.
- The new law on public procurement, which will enter into force in May 2016, establishes an appeals body (Complaint Settlement Agency). There have been concerns whether this agency can be regarded as independent, since it is an administrative authority subordinated to MoF according to Art. 1 (3) of the Law. A legal amendment to reinforce the agency's independence is planned.

e-procurement services

Implementation of e-procurement started in 2007, but its completion has been pending for several years due to lack of funds. The legal basis is set by the PPL in Article 56 and by further legislation in the area of e-government. The implementation of an e-procurement system has progressed since 2013, and the system is used by larger central public authorities and some Level-2 ATUs, which together execute 30% of all public procurement. The system needs however to be improved, or may be replaced by a new IT system, or order to be able to cover all budget institutions. The Anticorruption Strategy does not include actions oriented at the promotion of e-procurement services to minimize the risk of facilitation payments.

Awareness campaigns

As part of efforts to change social behavior in respect to corrupt practices and tolerance. In the year 2015, a total of 555 anti-corruption seminars have been organised, with a total of 30,481 participants, including 14,340 civil servants. In the same period, 213 awareness campaigns for students have been rolled out, reaching 15,395 students in secondary education and universities.

This sub-indicator scored 2 in 2010, and this score is confirmed since the conditions for score 3 *“Special measures are in place for detection and prevention of corruption associated with procurement”* are not fulfilled.

3.2.5 Sub-indicator 12(e)

Text: Stakeholders (private sector, civil society, and ultimate beneficiaries of procurement/end-users) support the creation of a procurement market known for its integrity and ethical behaviors.

There are only few civil society organizations dealing with corruption in general (Transparency International, Expert-Grup, the Center for Analysis and Prevention of Corruption). There is a group of investigative journalists (Journalistic Investigations Center - <http://www.investigatii.md/>). There is no evidence about a serious dialogue of these NGOs and journalists with the Government, and the impact on improving the system appears more than limited.

The new PPL allows the inclusion of a civil society representative in the working groups. Whether this will contribute to preventing corruption cases still has to be seen when the law will enter into force.

The score 2 of the last assessment appears – under current conditions – over-estimated. A score of 1 appears more justified.

3.2.6 Sub-indicator 12(f)

Text: The country should have in place a secure mechanism for reporting fraudulent, corrupt, or unethical behavior.

This indicator assessed whether the country provides a system for reporting fraudulent, corrupt or unethical behavior that provides for confidentiality. The system must be seen to react to reports as verified by subsequent actions taken to address the issues reported.

Legal basis

Article 14 (2) of the Anti-Corruption Law mandates the public authorities to evaluate legal instruments and measures regarding to their adequacy in fighting corruption, and mentions internal control and “*b) receiving information from various sources (audience, anonymous letters confidential phone, email, etc.)*”.

For the implementation, the following Government Decisions have been adopted:

- GD no. 707 of 09 September 2013 on *Regulation of the framework on whistle-blower for integrity*, which establishes steps for a public official to report fraud and corruption, and regulates his/her protection
- GD no. 767 of 19 September 2014 for *implementation of Law no.325 of 23 December 2013 on testing professional integrity*, which establishes the procedure for communicating and evidencing inappropriate influence applied on public officials and the maintenance of a register for reporting such influence

Most Central Public Authorities have drafted and approved internal regulations on whistle-blower for integrity.

Hotlines

According to the Regulation on functioning of anticorruption hotlines, a 3-level system of anti-corruption hotlines is established:

- National anti-corruption hotline
- Specialized anti-corruption hotline
- Institutional lines for information

The National anti-corruption hotline is maintained by NAC and operating 24 hours per day. During the period January-June 2015, this hotline received 1,312 of calls from citizens. Only 61 cases (4.65%) related to the reporting of suspected acts of corruption, corruptive behavior and related issues. The remaining majority of the calls concerned consultations.

There is no evidence of such hotlines in the public authorities, and reportedly very little information is provided by civil servants, i.e. from inside the public authorities. The main sources of information of NAC are undercover agents.

In the 2010 assessment, a score of 2 was assigned which appears justified since a mechanism is in place for public reporting of cases of fraud, unethical behavior and corruption, but the efficiency of the system is limited since relevant information is generally not received via this system but through other means.

3.2.7 Sub-indicator 12(g)

Text: Existence of Codes of Conduct/Codes of Ethics for participants that are involved in aspects of the public financial management systems that also provide for disclosure for those in decision making positions.

This indicator assesses whether the country has a Code of Conduct/Ethics in place that applies to all public officials. In addition, special provisions should be in place for those involved in public procurement. In particular, financial disclosure requirements have proven to be very useful in helping to prevent unethical or corrupt practices.

Code of Conduct

A Code of Conduct for civil servants has been adopted by Law no. 25 of 22 February 2008 on Code of Conduct for public officials. It provides norms of conduct and defines prohibited acts and transactions for public officials. In particular:

- Article 11 *“Gifts and other advantages”* prohibits civil servants to seek or accept gifts, services, favors, invitations or any other benefit, for him/herself or his/her family.
- Article 12. *“Conflict of interest”* stipulates avoidance and declaration of conflicts of interest.
- Article 13. *“Consequences for violation of this law”* refers to the provisions of the legislation on public function and statute of public officials.

Article 68 of the PPL (*“Principles for award of a public procurement contract”*) stipulate, under lit. a), the compliance with laws and regulations, morality and professional ethics;

In the 2010 assessment, a full score of 3 was assigned to this sub-indicator, considering the comprehensive civil service legislation, in particular the Code of Conduct, defining prohibited acts and sanctions.

It should however be noted that not all employees of public authorities, which are involved in public procurement, are civil servants. Examples are personnel of educational and medical institutions. They are thus not subject to the mentioned Code of Conduct.

This score of 3 is nevertheless maintained.

3.3 Related indicators

3.3.1 Sub-indicator 1(d)

Text: Rules on participation

This sub indicator assesses the participation and selection policies to ensure that they are non-discriminatory.

This sub-indicator is not specifically focused by the present study, except for the following issue related to corruption: *“Other legitimate exclusions (e.g. prohibition of commercial relations by law or adherence to UN Security Council sanctions) or for judicial finding of corruption (after the due process has been exhausted) are acceptable.”*

It is assessed whether the legal framework meets the following criterion (among four criteria):

“(c) Provides for exclusions for criminal or corrupt activities, administrative debarment under the law subject to due process or prohibition of commercial relations.”

- Article 40 (1) of the PPL (*“Corruption in the public procurement procedure”*) stipulates the rejection of offers submitted by economic operators who have been found to be involved in corrupt acts.
- Article 9 of the PPL (*“Basic tasks of the PPA”*) mandates the PPA in lit. c) to *“prepare, update and maintain the list of qualified economic operators and List of excluded economic operators”*

- Article 24 (*"List of qualified economic operators"*) defines this list as an official document that identifies economic operators accessible for public procurement procedures, and states that the inscription in this list, which is maintained by the PPA, is made further to a request, but is not mandatory.

Note: This list is published on the web page of PPA and includes 128 economic operators. However, a comparison of the economic operators participating in public procurement process and those that have been awarded contracts, it appears that those are not included in the list.

- Article 25 (*"List of excluded economic operators"*) defines this list as an official document issued and maintained by the PPA with the aim of limiting a period of 3 years, an economic operators' participation in public procurement procedures laid down by law.

The inclusion of an operator in the "black list" of excluded economic operators is to be pronounced by the PPA and subject to a court decision, i.e. the economic operator can file a complaint against such exclusion at the competent court. The black list published on the PPA's website tender.gov.md.

Criteria (c) of this sub-indicator is therefore fulfilled.

Without analyzing details in the present report, it can also be confirmed that criteria (a) and (b) of this sub-indicator are fulfilled, considering that the Rep. Moldova has signed the DCFTA and WTO agreements. On the other hand, criteria (d) is not fulfilled (*"Rules for the participation of government owned enterprises that promote fair competition"*), as there is still no regulation on the participation of state-owned enterprises nor public private partnerships in public procurement, and this constitutes a main shortcoming in combatting corruption.

The score of 2, assessed in 2010, is therefore maintained.

3.3.2 Sub-indicator 6(c)

Text: There are established norms for the safekeeping of records and documents related to transactions and contract management

It is assessed whether the legal framework meets the following criterion (among four criteria):

"(c) There is a document retention policy that is compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and with the audit cycles."

Article 32 of the PPL (*"Rules for communication"*) establishes that *"(1) Any communication, request, information, notification and the like, under this law, shall be submitted in writing" and "(2) Any written document must be registered at the time of transmission and upon receipt."*

Article 43 of the PPL (*"Public procurement file"*) establishes that *"(1) The contracting authority has the obligation to prepare public procurement file and keep it within 5 years after initiation of the public procurement procedure" and "(2) Documents to be included in public procurement file and those to be submitted to the PPA shall be established by regulations approved by the Government."*

Criterion (c) can therefore be considered as fulfilled.

Due to lack of security protocols to protect records, a score of 2 was assigned in 2010. There has been no change with regard to the security issue, and the score is therefore maintained.

3.3.3 Sub-indicator 9(a)

Text: A legal framework, organization, policy, and procedures for internal and external control and audit of public procurement operations are in place to provide a functioning control framework.

This sub-indicator assesses whether the system in the country provides for:

- (a) Adequate independent control and audit mechanisms and institutions to oversee the procurement function.*
- (b) Implementation of internal control mechanisms in individual agencies with clearly defined procedures.*
- (c) Proper balance between timely and efficient decision making and adequate risk mitigation.*
- (d) Specific periodic risk assessment and controls tailored to risk management.*

(a) Adequate independent control and audit mechanisms and institutions to oversee the procurement function.

Public procurement transactions of central public authorities are audited by the Court of Accounts which is the Supreme Audit Institution of Rep. Moldova and accountable to the Parliament. The Court of Accounts audits compliance of procurement transactions and also carries out performance audits of the public procurement system (in 2009 and 2015). In addition, public procurement transactions of public authorities are subject to control by the Financial Inspection, which is subordinated to the Ministry of Finance.

The respective roles and functions of these institutions are reflected in the Law on the Court of Accounts and the Law on Public Finances and Budgetary-Fiscal Accountability (No 181 of 25 July 2014), as well as by GD no 1026 of 2 November 2010 on the Organization of financial inspection activity. Furthermore, internal audit units have been established in public authorities, and their organization and functioning is regulated by the Law on Public Internal Financial Control (PIFC) No 229 of 23 September 2010. The internal audit function is still weak, and no specific training on auditing public procurement has been undertaken so far.

The audit and control organisms refer suspected corruption cases to the law enforcement agencies, including NAC and the General Prosecutor's Office.
See also Section 2.2 (Institutional Framework).

(b) Implementation of internal control mechanisms in individual agencies with clearly defined procedures.

Internal financial control in the public authorities is integrated within the FMIS and delegated to the Territorial Treasuries. The control cycle consists of two levels: (i) preventive controls in the public authorities; and (ii) second level ex-ante control by the Territorial Treasuries.

In terms of compliance, the internal financial control system can be considered as effective. However, this system does not address value-for-money, nor does it systematically address corruption risks.

Internal financial controls are subject to ex-post control by the Court of Accounts or by the Financial Inspection at least every two years (plus ad hoc controls by the MoF on a case basis).

New *National Internal Control Standards* have been adopted with Order no.189 of 5 November 2015. They provide a summary overview of international best practice and national legislation relating to 17 control standards, such as the four eyes principle, the maintenance of risks registers and record keeping of transactions. The Standards specifically mandate organisational units in public authorities to maintain risks registers which are to include corruption risks, and stipulate the development of internal controls to prevent and mitigate them. Corruption is referred to in the standard on "Ethics and integrity". For the implementation of these standards, the following Government Decisions have been adopted:

- The two above mentioned government decisions GD no. 707 of 09 September 2013 on *Regulation of the framework on whistleblower for integrity*, GD no. 767 of 19 September 2014 for *implementation of Law no.325 of 23 December 2013 on testing professional integrity*, and
- GD no. 1041 of 20 December 2013 on the *adoption of a Programme for developing financial control in the period 2014-2017* which establishes an Action Plan for the development of procedures and institutional arrangements for strengthening internal controls.

(c) Proper balance between timely and efficient decision making and adequate risk mitigation and
(d) Specific periodic risk assessment and controls tailored to risk management.

According to the PIFC Law, the heads of public institutions are responsible for implementing a risk management system in terms of preventing and managing risks to the achievement of the institution's objectives and efficient spending, as well as risks relating to the Integrity Plan of the public authority. Integrity plans are defined in GD no.906 of 28 July 2008 "on approval of the methodology of evaluation of corruption risks in public authorities and institutions" as *action plans to prevent corruption*. Corruption risks and measures to prevent and mitigate them – as identified in the integrity plans – are mandatorily included in the risk registers in form of control activities.

