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#### Asia Pacific Public Electronic Procurement Conference - 2021

# SESSION 3.1 e-GP use in procurement complaints: a tool for increasing transparency and improving a procurement framework

Chris Smith – Independent e-GP and open contracting consultant CAS Procurement Consulting Ltd

17th November 2021

### ADOPTION OF DIGITAL TOOLS FOR COMPLAINTS



World Bank Global Public Procurement Database - only 30 out of 218 countries have eComplaints systems and most of these are standalone platforms that are not integrated with the e-GP system/s, capture structured data or have linked data to contracts.



### PROCUREMENT APPEAL— AN EXAMPLE

## Competitive tender for civil works - construction of accommodation for 340 residents

#### Contract Notice states:

- Completion required within 7 months of contract award
- Drawings and specifications available on request
- Bidders and contracting authority to each appoint surveyors
- Contract performance security required
- Liquidated damages applicable for delay in completion
- 4 stage payments to be authorised by purchasers' architect

#### THE BIDDER'S COMPLAINT

Economic Operator (EO) invited for negotiations as preferred bidder.

EO could not accept major deviations from tender:

- Preparation of construction materials on site "objected to notwithstanding the specification"
- Misinterpretation of penalty clause "an exorbitantly disproportionate penalty"

Refusal to accept the new terms resulted in the contract being awarded to a higher bidder "a mistaken piece of economy"

Open Contracting – a citizen wrote to the review body to complain about award of contract to a more expensive EO.



# CASE STUDIES - DIGITISED COMPLAINT SYSTEMS

- Ukraine
- Albania
- Moldova



# SUBMITTING A COMPLAINT - UKRAINE Prozerro

#### How to submit a complaint:

- Online active form on the national eProcurement system linked to tender records;
- Complaint automatically stops tendering process.
- Complaint could have additional information (in form of e-documents, including pdf files) if needed
- Mandatory fee to submit a complaint;
- Payment through e-procurement system;

**Revoking a complaint:** If a complaint is registered in the Prozorro system it is impossible to revoke a complaint (intended to prevent complaint trolling)

# PROCESSING A COMPLAINT - UKRAINE Prozero

#### Processing of a complaint:

- E-procurement system automatically registers all complaints and provides links to tender data/records for review body;
- Review body within 3 working days after a complaint is registered must publish its decision:
  - If a complaint was accepted for the review with publication of date, time and place of the review;
  - Decision about refusal of the review with justifications;
  - Decision about stopping a review with justifications.

#### Decision of the review body (publication):

- It should be published in the e-procurement system within one day after a decision;
- Automatically comes into force after publication online no individual notification to parties is required.

# OPEN CONTRACTING DATA STANDARD (OCDS) A LOCAL EXTENSION FOR COMPLAINTS



## Provides structured standard data format for information related to a complaint.

Complaint is represented by the tender/complaints and/or award/complaints blocks of an OCDS release where each complaint object contains twenty six fields.

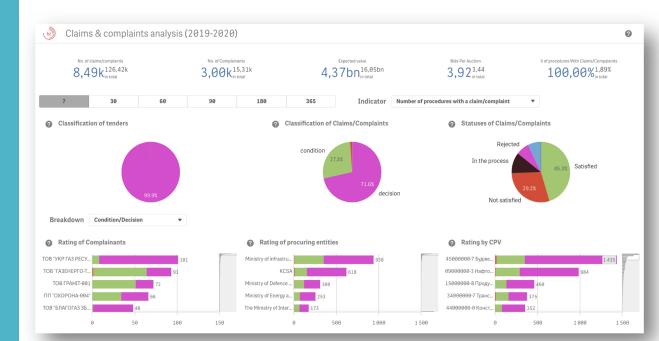
#### Additional fields

The fields introduced by this extension are:

- complaints/id The id of the complaint.
- complaints/title The title of the complaint.
- complaints/status The current status of the complaint. This field's codelist values are: draft , claim ,
   answered , pending , invalid , declined , resolved , cancelled , accepted , stopped .
- complaints/date The date when the complaint was posted.
- complaints/dateSubmitted The date when claim/complaint was submitted.
- complaints/documents All documents and attachments related to the complaint. The field's value can be an
  array of unique documents.
- complaints/type The type of the complaint. Possible values are: claim, complaint.
- complaints/relatedLot An identifier of the related lot.
- complaints/description The description of the issue or violation.
- complaints/author The organization filing a complaint.
- complaints/tendererActionDate The date of the tenderer action. Should be provided as a string.
- complaints/tendererAction The action of the tenderer. Should be provided as a string.
- complaints/satisfied The indicator whether the claim/complaint was satisfied. Should be represented as a boolean value.



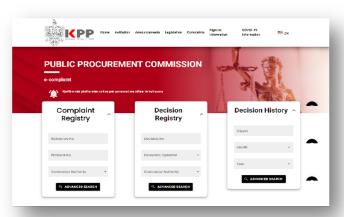
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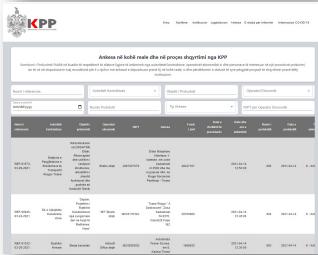


### COMPLAINTS REVIEW SYSTEM - ALBANIA



- New online complaints system launched October 2021
  - Register of complaints
  - Register of decisions
  - Audit trail/history of decisions
- Captures structured machine-readable data related to a complaint
- Powerful search
- Manages complaint workflow
- Publishes complaint details on the Public Procurement Commission website
- Adaptive website for citizens with visual impairment



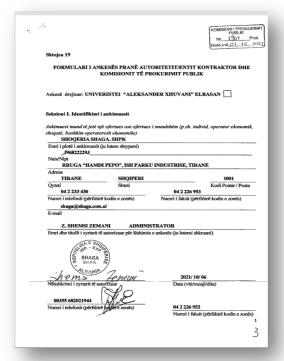




# COMPLAINTS REVIEW SYSTEM - ALBANIA



- Linked to Albania's eProcurement system, Business Registry and Tax Authority
- Uses the tender reference number to automatically generate the complete data of the procedure through the interaction with the electronic register of the PPA
- Generation of the invoice for the payment of the complaint fee
- Verification of payment mandate by the finance system and automatic notification to the parties involved



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* June 7 (2013):  **Gettise_des** '7821-16-18',  **Poccusent_object; '782-16-18',  **Poccusent_object; '782-18-18',  **Poccusent_object; '782-	JSON





# **BENEFITS**



- Monitor and report on statistics on procurement complaints
- Reduce cost to complainant and inconvenience by allowing online submission of complaint
- Improve efficiency in handling complaints and reduction in complaints exceeding the review deadline set out in the legislation
- Captures data from complaints to diagnose systemic problems and address them.
- Provides real-time information on the activity of the Commission through the website, based on the principles of Open Data.
- Publication of complaints and decisions in real time in the electronic register.

# MOLDOVA - MTENDER



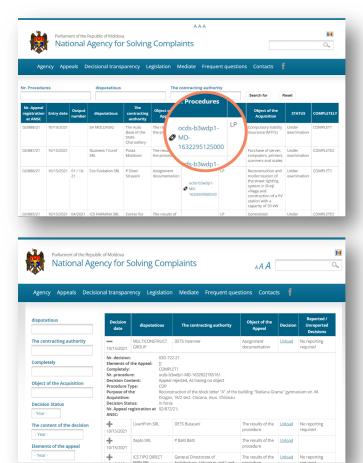


- MTender multiplatform networking digital procurement service developed with support from FBRD.
- Complaints are submitted online to National Complaints Settlement Agency (NSCA) and automatically recorded in MTender web portal.
- Contracting Authority can send answers to complaints to NCSA.
- NCSA can :
  - reject or accept appeal.
  - prepare and publish the decision online and suspend the procedure.



