

INGREDIENTS OF SUCCESS OF PROCUREMENT REFORM TOWARDS

COMPETITIVE AND TRANSPARENT PROCUREMENT – EXAMPLE OF UKRAINE

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prozorro

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MAIN Point of departure for PP REFORM – ANTI-CORRUPTION

In 2015 Ukraine scored #27 out of 100 points by
Transparency International for corruption perception



Improve of procurement efficiency
(also often influenced by corruption)
– was only 2nd consideration

Why else was the reform needed in 2014

As for end 2013, before the reform, there were following critical negative facts ruining national PP system:

- 43 exemptions from the scope of PPL;
- Single Source (direct contracting) was most popular procedure applied in more than 40 % (in value dimension) cases among all possible procedures;
- Average level of competition in tender procedures was less than 2 bidders per competitive tenders so many tenders had to be cancelled;
- Manipulations with paper-based tender process (“improvement/replacement” of bids after opening, different content of tender documents delivered to different bidders, very flexible contract amendments notably increasing prices or lowering quality – all together undermining the whole idea of competitive tender and forming environment well favorable for corruption).

!!! MOREOVER -- all these negative facts were quite uneasy to track because quite few pieces of information were published (mainly tender and contract award notices).

Why reform happened in 2014-2016 (and it still is evolutionally going on)

- ❖ Window of opportunities -- opened by great enthusiasm and by readiness (even pressure) of many citizens and business and public officers for complex reforms after Revolution of Dignity heated by the war in Eastern Ukraine and Crimean occupation.
- ❖ Effective and positive cooperation between main stakeholders – public sector (government authorities and procuring entities), business and civil society
- ❖ Strong and comprehensive support of international partners (EU (incl. member states), EBRD, USA, Canada).

Stages of reform

- I. 2014 – new edition of PPL radically reducing exemptions (from 43 to 14), essential extension of publication requirements (12 pieces of procurement info to be published at PP web-portal), limitation of contract amendments, introduction of EU based definitions and rules regarding covered entities and contracts, negotiated procedure, value thresholds).
- II. 2015 -- 1st experimental (pilot) version of e-procurement system PROZORRO was voluntary piloted by many entities for low-value contracts.
- III. 2016 – new edition of PPL introducing mandatory e-procurement process via PROZORRO system instead of paper-based process, further alignment with EU notions (framework agreements, self-declaration of bidders). Ukraine became GPA member, the PP Strategy and 7-years Road map (envisaged until end of 2022) adopted.
- IV. 2020 – new edition of PPL introducing PROZORRO 2.0 with further EU alignment (LCC, Abnormally low price, restricted tender, e-catalogues, pre-tender market consultations), all possible procurement info is published (in average 17! pieces of info per each tender process, notable part of them – automatically generated by e-system).

Latest facts (as of December 2021)



>10 mln. contracts from 2016



~ **46000** Buyers
(incl. procuring units within one entity)



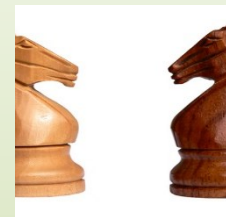
170 bln. EURO – value of contracts covered by PROZORRO from 2016



343 290 bidders



~ **4% savings**
(~ 7 bln. EURO)
Calculated as difference between initial estimated value and awarded value



2.9
Average number of non-disqualified bidders (in 2020)

More Results (2016-2019)

Table 1. Total Value of Concluded Contracts through Procurement Procedures in 2016-2020

	20	16	20	17	20	18	20	19	20	20
Type of procedure	In EUR, billions	%	In EUR, billions	%	In EUR billions	%	In EUR billions	%	In EUR billions	%
Competitive procedures (open tender and low-value e-auctions)	10,2	67,75	17,4	80,5	11,1	78,1	10	71,27	15,25	76,6
Negotiated procedure with 1 or several economic operators	5,3	32,25	4,2	19,5	3,1	21,9	4,1	28,73	4,66	23,4
Total	15,5	100	21,6	100	14,2	100	14,1	100	19,9	100

