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SYSTEM OF PUBLIC PROCUREMENT OF GOODS, WORKS AND SERVICES IN UKRAINE

The article examines the theoretical foundations of public procurement, defines the main concepts used in their implementation, and the role of procurement in the economy, and provides their classification. Since the public procurement system has a significant impact on the national economy, the strategic, innovative, administrative, social, regulatory and incentive functions of the customer country are taken into account. In order to systematize information about the current public procurement system in Ukraine and conduct further analysis, its organizational model was considered. One of the main elements of the public procurement system, the proper creation of which depends on the targeted and effective use of national financial resources, is the needs of the state (local self-government bodies), in connection with which it is necessary at the legislative level in Art. 1 of the Law "On Public Procurement" to establish the concept of "state (municipal) needs"; it is necessary to make changes to the concept of "public procurement", because the existing concept does not fully reflect the content of the system and is very difficult to understand. In the process of theoretical research of the public procurement system, one should also take into account such important elements of this system as the financing of state (municipal) needs in accordance with the budget legislation of Ukraine.

Keywords: budget funds, state orders, procurement model, public procurement system, bidding.

НАГАЙЧУК Вікторія, МАЗУР Віталій

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СИСТЕМА ДЕРЖАВНИХ ЗАКУПІВЕЛЬ ТОВАРІВ, РОБІТ І ПОСЛУГ В УКРАЇНІ

У статті розглянуто теоретичні основи публічних закупівель, визначено основні поняття, що використовуються при їх реалізації, та роль закупівель в економіці, наведено їх класифікацію. Оскільки система публічних закупівель має значний вплив на національну економіку, до уваги беруться стратегічні, інноваційні, адміністративні, соціальні, регулятивні та стимулюючі функції країни-замовника. З метою систематизації інформації про діючу систему публічних закупівель в Україні та проведення подальшого аналізу розглянуто її організаційну модель. Одним із основних елементів системи публічних закупівель, належне створення якої залежить від цільового та ефективного використання національних фінансових ресурсів, є потреби держави (органів місцевого самоврядування), у зв'язку з чим необхідно на законодавчому рівні у ст. 1 Закону «Про публічні закупівлі» закріпити поняття «державні (муніципальні) потреби»; необхідно внести зміни до поняття «публічна закупівля», оскільки існує поняття не повністю відображає зміст системи та є дуже складним для розуміння. У процесі теоретичного дослідження системи публічних закупівель слід також враховувати такі важливі елементи цієї системи, як фінансування державних (муніципальних) потреб відповідно до бюджетного законодавства України.

Ключові слова: бюджетні кошти, державні замовлення, модель закупівель, система публічних закупівель, торги.

STATEMENT OF THE PROBLEM IN A GENERAL FORM AND ITS CONNECTION WITH IMPORTANT SCIENTIFIC OR PRACTICAL TASKS

Any political system is a complex of institutions and organizations that bear collective responsibility for social organization and perform various management functions.

One of the areas of implementation of the state's management functions is the renewal of the public procurement system, which is regulated by special legal acts, and in 2016, its transfer from a shadow to an electronic format for public control. During its operation, the ProZorro system saved the state budget 41.35 billion dollars, was one of the most important and successful reforms, received several international awards, became an innovative solution that allows "for everyone to see everything." E-procurement systems are means of detecting and fighting corruption thanks to the multitude of tools used to monitor and analyze public procurement. In addition, the system is unique in its structure, as it operates in partnership with three parties - the state, business and the public.

ANALYSIS OF RESEARCH AND PUBLICATIONS

The source base of the research is scientific works on the organization of procurement in the public sector, scientific articles, legislation of Ukraine, international regulatory and legal acts, as well as in-depth studies of this topic by international and domestic non-governmental organizations. A broad theoretical understanding of the place

and role of public procurement in public administration became possible thanks to research on public procurement by the following theorists: Batenko L.P., Naumenko S.M., Smyrichynskyi V.V., Tkachenko N.B., Umantsiv Yu.M. and international experts Curado A, Encarnação S, Candia C, Damásio B, Pinheiro FL, Mehmet Akif Demircioglu, Roberto Vivona.

