

ARZINGER

# Public Procurement in Ukraine: the basics

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# Ukrainian tenders: why participate?

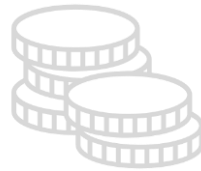
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## Q1-Q3 2020 figures:



### Over 36k purchasers:

always possible to find a right purchaser for your goods and services



### Estimated value:

909.24 billion UAH

(27.08 billion EUR)



**ONLY**  
**2,37 competitors**  
per bid (in avg.)



# Prozorro: Basics



Single state procurement system



Direct participation through authorized e-platforms (over 15 options)



Direct communication with purchasers



Single window for submitting documents



Fully electronic appeal



"Everyone sees everything"



No discrimination of foreign bidders



# Prozorro: international recognition

## Ukrainian public procurement system wins the first prize in the international procurement award

26.05.2016

On May 19 Ukrainian Prozorro, reformatory public procurement system received the first prize in the prestigious World Procurement Awards in the Public Sector nomination 2016 in London. Public Finance Management Reform Project of GIZ Ukraine supports Prozorro on behalf of Federal German Government and British Government. This award is one of the most recognised in the sphere of procurement in the world.

In addition to that, Ukraine earned the right to hold the next 13th Procurement, Integrity, Management and Openness (PRIMO) Forum next year. This will give an additional chance for Ukraine to show its progress in public procurement reform. The topic of the next forum will be dedicated to anti-corruption.

Started in 2014 largely by the efforts of the team of volunteers, strongly supported by international donors, Prozorro has already achieved remarkable results: pilot project completed on electronic tenders of total value over UAH 15 bn, over UAH 1.4 bn saved for the state budget, legislation for total transit to the e-procurement developed and adopted in Parliament in December 2015.

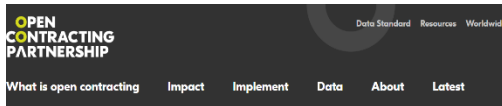


World Bank may use Prozorro e-procurement system for its projects in Ukraine

January 30, 2020 21:33

## PROZORRO AND PROZORRO.SALE WON THE INTERNATIONAL GLOBAL PUBLIC SERVICE TEAM OF THE YEAR-2019

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# Key types of procurement procedures



Below-threshold procurements

**"Ukrainian" open bidding** (from UAH 200 k (goods, services) / UAH 1,5 million (works): **no publication in English, post-qualification**

**"European" open bidding** (from EUR 133 k (goods, services) / EUR 5 150 k (works): **publication in English, pre-qualification**

Negotiation procedure

**NB!** Some procurements may be conducted outside Prozorro system.  
E.g.: EBRD-funded tenders. EBRD procurement rules apply.



# Common issues: from the purchasers' side



Unjustified combination of lots



Discriminatory qualification criteria



Tender conditions drafted for a specific supplier



Unjustified disqualification

**Significant experience  
(e.g. 5+ years)**

**Many analogous  
agreements (e.g. 20)**

**Experience of work  
with specific  
purchasers**

**Analogous agreements  
amounting more than  
expected value**



# Common issues: from the participants' side

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Incompliance with tender documentation (e.g. not submitting the annexes to the agreements)