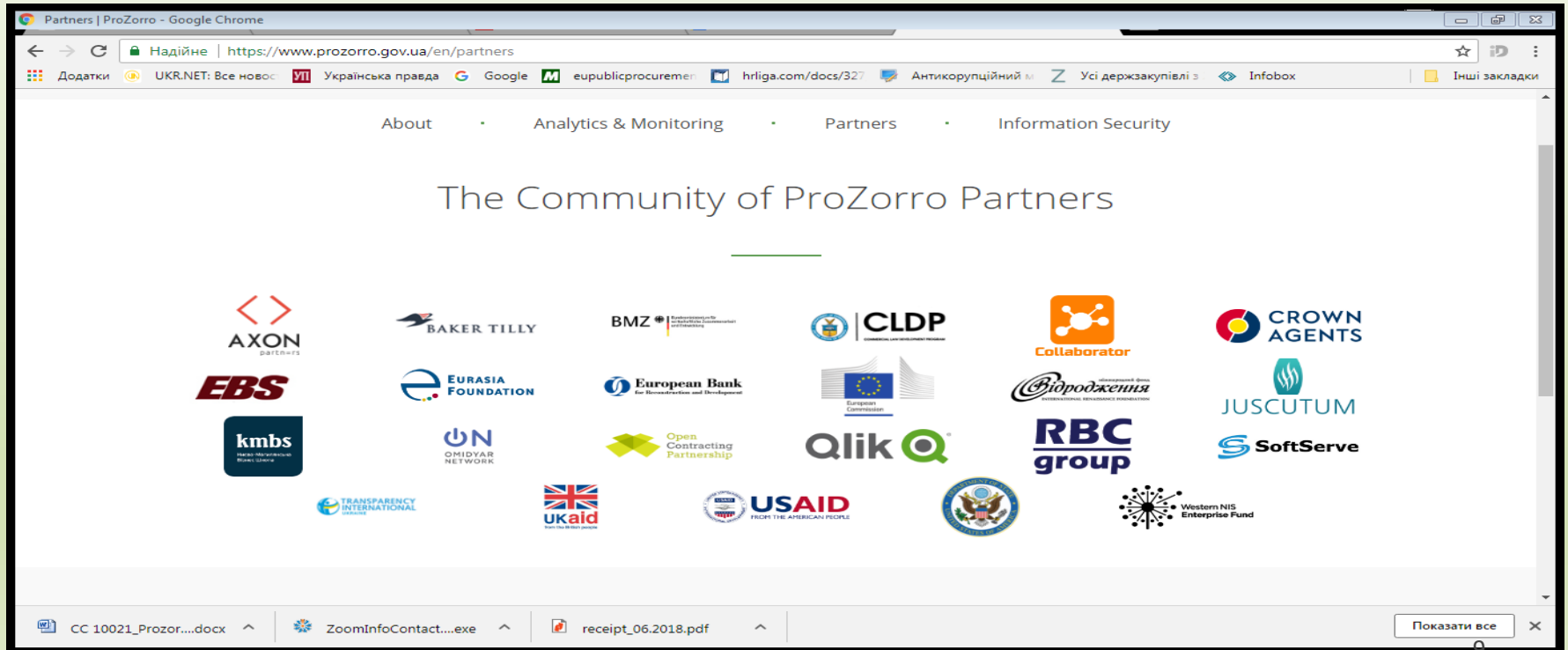
- ✓ The value non-competitive procedures equalled 32.25 % in 2016, 19,5 % in 2017, 21,9% in 2018 that reflects very positive dynamic for reduction on non-competitive procedure while raised 23,4% in 2020 are caused by COVID-19 related contracts.
- ✓ **It should be also emphasized** that significant part of non-competitive procedures is related to the procurement of municipal utility services (22.05 % of all procurement contracts or 67.3 % of non-competitive procedure in 2019) which are de facto (and sometimes even de jure) naturally monopolized.
- ✓ Notable part of non-competitive tendering procedures was conducted for the purposes of the defence obviously caused by the on-going war in Eastern Ukraine.

Public perception of PROZORRO

- The results of an earlier survey conducted by the Razumkov centre in May 2016 (published in October 2016) showed that the **PROZORRO`** public procurement reform was rated as the **3rd most successful reform in Ukraine**, with the Police and army reforms coming first and second accordingly.
- General positive impact of PROZORRO has also international recognition in form of **4 different awards and assessments** received in 2016-2018 as well as OECD in its 2017 monitoring report on Istanbul Anti-Corruption Action Plan concluded that “.. *situation concerning public procurement has significantly improved after these reforms.*”
- According to the results of the several surveys in 2018-2020, the surveyed businesses fully shared the opinion of contracting authorities and civil society that **the main feature of the electronic system PROZORRO was the maximum openness of PP information**. At the same time, *the biggest advantage of the system for business was convenience of online documentary formalities* related to participation in procurement procedures. On contrary, **the main shortcoming on opinion of the business well shared by contracting authorities was the dominance of the lowest price as the main evaluation criterion**, which complicated the ability to buy qualitative goods and services
- **Bidders from 44 countries in 2020** participated in Ukrainian tenders (generally, economic operators of 67 foreign countries are registered in PROZORRO as for end of 2020). *In terms of contract values, the most successful bidders in 2020 were from Turkey (400 mln EURO), France (150 mln EURO), Canada (120 mln EURO), Azerbaijan (70 mln EURO) and Switzerland (60 mln EURO).*

The Community of International PROZORRO Partners

Idea and effectiveness of the reform was well recognized and thus also supported by main international donors and partners of Ukraine – EU, EBRD, WB, USAID, IMF, GIZ.