Despite the considerable number of research papers and articles on public procurement, especially ProZorro, researchers have not focused on public procurement analytical tools, although monitoring tools are anti-corruption mechanisms that can provide an open, transparent view of the entire public procurement system.

FORMULATION OF ARTICLE GOALS

The purpose of the article is to find out the peculiarities of the system of public procurement of goods, works and services in Ukraine, and to develop proposals for improving the legislation that regulates this type of procurement.

OVERVIEW OF THE MAIN MATERIAL

The procedure for implementing state regulation and public control in the field of public procurement, determining the principles of their implementation, as well as the procedure for monitoring and publishing information about them is regulated by the Law of Ukraine "On Public Procurement" [1].

Having analyzed a number of positions of scientists in the field of public administration regarding categories "state order", "public procurement", "state procurement" [2] and taking into account the essence of the state order, it can be concluded that the state (municipal) order is the activity of the state (municipal entities) to satisfy state (municipal) needs that arise in connection with their implementation of their tasks, goals and functions in the process of distribution and use public financial resources through the conclusion and execution of state (municipal) contracts and other civil law contracts, as well as regarding the control of their implementation.

The state order is, according to J.René, a certain system consisting of a number of interdependent elements, such as:

- determination (formation) of state needs depending on the goals, tasks, and functions of the state;
- financing of state needs (from budgetary and extra-budgetary sources);
- satisfaction of identified needs by placing an order, concluding a relevant contract or civil law agreement and fulfilling obligations under the concluded contract or agreement;
- reporting on the execution of contracts and agreements;
- conducting control (including financial) on the correctness of the application of norms on state procurement, the efficiency and quality of meeting state and municipal needs, economy and targeted use of the country's financial resources [3].

As correctly stated in the writings of R. Vivona, "state needs are the main element of the public system in the field of procurement and one of the most important, since the purposeful and effective distribution and use of the country's financial resources, as well as the effectiveness of meeting public interests, depend on the correct and timely establishment of state needs" [4].

It should be noted that not all needs can be classified as state (municipal) needs, but only those that have certain characteristics. Thus, Cherevaty O. S. defines the following set of features characterizing the needs of public procurement entities:

1) subjects – public legal entities or state and regional customers of the national and, accordingly, regional level;

2) source of support – funds from the state budget, local budget or extra-budgetary source of financing [5]. Similar features are inherent in the needs that belong to municipal needs. Naumenko S. M. divides the signs characterizing needs as state needs into essential signs of state needs and formal-legal ones and refers to them:

- the state's needs for goods;
- financing from the budget and extrabudgetary sources;
- implementation of state procurement by entities that have acquired the status of state customers;
- satisfaction of state needs through the development and approval of a special legal mechanism for the interaction of the state and entrepreneurs, including the use of legally established methods of placing state orders and the use of a special contractual structure - the state contract [6].

Thus, the importance of the legislative consolidation of such a basic concept in the public procurement system as "state (municipal) needs" is beyond doubt, its absence will lead in practice to the problem of correct interpretation of the norms regarding what and who is subject to regulatory legal acts on public procurement.