The Court of Accounts applies a risk-based approach, and internal audit units also base their audit plans on risk assessment. However, risk management is generally in the early stages of development, and corruption risks are not specifically addressed.

Considering the absence of an efficient risk management system, the conditions for a higher score than 1 are not met, and score 1 assigned in 2010 is maintained.

3.4 Recommendations for improvement of the analysed MAPS indicators

In order to improve the scores on the indicators analysed above, the following would need to be undertaken:

Table 7 – Recommendations for improving the MAPS indicators

Sub-Indicators	Score 2015	Measures for improving the score to 3
12(a) – The legal and regulatory framework for procurement, including tender and contract documents, includes provisions addressing corruption, fraud, conflict of interest, and unethical behavior and sets out (either directly or by reference to other laws) the actions that	2	The PPL should include a provision on how to incorporate instructions relating to corruption and fraud in the tender documents. This could as well be covered in secondary legislation (which is currently under development)

Sub-Indicators	Score 2015	Measures for improving the score to 3
can be taken with regard to such behavior.		
12(b) – The legal system defines responsibilities, accountabilities, and penalties for individuals and firms found to have engaged in fraudulent or corrupt practices.	1	Score 3 requires that <i>“The legal framework should spell out the individual responsibilities and consequences for government employees and private firms or individuals found guilty of fraud or corruption in procurement, without prejudice of other provisions in the criminal law.”</i> This could be achieved by making the Anti-Corruption Law more specific, i.e. including penalties, or making clear references to other laws.
12(c) – Evidence of enforcement of rulings and penalties exists.	1	This is an implementation issue. More evidence on enforcement is needed (court rulings with guilty verdicts). This may also require faster law enforcement procedures.
12(d) – Special measures exist to prevent and detect fraud and corruption in public procurement.	2	NAC and NIC need more human and material resources. A special department for corruption in procurement may be envisaged in NAC, as well as training for NAC officials in this area.
12(e) – Stakeholders (private sector, civil society, and ultimate beneficiaries of procurement/end-users) support the creation of a procurement market known for its integrity and ethical behaviors.	1	More activity of civil society organizations (CSOs) in the area of procurement corruption would be needed, and more visibility of their reports for the public. This would also require training for them, since CSOs tend to focus on other areas of corruption. Funding of these activities should be provided by donors. Better cooperation of government with the CSOs would also be needed.
12(f) – The country should have in place a secure mechanism for reporting fraudulent, corrupt, or unethical behavior.	2	The whistleblower system in public authorities should be further developed (hotlines, better protection of whistleblowers). The effectiveness of the NAC hotline should be improved.
12(g) – Existence of Codes of Conduct/Codes of Ethics for participants that are involved in aspects of the public financial management systems that also provide for disclosure for those in decision making positions	3	
Related sub-indicators		
Sub-indicator 1(d) – Rules on participation	2	Including public enterprises in the scope of the PPL, or introducing other uniform regulations on public procurement carried out by public enterprises and PPPs
Sub-indicator 6(c) – There are established norms for the safekeeping of records and documents related to transactions and contract management	2	Security protocols to protect records on procurement.
Sub-indicator 9(a) – A legal framework, organization, policy, and procedures for internal and external control and audit of public procurement operations are in place to provide a functioning control framework.	1	Strengthen risk assessment in regard to corruption and fraud in public procurement. To achieve this: Capacities of internal and external auditors on procurement audit should be strengthened through specialized training. Also, internal controls in public procurement should be strengthened (working groups, post-award monitoring).

4 Risk mapping

This section describes corruption risks characteristic to the national system of public procurement in the Rep. Moldova, including mapping of integrity risk areas and recommended measures for integrity/corruption risks mitigation. Findings and conclusions in this section result from interview held with the various stakeholders (see Annex 2).

4.1 High risk areas

By sectors of activity

The highest corruption risks in procurement are found the following two sectors of activity:

- Goods: Pharmaceutical products and medical equipment
- Works: Construction works and repairs, in particular roads

This is not surprising, since these two sectors are those with the highest procurement volumes, as shown in the table below.

Table 8 - Public procurement by sectors of activity, as percentage of total procurement

Sector of activity	Number of contracts	Amount MDL	% by amount	% by number of contracts
Pharmaceutical products and medical equipment ⁴	6,098	672,788,084	13.69	44.28
Construction works ⁵	1,173	2,785,232,343	57	9

Source: PPA Annual Report 2014, Annex no.6 (open tenders)

In 2014, NAC registered two cases of corruption in procurement of medical equipment and pharmaceutical products and two cases in works.

By type of public authority

- Local public authorities are by far more prone to corruption than central public authorities (by municipality in 2014: Chisinau 44%, Balti 10 %, other rayons: 3-4 % each)
- Public enterprises are not subject to the public Procurement Law, and their procurement processes are therefore intransparent and open to corruption. There are 300 public enterprises.

By value of contract

- The larger the contract amount is, the higher is the corruption risk.
- There was no agreement among the interviewees on whether smaller or larger companies are more prone to corruption.
- Single source procedures, including emergency procurement, present a high corruption risk.

⁴ Cat. 330, 331 and 336

⁵ Cat 450, 451, 452, 453, 454 and 455

4.2 Overview

The procurement process is divided into four phases:

Phase 1 – Project identification (needs assessment)

Phase 2 – Advertising, prequalification, bid preparation and submission;

Phase 3 – Contracting process (bid review, Contractor selection and contract award)

Phase 4 – Contract implementation and monitoring

The tables below lists the corruption risks on both sides, i.e. by the economic operator (**active corruption**) and by the contracting authorities (**passive corruption**). Active and passive corruption is equally strong. Interview suggest that active and passive corruption is equally strong. There is the perception that corruption often finances political parties, and vice-versa contracts are awarded by political criteria.

Only some of these irregularities are offenses according to the Penal Code:

- Falsification of documents
- Abuse and negligence of office
- Collusion between economic operators (difficult to prove)

Table 9 - Risk mapping

	Economic operator	Contracting authority	Possible consequences
Pre-bidding			
Phase 1: Project identification (Needs assessment)	<ul style="list-style-type: none">Prioritization of needs influenced by external actors in favour of their interests	<ul style="list-style-type: none">Artificial increase of the budget to cover corruption costsFormulation and justification of needs reflect personal interest	<ul style="list-style-type: none">Economically unjustified procurement
		<ul style="list-style-type: none">Technical specifications (Specified parameters) designed for a specific economic agent	<ul style="list-style-type: none">Favorising a concrete bidder
		<ul style="list-style-type: none">Lack of confidentiality (information provided to some bidders)	
		<ul style="list-style-type: none">Splitting of one large procurement into several small ones to achieve minor value procurement, which is	<ul style="list-style-type: none">Not contained in annual plans, not published, and does not arrive to PPA.Favorising a concrete bidder
		<ul style="list-style-type: none">Inaccurate analysis of needsNeeds documentation does not clearly specify the quality standards Bidding documents are incomplete, ambiguous too complex and create confusion	<ul style="list-style-type: none">Supply of low qualityThreat for safety (food, medicines, roads) or environmentHigh maintenance costs after completion.
Bidding			
Phase 2: Advertising, prequalification, bid preparation and submission;	<u>Collusion: Tenderers form groups controlled by certain persons, and influence the selection from start</u>		<ul style="list-style-type: none">Excessive price as a result of limited or non-existent competition.
	<ul style="list-style-type: none"><i>Bid suppression</i>: some of the conspirators agree not to submit a bid so that another conspirator can successfully win the contract;<i>Subcontract bid rigging</i>: some of the conspirators agree not to submit bids, or to submit cover bids that are intended not to be successful, on the condition that some parts of the successful bidder's contract will be subcontracted to them.		
	<ul style="list-style-type: none"><i>Complementary bidding</i>: some of the bidders bid an		

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	Economic operator	Contracting authority	Possible consequences
	amount knowing that it is too high or contains conditions that they know to be unacceptable to the agency calling for the bids;		
	<ul style="list-style-type: none"> • <i>Bid rotation</i>: bidders take turns being the designated successful bidder • <i>Customer or market allocation</i>: bidders agree to divide up customers or geographical areas; 		
	<ul style="list-style-type: none"> • <i>Lowballing</i>: submitting the lowest bid with the understanding of the public official that, once awarded, the contract will be amended to increase the contract price; 	<ul style="list-style-type: none"> • Agreement on lowballing 	<ul style="list-style-type: none"> • Favouring of a specific bidder
	<ul style="list-style-type: none"> • Fake offers from different connected economic operators, in order to have three offers for a RFP. 		
		<ul style="list-style-type: none"> • Failure to submit confidentiality declarations • Failure to keep confidentiality of bids received 	<ul style="list-style-type: none"> • Favouring of a specific bidder
	<ul style="list-style-type: none"> • Falsification of documents (certificates, balance sheets, bank guarantees) included in bid 		<ul style="list-style-type: none"> • Possible award to an unqualified bidder
Phase 3: Contracting process (bid review, Contractor selection and contract award)	<ul style="list-style-type: none"> • 	<ul style="list-style-type: none"> • Conflicts of interest (relations between contracting authority and economic operator) • Bribes 	<ul style="list-style-type: none"> • Decision on award in favour of a specific bidder (relatives, former employees) • Higher price. Difference is bribe (usually 10%, but sometimes up to 40%).
		<ul style="list-style-type: none"> • Failure to record the offers submitted • Loss of submitted documents • Manipulation of bid documentation received • Failure to document the process of bid opening • Unjustified tender cancellation 	<ul style="list-style-type: none"> • Unjustified disqualification of bidders • Decision on award in favour of a specific bidder
		<ul style="list-style-type: none"> • Request of additional documents or information previously not required 	<ul style="list-style-type: none"> • Decision on award in favour of a specific bidder
		<ul style="list-style-type: none"> • Non-compliance with legislation • Inaccurate assessment of bidder's qualification 	<ul style="list-style-type: none"> • Intransparent bid evaluation
	<ul style="list-style-type: none"> • Failure to ensure the deposit of execution 	<ul style="list-style-type: none"> • Lack of control about complying with guarantee 	<ul style="list-style-type: none"> • Non-execution

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	Economic operator	Contracting authority	Possible consequences
	guarantees	regulations	
	<ul style="list-style-type: none"> 	<ul style="list-style-type: none"> Extension / speed up of process signing the contract 	<ul style="list-style-type: none"> Favouring a specific bidder
Post-bidding			
Phase 4: Contract implementation and monitoring	<ul style="list-style-type: none"> Modified guarantee conditions 	<ul style="list-style-type: none"> Non-respect of the requirement for a performance guarantee (e.g. in road repair). 	<ul style="list-style-type: none"> Non-respect of guarantee period
	<ul style="list-style-type: none"> Additional agreements: Increase of amount by up to 30% after contract signature 	<ul style="list-style-type: none"> Unjustified amendment of contract conditions, approval of the additional costs Unauthorized advance payments 	<ul style="list-style-type: none"> Price increases Lack of financial resources for payment
	<ul style="list-style-type: none"> Delivery of goods that do not correspond to contractual terms, insufficient quality Violation of the norms and standards provided by the legislation and contract. 	<ul style="list-style-type: none"> Insufficient vigilance or competence of officials who make reception of goods Non-sanctioning of economic operator Insufficient monitoring, control of implementation of the contract 	<ul style="list-style-type: none"> Winning bidders compensate bribes and other extra payments with poor quality and defective or different specifications than those contracted Early repairs No value-for-money
	<ul style="list-style-type: none"> Non-execution of the contract 	<ul style="list-style-type: none"> Acceptance of non-executed works, non-delivered goods Approval of false or inexistent claims 	<ul style="list-style-type: none"> Payment was made, but no equipment delivered
	<ul style="list-style-type: none"> Subcontracting of companies who do not fulfill the criteria (usual in roads construction). 		<ul style="list-style-type: none"> Higher costs Lower quality
	<ul style="list-style-type: none"> 	<ul style="list-style-type: none"> Contracting authorities find fictive “defects” and request payments. 	

4.3 Concrete corruption cases

NAC and the Court of Accounts have provided, for this study, information about 42 corruption cases relating to the years 2012-2015. Details of these cases are included in Annex 1. Due to the incompleteness of some of the information, no statistics are presented here below, rather than a general summary.

The penal cases relate mainly to the following articles of the Penal Code: Art. 327 (Abuse of power or abuse of service); Art. 328 (Official excess or excess of service); Art. 329. (Service negligence); and Art. 361 (Manufacture, possession, sale or use of false official documents, printed materials, stamps or seals). Only one case of insignificant value relates to Art. 325. (Active corruption).

16 of the cases involve central public authorities; 14 local public authorities; 6 cases involve companies (including three public enterprises); one case a commercial bank; two cases involve citizens; and three cases are not specified.

Two of the cases have been judged, and the proponents have been sentenced guilty of committing criminal offenses. In two cases, the procedure was closed without court sentence. All other cases are under examination at NAC or have been transferred to the Prosecutor.

