

# PROBLEM ISSUES OF THE STATE PROCUREMENT SYSTEM AS A MECHANISM OF BUSINESS DEVELOPMENT IN UKRAINE

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**Abstract.** *The public procurement system in Ukraine, in accordance with the current legislation, is designed to ensure efficient and transparent procurement, create a competitive environment in the field of public procurement, prevent corruption in this area and develop fair competition.*

*The key reason for the release of the Law of Ukraine "On Public Procurement" was the low efficiency of the system of conducting tenders, where proper control over the application of the law was not carried out, and there were also opportunities for the implementation of corrupt practices. The absolute advantage of the newly introduced legal regulation of the researched topic was a change in the approach to confirming the grounds for rejecting the participants' proposal. The list of such reasons is quite significant and includes, for example, the presence of a participant in the Unified State Register of Persons who have committed corruption or corruption-related offenses, the involvement of a procurement participant in liability for committing anti-competitive concerted actions related to the distortion of the results of bidding (tenders), an individual who is a participant, as well as an official (official) person of the participant who signed the tender offer, were convicted of a crime committed for selfish motives, the criminal record of which was not removed or not repaid in accordance with the procedure established by law, the participant was declared bankrupt and the discovery of of the liquidation procedure, etc. These grounds can now be confirmed in any way. The customer establishes a specific method of documentary confirmation of the specified facts in the tender documents only for the winner of the procedure (with the exception of information contained in open sources). The new approach significantly facilitates the procedure for monitoring anti-corruption activities. On the other hand, today the legislation of Ukraine on public procurement, according to which the practice of electronic auctions was introduced, is far from unambiguously perceived by representatives of the economic sphere. An important principle for conducting purchases without any violations is the obligation of customers to bear responsibility for the tenders held. Therefore, a number of existing problems arising due to certain shortcomings of the legal framework stand out in the researched area.*

**Key words:** public procurement, public procurement, tender, anti-corruption activity.

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## **Introduction.**

The main task of implementing state policy in the field of procurement is to create an effective, unified, balanced system that can ensure overcoming crisis phenomena, transparency, openness, competitiveness, which will ultimately lead to the maximum efficiency and economy of spending public funds by tenderers.

The development of the public procurement system is inextricably linked with the introduction of modern information technologies. Therefore, the automation of public procurement processes should become a step in improving the mechanisms of procurement with public funds, which will provide for the introduction of the electronic public procurement system in Ukraine - the process of procurement procedures by customers and

bidders using a single, state, specialized information system on the Internet in the online mode -line using electronic document flow, electronic digital signature or the corresponding certified key.

## **Research methodology.**

The works of many domestic and foreign scientists are devoted to the study of various aspects of the public procurement system. But in their writings practically no attention is paid to the system of application of electronic procurement.

However, when addressing these issues, there is an insufficient level of elaboration in the literature and regulatory documents of the problem of the introduction of electronic public procurement in Ukraine, as well as the practical significance of this problem for the efficient and

economical spending of public funds.

Statement of the problem - the purpose of the article is to study the prospects of electronic procurement in Ukraine, to analyze the foreign experience of using electronic procurement in developed countries of Europe and the world, to determine the ways and problematic issues of the implementation of electronic public procurement in Ukraine.

Presenting main material. Methods. During the study, the following methods were used: the formal-legal method was used to analyze the legal norms regulating the activity of public procurement. Gave an opportunity to find out the content and direction of legal norms; the comparative legal method was used to compare the different regulatory frameworks of Ukraine in this area; the sociological method made it possible to investigate the practical experience of public procurement; the logical method (analysis, synthesis, generalization) made it possible to systematize and summarize the results of the research, to present them in the work.

Method. During the research, the legal acts regulating the activity of public procurement in Ukraine were analyzed, as well as scientific publications, analytical materials on this topic, which cover the research issues, were studied.

