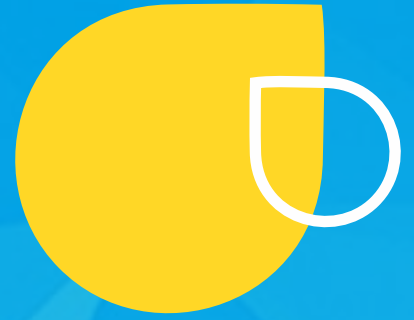




# REFORM OF PUBLIC PROCUREMENTS IN UKRAINE AND PERFORMANCE RESULTS OF PROZORRO E-PROCUREMENT SYSTEM

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# Names and abbreviations

**API** - Application programming interface

**OCDS** - Open Contracting Data Standard

**OCP** - Open Contracting Partnership

**TI** - Transparency International

**AMCU** - Antimonopoly Committee of Ukraine

**GDP** - Gross domestic product

**VRU** - Verkhovna Rada of Ukraine

**SASU** - State Audit Service of Ukraine

**SE** - State enterprise

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

**EU** - European Union

**CPI** - Corruption Perceptions Index

**CMU** - Cabinet of Ministers of Ukraine

**MEDT** - Ministry of Economic Development and Trade of Ukraine

**OECD** - Organization for Economic Cooperation and Development

**WTO** - World Trade Organization

**LLC** - Limited liability company

**SP** - Sole proprietorship

**CDB** - Central database

# Main definitions

## *Automatic risk indicators*

criteria with preset parameters, used for automatic selection of sub-threshold procurements containing signs of a low-quality tender announcement, low competitive activity or nontransparent procurement procedure

## *Civil society*

the aggregate of nongovernmental organizations and institutions that manifest interests and will of citizens

## *Procurement contract*

a contract between the contracting authority and the tenderer, based on the results of the procurement procedure and envisaging the provision of services, performance of works, or acquisition of goods

## *Tender documentation*

open information regarding public procurements, available in formats suitable for analysis by users (.pdf, .docx, etc.)

## *Sub-threshold procurement*

a procurement of goods, works and/or services valued at less than UAH 200 thousand for goods and services and less than UAH 1.5 million for works. For contracting authorities in certain sectors of economy, the thresholds are UAH 1 million for goods and services and UAH 5 million for works

## *E-procurement system*

an information and telecommunication system for implementation of procurement procedures, electronic generation, posting, publication and exchange of information and documents, comprised of the Authorized Agency's web portal and authorized e-platforms linked by secure automatic exchange of information and documents

## *Machine-readable data*

open data or metadata regarding public procurements, available in formats that can be processed by a computer (.xml, .json, etc.)

## *Analytics module*

an online instrument for aggregation, sorting and other processing of machine-readable data regarding public procurements

## *Over-threshold procurement*

a procurement of goods, works and/or services with the value equal to or exceeding UAH 200 thousand for goods and services and UAH 1.5 million for works. For contracting authorities in certain sectors of economy, the thresholds are UAH 1 million for goods and services and UAH 5 million for works

## *Tender*

a competitive selection of tenderers for the purpose of determining the winner of the tender in accordance with procedures set out in the Law of Ukraine On Public Procurements (except negotiation procurement procedure)

# Introduction

Procurement is the main area of spending public funds in the world. The volume of public procurements in the European Union is 14% of GDP per year on average (European Commission, 2017). With regard to EU's GDP in 2015, it amounted to almost 2,700 billion euros (International Monetary Fund, 2016). According to estimates by the Ministry of Economic Development and Trade of Ukraine (2016a), the similar indicator for Ukraine was close to US 12 billion, or 13% of the country's GDP in 2015 (The World Bank, 2017). This is the money of taxpayers given to the state. Monitoring the use of these funds may be considered a duty of every conscientious citizen.