The most spectacular case involves public healthcare institutions:

- Procurement of oxygen generator facilities for five institutions: MDL 8.5 million
- Installation of radio-diagnostic facilities: MDL 6.6 million
- Renovation of the heating system, changing doors and PVC windows: MDL 6.8 million
- Procurement of diagnostic imaging services for a healthcare institution (ACSR): MDL 10.5 million
- Three procurement transactions of medical equipment for the Institute of Neurology and Neurosurgery: MDL 8.8 million

The main infractions documented are:

- Lack of planning and of needs assessments
- Retroactive amendment of the delivery terms in the tender documents, resulting in price increases for equipment and maintenance costs
- Product substitution by low quality products
- Acceptance of defects
- Lack of verification of volumes executed
- Lack of authorization for equipment delivered
- General violations of procurement legislation in terms of procedure
- Non-respect of budget limits
- Fraud and falsification of documents

Other significant cases at central level relate to:

- The Ministry of Health regarding the construction of a surgical block at the Republican Clinical Hospital (EUR 12.7 million): Significant increase of costs after contract award to a foreign company, and dubious involvement of a local agent.
- The National Ecologic Fund: Irregular and unsubstantiated increase of the contract value (works and goods for about MDL 9.0 million) and irregular procurement for over 69.0 million.

At local level, the most significant cases are:

- Rayon Șoldănești: Irregularities and unjustified expenditure for investments and capital repairs totaling MDL 27.0 million

- Rayon Căușeni: Contracting of works and services (total MDL 22.9 million) without annual and quarterly procurement plans, resulting in the lack of budget funding.

The NAC and CoA reports provide details about the observed frauds irregularities, but no information is available about the corruption aspect, i.e. the payment of kickbacks, and whether there is a criminal investigation oriented at the contractors and their representatives.

Apart from the penal cases reported by NAC and Court of Accounts, there are a number of cases under **journalistic investigation** by two NGOs:

- AGER (Asociatia pentru guvernare eficienta si responsabila) ager.md
- Center of investigative journalists anticoruptie.md

These investigations establish the relation between donations of companies to political parties and awards of public procurement contracts by officials which are members of those parties.

4.4 Institutional weaknesses

The risk mapping table and findings from interviews with stakeholders suggest the existence of several institutional weaknesses:

- **The limited role of the PPA**, which is only a filter for ex-ante checking of compliance of the documents and does, for instance, not receive any feedback about contract implementation that would allow blacklisting of non-performing companies.
- **The lack of ex-post monitoring** of contract execution, nor blacklisting in cases of non-execution. Since a significant part of corruption cases become visible only during contract execution, an ex-post control of procurement transactions should be introduced in legislation.
- **Weak capacities of the working groups** in contracting authorities, especially at local level. The WGs lack technical skills, in particular for the identification of required funds and for the preparation of technical specifications for the procurement of special goods, services or works that require advance technical knowledge.
- **Conflicts of interest** of the working group members, especially at local level where there are insufficient human resources
- **The lack of risk management and risk registers** in contracting authorities makes ex-post control by the control bodies difficult. The internal audit function could assist in that, but is still underdeveloped, has only few competences and is dependent of the head of institution.
- **The low level of participation of economic operators in public procurement**: One reason is that the Public Procurement Law requires a certain experience from tenderers. This is often a barrier to competition and leads to an excess of contracts awarded to a small number of economic operators which subcontract other economic operators who do not fulfil the experience requirements. Subcontracting is allowed, and it is not required to show sub-contractors in the bid, although the contracting authority has the right to request it.
- **Annual public procurement plans of most contracting authorities are not published**. It cannot be assessed what is currently under execution. This affects transparency.
- **The ineffective complaints system**: There is an increasing number of complaints, but no confidence of economic operators in the complaints system. According to legislation, reply should be given within 15 days, but often no reply is given at all.
- **Civil service legislation**: low salaries of civil servants
- **General Prosecutor's Office has limited access to information**: Access to bank accounts only after penal case is initiated, no direct access to the PPA IT system

- Impossibility for the control bodies and General Prosecutor's Office to control donor funded projects, since they follow their own procedures
- Lack of resources of NAC
- Resistance of judges with regard to law enforcement and high corruption risks in police and judiciary
- Service delivery units (hospitals and schools) and public enterprises are not covered by the Treasury system. This facilitates the execution of unauthorized payments.
- **Weak capacities of officials who carry out the reception of goods** also results from the fact that current legal framework lacks provisions for post-award contract monitoring, and thus capacities in this regard are not developed.

4.5 Legal gaps

The main legal gap is that public enterprises and PPP are not subject to the Public Procurement Law (It is however noted that they can, on a voluntary basis by decision of their board, make themselves subject to public procurement. This has been done in some cases)

Further legal gaps are mentioned in a methodological document of NAC from 2015 as follows:

- Penal Code: Lack of an article about conflict of interest
- Penal Code: Lack of a regulation on collusion (submission of bids by connected economic operators)
- Lack of a clear legal mechanism for a timely termination of procurement contracts, having in mind that a contract is often partially or fully implemented and paid before a fraud is detected. Relevant legal provision do exist, but are not applied in a timely manner.
- Insufficient regulation in legislation regarding advance payments and additional contracts

4.6 Perception of corruption in public procurement

According to a **survey published by Transparency International** in 2015, only 7.2% of businessmen in Rep. Moldova participated in the last two years in public procurement tenders. The reasons that they indicated are presented in the table below.

Table 10 - Important reasons for not participating in public procurement, %

	2005	2007	2008	2012	2014	2015
Complexity of the procedure	46.6	47.4	40.1	17.7	15.3	17.8
Cost of the procedure	43.2	56.5	41.1	16.4	17.1	17.6
Too large competition	45.1	46.8	39.1	20.9	20.8	20.6
No chance of winning without making unofficial payments	46.4	48	33	20	22.2	23.8
No transparent and fair procedure	49.4	53	36.5	27.6	29.7	25
Direct contracts are simpler	58.7	59.6	50.4	29.1	33	23.3
From the start winner is known	z	z	z	z	z	24.4
Not our profile	67.1	67	67.3	36.8	62.4	56.1

Source: *Corruption in RM, Transparency International, December 2015*

This suggests that about 25% of the interviewees expect corruption ("No chance of winning without making unofficial payments" and "From the start winner is known"). This percentage has however significantly decreased since 2005, when it was around 45%.

In the frame of the present study, **anonymous questionnaires have been sent out to about 20 companies** which regularly participate in public procurement tenders, selected by the Chamber of Commerce. Nine replies have been received. None of the respondents provided information on his/her business sector; annual turnover; tender amounts; and main contracting authorities. There is no statistical relevance of the sample nor of the group of respondents. However, the replies received confirm the patterns evidences by the concrete cases identified by NAC and the CoA:

Eight out of nine respondents confirmed that they have faced corruption in public procurement (bribes “always” or “very often” requested). According to the respondents, the initiative comes from the contracting authorities (seven cases) and the Public Procurement Agency (one case). In two cases, payments have been requested in favor to a political party.

The respondents stated that payment of kickbacks is often carried out via intermediaries (including the establishment of new companies for this purpose). The percentage of the kickback in relation to the contract value was indicated as ranging g between 3 to 70%, with 10-20% being the most frequent range. A trend of increasing percentages, over the last few years, was pointed out by one respondent. Bribes are paid mostly for contract award, or otherwise in exchange of confidential information or for accelerating the payment of invoices. Respondents indicated that in most cases they paid the requested bribes. Only one respondent reported having informed the law enforcement agencies, but had then been confronted with harassment by tax authorities, police, etc.

The main problems mentioned by the respondents in relation with corruption in public procurement are the following:

- Low quality of bid documents, coupled with a lack of information about the requirements
- Bid leaking (the favoured company was informed about the Contracting Authority’s cost estimates)
- Disqualification without proper justification
- Selection of lowest bids, whereby quality is not taken into account
- Rigged specification (brand names or narrow specifications; bidding documents developed by one of the participants in the tender)
- Coercion by competitors (asked not to participate since “the market share belongs to company X”)
- Collusion (rotation among companies that are preferred by Contracting Authorities)
- Change order abuse (bidding document contained works that were not performed after contract award, and winner knew it)
- Rebid (tender cancellation, when no kickback was paid, and subsequent opening of a new tender where a new company appears and wins the contract)
- Bid opening meeting are not public

In terms of procedure, the respondents criticized the large number of documents required, the costs of the bidding documents and bank guarantees, as well as the difficulties in opening a bank guarantee within short time frames.

Some recommendations were made which mostly relate to a simplification of the procedure and increase of its transparency. It was also requested that awards for specific brand products should only be made to official distributors and authorized dealers.

5 Risk indicator system based on the “red flag” concept

This section develops a red flag indicator system for corruption and fraud in public procurement, based on the analysis of international materials on this topic, combined with the findings on specific cases in Rep. Moldova.

5.1 Materials analysed

For defining corruption risk indicators in public procurement the following materials have been assessed:

- A study commissioned by EU OLAF “*Identifying and Reducing Corruption in Public Procurement in the EU*” (2013) which identifies the 23 red flag indicators. The study analyses EU projects in the following sectors: Road & Rail Construction; Urban & Utility Construction; Waste Water Treatment; and Research and Development
http://ec.europa.eu/anti_fraud/documents/anti-fraud-policy/research-and-studies/identifying_reducing_corruption_in_public_procurement_en.pdf
- The World Bank study “*Most Common Red Flags of Fraud and Corruption in Procurement in WB projects*” (2010) identifies 10 red flags.
http://siteresources.worldbank.org/INTDOI/Resources/Red_flags_reader_friendly.pdf
- The World Bank book “*The Many Faces of Corruption: Tracking Vulnerabilities at the Sector Level*” (2007) identifies four categories (kickback; bid rigging; use of front or shell companies; and misinterpretation of facts) and the corresponding red flags.
<https://openknowledge.worldbank.org/bitstream/handle/10986/6848/399850REPLACEM101OFICIALOUSEOONLY1.pdf?sequence=1>
- The website of the *International Anti-Corruption Resource Center (IACRC)* provides a comprehensive list of corruption indicators, as well as red flags for other procurement fraud. It also contains definitions of the main categories of procurement fraud.
<http://iacrc.org/our-services/combating-corruption-in-procurement/>
- The website *Fraud Red Flags & Indicators* of the Office of Inspector General of US Department of Defense is based on the IACRC list, but adds a number of well-defined practical examples.
<http://www.dodig.mil/resources/fraud/redflags.html#tab>
- The World Bank “*Fraud and Corruption Awareness Handbook - A Handbook for Civil Servants Involved in Public Procurement*” (2013) contains a comprehensive set of definition and red flags on all types of procurement fraud as well as definitions and examples. It analyses World Bank project, but is well applicable to public procurement.
<http://documents.worldbank.org/curated/en/2014/02/19437783/fraud-corruption-awareness-handbook-handbook-civil-servants-involved-public-procurement>

5.2 Red flags by type of fraud

The analysis of all above mentioned materials shows a similar categorization of types of procurement fraud and of the corresponding red flag indicators. However, a structured categorization is not always straightforward, since categories are often overlapping, and cause and

effects are sometimes confused. Corruption – which is generally defined as bribery and kick back – is often combined with other categories of procurement fraud.

This section contains a synthesis of the materials analysed, and presents the main categories of procurement fraud (with focus on those related to corruption), in terms of definitions and red flags indicators.

5.2.1 Bribery and kickbacks

Bribery occurs when a public official accepts something of value (money, gifts, travel and entertainment, loans, etc.) in exchange for preferential treatment of a contractor, such as:

- Qualifying an unqualified company to bid
- Improper or non-competitive contract awards
- Excessive payment for goods or services
- Procurement of excessive quantities, or procurement of inappropriate items
- Continued acceptance of low quality or non-compliant goods, works or services

Kickback is a specific form of bribery where an amount of money is given to a public official in return for a contract award or providing preferential treatment. Depending on the industry, kickbacks for contract awards usually range 5%-20% of the contract value.

Fees can be used to disguise corrupt payments. These fees often take the form of the involvement of an unnecessary middleman (broker, agent or facilitator). Two common scenarios:

- An international contractor hires a local agent to “assist” with the bid preparation and contract negotiations. The fee paid to the local agent is often used to pay agreed bribes.
- A contracting authority places an order for the procurement of goods with a middleman at a certain price per item. The broker buys the equipment from a local firm for a lower price per item (or buys cheaper substitutes) and keeps the profit or splits the profit with the procurement officials.

See also: Shell companies.