Regarding the content of the public procurement system, it should be noted that from the definition of the concept of this system given in the Law on Public Procurement, it can be concluded that this system includes the following main elements:

- customers - state authorities (legislative, executive and judicial authorities), law enforcement agencies, state authorities of ARC, local self-government bodies, as well as associations of territorial communities; Pension Fund of Ukraine, targeted insurance funds; legal entities and their associations that provide for the needs of the state and territorial communities, if such activity is not carried out on a commercial basis;

- actions carried out by these entities to ensure state and municipal needs;
- information and telecommunication system authorized by the Authorized Body [1]. The subject (sphere) of legal regulation of the public procurement system includes groups of public relations arising in the process:

- 1) planning of public procurement of goods, works, services;
- 2) identification of suppliers (contractors, executors);
- 3) conclusion of a civil law contract, the subject of which is the supply of goods, performance of work, provision of services (including purchase of real estate or property lease);
- 4) execution of contracts;
- 5) monitoring of purchases of goods, works, and services;
- 6) audit in the field of procurement of goods, works, and services;
- 7) control over compliance with the legislation of Ukraine and other normative legal acts on the contract system in the field of procurement of goods, works, and services to ensure state and municipal needs.

It should be noted that the subject of legal regulation of the public procurement system under the Law on Public Procurement was only public relations in the process of placing orders for the supply of goods, performing works, and providing services for state, municipal, and budgetary institutions.

In the process of implementation of the public procurement system, each of the specified elements is implemented step by step, but, in addition, it should be noted that after the planning of public needs and, accordingly, future procurements in relation to their satisfaction, social relations arise regarding the financing of these procurements. It seems that from a correct theoretical and practical understanding of the public procurement system, in addition to the elements listed above, it should also include the process of financing state and municipal needs in accordance with the provisions of the Budget Code of Ukraine and consider this system as a set of the following interrelated elements:

- determination (formation) of state (municipal) needs depending on the goals, tasks and functions of the state (municipal entities) in the form of application of the procurement planning method;
- financing of state (municipal) needs (from budgetary and extra-budgetary sources);
- satisfaction of identified needs by purchasing goods, works, and services;
- implementation of monitoring and audit in the field of procurement;
- conducting control (including financial) on the correctness of the application of norms regulating the contract system in the field of procurement, the efficiency and quality of meeting state and municipal needs, the economy and purposefulness of the use of public financial resources [8].

Based on statistics and analysis of the regulatory legal framework, three main trends in the development of the public procurement system in Ukraine can be identified.

1. The improvement of legislation in the field of public procurement is often due to the need to make technical amendments prepared based on the results of public procurement monitoring and aimed at eliminating legal gaps and, in general, the need to develop legislation on public procurement during martial law.

Thus, the conditions of the Decree of the Cabinet of Ministers of Ukraine dated February 28, 2022 No. 169 "On some issues of defense and public procurement of goods, works and services under martial law" did not affect purchases of up to UAH 50,000. [9]. Even the Ministry of Economy of Ukraine in the letter "Regarding the changes introduced to the procurement procedure during the martial law" dated March 9, 2022 No. 3304-04/9472-06, in particular, notes:

"... Resolution of the CMU No. 169 establishes the rule of non-application of public procurement procedures, as well as simplified procurement for procurement, which, in accordance with the provisions of the Law of Ukraine "On Public Procurement", must be carried out by conducting procurement procedures (simplified procurement), i.e. public procurement, with a value that exceeds 50,000 hryvnias.

That is, for the procurement of goods, works and services, the cost of which does not exceed 50,000 hryvnias, the customer is obliged to adhere to the principles of public procurement and may pledge the electronic procurement system, as well as electronic catalogs for the procurement of services. In the case of public procurement without the use of a unified electronic system, the customer is obliged to publish in the electronic procurement system a report on concluded procurement contracts concluded without the use of a unified electronic procurement system in accordance with Article 3 of the Law" [10].

Everything that was included in the list is regulated by Resolution No. 169. At the same time, the Law did not expire as of March 28, 2022, therefore, when purchasing up to UAH 50,000, you must comply with the requirements of the Law and the principles of public procurement, but decisions should be made with information security in mind in general.

2. The second trend is the strengthening of legal measures to combat corruption, which leads to the strengthening of control over the spending of budget funds and increased transparency of procurement procedures.

According to economists' estimates, annual losses from corruption crimes in the field of public procurement make up more than 15% of the expenditure part of the state budget, i.e. 35-50 billion UAH.