Missing deadlines



Failure to present correct bank guarantee



Collusion



Appealing on incorrect grounds



Abuse of right to appeal



# Appeal

	To the AMCU	To the Court
What appeal?	<ul style="list-style-type: none"> <li>Provisions of <b>the tender documents</b> (e.g. discriminatory conditions);</li> <li><b>Decisions</b> of the purchaser (e.g. selection of tender procedure.</li> </ul>	<ul style="list-style-type: none"> <li><b>Decisions of the AMCU</b>;</li> <li>Concluded contract.</li> </ul>
When ?	<ul style="list-style-type: none"> <li>appeal against the tender documentation and the decisions, actions or inactions of the purchaser, which took place before the deadline for submission of tender proposals - <b>not later than 4 days before</b> the deadline for submission of tender proposals;</li> <li>complaints against decisions, actions or omissions of the purchaser, which occurred after the evaluation of tenders offers - within <b>10 days from the date</b> when the subject of the complaint learned or should have learned about the violation of their rights, but before the conclusion of the procurement contract</li> <li>appeals against decisions, actions or omissions of the customer, which took place after the consideration of tenders in the "European" procedure - within <b>5 days from the date of publication of the protocol</b> of consideration of bids.</li> </ul>	<ul style="list-style-type: none"> <li>The decision of the AMCU: <b>30 days from the date of its publication</b> in the electronic procurement system;</li> <li>The fact of concluding a contract: <b>3 years</b> after concluding.</li> </ul>
How much ?	<ul style="list-style-type: none"> <li><b>2 000 – 170 000 UAH</b> (depending on the value of tender and the grounds for appeal).</li> </ul> <p><b><u>NB! Will be returned if appeal is successful.</u></b></p>	<ul style="list-style-type: none"> <li><b>2102 UAH</b> per each claim.</li> </ul> <p><b><u>May be returned if the appeal is successful.</u></b></p>





# AMCU Appeal Commissions in Persons

## First commission



Deputy Chairman of the AMCU  
and State Commissioner - Natalia Buromenska



State Commissioner –  
Irina Kopaygora



State Commissioner –  
Serhiy Tyschuk

## Second commission



The First Deputy Chairman of the AMCU  
and state commissioner - Olga Muzichenko



State Commissioner –  
Maria Protsyshen



State Commissioner –  
Olga Nechitaylo



# PRO Tips



Participate in **pre-tender consultations**



**Check ALL tender documentation** before submitting documents



**Ask purchaser** all the **questions**



**Double-check the translations**, have a local representative speaking and reading Ukrainian



**Timely appeal** to the AMCU



**Tender offer = Tender documentation**



Be prepared to **justify your price**



**24 hours for amending documents** (but only some of them!)



**Prepare the documents "for the winner" beforehand**



**Check your competitors as if you were the purchaser**



**Check your documents as if you were your competitor**



# Recent Success Stories

ДК 021:2015 – 33600000-6  
Фармацевтична продукція  
(Трастузумаб 150 мг)

**CPV: 33600000-6 Pharmaceutical  
products (Trastuzumab 150 mg)**

UA-2020-06-11-006745-с • 77398d210cdd49a5ae9bab85cf777a93

очікувана вартість  
**263 633 058,00**  
UAH

Як працює модуль Аукціон

[Перейти на аукціон](#)

Завершений

17 вересня 2020 • 12:03

Учасник	Рішення	Пропозиція	Опубліковано	Додатково
Шерінг-Плау Централ Іст АГ #CHE-101.840.285	<a href="#">Переможець</a>	▲ 121 329 000,00 UAH	21 вересня 2020 • 14:59	<b>Обґрунтування аномально низької ціни</b> до 19 вересня 2020 • 00:00 <a href="#">Повідомлення</a>



# Recent Success Stories

45230000-8 Будівництво трубопроводів, ліній зв'язку та електропередач, шосе, доріг, аеродромів і залізничних доріг; вирівнювання поверхонь (Будівництво автотранспортної магістралі через р. Дніпро в м. Запоріжжі» (автомобільна дорога Н-08 Бориспіль – Дніпро – Запоріжжя (через м. Кременчук) – Маріуполь «Під'їзд до о. Хортиця

очікувана вартість  
12 340 694 530,00  
UAH

Як працює модуль Аукціон

Перейти на аукціон  
Завершений

21 лютого 2020 • 12:20

Протокол розкриття

Контакти

Катерина Полякова  
+380966070662  
tender@sad-zp.com.ua

DOZORRO

Учасник	Рішення	Пропозиція	Опубліковано
ONUR TAANHUT TASIMACILIK INSAAT TICARET VE SANAYI ANONİM SİRKETİ(ОНУР ТААХХУТ ТАШИМАДЖИЛИК ИНШААТ ТІДЖАРЕТ ВЕ САНАІ АНОНІМ ШІРКЕТІ) #83588	Переможець	11 918 000 000,00 UAH з ПДВ	21 лютого 2020 • 16:37