#### Results.

There are a number of problems that have arisen due to certain shortcomings of the legal framework:

- firstly, one of the "most popular" bidding schemes is the involvement of fictitious pseudo-organizations in them, which lower the price, and in case of victory, refuse to sign the contract with the customer. In such a case, a contract is signed with the next winning organization, or the tender is held anew;
- secondly, the "wrong" definition of their subject has become a fairly frequent practice that negatively affects the transparency of tenders. Thus, the tender is "hidden" from potential other participants, which prevents them from searching and submitting offers. An even simpler scheme is to hide a tender in the e-procurement system by making grammatical errors in its title or by specifying a deliberately incorrect qualification;
- thirdly, the price threshold for public procurement, when it comes to goods and services, is 200 thousand hryvnias, while for works the maximum amount is 1.5 million hryvnias. In this way, orders for a larger amount can be divided into smaller "threshold" purchases, and the bidding procedure for them bypasses the electronic system, which, in turn, creates grounds for a corruption component. It is also important that the verification of compliance with qualification requirements and the technical part is carried out ex post facto, after the tender winner has been identified;
- fourthly, the customer has the right to cancel the auction for various reasons, which may be fictitious reasons, lack of further need for procurement or

alleged significant violations of the law - fictitious in fact. This usually happens if a candidate who is undesirable for the customer wins. The formal reason in such cases is the need to provide additional documents that will confirm that the offer fully meets the requirements of the tender documentation.

- fifthly, quite often a problem arises, which consists in the inconsistency of the quality of the delivered products with the requirements that were previously stated in the tender documentation. In order to avoid such difficulties, customers have the right to establish in the tender documents an obligation according to which the winner must provide product samples.

- sixthly, the current legislation gives the customers quite broad rights, thanks to which they can establish the necessary criteria for the "necessary" candidate to become the winner of the tender, for example: - the criteria are set at the sole discretion of the customer, so a dubious firm can easily become the winner of the tender ; - some of the proposed requirements, in other words criteria, may be discriminatory; - a number of reasons for refusing to purchase a tender may have a specific meaning.

- Seventhly, settlement of public procurement contracts in Ukraine takes more than 60 days, which demotivates potential bidders who are able to offer goods, works and services of higher quality. Thus, recognizing the significant positive progress in the procedure of state regulation and control in the field of public procurement, it is necessary to note the need for further reform of the field of public procurement in Ukraine [1].

Automation of public procurement processes has become widely used in many countries of Europe and the world. In the USA, for example, the electronic trading system has been operating since 1998. First of all, this system solved the tasks of the military (procurement of weapons, material and technical support of the troops), which enabled the country to significantly reduce administrative costs. Denmark, Norway, Ireland, Australia, Canada, Mexico, and Sweden achieved the greatest success in this area. According to experts, thanks to electronic procurement, it is possible to save budget funds by 10-15%, at the same time reducing the terms and costs of conducting procurement procedures, significantly reducing the level of corruption [2].

As evidenced by the experience of European countries, the creation of a system of electronic bidding allows to significantly reduce the expenditure of public funds by bidders on the acquisition of procurement items, organization and conduct of the procurement process; enables unhindered, daily online access to information of all interested persons; ensures openness and transparency at all stages of procurement; reduces paper document flow in this area; creates equal access to accumulated information and equal conditions of competition between suppliers; facilitates the work of supervisory and law enforcement agencies; warns of abuse and corruption in the field of public procurement, etc.

The main principles on which the electronic public procurement system should be built are:

- maximum accessibility and transparency for all

categories of the system without exception;

- provision of services online around the clock;
- unified requirements for technical standards;
- confidentiality and information security;
- control and establishment of responsibility for non-compliance with legal requirements in the field of electronic trading.

Thus, the introduction of e-commerce systems in the country is negatively influenced by: imperfect legislation; significant level of corruption in the procurement sector; excessive politicization of the public procurement system; unsatisfactory material and technical support, first of all, of customers of tenders (budgetary institutions and organizations, economic entities of the state sector of the economy). In addition, despite everything, the percentage of Internet users in Ukraine and their information technology awareness and computer literacy remain insignificant.