Ongoing Issues -- Legislative context

- New PPL still requires further improvement and compliance with the **EU Directives**, in particular in terms of **types of procurement procedures** (4 in Ukraine versus 5 in EU), role and way of e-auction as sole possible evaluation mechanism with lowest price domination (*while EU Directive promotes Most Economically Advantageous Tender with multi-criteria without strict weight indicators for lowest price*), additional flexibilities for utilities, introduction of variants and dynamic purchasing systems.
- Another angle of legislative issue is situation where as for now (December, 2021) there are more than **50** draft laws proposing to amend current new PPL (valid from 2020) registered in the Parliament (mostly initiated by MPs). It reflects problem of frequent attempts to amend the procurement legislation and majority of proposals envisage exclusions from the scope of PP Law

Ongoing Issues -- Institutional and professional context

- **Lack of skills/knowledge/experience among users of procurement system** – seems to be the one of main and quite permanent problem seriously reasoned by often staff changes (in both public (buyers) and private (bidders) sectors).
- **Technical reliability and functionality of the IT system** as well as some (non-critical) deviations between technical solution of e-procurement system and provisions of the PPL.
- **Weak attention to internal operational control** and to the prevention of violations of the public procurement rules by contracting authorities; -- coupled with a lack of comprehensive analysis of procurement efficiency, including the performance of procurement contracts. Focus of control is usually put purely on correctness of procurement procedures often ignoring contract performance evaluation.

Ongoing Issues -- Procurement practice context

➤ On bidders side (all mistakes below are critical resulting in bids rejection):

- Incorrect bank guaranties as bid security (size of guarantee is not equal to sum required by tender documentation as well as conditions to realize guarantee in certain cases)
- Absence of all required documents

➤ On contracting entities side:

- Unjustified cancellation of tenders when contracting entity had subjective personal negativism in relation to potential winner;
- Discriminatory bids rejection and/or award to incompliant bidder as well as discriminatory or non-proportional technical or qualification requirements limiting competition.
- Setting unjustified requirements to submit unnecessary additional documents – *e.g.* confirmation of the status of the tenderer as a manufacturer, submission of copies of previous contracts only with State authorities.

PROZORRO perspectives

- Legislative development -- full compliance and transposition of EU public procurement law (incl. Court of Justice case-law) into Ukrainian law.

- Development in PROZORRO business processes – the nearest plans for 2022-2024 envisage:
 - further increase of data security protection (in collaboration with relevant responsible state authority);
 - development of new facility for preparation of tender documentation – “e-documentation” allowing to fill forms with respective content in accordance with PP Law 2020 instead of uploading text files of documentation;
 - further development of functionality for framework agreements, e-cabinet for centralized procurement bodies (CPBs) and e-catalogues (it is planned to reach 20% of all low-value contracts to be purchased via e-catalogues by end of 2022). It will be supplemented by parallel development of CPBs;
 - additional facility/service for pre-tender market consultations;
 - the share of machine-readable data to be up to 90 % of all data -- by end of 2023;
 - e-contracting and e-payments services are fully available by 2024.

Conclusive Lessons (learnt?:)

- Stage-by-stage approach -- it took several stages to set it (“publishing all data” and electronic procurement process) as mandatory rule and main reason for such step-by-step approach was time&resources-consuming necessity to develop appropriate functionalities in e-procurement system to implement the legislative requirements.
- Well-developed and detailed strategy makes life really easier – 1) all stakeholders are aware and thus well-prepared for introduction of new rules, processes, requirements; 2) strategy mobilizes and disciplines Government to develop legislative changes and relevant IT solutions; 3) international partners understand better where their support can be most efficient; 4) more detailed strategy – more comfortable to undertake parallel actions to save resources and for better synergy.
- Effective and positive cooperation between main stakeholders (public, private and CSOs sector) “must-have” precondition for success of the reform

THANK YOU FOR YOUR ATTENTION!

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