Corruption in public procurements is a global problem. For instance, in late 2016 the world was shaken by the investigation of bribery in winning public contracts by the Brazilian company Odebrecht. According to estimates by the United States government (2016), this company has spent, beginning from 2001, almost US 788 million on bribes paid to governments of several countries in exchange for public contracts. In particular, Odebrecht was contracted by organizing committees of the 2014 FIFA World Cup and the 2016 Summer Olympics. Obviously, the value of contracts for which such a huge bribes were paid is even higher.

The situation with public procurements in Ukraine is best demonstrated by the story of the construction of Podilsko-Voskresenskyi Bridge in Kyiv. Construction of this bridge began in 1993. The amount of public funds spent on it since then is hard to assess. Almost UAH 600 million will be allocated from the city budget on the support of its structure in 2017 alone (Vechirniy Kyiv, 2016). Unlike the sports venues in Brazil, this bridge is not operational.

Paradoxically, for 23 years public funds are being spent on infrastructure which the city's residents still cannot use.

In order to change this situation, business community and civil society have initiated a reform of public procurements in Ukraine in the spring of 2014. Piloting across Ukraine of a new electronic system called ProZorro started in April 2015 on small sub-threshold procurements, and Ukraine's Defense Ministry was enabled to procure foods, clothes, fuel and lubricants via this system. The new

Law of Ukraine On Public Procurements, which creates conditions for further electronization of procurements, was passed in late 2015. Besides the state, this initiative was joined by international donors, which provided financing required to launch a nationwide reform. Beginning from August 2016, all public procurements regulated by the Law of Ukraine On Public Procurements must be made via ProZorro online platform.

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*This report aims to develop a methodology of civic monitoring of public procurements in Ukraine on the basis of international experience, use this methodology to evaluate main legal and technological innovations of the reform, and start monitoring the procurement data that becomes available online.*

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The report consists of three main parts. The first part develops a methodology of monitoring public procurements in Ukraine by civil society. The proposed methodology is based on the examples of effective civic monitoring in countries where the magnitude of corruption is comparable with that in Ukraine, such as Paraguay and Armenia. The second part covers the main legal and technological innovations in the public procurement sector. It contains an overview of legislative framework, ProZorro architecture, and procurement data disclosure and analysis instruments. The third part offers analysis of data regarding ProZorro procurements that were successfully concluded during the second half of 2016. It outlines patterns in the use of various procurement types, and lists organizations that require public scrutiny.

Corruption in public procurements is a global problem. Monitoring these procurements is a global need for citizens. This report is intended to make public sector more transparent by analyzing public procurements in Ukraine.

# SECTION I.





# I. Public procurement monitoring methodology

Monitoring is an important instrument of overcoming corruption and improving effectiveness of the public procurement sector. There is a number of approaches to it, and every country selects the most suitable one for its procurement system. This section describes the main types of monitoring methodologies, and characterizes the participation of civil society in it. On the basis of international experience, a methodology of monitoring public procurements in Ukraine is developed.

## 1. Types of procurement monitoring methodologies

Approaches to monitoring of the public procurement sector may be typologized on the basis of various criteria. They may include analysis level (government, regional and other procurements), type of supervisory organization (audit service, treasury, etc.) and other. For the purposes of this study, the starting point was the analysis aspect-based typologization presented in a report by the Organization for Economic Cooperation and Development and the European Union (2013). This approach was selected because it covers the key aspects that can be traced in procurements.

According to recommendations contained in the OECD report, the term “monitoring” is defined in this report as regular supervision of the public procurement system’s development to ensure achievement of the goal declared in the Law of Ukraine On Public Procurements (2016):



*Ensuring effectiveness and transparency of procurements, creating a competitive environment in the public procurement sector, preventing corruption in this sector, and developing fair competition.*



Based on this goal, Transparency International Ukraine focuses its efforts on supervising development of competition and transparency of procurements, thus preventing corruption practices in this sphere. It is expected that competition and openness will help improve the effectiveness of public procurements, and therefore, achieve higher standards of living of every Ukrainian citizen.