# MOLDOVA COMPLAINTS OPEN DATA AND TRANSPARENCY ON APPEAL DECISIONS







NATIONAL AGENCY FOR

e-mail.: valeriuf@vahoo.com, pe marginea

AGENTIA NATIONALĂ PENTRI

SOLUTIONAREA CONTESTATIILOR

adresa:

MD-2001, mun. Chişinäu, bd. Stefan cel Mare şi Sfânt 124, et. 4,

DECIZIE

Nr. 03D-722-21 Data 15.10.2021
privind contestatia formulată de către. Multiconstruct-Grun "SRL înrecistrată la

Agenția Națională pentru Soluționarea Contestațiilor cu nr. 02/872/21 la data de 07.10.2021, pe marginea procedurii de achiziție publică nr. MD-1632822765161 din 11.10.2021

documentației de atribuire a procedurii de achiziție publică nr. MD-1632822765161 din 11.10.2021, privind achiziția "Reconstruirea blocului lit. "A" a clădirii gimnaziului "Steliana Grama" str. M. Drăgan, 16/2 sect. Ciocana, mun. Chișinâu", inițiată de către

Direcția educație, tineret și sport sectorul Ciocana (în continuare - DETS sec. Ciocana)

adresa: mun. Chisinău. str. Alecu Russo 57, număr de identificare (IDNO):

contractante de a răspunde în mod clar, complet și fără ambiguități la solicitările de clarificări, de asemenea, contestatorul susține că nu este convins de faptul că autoritatea contractantă dispune de documentatia de proiect, deoarece la solicitarea acestuia a refuzat

La rândul său, DETS sec. Ciocana, a remis în adresa Agentiei procesul-verbal nr.

Conform prevederilor art. 82 alin. (1) din Legea nr. 131/2015, orice persoană care are

sau a avut un interes în obținerea unui contract de achiziție publică și care consideră că în

cadrul procedurilor de achiziție publică un act al autorității contractante a vătămat un drept

al său recunoscut de lege, în urma cărui fapt a suportat sau poate suporta prejudicii, este în

drept să conteste actul respectiv în modul stabilit de lege. Totodată, conform alin. (2) din

articolul nominalizat supra, în sensul prevederilor alin. (1), prin act al autorității

contractante se întelege orice act administrativ, orice altă actiune sau inactiune care produce

De asemenea, la cauză sunt relevante și prevederile art. 86 alin. (3) din Legea nr. 131/2015 potrivit cărora. Agentia Națională pentru Solutionarea Contestațiilor examinează

21044703 din 12.10.2021, prin care s-a consemnat că la procedura de achizitie publică nr.

MD-1632822765161 din 11.10.2021 nu a fost depusă nici o ofertă, respectiv în temeiul art.

Aprecierea Agenției Naționale pentru Soluționarea Contestațiilor:

sau poate produce efecte juridice în legătură cu procedura de achiziție publică.

1007601009565, tel.: 022499661, e-mail.: detsciocanaachiziti@mail.ru. În calitatea sa de persoană interesată în cadrul procedurii de achiziție publică nr. MD-1632822765161 din 11.10.2021, "Multiconstruct-Grup" SRL contestă inacțiunea autorității

să publice în SIA "RSAP" documentul respectiv.

71 alin. (1) lit. a) aceasta a fost anulată.

Agenția Națională pentru Soluționarea Contestațiilor a recepționat spre examinare contestația nr. 02/872/21 din 07.10.2021, depusă de către "Multiconstruct-Grup" SRL,

tel: 022 820652, fax: 022 820651, e-mail: contestatii

## MODELLING THE COMPLAINTS

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verification of self declaration

Tender Documents

Contract Notice

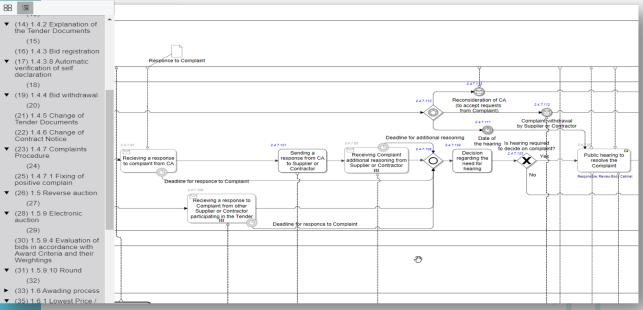
positive complain

Procedure

(18)