Corruption in the field of public procurement means that budget funds are not spent efficiently, and the revenues that these funds should have brought are lost. For example, taxpayers' money to pay for safer roads or equipment for hospitals ends up in the pockets of corrupt people. This causes significant financial losses of public

funds due to inflated purchase prices, including the so-called additional costs of winning bids; Managers of public funds purchase goods (services or works) of inferior quality because product quality standards are rarely negotiated when parties collude to obtain an undue advantage; The public is losing trust in the state, which is one of the reasons for the further growth of corruption. The public procurement market is becoming less attractive for foreign suppliers due to the direct advantage of domestic producers under the law and the high level of corruption in the industry.

To avoid corruption risks, it is necessary to amend the legislation by:

- use of electronic auctions;
- simplification of the system of public procurement procedures and its accessibility;
- clear formulation of the legal norm and avoidance of conflicts between legal norms;
- establishment of necessary and objective standards of conduct and conduct of public procurement procedures, including definition of terms and concepts at the legislative level (related persons, conspiracy, etc.);
- implementation of international standards.

3. The third trend is related to the protection of Ukraine's national interests. In particular, by adopting Resolution No. 590 of the Cabinet of Ministers of Ukraine dated June 9, 2021 "On approval of the Procedure for the exercise of powers by the State Treasury Service in a special regime under martial law" [11].

In addition, Resolution No. 346 of the Cabinet of Ministers of Ukraine dated March 21, 2022 "On Amendments to the Procedure for the Execution of Powers by the State Treasury Service in a Special Mode in the Conditions of Martial Law" amended Resolution No. 590 in the part of the order of making payments on behalf of customers from the unified treasury account [12].

So, currently, in accordance with clause 19 of Resolution 590, the treasury and treasury bodies make payments on behalf of clients, taking into account the resources of a single treasury account in the following order:

1) expenses for national security and defense and expenses for the implementation of martial law measures, as well as administrators (recipients) of budget funds involved in solving tasks related to the application of martial law measures;

2) regarding state budget expenditures for the payment of pensions, allowances and pensions under the pension increase scheme, as well as the deficit of the Pension Fund; expenses of the Pension Fund and the mandatory state social insurance fund; payments for services to ensure the functioning of the Unified Register and the register of the Ministry of Justice and the Ministry of Regions.

CONCLUSIONS FROM THIS RESEARCH AND PROSPECTS FOR FURTHER EXPLORATION IN THIS DIRECTION

Thus, considering the main concepts of the public procurement system (including state (municipal) order) and summarizing, the following conclusions can be drawn:

Public procurement is a mechanism for regulating the market situation, and it also makes it possible to prevent manifestations of corruption in public authorities through the use of the Prozorro electronic system, through which most procurements are processed.

One of the main elements of the public procurement system, on the correct establishment of which depends on the purposeful and effective spending of the country's financial resources, are state (municipal) needs, in connection with which it is necessary at the legislative level in Art. 1 of the Law on Public Procurement to consolidate the concept of "state (municipal) needs"; it is necessary to make changes to the concept of "public procurement", because the currently established concept does not fully reflect the content of this system, in addition, it is quite difficult to understand; in the process of theoretical study of the public procurement system, it is also necessary to consider such an important element of this system as the financing of state (municipal) needs in accordance with the budget legislation of Ukraine.

It seems necessary to make the following changes to Art. 1 of the Law on Public Procurement:

1. Clause 1 should be worded as follows: "The system of public procurement of goods, works, and services for the provision of state and municipal needs — a set of participants in the system of public procurement and actions carried out by them in accordance with the legislation of Ukraine regarding the determination (formation) of state (municipal) needs, financing of these needs from budgetary and extra-budgetary sources, their satisfaction through procurement of goods, works, services, procurement monitoring and audit, implementation of control in the sphere of procurement aimed at ensuring state and municipal needs".

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