Table 11 -

Red flags for bribery and kickbacks	
Enhanced financial standing	<ul style="list-style-type: none"> • Unexplained increase in wealth of public official⁶ (procurement official or other government official involved in awarding contracts) • Public official fails to file complete financial disclosure statement (declaration to be submitted to NIC). • Public official socializes with (current or prospective) contractor, and accepts inappropriate gifts or entertainment. • Public official discusses employment with a contractor • Contractor performs work on public official's personal property
Intermediaries	<ul style="list-style-type: none"> • Involvement of a middleman (broker, local agent) with no obvious value to the performance of the contract. See also: Shell companies
Repeated awards	<ul style="list-style-type: none"> • Repeated awards to the same contractor at higher-than-market prices • Repeated awards of contracts to poor performing contractors (continued acceptance of low quality goods or works, or late delivery)

⁶ In the further text, “public official” means a civil servant of government employee involved in public procurement or being a decision maker for awarding a contract.

	<ul style="list-style-type: none"> • Procurement official insists that suppliers use certain subcontractors
Systemic issues	<ul style="list-style-type: none"> • Working group has the same composition for several years • Procurement official has been in the same position for several years • Procurement official declines promotions to non-procurement positions • Procurement official acts beyond normal scope of duties in managing a procurement (Excessive control over selection process) • Lack of segregation of duties between procurement staff for: initiation of procurement; award of a contract; acceptance of supplies and service; payment; and inspection or monitoring of execution.

5.2.2 Conflict of interest

Conflicts of interest arise when procurement officials have undisclosed interests in or links with a contractor:

Personal conflicts of interest occur when procurement official is in a position to take decisions that may enhance his/her financial standing. Article 74 of the new PPL defines conflict of interest for members of the working group as follows (in brief):

- Being spouse, relative or in-law up to the third degree with an employee or founder of the contractor
- Having worked in the past three years, under an employment contract or other working agreement, with the contractor
- Having been part of the board or any other governing body of the contractor
- Holding shares in the contractor

Organizational conflicts of interest occur when a company is part of the development or specifications process for a public procurement.

Note: Kickbacks, or generally bribery, can be prosecuted as a conflict of interest. The presence of a conflict of interest case might be easier to prove than actual corrupt payments.

Table 12 -

Red flags for conflict of interest	
Links between official and supplier	<ul style="list-style-type: none"> • Matching between public official's and contractor's contact details (company registration information, addresses, phone numbers, web site info, family relationships). This matching should extend to official's family members and contractor's subcontractors. • Public official and his/her family members holding shares in the contractor or a subcontractor • A contractor's senior employee is a former public official
Systemic issues	<ul style="list-style-type: none"> • Framework contracts or other types of long term agreements • Socialization between public official and contractor during the bidding period • Public official fails to file conflict of interest form

5.2.3 Collusive bidding / bid rigging

Collusive bidding, also known as “bid rigging”, occurs when bidders secretly agree to submit complementary high (or otherwise unresponsive) bids, in order to allow preselected contractors to win contracts, e.g. on a rotating basis, or to divide contracts by territory, or take other steps to defeat the competitive process in order to share the procurement volume in a certain industry among each other.

Collusive bidding drives up prices in the affected industry. In some industries where collusive bidding is prevalent, bid prices are often 30% or more above cost estimates. It is most common in industries with high start-up and entry costs and relatively few bidders, such as road construction and waste disposal.

In collusive bidding, the designated winner coordinates the bidding by the other participants – dictating prices to be bid by others, in order to ensure that the designated winner’s bid is the lowest. This often includes the coordination of the preparation of bids on behalf of the collusive bidders. The designated winner may also use subsidiaries, affiliates or shell companies (firms that are set up as a front for illegal activities) for submitting complementary bids.

Bid rigging often accompanies kickback schemes.

Table 13 -

Red flags for collusive bidding	
Linked bidders	<ul style="list-style-type: none"> • Apparent connections between bidders: matching contact details (addresses, phone numbers), common staff, etc. • Cross-ownership of bidding companies or family ties (similar names of key staff and owners or family members) • Different bids contain similar typographical errors, addresses, phone numbers, letterheads, or are printed on similar stationery • Different bids are faxed from a single fax machine or mailed from a single e-mail address • Sequential bid securities (indicating that one person arranged securities at the same bank, same branch, and on the same day)
Pricing	<ul style="list-style-type: none"> • Unusual bid patterns (see details below) • Winning bid too high compared to cost estimates, industry averages or similar contracts • All bids higher than cost estimates, , industry averages or similar contracts
Fictitious or shell company	<ul style="list-style-type: none"> • Losing bids come from unqualified, unknown bidders or fictitious companies. See “Shell companies”. • Only one bid is compliant with the bid specification while the others are poorly prepared. • Fraudulent bid securities (indicating that submitting bidder knew that it would not win)
Rotation and subcontracting	<ul style="list-style-type: none"> • Pattern of rotating winning bidders by industry or geographical area: Certain contractors repeatedly win contracts with one contracting authority, but not elsewhere for similar goods or services. • Losing bidders hired as subcontractors (with or without the contracting authority’s knowledge)

	<ul style="list-style-type: none"> • Qualified contractors fail to bid and become subcontractors • Low bidder withdraws and becomes a subcontractor
Coercion	<ul style="list-style-type: none"> • Substantially fewer bids received than in previous, similar tenders (indicating a scheme to withhold bids). • Qualified bidders withdraw their bids (Pressure from contracting authority or other companies including by intimidation and physical threats) • Qualified bidders initially took steps to bid (acquired the bidding documents) but then refrained from submitting bids • In case of re-bid, when original bids were rejected as being too high: Failure of original bidders to re-bid, or an identical ranking of the same bidders upon re-bidding,

Table 14 -

Unusual bid patterns	
Unusual bid patterns within one tender	<ul style="list-style-type: none"> • Bids are too close i.e., less than 1% between the lowest bid and the subsequent lowest bid for items where some variation is expected (e.g., works, consulting services). This indicates that the bidders knew each other's prices. • Bids are too far apart, i.e. more than 10% between the lowest bid and the subsequent lowest bid, even for the same line item • Bids are distinct from one another by a systemic percentage, <i>i.e.</i>, 1%, 3% 10% • Losing bid prices are round or unnatural numbers, <i>e.g.</i>, USD 355,000 or 65,888,000.
Unusual bid patterns over time	<ul style="list-style-type: none"> • A certain company bids significantly higher on some bids than on other comparable bids. • Bidders change prices at about the same time and to the same extent. • Apparent pattern of low bids regularly occurring, such as a certain company always being the low bidder in a certain geographical area, or in a fixed rotation with other bidders. • Certain contractors always bid against each other or, conversely, certain contractors do not bid against one another. • Bid prices drop when a new bidder or infrequent bidder submits a bid.

5.2.4 Shell companies

Shell companies are fictitious companies (often consulting firms), also called “front companies”, which are not legitimate entities, set up for the following purposes:

- Set up to obtain contracts in intransparent ways
- Established by public officials of the contracting authority to submit false invoices.
- As “shadow bidders” submitting higher priced bids to facilitate the selection of the designated winner and to give the appearance of competition.

Considerations about shell companies should be applied to contractors and all subcontractors.

Table 15 -

Red flags for shell companies	
Contact details	<ul style="list-style-type: none"> • Company with P.O. box addresses, or located in a residence or non-business location • Company without corporate facilities (office space, staff, web site, etc.) • Company not listed in business directories • Phone numbers provided are personal numbers or answering services • Discrepancy between the company address and its telephone number area code • Company registered in a tax heaven and/or payments are made against on accounts held by companies registered in a tax heaven. • Slight variation of company name spelling in documents
Track record	<ul style="list-style-type: none"> • Newly registered company with no track record in the industry (unauthorized vendor) • Company with unclear ownership structure • Company provides a wide variety of disparate goods and services (often at higher-than-market prices)

5.2.5 Leaking bid data

Leaking bid data occurs when a public official involved in the procurement process share information with favored bidders to give them an unfair advantage, e.g., enabling them to tailor their bid so as to secure contract award. This includes:

- Leaking bid information from competing bids
- Providing confidential pre-bid information (cost estimates)

Such schemes usually occur in connection with bribery.

Table 16 -

Red flags for leaking bid data	
Suspicious bid	<ul style="list-style-type: none"> • Winning bid is very closely under the next lowest bid • Winning bid is very closely under the cost estimate of the contracting authority. • Winning bid contains data based on information which is not publicly available (Winning contractors participated in drafting specifications) • Involvement of middleman (broker, local agent) with no obvious value to the performance of the contract. See also: Shell companies • Late bidder is the winning low bidder
Violation of the procedure	<ul style="list-style-type: none"> • Bid deadline extended without objective reason • Acceptance of bids after the deadline • Contract is re-bid without objective reason

5.2.6 Unbalanced bidding

A related scheme to “Leaking bid data” is **unbalanced bidding**. Under this scheme, procurement officials provide a favored bidder with inside information that is not made available to other bidders,

and which allows the company to lower its price or otherwise tailor its bid to defeat its uninformed competitors. Examples are:

- Information that specific line items in a request for bids will not be called for after the contract has been awarded.
- Information that a specific low-cost solution will be acceptable
- Providing a favored bidder with information to meet vague or ambiguous terms in the bid request within the estimated budget.

Unbalanced bidding also usually occurs in connection with bribery.

Table 17 -

Red flags for unbalanced bidding	
Removal of low priced line item	<ul style="list-style-type: none"> • Particular line items, which are costed unreasonably low compared to market prices, are later removed from the list of requirements under the contract • Change orders issued soon after the contract award • Wide and inexplicable disparity in bid prices considering the type of works, goods or services being procured

5.2.7 Manipulation of the bidding procedure

A procurement official, often as the result of corruption, manipulates the bidding process in order to benefit a favored contractor. These manipulations include leaking information regarding competing bids, accepting late bids, changing bids and re-bidding. See also “Leaking of bid data” and “unbalanced bidding”.

Table 18 -

Red flags for manipulation of the bidding procedure	
Manipulation of bids	<ul style="list-style-type: none"> • Indications of changes to bids after submission: written corrections, deletions, or interlineations that change key information (i.e. prices, validity period of the bid). • Winning bid voided for errors, and tender is re-bid or awarded to another company. • Bids are not in a sealed envelope • Bids are not kept in a secure location with limited access • Bids lack a time stamp
Manipulation of procedure	<ul style="list-style-type: none"> • Acceptance of late bids • Bid deadline extended after some of the bids have been submitted • Submitted bids "disappear" • Contract is not re-bid even though fewer than the minimum number of bids are received • Lack of written records of the procurement process • Delays in completing the evaluation, or delays between the announcement of winning bidder and signing of the contract (may indicate negotiation of corrupt terms)

5.2.8 Unjustified sole source procurement, split purchases and inappropriate bundling

Unjustified sole source procurement occurs when procurement officials, in collusion with a contractor, steer contracts to favored companies by avoiding competitive bidding. This can occur in two ways:

- **Split purchases:** A single procurement is thereby split into two or more procurement transactions, each below competitive bidding thresholds, to avoid review or competitive selection.
- Significantly extending the scope of a contract (e.g. consultancy work) after contract award, taking the contract amount from “just below” to “considerably above” the threshold for competitive bidding.

Repetition of this scheme, favoring the same parties, can be a strong indicator of corruption.

The opposite approach of contract splitting is **inappropriate bundling**, yet yields the same result of reduced competition: The tender bundles a wide variety of goods that have no relation with each other, into one lot (e.g., computer equipment, copper wires and video equipment), with a provision stipulating that incomplete lots are not allowed. Single manufacturers or authorized dealers will likely not meet the requirements of the entire lot. There is thus a significant reduction in the number of potential or actual bidders resulting from the bundling, and typically the contract will be awarded to a favored bidder (broker) at a price well above the estimates.

Table 19-

Red flags for unjustified sole source procurement, split purchases and inappropriate bundling	
Unjustified sole source	<ul style="list-style-type: none"> • Contract amount just below competitive bidding limit • Requests for sole source procurement or direct contracting when there is an available pool of vendors to compete the contract. • Emergency procurement • Inadequate justification when requesting a non-competitive award
Splitting	<ul style="list-style-type: none"> • A large number of contracts just below the threshold for competitive bidding • Two or more similar sole source contracts awarded to the same contractor • Awards made below the competitive bid limits that are followed by change orders that exceed such limits • Splitting of items that are normally procured together (e.g. procurement of computers and related accessories split into separate contracts)
Bundling	<ul style="list-style-type: none"> • Items to be procured within a proposed bundle are not related • Few bids received • Fictitious companies (see “Shell companies”)

5.2.9 Rigged specifications

Rigged specifications occur when a procurement official, often in collusion with a contractor, drafts a request for bids containing specifications that are either too narrow or too broad.

- Unduly narrow specifications allow only a favored contractor to qualify. In some cases, procurement officials allow the favored bidder to draft the specifications.
- Unduly broad specifications can be used to qualify an otherwise unqualified contractor to bid.