- **WORKFLOW**
- **European Bank** for Reconstruction and Development

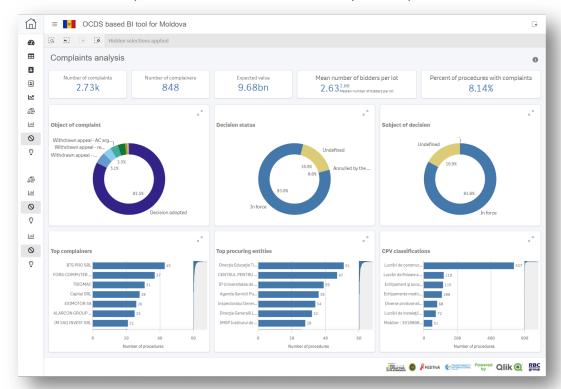
- Innovative use of Business Process Model Notation (BPMN) to optimise and align:
  - Workflow and Legislation
- Standard forms and templates are translated to OCDS to facilitate access to machine-readable tender and complaint data
- Extract programme code for system development



# OPEN BI FOR COMPLAINTS

**PARTNERSHIP** 

OCDS based BI tool for Moldova developed by the Open Contracting Partnership and designed to provide public access to tools for quick and convenient analysis of procurement



### CHALLENGES -LACK OF GOOD QUALITY DATA ON COMPLAINTS

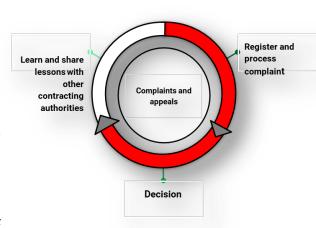
- e-GP systems do not cover complaints management as an integral function.
- Mandatory standstill periods may be enforced by the e-GP system but the submission and registering of complaints is managed offline.
- Little aggregated data available for a critical KPI to monitor the performance of the procurement system and improve it.

# POTENTIAL APPROACHES AND TOOLS TO DIGITISE COMPLAINTS AND APPEALS SYSTEM

- Involve users in the design of the system to make it inclusive
- Adopt the Open Contracting Data Standard (OCDS) with a local extension
- Use business process mapping notation (BPMN)
- Re-use eProcurement system and other government data
- Publish open data

# POTENTIAL APPROACHES AND TOOLS TO DIGITISE COMPLAINTS AND APPEALS SYSTEM

- Develop a module within the e-GP
- Think imaginatively about the use of the data, e.g.,:
  - OECD MAPS Indicator 13 (Procurement appeals mechanisms are effective and efficient)
  - WTO GPA Article XVIII
     Domestic Review
     Procedures
- Use complaints data to diagnose the causes of systemic problems
- Drive down complaints using a lessons learned approach



### Good practices

- Adopt red flags for complaints
- Use BI to understand the trends and spot reoccurring problems
- Integrate complaints into the design of eGP systems
- Reuse data from existing government systems
- Publish open data using the Open Contracting Data Standard
- Share and implement lessons learned
- Design digital complaints systems that are easy to use by suppliers and are accessible for citizens with disabilities so that they are inclusive.

Albania - Public Procurement Commission	https://kpp.al/en	
Ukraine - local OCDS extension for complaints	https://github.com/openprocurement/ocds complaint extension	
Ukraine – DOZORRO	https://dozorro.org/	
World Bank - Global Public Procurement Database	www.globalpublicprocurementdata.org/gppd/advanced_search	
Moldova – MTender	https://mtender.gov.md/en	
EBRD Technical documentation - Business requirements and use cases (complaints management)	Business requirements and use cases	
Moldova BI	https://bi.open-contracting.org/moldova/complaints	
Moldova - National Agency for Solving Complaints	www.ansc.md/ro/contestatii/2021	
Open Contracting Partnership	www.open-contracting.org/	

### PROCUREMENT COMPLAINTS - SOME USEFUL LINKS