The optimal public procurement system for Ukraine:

1. State procurement should be exclusively a function of the state. They should be organized in a way that ensures the most effective spending of budget funds through the purchase of the highest quality goods, works and services for the public sector of the economy at the lowest possible prices (optimal "price-quality" ratio of goods or services).
2. The law should apply exclusively to budget funds of all levels, which are spent by managers of budget funds (including by state enterprises exclusively in the part of budget funds), and purchases of those state enterprises that produce products (provide services) that are socially important value (water supply, transport, etc.);
3. Management of the public procurement process should be entrusted to executive authorities. It is expedient to study this issue as the creation of a separate central body of the executive power, which will deal with issues of public procurement.
4. Such a body should perform the following functions:
  - 1) Methodological: approve tender documentation, rules and conditions of tender procedures, create and maintain a single website, which will host all information about the public procurement procedure, tender results, etc.
  - 2) Organizational: to directly organize tenders, in particular by creating an electronic bidding system as part of the implementation of the "e-government" project;
  - 3) Monitoring: collection and accumulation of information on the results of auctions, official publication of their results in the printed edition and on the corresponding website; All selection and decision-making criteria must be clearly prescribed in the law in order to minimize the influence of subjective factors, in particular the human factor.
5. External control over the process of public procurement should be carried out by the Cabinet of Ministers of Ukraine and the Verkhovna Rada of Ukraine within the framework of their powers.
6. External audit of public procurement should be carried out by the following organizations: Central Committee (CMU), Accounting Chamber (VRU), State Treasury (Ministry of Finance), AMCU (competition protection issues).

7. Arbitration and the resolution of disputed issues in the process of public procurement must be decided by the coordinating body of the state government - the Interdepartmental Commission on Public Procurement, whose composition must be formed in accordance with the latest amendments to the current law of June 19, 2007. The last instance of resolving disputed issues is the court.

8. Public control over the implementation of public procurement should be carried out through the presence of independent representatives in tender committees, who can be both civil servants (from departments not related to those that carry out procurement) and representatives of public organizations.

9. The transparency of public procurement should be ensured by free and free access to information on applications for participation in bidding, direct bidding and the results of conducted bidding, which is officially published by the Agency on the website and in its own printed edition.

10. The responsibility of the participants in the public procurement process is regulated by the current legislation on the civil service, the norms of which must be strictly followed.

On December 25, 2015, the Verkhovna Rada adopted the Law of Ukraine "On Public Procurement". By law, on April 1, 2016, the Prozorro system became mandatory for central authorities and monopolists, and on August 1, 2016, for the rest of the state customers [3].

The Law of Ukraine "On Public Procurement" provides:

- Introduction of an electronic auction, which provides for automatic evaluation of tender offers;
- Emergence of new concepts: "authorized electronic platform", "electronic procurement system", "centralized procurement organization", "cloud computing system";
- Instead of 5 procedures, leave 3 (open bidding, competitive dialogue, negotiation procedure);
- Change in terminology, in particular: instead of the term "state procurement" the term "public procurement" is introduced; the terms "tender", "tender documentation", "tender proposal", "tender committee" are introduced instead of the terms "tender", "tender documentation", "tender proposal", "committee on competitive bidding" [4].

Main changes:

- The threshold for mandatory purchases through Prozorro has decreased from 200 to 50 thousand hryvnias.
- Strengthening responsibility for gross violations of tender legislation.
- The business can correct minor errors in the tender offer within 24 hours.
- The mechanism for appealing tender procedures in the Antimonopoly Committee of Ukraine has been improved — now the Participant can appeal the cancellation of the procurement by the Customer, and the cost of the appeal fee will depend on the expected cost of the procurement procedure.

An alternative for small sub-threshold purchases has worked — the state marketplace Prozorro Market.[5]

- The transformation of the procurement process itself has begun — tender committees are becoming a thing of the past, replaced by authorized persons: a separate position that is paid.[6]

### Conclusions.

At the present time, a progressive institution - public procurement - has been created in Ukraine, which is designed to ensure equal, transparent, competitive conditions for business entities in the field of procurement, as well as the needs of the modern state of Ukraine for the effective implementation of its functions. However, despite the positive aspects, its legal regulation needs significant

improvement both in terms of the stages of public procurement and in the field of control over this process.

The issues of access to the possibility of appeal are relevant, in particular, the reduction of payment for filing a complaint, as well as the strengthening of the responsibility of customers for violation of the specified procedure, etc.

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