Table 20 -

Red flags for rigged specifications	
Tailored specifications	<ul style="list-style-type: none"> • Preferred supplier indications (e.g. explicit mentioning of brand names instead of general product characteristics) • Specifications are significantly narrower than in comparable previous requests for bids. • Tailored specifications: Similarity between specifications and winning contractor's product or services • Specifications are significantly broader than in comparable previous requests for bids. • Unusual evaluation criteria
Few bids	<ul style="list-style-type: none"> • Fewer than the normal or expected number of potential bidders apply for pre-qualification or submit bids, compared to prior similar tenders

5.2.10 Excluding qualified bidders

Procurement officials can facilitate the selection of a favored bidder by improperly excluding other qualified bidders, often in collusion with a corrupt bidder. This can take place at any time from the drafting of the bidding documents to the receipt of bids.

Examples for tactics to exclude qualified bidders are:

- Those already described above: "Sole source procurement / split purchases" and "Rigged specifications"
- Arranging narrow or unduly burdensome pre-qualification criteria.
- Biased evaluation criteria: For example, in an international competitive tender requiring the delivery of goods within a very short time of contract effectiveness, as this may exclude many international bidders whose shipments would take longer.

Table 21 -

Red flags for excluding qualified bidders	
Coercion and exclusion	<ul style="list-style-type: none"> • A significant number of qualified bidders failing to bid (Pressure from contracting authority or other companies including by intimidation and physical threats) • Highly qualified firms have expressed interest and are not shortlisted
Questionable evaluation	<ul style="list-style-type: none"> • Unreasonable prequalification requirements • Unusual or unreasonable evaluation criteria • One or more of the short-listed companies does not have the appropriate qualifications
Questionable Disqualification	<ul style="list-style-type: none"> • A high number of bids declared unresponsive • Disqualifications are poorly justified • Lowest bidder unjustifiably declared non-responsive, thereby allowing the award of the contract to a preferred contractor, who often quotes a higher price • Changes in the scoring of bids, or arbitrary scoring of bids
Violation of procurement	<ul style="list-style-type: none"> • Allowing an unreasonably short time limit to bid (not in compliance with legislation)

rules	<ul style="list-style-type: none"> The evaluation criteria differ from those issued in the bidding documents The winning bidder is not on the short list
Winning bid is poorly justified	<ul style="list-style-type: none"> Technical specifications are copied from the bidding documents or are incomplete The bid does not match requirements (e.g. in terms of quantity, quality, qualifications)

See also: “Rigged specifications”, “Unjustified sole source procurement” and “Leaking bid data”

5.2.11 Unnecessary purchases

Unnecessary, excessive or inappropriate purchases of goods or services, or unnecessary repairs, might indicate corruption or purchases for personal use or resale.

Table 22 -

Red flags for unnecessary purchases
<ul style="list-style-type: none"> Unusual or unexplained high volume purchases of products or services from a particular supplier Replacement or repairs after unreasonably short time period Inadequate or rushed needs analysis and justification to support the need to acquire goods (in the quantities purchased)

5.2.12 Procurement fraud in contract implementation

This paragraph lists types of procurement frauds which are generally connected to corruption, but become only visible during contract implementation.

Change order abuse: A contractor, in collusion with a procurement official, submits a low bid to ensure winning a contract, and then, after the contract is awarded, requests unjustified change orders (contract amendments) to increase profit, or – in relation with corruption – to cover costs for kickbacks.

Failure to meet contract specifications: A contractor delivers works, goods or services that do not meet contract specifications in terms of quantity and/or quality. A specific type of such fraud is **product substitution**, where the contractor substitutes products of lower quality than those specified in the contract, but charges for higher quality items, in order to increase profits or cover kickbacks. Lower quality can also result from counterfeit, defective or used parts. Subsequently, the supplier may have to submit false documentation, and give gifts to inspectors or pay kickbacks to contracting officials, in order to conceal these acts.

False, inflated or duplicate invoices: A contractor intentionally submits false (meaning that no services were provided), duplicate or inflated invoices. The scheme can involve a contractor acting alone or in collusion with a public official who shares in the profits.

Purchases for personal use or resale: A public official purchases in the name of his/her public institution goods that are intended for his/her personal use, or that the official intends to resell. Frequent examples are computer parts, automobile or other spare parts.

Table 23 -

Red flags for implementation	
Change order abuse	<ul style="list-style-type: none"> • Pattern of low bid awards followed by change orders that increase the price or scope of the contract, or extend the contract period • Vague contract specifications followed by change orders • Substantial changes in scope/costs for works
Failure to meet contract specifications	<ul style="list-style-type: none"> • Low quality, undelivered goods, poor performance • Early failure or high repair rates • High rate of rejections, returns or failures • High volume of complaints from users • Unusual or generic packaging • Discrepancies between product's description and tests or inspection results (e.g., "new" product appears to be used) • Supporting documentation not provided, photocopied, inadequate or altered • Product identification numbers differ from published or catalogue numbers or numbering system
False, inflated or duplicate invoices	<ul style="list-style-type: none"> • Invoiced goods or services cannot be located in inventory • No receiving report for invoiced goods or services • Questionable or no contract (purchase order) for invoiced goods or services • Multiple invoices in the same or similar amount (for the same or similar goods or services) to the same or related contractors • Invoice prices, amounts, item descriptions or terms exceed or do not match contract terms, receiving records or inventory • Discrepancies between invoice and supporting documents • Total payments to contractor exceed total contract amount • Purchased items "returned" to supplier without credit or refund
Purchases for personal use or resale	<ul style="list-style-type: none"> • High volume or unusual purchases of "consumer items" or items suitable for personal use or resale • Business purchases from vendors that sell consumer products • Purchased items delivered to another location (not the contracting authority's premises)

5.2.13 Complaints

A general red flag for all types of irregularities mentioned above is the **incidence of complaints** (formal or informal) from non-winning bidders or subcontractors.

5.3 General red flags

Apart from the red flags which are specific to certain types of frauds, there are **general characteristics** which increase the likelihood of corruptive and fraudulent acts in a tender:

- Large tenders (average value plus two times the standard deviation)
- Industries with a reputation for corruption. In Moldova, these are: construction works and repairs, in particular roads; pharmaceutical products; and medical equipment
- In case of foreign contractors: The contractor's country reputation according to the Corruption Perception Index
- Procurement by local public authorities (versus central public authorities). This is specific to Rep. Moldova. The smaller a municipality is, the higher is the likelihood of conflicts of interest.

Another issue, which is actually not only specific to Rep. Moldova, are **donations to political parties**, as a specific form of bribe. Donations by companies to political parties should therefore be considered as important red flags.

5.4 Techniques for data collection and analysis for the relevant indicators

The objective of this paragraph is to propose mechanisms for identifying the presence of red flags, as categorized above, in a public procurement transaction.

Table 24 – Data collection and analysis

Red flag	What is to be checked ?	Who should check ?
Red flags for bribery and kickbacks		
Enhanced financial standing of public officials	<p>Spot checks and checks in suspicious cases (complaints, audit findings, reports by NAC or CoA)</p> <p>For public official and their relatives:</p> <ul style="list-style-type: none"> • Declarations to be submitted to NIC • Bank accounts (balance, transfers) • Real estate registers • Car registration • Company register (existence of shares in companies) 	NIC
Intermediaries	<p>Complete business information of contractor and subcontractors in order to identify shell companies (company registration, history of tax declarations and social security contributions)</p> <p>Recommendation: Subcontractors should only be allowed if they are indicated in the bid, and if the role of each of them is clearly justified</p>	PPA
Repeated awards	Regular review of tender.gov.md to identify repeat awards to the same contractor, then review details (price level, implementation performance) of suspicious cases	PPA Civil society
Systemic issues	<ul style="list-style-type: none"> • Composition of the working group to be reported annually by all contracting authorities • Analysis of the segregation of duties <p>Recommendations:</p> <ul style="list-style-type: none"> • Rotation of members • Collective procurement in contracting authorities with insufficient staff (especially at local level) 	PPA
Red flags for conflict of interest		
Links between official and supplier	<p>Spot checks and checks in suspicious cases (complaints, audit findings, reports by NAC or CoA) of tender.gov.md of</p> <ul style="list-style-type: none"> • Company register • Civil register, including relatives 	PPA Financial Inspection
Systemic issues	<ul style="list-style-type: none"> • Conflict of interest forms to be filed before procurement can be initiated 	Treasury offices, with IT support
Red flags for collusive bidding		

Red flag	What is to be checked ?	Who should check ?
Linked bidders	Spot checks and checks in suspicious cases (complaints, audit findings, reports by NAC or CoA) of tender.gov.md of <ul style="list-style-type: none"> • Company register • Civil register, including relatives 	PPA
Pricing	<ul style="list-style-type: none"> • Regular review of winning proposals for unusual bid patterns according to red flags (regular spot checks; after complaints; and in cases reported by audit, inspection, NAC, etc.) • Price checks – see at the bottom in this table Recommendation: Cost estimates to be provided for each tender at item level	Financial Inspection Civil Society
Fictitious or shell company	Complete business information of contractor and subcontractors in order to identify shell companies (company registration, history of tax declarations and social security contributions) Recommendation: <ul style="list-style-type: none"> • Establishing a list of qualified, checked bidders whose membership is mandatory for bid submission • Prohibit subcontracting of losing or withdrawing bidders • Prohibit short list alliances 	PPA White list to be held by Chamber of Commerce
Rotation, subcontracting and coercion	Regular review of winning proposals for patterns indicating rotation or territorial split Recommendation: <ul style="list-style-type: none"> • Prohibit subcontracting of losing or withdrawing bidders • Subcontractors should only be allowed if they are indicated in the bid 	Civil society
Red flags for shell companies		
Shell companies	Complete business information of contractor and subcontractors in order to identify shell companies (company registration, history of tax declarations and social security contributions)	PPA White list to be held by Chamber of Commerce
Track record	Track records, business licenses, authorizations Recommendation: <ul style="list-style-type: none"> • Brand products to be only purchased from authorized dealers • Requirement for business licences from Chamber of Commerce for certain sensitive services/works 	PPA
Red flags for leaking bid data		
Suspicious bids	<ul style="list-style-type: none"> • Review of winning proposals for patterns, according to red flags, that indicate leaking of bid data 	Procurement Complaints Agency

Red flag	What is to be checked ?	Who should check ?
	(regular spot checks; after complaints; in cases reported by audit, inspection, NAC, etc.) • Role of middleman	
Violation of the procedure	Compliance with Public Procurement legislation	Court of Accounts Financial Inspection
Red flags for unbalanced bidding		
Removal of low priced line item	Regular review of tender.gov.md to identify cases with change orders, according to red flags, and review them in detail	Financial Inspection Court of Accounts Civil Society
Red flags for manipulation of the bidding procedure		
Manipulation of bids	Physical inspection of documents Recommendation: • Electronic submission, whereby the electronic documents must be protected against alteration (MAC address)	Financial Inspection Court of Accounts
Manipulation of procedure	Audit of the procedure Recommendation: e-procurement will reduce possibilities for manipulation	Financial Inspection Court of Accounts
Red flags for split purchases		
Unjustified sole source Splitting	Regular review of tender.gov.md to identify patterns of split of unjustified sole source, and review these cases in detail	Financial Inspection Court of Accounts
Bundling	Regular review of tender.gov.md to identify unrelated product categories in a contract	Financial Inspection Court of Accounts
Red flags for rigged specifications		
Tailored specifications	1. Tailored specifications that result from lack of knowledge (e.g. procurement of sophisticated products by small municipalities): Recommendation: • Collective procurement • Hiring (foreign) specialists for developing specifications for complex products or services 2. Tailored specification in corruptive intention: This should be regulated by the market (complaints of competitors), but this requires a strong, independent complaints agency	Procurement Complaints Agency
Red flags for excluding qualified bidders		
Coercion and exclusion Questionable evaluation	This can only be regulated by the market (complaints of competitors)	PPA (Complaints Agency)

Red flag	What is to be checked ?	Who should check ?
Winning bid is poorly justified		
Questionable disqualification	Standard inspection of the whole tender procedure when a high number of bids declared unresponsive	Procurement Complaints Agency
Violation of procurement rules	Audit of the procedure	Financial Inspection Court of Accounts
Red flags for unnecessary purchases		
Unnecessary purchases	Regular checks of tender.gov.md against annual procurement plans of contracting authorities Recommendation: <ul style="list-style-type: none">• Mandatory publication of annual procurement plans and changes to be approved	Court of Accounts Civil society
Red flags for implementation		
Change order abuse	Regular review of tender.gov.md to identify cases with change orders, according to red flags, and review them in detail	Financial Inspection Court of Accounts Civil Society
Failure to meet contract specifications	Identify pattern of repair orders and returned goods (available in FMIS ?) through regular spot checks Recommendation <ul style="list-style-type: none">• For sensitive products (medication, medical equipment, food, vehicles, etc.) requirement of being an authorized dealer, business licences, authorization of equipment by national regulator institutions as condition for import.• For other products, spot checks by inspection services	Sector specific inspection services
False, inflated or duplicate invoices	Review for each payment: <ul style="list-style-type: none">• Contracts• Financial documents• Inventories Recommendation: <ul style="list-style-type: none">• Implementing a procurement module in the FMIS would rule out these irregularities	<ul style="list-style-type: none">• Treasury offices• Ex-post review by Financial Inspection
Purchases for personal use or resale	<ul style="list-style-type: none">• Regular review (spot checks) of tender.gov.md to identify suspicious product categories (consumer products)• Review for each contract presented to Treasury Offices whether delivery address matches contracting authority's addresses.	Civil society Treasury offices
GENERAL		
Price checks	<ul style="list-style-type: none">• Establish cost estimates based on industry averages for the most common goods and services• Keep database of item costs in winning proposals	<ul style="list-style-type: none">•