**45230000-8 Construction of pipelines, communication and transmission lines, highways, roads, airfields and railways; alignment of surfaces (Construction of a motorway across the Dnieper river in the city of Zaporozhye) (highway N-08 Boryspil - Dnipro - Zaporozhye (through the city of Kremenchuk) - Mariupol. (First stage of construction))**





## Are foreign companies allowed to participate in Ukrainian tenders?

Yes, both residents and non-residents are equally allowed to participate. Please note, however, that only for those tenders, value of which exceeds EUR 133 000 (for goods and services) and EUR 5 150 000 (for works), announcement of tender is translated in English, and the tender documentation itself is not translated at all. So, you would need to have a local representative knowing Ukrainian to participate in any case. Moreover, the documents of tender offer must be submitted in Ukrainian, too.



## Do we really need to publish confidential contracts with our previous customers on publicly accessible web-site "Prozorro" to participate in tender?

It would depend on the requirements of a particular tender, however, generally, yes – if requested by the customer. However, if you have valid arguments, the public customers may amend tender requirements and limit the volume of requested confidential documents to the minimum.



## Is it possible to conclude direct contract with public entity without undergoing open bidding procedure?

There are some limited cases when direct procurement is allowed (e.g. lack of competition, necessity to protect IP rights, need to urgently eliminate consequences of emergencies etc.). Generally, if the purchase expected value exceeds legally established thresholds (200 000 UAH for goods and services, 1 500 000 UAH for works), then the open tender is required.



## Is it possible for a group of companies (e.g. consortium) to participate in tender?

Yes, it is possible, however a properly drafted documents confirming existence of such consortium and distribution of responsibilities among the parties to the consortium must be provided.



## Are all procurements by Ukrainian public entities conducted through online "Prozorro" system under procedures set out by national legislation?

Most of the procurements are conducted under national legislation. However, there are exceptions. For instance, public procurements of medicines conducted by specialized procuring organizations (e.g. UNDP, UNICEF, Crown Agents), as well as procurements conducted for funds received from international financial organizations (e.g. EBRD, IFC etc.) are conducted under the rules of such organizations.



## Would it be possible for two companies of the same group (e.g. one being resident of Ukraine and the other being non-resident) to participate in one tender?

No. Such participation will be considered bid rigging, and both companies must be disqualified by the customer. Moreover, the companies may be punished for up to 10% of their yearly income each and deprived of the right to participate in tenders for 3 years.



# FAQ (2)



## **What should we do if we feel that tender documentation is drafted in favor of a particular participant and discriminates us?**

You are entitled to request the purchasing entity to change tender requirements to avoid discrimination. Such request may be sent free of charge, however there is no guarantee that it will be satisfied. Should the purchaser refuse to satisfy your request, you may appeal the disqualification to the AMCU, however a proper justification and evidence of discrimination is required.



## **Are we allowed to discuss with the public purchaser the technical characteristics and the estimated value of supply before the tender is announced? Would it be considered anticompetitive?**

You may participate in so-called “pre-tender consultations” organized by the purchasing entity. However, each communication must be as transparent and unambiguous as possible, and only objective information and no illegal incentives must be provided to the purchaser in course of such communications.



## **How long would it take to appeal the tender?**

It depends on a type and subject of appeal. If you appeal the decisions of the customer (e.g. disqualification) or provisions of tender documentation, such appeal should be submitted to the AMCU (appeal body) and will be considered in 10-20 business days. If you decide to appeal the procurement contract, you will need to go to court, and in practice court proceedings may last over a year.



## **How can we insist on disqualification of our competitors if we understand that they are incompliant with tender requirements?**

You may address the AMCU with the appeal to ensure disqualification of the competitor. Accordingly, the competitor may also address the AMCU with the appeal to disqualify your company. Thus, it is crucial to ensure that your offer is 100% compliant with the requirements of tender documentation.



## **How much would it cost to address my appeal to the AMCU?**

It would depend on the estimated value of the tender. In some cases the price of appeal may be up to UAH 170 000. However, if your appeal is satisfied even partially, the cost will be fully refunded.





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**Thank you!**

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ZIN  
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