Red flag	What is to be checked ?	Who should check ?
	and <ul style="list-style-type: none"> Identify deviations when a new bid is submitted Recommendation <ul style="list-style-type: none"> Cost estimates to be included in annual procurement plans at item level 	
Donations to political parties	Regular review of tender.gov.md for matching with published donations to political parties	NIC Civil society

Different risks that correspond to the above listed red flags have different probabilities. For an accurate evaluation of these probabilities, it would be necessary to analyse a larger sample of cases. However, based on the available cases, on the general perception and on international experience, some likelihood of the different corruption risks can be established. The table below also shows the risk impact. Obviously this impact depends on the transaction volumes. However, certain types of fraud (such as split purchases) are likely to have a lower financial impact than donations to political parties (which are usually an indicator for influence on large value contracts). The table below provides an indicative risk matrix:

Table 25 – Probability and impact of corruption risks

	Probability	Impact
Bribery and kickbacks	High	Medium
Conflict of interest	High	Medium
Collusive bidding	High	High
Shell companies	Medium	Medium
Leaking bid data	Low	Medium
Unbalanced bidding	Low	Medium
Manipulation of the bidding procedure	Low	Low
Split purchases	Medium	Low
Rigged specifications	Medium	Medium
Excluding qualified bidders	Medium	High
Unnecessary purchases	Low	Medium
Implementation	High	Medium
Donations to political parties	High	High

Some mechanisms are already in place to avoid certain corruption patterns: For tenders above a certain threshold, there is the need for an expertise (cost estimate), to be made by a specialized unit in the Ministry of Regional Development. If bids are 15% lower than the cost estimate⁷, the bidder is excluded, because of the risk of low quality. If all bidders are lower, then the contract is re-tendered. On the other hand, the tender can also be cancelled if all bids exceed the cost estimate by 30%.

⁷ Art.65 and 66 of the PPL address the issue of abnormally low bids

5.5 Risk prevention and internal controls by the Contracting Authorities

Per definition, corruption means a collusion between the supplier and the Contracting Authority, and the concrete cases and public perception also show that the initiative comes from the Contracting Authorities, specifically from the Working Groups.

The Contracting Authorities are therefore not well placed for preventing and detecting corruption by control measures.

However, there are a few steps in the procurement process where internal controls can be strengthened. To show this, it is firstly useful to assign the red flags identified in section 5.2 to the different phases of procurement according to the risk mapping table in Section 4.2. A set of internal control, based on what is outlined above in Section 5.4., is proposed in the rightmost column of the table below:

Table 26 – Internal controls for mitigation of corruption risks

	Risks	Internal controls
Pre-bidding		
Phase 1: Project identification (Needs assessment)	Unnecessary purchases	Mandatory publication of annual procurement plans, and cost estimates should be mandatorily included at item level with justification (e.g. reference to industry price lists) Changes to annual procurement plans would require Minister's approval A validation of procurement transactions against the procurement plan could be carried out by the Treasury Offices and supported by a Procurement Module in the FMIS
	Rigged specifications	Engage external experts to draft and/or review technical specifications in cooperation with the working groups. This would add an additional layer of control and improve quality. Close coordination with the working group will however be needed in order to properly reflect the assessed needs for the procurement.
	Unjustified sole source procurement / split purchases	This could be partly ruled out by the procurement plan in connection with better cash planning and the implementation of a commitment module in the FMIS (Matching the procurement plan with the spending quotas). In this case, the Treasury Offices could identify patterns of split purchases (this would however be an additional task for them, which they currently do not carry out).
Bidding		
Phase 2: Advertising, prequalification, bid preparation and submission;	<ul style="list-style-type: none"> • Bid leaking • Unbalanced bidding 	This can only be controlled from a formal point of view: <ul style="list-style-type: none"> • Confidentiality declarations • Declarations that there is no conflict of interest These declarations should be annexed to the bid evaluation of the working group as required documents for signing the contract.
Phase 3: Contracting	<ul style="list-style-type: none"> • Collusive bidding 	<ul style="list-style-type: none"> • Tenders should allow subcontractors only if they

	Risks	Internal controls
process (bid review, Contractor selection and contract award)	<ul style="list-style-type: none"> • Bid rigging • Shell companies 	<p>are indicated in the bid</p> <ul style="list-style-type: none"> • Tender documents should prohibit short-list alliances • More business documents to be requested from suppliers in the tender documents, e.g. tax history and social contribution records (to rule out shell companies)
	Excluding qualified bidders	This will best be addressed by an effective Complaints Body, and the working group must then be prepared to justify its decisions. In case that an inadequate decision of the working group has been identified by the Complaints Body, then the Contracting authority should sanction the working group members.
Post-bidding		
Phase 4: Contract implementation and monitoring	Change order abuse	This can be controlled by the Treasury Offices and supported by a Procurement Module in the FMIS
	Failure to meet contract specifications	<p>Receipt of goods / acceptance protocols for works or services to be submitted to the Treasury Offices as conditions for payment. Controls by the Treasury Offices, which are of formal nature, would need be strengthened and more sophisticated.</p> <p>For non-delivery of goods, controls could also take place at the level of Asset management in the FMIS (not implemented yet).</p>
	False, inflated or duplicate invoices	This can be controlled by the Treasury Offices and supported by a Procurement Module in the FMIS
	Purchases for personal use or resale	This could be controlled at the level of Asset management in the FMIS
General	•	•
Conflicts of interest	•	Periodic changes in the membership of the working group

The conclusion is that, overall, the initiation and the finalization of the procurement process are the areas where internal controls can be most useful to prevent and detect fraud and corruption, by proper management of procurement plans, in the beginning, and invoice controls, at the end of the process.

For operationalizing these internal controls, IT support would be needed, primarily in terms of a procurement module in the FMIS. Also, the role of the Treasury Offices in controlling procurement documents and invoices should be strengthened, to be not only focused on formal compliance, but also to include some value-for-money checks. Later on, when financial controls will be decentralised to the public authorities, these checks would have to be carried out by their Finance Departments.

6 Recommendations

This section summarizes the recommendations elaborated above.

Recommendations in regard to the legal framework

The new Public Procurement Law is generally considered as compliant with international standards. Secondary legislation is currently under development, and regulate the following:

- Subcontractors should only be allowed if they are indicated in the bid, and if the role of each of them is clearly justified
- Prohibit subcontracting of losing or withdrawing bidders
- Prohibit short list alliances
- Development of specifications should be considered a conflict of interest (this is currently not explicitly ruled out by the PPL)
- Contract amendments after contract award to be strictly limited (in terms of amounts, quality, quantity and other terms) and requiring special approval
- Improving the legal framework in regard to introducing post-award control (reception of goods, monitoring of implementation), including feedback about contract implementation to the PPA that would allow blacklisting of non-performing suppliers
- Including public enterprises in the scope of the PPL, or introducing other uniform regulations on public procurement carried out by public enterprises and PPPs (with the aim to ensure transparency and competition). This would be particularly important for those public enterprises who mainly provide goods or services to public authorities (whereas those who produce goods for the market do not need to be specifically focused in this regard).

Recommendations for business practices (also to be anchored in the legal framework)

- Brand products to be only purchased from authorized dealers
- Sensitive products, services or works (medicines, food, vehicles, etc.) only to be contracted with companies holding a business licence (issued by the Chamber of Commerce or sector ministry to those companies who have a track record, trained personnel, etc in the respective sector).
- Requirement for authorization of equipment by national regulator institutions as condition for import (e.g. for medical equipment)
- Establishing a “White List” of qualified, vetted companies, and inclusion in this list is mandatory for participating in public procurement

Recommendations in regard to the institutional framework

- Rotation of members of the working groups
- Collective procurement covering contracting authorities with insufficient staff, especially at local level and especially for complex products
- Hiring independent (foreign) specialists for developing specifications for complex products or services
- Mandatory preparation, approval and publication of annual procurement plans, in line with the budget and containing evidence of needs assessments. Changes require approval and publication.
- Cost estimates, based on industry averages for the most common goods and services, to be included in annual procurement plans at item level
- Capacity building of the working groups

Recommendations for technology improvement

- e-procurement to ensure electronic submission of bids, whereby the electronic documents must be protected against alteration
- Implementing a procurement module in the FMIS
- Keeping databases of item costs of winning bids, for main products and services, for later comparison and for establishing a knowledge base
- Implementation of specialized anti-fraud software (automated analysis of financial transactions for fraudulent patterns)

Implementation of these recommendations and of the resulting verifications will require strengthening of the control institutions, in particular establishing dedicated procurement control units in the Court of Accounts and in the Financial Inspection, as well as specific capacities in the internal audit units of the public institutions, which would focus on audit and control of contract implementation.

Furthermore, a strong independent Procurement Complaints Agency, as envisioned by the new PPL, is required which should also carry out regular spot checks, unrelated to specific complaints, for uncovering fraud patterns.

7 Elaboration and presentation of this report

The present report was elaborated in the period November 2015 to February 2016.

For preparation of the report, interviews have been held with the main anti-corruption institutions in Rep. Moldova, other stakeholders in this domain as well as selected public authorities (see Annex 2). The list of legislation and other documents reviewed is included in Annex 3.

The draft report was presented on 28 January 2016 at the National Anti-Corruption Center to an audience comprised of representatives of the main concerned institutions and organisms, and circulated for comments to the participants. The present final version addresses all comments received.

Annex 1: Concrete corruption cases in Rep. Moldova in the period 2012-2015

Reference	Institution	Description	Prejudice	Art. In Penal Code Follow-up, outcome
NAC 2014 no.2	Local public authority	Manufacture, possession, sale or use of false official documents committed by decision makers of vocational school in a rayon to purchase coal in 2013	MDL 28,080	Art. 361. Manufacture, possession, sale or use of false official documents, printed materials, stamps or seals In 2014 the criminal case was sent according to the Rayon prosecutor.
NAC 2014 no 4	Central public authority	Replacing contracts for the performance of works for building protective dikes against floods in the district . Violation of the Public Procurement Law, by not publishing a tender;	in the course of determination	Art. 328. Official excess or excess of service
NAC 2014 no 5	Local public authority	Manufacture, possession, sale or use of false official documents and signatures on a procurement contract for goods by the Director of a school in a settlement of the rayon	in the course of determination	Art. 361. Manufacture, possession, sale or use of false official documents, printed materials, stamps or seals Connected to another penal case.
NAC 2014 no 6	Central public authority	Decision makers of the Administration Board of Fund subordinated to a Central Public Authority, in reason of personal and material interests, selected two specific grant beneficiaries without respecting procurement procedures.	MDL 250,000 MDL 2,396,636	Art. 327. Abuse of power or abuse of service In 2015 prosecution in the criminal case was closed under the Criminal Procedure Code article 275 p.3
NAC 2014 no 7	N/A	In December 2012, head of unit together with head of Section have been hiding an infraction regarding the use of spare parts procured contrary to destination, and false registration of its use	in the course of determination	Art. 332. Forgery of public documents Connected to another penal

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Reference	Institution	Description	Prejudice	Art. In Penal Code Follow-up, outcome
		in official documents		case.
NAC 2014 no 8	Central public authority	Violation of Public Procurement Law by the Working Group of Central Public Authority for public procurement in December 2013	MDL 14,197,186	Art. 328. Official excess or excess of service
NAC 2014 no 9	Central public authority	During the years 2012-2014 public officials within the Central Public Authority (including subordinated subdivisions) have committed violations of the norms governing asset management, procurement, and keeping track of goods. Considerable material damage was caused through: <ul style="list-style-type: none"> unjustified expenditure lack of material goods payment of non-executed repairs accepting irregularities in determining pensions, resulting in overpayment 	in the course of determination	Art. 329. Service negligence
NAC 2013 no 10	Private company	Fraud in particularly large extent to the state budget and money laundering committed since 2009 to present by managers of the private company in the participation in public procurement of medicines imported to Moldova, using dubious schemes, medicines produced in China and quality which is not in compliance with established standards	in the course of determination	<ul style="list-style-type: none"> Art. 196. Causing pecuniary damage by fraud or breach of trust Art. 243 Money Laundry <p>On 30 Jan 2015 the prosecution was closed under article 275 Criminal Procedure Code, p.9 (which is unspecific)</p>
NAC 2014 no 11	Central public authority	<ul style="list-style-type: none"> calculated and paid illegally salary benefits worth MDL 36,036 illegally scrapped 86 tires, 12 batteries worth MDL 75,475 paid work and services in excess of the value of the contract on procurement of total MDL 14,299. <p>Non-delivery of</p> <ul style="list-style-type: none"> 14 motorcycles and one vehicle to the Inspectorate, total MDL 372, 953 lei three vehicles total MDL 112,026 	MDL 36,036 MDL 75,475 MDL 14,299 MDL 372, 953 MDL 112,026	Art. 328. Official excess or excess of service Art. 329. Service negligence

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Reference	Institution	Description	Prejudice	Art. In Penal Code Follow-up, outcome
NAC 2014 no 12	Local public authority	The mayor of the ATU, during the years 2011-2014, used his official position for material and personal interests, entered - in the name of the authority he represented - into several contracts with commercial companies in which he has a share of 100%.	in the course of determination	Art. 327. Abuse of power or abuse of service
NAC 2014 no 15	State enterprises	Abuse of power committed by public officials within the some SOEs by purchasing goods (software), in 2013 from commercial companies, resulting in non-delivery of the goods	MDL 196,630 and MDL 20,549	Art. 327. Abuse of power or abuse of service
NAC 2014 no 16	N/A	The representative of a commercial company presented documents for a public tender and requested that the documents in question be examined as a priority. Among the documents was money totaling MDL 1,000	MDL 1,000	Art. 325. Active corruption In 2015, the criminal case was sent to court by NAC
CoA 2013 Audit report 2012 of Ministry of Culture and subordinated institutions	Ministry of Culture	<p>Negligence of the working group for procurement:</p> <ul style="list-style-type: none"> • Failure to ensure the delivery of 6,500 books to the National Library worth MDL 325,600; • Additional agreements with two companies, increasing the value of contracts by 100%, i.e. amount MDL 544,900). <p>Developing project documentation for items where works were not executed, with funds amounting to MDL 3,737,000.</p> <p>Incomplete financing of planned investments leading to an increase of costs of the reconstruction project and the generation of risks of damage to buildings constructed However, the payment of the costs of the feasibility study that were not executed generated debts amounting to MDL 300,000.</p>	MDL 325,600 MDL 3,737,000	Sent to NAC by CoA Under investigation
CoA 2013 Audit report 2011-2012 of Rayon Șoldănești	Local public authorities from Rayon Șoldănești	<p>Irregular and irrational expenditures for investments and capital repairs totaling MDL 27.0 million. Most significant:</p> <ul style="list-style-type: none"> • Lack of project appraisal and expertise – MDL 9.4 mln; • Execution of non-contracted works – MDL 8.8 mln; • Inefficient expenditures – MDL 1.0 mln; • Failure to observe legal procedures for procurement - MDL 	MDL 27 million	Sent to General Prosecutor's Office by CoA Two penal cases: <ul style="list-style-type: none"> • On 27 Feb 2013, penal case initiated by Prosecutor's Office of

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Reference	Institution	Description	Prejudice	Art. In Penal Code Follow-up, outcome
		7.8 mln,		<p>Rayon Șoldănești based on Art. 327. Abuse of power or abuse of service</p> <ul style="list-style-type: none"> On 28 Mar 2012 initiated penal case (based on Art. 328. Official excess or excess of service) was sent to the court of Rayon Șoldănești. The Mayor of Șoldănești and the manager of municipal enterprise "Piața Șoldănești" were judged guilty of committing criminal offenses.
CoA 2013 Audit report 2011-2012 of Rayon Căușeni	Local public authorities from Rayon Căușeni	<p>Non-compliance with public procurement legislation, resulting in:</p> <ul style="list-style-type: none"> Contracting of works and services without annual and quarterly plans for public procurements – total MDL 22.9 million; procurement of works and services from a single source, without procurement procedures- total 1.5 mil. lei; lack of adequate financial cover for procurement – total MDL 0.4 mil. 	MDL 24.9 million	<p>Sento to General Prosecutor Office by CoA</p> <p>On 29 Nov 2013, GP started prosecution based on</p> <ul style="list-style-type: none"> Art. 328 Official excess or excess of service Art.310 Falsification of evidence in civil proceedings <p>The criminal case was sent to the Prosecutor's Office of Rayon Căușeni</p>
CoA 2013 Audit report 2012 of the Compulsory Insurance Funds for Medical Assistance	Public healthcare institutions (IMSP)	<p>Five projects "Providing IMSP with oxygen generator facilities" (MDL 8.5 million):</p> <ul style="list-style-type: none"> No need assessment for equipment, the lack of planning acquisition by the institution and lack of funding sources (at the time of the acquisition procedure); Retroactive amendment of the delivery terms in the tender 	<p>MDL 8.5 million</p> <p>MDL 6.6 million</p> <p>MDL 6.8 million</p> <p>MDL 10.5 million</p> <p>MDL 8.8 million</p>	<p>Sent by CoA to General Inspectorate of Police General Prosecutor's Office National Anticorruption Center</p>

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Reference	Institution	Description	Prejudice	Art. In Penal Code Follow-up, outcome
		<p>documents, resulting in the stipulation for payment of customs duties and import VAT to be borne by the institution (unforeseen in the tender documents and not specified the contractual conditions of MDL 2.1 mln)</p> <ul style="list-style-type: none"> violation of legislation in the procedure of acquisition, contracting and receiving equipment After the commissioning of oxygen generators, the average monthly expenditure incurred by IMSP for the maintenance and exploitation have increased, compared to previous periods, by 1.6 to 3 times. <p><u>Investment projects for installation of radio-diagnostic facilities (MDL 6.6 million):</u></p> <ul style="list-style-type: none"> delay in organizing procedures for purchasing equipment (from 3-5 months) violation of legislation in the procedure of acquisition, contracting and receiving equipment the technical parameters of the equipment delivered to not correspond to those specified in the procurement contracts. The operation of the delivered equipment is not authorized by the National Agency for Regulation of Nuclear and Radiological Activities. Staff was not trained <p><u>Renovation of the heating system, changing doors and windows of PVC (MDL 6.8 million):</u></p> <p>Working group for procurement of Rayon hospital Strășeni has accepted defects, lack of justifications and of verification of works volumes, and concluded irregular additional agreements.</p> <p><u>Provision of medical assistance and outpatient hospital care in the ACSR (Asociația curativ sanatorială și de recuperare) according to current medical standards by implementing</u></p>		<p>General Prosecutor sent materials Prosecutor's Office of Rayon Strășeni</p> <p>Criminal cases under Art. 328 excess or excess of service are in the procedure of NAC criminal prosecution. Criminal cases have been committed by</p> <ul style="list-style-type: none"> members of the working group for public procurement of Republican Clinical Hospital public tender on procurement of equipment necessary for the production of oxygen. members of the working group of Spitalul Strășeni

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Reference	Institution	Description	Prejudice	Art. In Penal Code Follow-up, outcome
		<p><u>advanced diagnostic imaging services</u> (MDL 10.5 million):</p> <ul style="list-style-type: none"> Irregular procurement procedure, contracting and receiving equipment and of adjustment work of premises, without expertise; acceptance by CNAM and IMSP of works for adapting premises (1.2 million) without documentary justification of volumes executed; unclear situation of certifying compliance and country of origin, as well lack of authorization of equipment receptioned. The level of achievement of the objectives of the project in 10 months of 2012 was MDL 0.7 mln, or 3.2% of the planned value. <p><u>Three investment projects to equip the Institute of Neurology and Neurosurgery with medical equipment</u> (MDL 8.8 million):</p> <ul style="list-style-type: none"> failure to apply penalties for non-compliance with delivery deadlines; failure to comply with the budget limit of 1.4 mln; failure to conduct adaptation works for premises due to failure to finalize the commissioning of the ventilation system (0.4 million); failure to ensure the integrity and quality of equipment received, which led to returns of goods to the supplier 		
CoA 2013 Audit report 2012 Of the Ministry of Environment and National Ecologic Fund	Ministry of Environment and National Ecologic Fund	Irregular and unsubstantiated increase of the value of works and purchased goods amounting to about MDL 9.0 mln and irregular procurement of over 69.0 million.	MDL 9 million MDL 69 million	Sent by CoA to General Prosecutor Office Under investigation
CoA 2014 Performance Audit report in the area of	National Ecologic Fund	NEF Project "Reconstruction of the pumping station and sewage collector Straseni" with value MDL 2.5 mil.: Inoperative pumping station and river water continues to be polluted by wastewater	MDL 2 million	Sent by CoA to General Prosecutor Office

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Reference	Institution	Description	Prejudice	Art. In Penal Code Follow-up, outcome
environment "Protection and sustainable use of water in rivers and streams"		discharges from the sewerage network Straseni. Without proper evacuation capacity, the pump worked only a few days, then failed, and the station was flooded. Investments worth MDL 2.0 mil. are inconsistent and contrary to the initial purpose. Decision makers of Rayon Council Strășeni have made illegal modification of the technological part of the project		On 04 Aug 2014 criminal prosecution has been initiated, under Article 329 Service negligence. The case was sent to the Anti-Corruption Prosecutor for organizing and conducting prosecution of the Rayon managers.
CoA 2014 Audit report of the project „ Health Services and Social assistance for 2011-2013”	Ministry of Health	According to the feasibility study prepared by MoH, costs for construction of the new surgical block of the Republican Clinical Hospital (SCR) were estimated at EUR 5.9 million, and the surface of 5928.0 m2. Later on, the designer has calculated costs of EUR 12.7 million, with a surface of 10,576.7 m2, leading thus to significant discrepancies between the initially calculated and the final costs of the works. The procurement contract was concluded between the MoH and a non-resident company. Further to the audit findings, the developer / author of the project execution is a local company.	EUR 12.7 million	Sent by CoA to NAC Materials are being examined.
NAC 2015 no 1 and 3	Local public authority	Illegal activities by public officials (decision-making) of the Directorate General for Housing and communal landscaping of the municipality in regard to procurement of components for playgrounds for children.	in the course of determination	Art. 328. Official excess or excess of service, and Art. 42 (Participation) Under investigation by NAC
NAC 2015 no 2	N/A	Rigging of procurement of digital X-ray devices by officials in high positions	in the course of determination	Art. 328. Official excess or excess of service Sent by NAC to court
NAC 2015 no 4	Local public authority	Mayor in collusion with the Local Councilor concluded a procurement contract for repair of a bridge with an economic operator, and paid for it, but works were neither needed nor undertaken.	MDL 33,000	Art.191 Misappropriation of funds, and Art. 332. Forgery of public documents

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Reference	Institution	Description	Prejudice	Art. In Penal Code Follow-up, outcome
				Reported by a citizen, under investigation by NAC
NAC 2015 no 5	Agency	Decision-makers of an Agency and subordinated entities <ul style="list-style-type: none"> Conducted public procurement of clothing for professional use, amounting to MDL 3,178,700, in spite of the lack of funds allocated or this purpose Planned fictitious procurement of phytosanitary products, insecticides and related services in higher quantity, knowing that these materials will not be used. Undertook illegal felling of trees in the amount of MDL 16,000,000. 	MDL 3,178,700 MDL 16 million	Art. 328. Official excess or excess of service Under investigation by NAC
NAC 2015 no 6	Institution	Excess of service by public officials of the institution in concluding a contract for repairs	in the course of determination	Art. 328. Official excess or excess of service Under investigation by NAC
NAC 2015 no 7	Central public authority	Public officials participated in the misappropriation of assets by fraud and in the frame of conducting public tenders for the procurement of medical equipment in the institutions subordinated to the Ministry	in the course of determination	Art.190 Fraud Under investigation by NAC
NAC 2015 no 8	Commercial bank	The President, the Deputy President and a member of the Board of a Commercial Bank issued an unjustified decision for leasing of four cars although the bank's financial situation was in a deplorable situation (Bank put under administration of the National Bank in 2014).	in the course of determination	Art. 239 Violation of credit granting rules, lending policy or rules for insurance indemnisation Under investigation by NAC
NAC 2015 no 9	Central public authority	Excess of service by a senior public official (decision-maker) of the Ministry regarding the organization of public procurement of an IT system, causing damage to the state budget in the amount of MDL 19,080,000	MDL 19,080,000	Art. 328. Official excess or excess of service Under investigation by NAC
NAC 2015 no 12	Private company	Employees of the private company recorded false transactions regarding the procurement of goods from physical persons, in order to be used for tax fraud (deduction of expenditure by tax payer).	in the course of determination	Art.361 Manufacture, possession, sale or use of false official documents, stamps or seals

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Reference	Institution	Description	Prejudice	Art. In Penal Code Follow-up, outcome
				Submitted in 2015 to the competent authority
NAC 2015 no 13, 22, 23, 24, 26, 27, 28, and case received by NAC from other law enforcement bodies, no.2 <i>(see also above: CoA 2013 Audit report 2012 of the Compulsory Insurance Funds for Medical Assistance)</i>	Central public authority Healthcare center, a Hospital Agency	From November 2014 to March 2015, the former Minister; head of department of the Ministry; senior managers of the healthcare center (including the chairperson and members of the working group for public procurement); the Director and Deputy Director of Agency; as well as representatives of economic operators, collaborated in rigging procurement of medical equipment by favouring a specific economic operator in disadvantageous conditions for the public institutions, and generated significant damage to public funds The former minister acted as organizer	MDL 6 million	Art. 328. Official excess or excess of service and Art. 27 (attempt) and Art. 42 (Participation) Penal case was submitted to court on 23 November 2015 General Prosecutor started investigations in 2015
NAC 2015 no 30	Citizen	Citizen participated in rigging public tenders	in the course of determination	Art.190 Fraud Penal case was submitted to court on 23 November 2015
NAC 2015 no 16	State enterprise, Public authority	Directors of two economic operators, in collaboration with managers of the state enterprise and public officials, concluded a contract through public tender for road maintenance and repair, worth MDL 163,122,271. The contract amount was increased by approximately MDL 4,410,150 million lei. Contract was executed by sub-contractors	MDL 4.410.150 lei	Art. 328. Official excess or excess of service Under investigation by NAC since 14 December 2015
NAC 2015 no 17	Local public authority	Public officials of the settlement concluded a supplement to a contract of 2014, thereby illegally increasing the amount of works by MDL 389,963 causing damage to state budget's in the same amount.	MDL 389,963	Art. 328. Official excess or excess of service Under investigation by NAC
NAC 2015 no 19	Local public authority	Abuse of office committed by public officials of the Rayon Council in the purchase of real estate	in the course of determination	Art.327 Violation of rules for initiation and conducting of public procurement procedures

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Reference	Institution	Description	Prejudice	Art. In Penal Code Follow-up, outcome
				Under investigation by NAC
NAC 2015 no 20	Local public authority	Active and passive corruption committed by the manager of an economic operator, giving money to public officials of the Rayon Council, who were responsible for a tender for repair works in educational institutions in a Rayon (changing the roof of a school in settlement). The Operator won the tender, although only placed 7 th , while another economic operator had offered the lowest price.	in the course of determination	Art.325 Active corruption Under investigation by NAC
Case received by NAC from other law enforcement bodies no.1	Center (subordinated to central public authority)	Abuse of service by decision-makers of the Center, subordinated to the central public authority, in regard to public procurement relating to repair of a building in Chisinau, where the Center is located	in the course of determination	General Prosecutor started investigations in 2015 according to art.327 Violation of rules for initiation and conducting of public procurement procedures Under investigation by NAC
Case received by NAC from other law enforcement bodies no.3	Citizen	A citizen claimed having influence over a bailiff and accepted cash from other citizen amounting to MDL 32,500, in order to help the first winning an auction for purchasing, at a reduced price, of scrapped trucks sold by the bailiff.	MDL 32,500	Art. 326. Influence trafficking Penal case initiated by General Police Inspectorate of Chisnau municipality Under investigation by NAC
Case received by NAC from other law enforcement bodies no.4	State enterprise	Decision makers of the SOEs, concluded a contract for audit services with a JSC in 2010, without decision of the SOE's Board and without procurement procedure, causing a damage of MDL 355,776.	MDL 355,776	General Prosecutor started investigations in 2015 according to Art. 328. Official excess or excess of service

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Reference	Institution	Description	Prejudice	Art. In Penal Code Follow-up, outcome
				Under investigation by NAC
Case received by NAC from other law enforcement bodies no.5	Local public authority	The Mayor violated the "Regulations on low-value public procurement " by concluding a contract exceeding the amount of MDL 40,000 without public procurement procedure	Over MDL 40,000	Art. 328. Official excess or excess of service Penal case initiated by General Police Inspectorate Under investigation by NAC
Case received by NAC from other law enforcement bodies no.6	School	Public officials, members of the working group for procurement of a School, falsified the signature of the chairperson of the working group in several documents relating to the procurement of a heating system for the school.	in the course of determination	Art. 328. Official excess or excess of service Penal case initiated by General Police Inspectorate Under investigation by NAC
Case received by NAC from other law enforcement bodies no.8	Local public authority	In 2012, public officials of the municipality, ignoring the provisions of Law on energy efficiency", contracted for street lighting services a SOE which did not have the necessary technical capabilities. This led to signing subsequent contracts for granting the service, causing considerable damage to public interest.	MDL 4,791,321	Art.327 Violation of rules for initiation and conducting of public procurement procedures Penal case initiated by General Police Inspectorate Under investigation by NAC

Annex 2: List of persons interviewed

1. Național Anticorruption Center

- Olga Țiju, head of department for risk assessment and awareness raising on corruption
- Francesco Talmaci, head of analytical department
- Arcadie Rotaru, deputy head of analytical department
- Ruslan Flocea, head of territorial department Center
- Sergiu Doina, senior inspector, section of corruption risk assessment

2. National Integrity Commission

- Anatolie Donciu, President of the **National Integrity Commission**

3. Court of Accounts

- Ecaterina Paknehad, Member of the Court of Accounts
- Natalia Trofim, head of general directorate I (Auditul of State budget and assets)
- Marianna Spoialo, Head of Department for performance auditing

4. Ministry of Finance

- Simion Botnari, Deputy Minister of Finance
- Ion Sîrbu, Head of Department for harmonisation for Public Internal Financial Control
- Viorica Pricop, head of unit for harmonisation of internal audit in the public sector
- Petru Babuci, head of unit for harmonisation of Financial management and Control in the public sector
- Cristina Scutelnic, Consultant, unit for harmonisation of Financial management and Control in the public sector
- Ludmila Popa, Deputy head of internal audit department
- Maxim Bucatari, Senior Consultant in the internal audit department

5. Financial Inspection

- Alexei Secrieru, Director
- Ion Borta, Deputy Director
- Valeriu Babăra, Deputy Director
- Alexandru Ciuș, head of department for synthesis, legal assistance and control

6. Public Procurement Agency

- Viorel Moșneaga, Director

7. General Prosecutor's Office

- Alexandru Nichita, head of Section for financial-economic investigation

8. Chamber of Commerce and Industry

- Ludmila Pascal, Head of department for developing business environment
- Dorin Rojnevski, consultant - Department for developing business environment

9. Chișinău Municipality

- Veronica Herța, head of Finance Department
- Zinaida Jalobă, deputy head of Finance Department

10. EU Delegation in Rep. Moldova

- Ekaterina Yakovleva, Programme Manager
- Wicher Slagter, head of political-economic section

11. EUHLPAM

- Alben Kuyumdzheva, anti-corruption expert

12. AO Centrul Analitic Independent Expert Grup

- Dumitru Budianschi, director of programme „Public sector: economy, finance, management”

13. Center for journalistic investigations

- Natalia Porubin, director adjunct

Annex 3: Documents reviewed

LEGAL FRAMEWORK

- Penal Code no. 985 of 18 April 2002
 - Contravention Code no. 218 of 24 October 2008
 - Law on Public Procurement No. 131 of 3 July 2015
 - Law on Public Procurements No. 96-XVI of 13 April 2007
 - Law no. 90-XVI of 25 April 2008 on Prevention and Combatting Corruption
 - Law no. 1104-XV of 06 June 2002 on the National Anti-Corruption Center
 - Law 180 of 19 December 2011 on the National Integrity Commission
 - Law 1264 of 19 July 2002 on declaration and control of the income and ownership of the state dignitaries, judges, prosecutors, public officials and certain persons vested with managerial functions
 - Law no. 158-XVI of 04 July 2008 on Public function and statute of the public official
 - Law no. 16-XVI of 15 February 2008 on Conflict of interest
 - Law no. 25 of 22 February 2008 on Code of conduct of public officials
 - Law no.252 of 25 October 2013 on Approval of Regulation on functioning of anticorruption hotlines
 - Law on Competition no. 183 of 11 July 2012
 - Law no. 982 of 11 May 2000 on access to information
 - Law on Public Internal Financial Control No. 229 of 23 September 2010
 - Law on the Court of Accounts No. 261 of 05 December 2008
 - Law nr.181 of July 25, 2014 on Public Finance and Budgetary-Fiscal Accountability
 - National Anticorruption Strategy for 2011-2015, approved with Parliament Decision no. 154 of 21.07.2011
 - Action Plan for the years 2014-2015 on implementation National Anticorruption Strategy for 2011-2015 approved with Parliament Decision no. 76 of 16.05.2014.
 - Government Decision on organization the activity for financial inspection No.1026 of 02 November 2010
 - Government Decision no.45 of 24 January 2008 for approval of Regulation on compilation and evidence of list of prohibited economic operators
- Government Decision no. 188 of 3 April 2012 on official websites of public administration authorities in the Internet
- Government Decision no. 707 of 09 September 2013 on *Regulation of the framework on whistleblower for integrity*
 - Government Decision no. 767 of 19 September 2014 for *implementation of Law no.325 of 23 December 2013 on testing professional integrity*
 - Government Decision no. 1041 of 20 December 2013 on the *adoption of a Programme for developing financial control in the period 2014-2017*
 - Action Plan for implementation of the Association Agreement Rep. Moldova-EU for the years 2014-2016, approved by GD no.808 of 7 October 2014
 - Order of the Minister of Finance on Approval of the National Standards of Public Internal Financial Control no.189 of 5 November 2015
 - Order of the Minister of Finance on Approval of the National Standards of Public Internal Financial Control No. 51 of 23 June 2006
 - Order of the Minister of Finance on Approving the Ethical Code of the Internal Audit and of the Internal Audit Charter (framework Regulation for functioning of the internal audit unit) No. 139 of 20 October 2010

OTHER DOCUMENTS

- EU Directives No 18/2004/CE (*"On the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts"*, 31 March 2004)
- EU Directive No 66/2007/CE (Remedies Directive)
- Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC
- Moldova country procurement assessment report, World Bank, June 2010.
- OECD Methodology for assessment of national procurement systems
- NAC Annual Report 2014
- CoA Annual Reports for 2012-2014
- CoA audit reports for 2012-2015
- NAC report for period 2014-11 months 2015
- The DCFTA Title V Chapter 8 on Public Procurement
- The WTO Government Procurement Agreement
- Annual Reports on Public Procurement Agency activity for years 2012-2014
- Articles published on www.anticoruptie.md, www.investigatii.md, www.ager.md
- Corruption in RM, Transparency International, December 2015
- *"Identifying and Reducing Corruption in Public Procurement in the EU"*, A study commissioned by EU OLAF, (2013)
- The World Bank study *"Most Common Red Flags of Fraud and Corruption in Procurement in WB projects"*
- The World Bank book *"The Many Faces of Corruption: Tracking Vulnerabilities at the Sector Level"* (2007)
- Documents published on website of the *International Anti-Corruption Resource Center (IACRC)* <http://iacrc.org/our-services/combating-corruption-in-procurement/>
- Documents published on website of the Office of Inspector General of US Department of Defence <http://www.dodig.mil/resources/fraud/redflags.html#tab>
- The World Bank *"Fraud and Corruption Awareness Handbook - A Handbook for Civil Servants Involved in Public Procurement"* (2013)

Annex 4: List of participants at the presentation of the report

Name	Institution	Position
Vitalie Verebceanu	NAC	Head of General Department for Prevention of Corruption
Romina Ciubotaru	NAC	Principal inspector
Francisco Talmaci	NAC	Head of Analytical department
Ruslan Flocea	NAC	Head of territorial department Center
Nicolae Cojuhari	NAC	Inspector
Olga Tiju	NAC	Head of department for risk assessment and awareness raising on corruption
Valeriu Secaş	Public Procurement Agency	Deputy Director
Gheorghe Ghidora	Public Procurement Agency	Deputy Head of Department "Regulation and Control"
Natalia Trofim	Court of Accounts	Head of General Department I "Audit of State Budget and State Property"
Aurel Chiosa	Court of Accounts	Auditor, General Department I "Audit of State Budget and State Property"
Valeriu Babără	Financial Inspection	Deputy Director
Viorica Pricop	Ministry of Finance	Deputy Head of Department for Harmonization of Public Internal Financial Control
Dumitru Ochinca	Ministry of Finance	Head of service "Policies for regulation of public procurement"
Ala Timoftică	National Integrity Commission	Consultant
Dumitru Budianschi	Expert Grup	Director of the program "Public Sector: Economy, Finance, Management"
Ekaterina Yakovleva	EU Delegation	Programme Manager
Olga Crivoliubic	UNDP	Project Coordinator
Ilse Schuster	UNDP	Expert
Serghei Merjan	UNDP	Expert

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