According to the EU and OECD, there are three types of monitoring: audit of compliance, performance evaluation, and policy-compliance monitoring. The first type involves comparison of procurement practices with regulatory framework (2013, p. 5). The monitors check compliance of contracting authorities and suppliers with formal rules, such as conformity of a potential supplier with requirements to participation in a particular tender or observance of terms of procurement procedure by the contracting authority. In Ukraine, this supervision is carried out by both the state (in particular, the State Audit Service<sup>1</sup>) and the public (for instance, the Anticorruption Action Center<sup>2</sup>).

The second type features checks of the procurement system’s effectiveness from the viewpoint of achieving key indicators. These indicators may include average number of tenderers, number of complaints against a particular contracting authority, etc. Monitoring of this type may be conducted at the national level or at the level of a particular procuring entity. Responsibility for monitoring the effectiveness of procurements at the national level is borne by the Ministry of Economic Development and Trade of Ukraine, which according to Article 8 of the Law of Ukraine On Public Procurements prepares annual analytical reports on the functioning of the national procurement system. Among the public, monitoring performance of the procurement system from the viewpoint of risk indicators is on the agenda of, for example, Public Control<sup>3</sup>.

The last type of monitoring is devised to check conformity with national policy goals. An example of these goals is consideration of environmental impact during procurement procedure. MEDT remains the principal authority for supervision in this area, because this ministry is responsible for the national policy on public procurements. Specialized civic organizations also monitor the aspects they advocate.

<sup>1</sup> State Audit Service website - [www.dkrs.gov.ua](http://www.dkrs.gov.ua)

<sup>2</sup> Anticorruption Action Center website - [antac.org.ua](http://antac.org.ua)

<sup>3</sup> Public Control website - [gromko.dp.ua](http://gromko.dp.ua)

As we can see, these methodologies may be used both by the state and by civil society. The key difference is the fact that the state may achieve the monitoring goal directly, while the broad public can do it only indirectly, by putting pressure on or by cooperating with the government. The indicators of pressure may include the number of complaints to controlling authorities or public discussions of problematic tenders. One of the most vivid examples of cooperation in Ukraine is cooperation between Public Control and Dnipropetrovsk Oblast State Administration on punishing the identified offenders.

In this report, TI Ukraine places an emphasis on controlling the transparency of the public procurement system and its conformity with law on the basis of key indicators and, as a result, providing analysis-based recommendations to the government.

## 2. Characteristics of civic procurement monitoring

Monitoring of procurements by the public is somewhat different from the government monitoring. Below are provided the key characteristics of civic control. Considering the difficult situation with corruption in Ukraine: 29 out of 100 points in the Corruption Perceptions Index from Transparency International (2016a), examples of successful engagement of the public in procurement monitoring were taken from countries with the comparable level of corruption. In this case, 0 points means the highest level of corruption, and 100 points means the complete absence thereof. With 40 points, India has the highest score among the selected examples. In addition, we took into account EU's best practices of enhancing civic control, in particular, the "red flag" project.

The government monitoring is not always legislatively regulated (The EU & OECD, 2013, p. 4). Nevertheless, the public bodies responsible for this monitoring always exist. A telling example is India, where even without a law on public procurements, the key problem with controlling is overlapping functions of existing supervisory bodies (Shingal, 2014, p. 18). Like in the case of government monitoring, engagement of the public in procurement monitoring may be institutionalized. An example of this case is the Republic of the Philippines, where efficient monitoring of school textbook procurements by Government Watch resulted in the obligatory availability of the public representative's signature on textbook procurement

contracts beginning from 2007 (Aceron, 2009). However, after the end of the Government Watch project, participation of the broad public in monitoring became irregular (Westhuizen, 2015, p. 97). As we see, civic monitoring, unlike the government one, does depend on the availability of projects from particular organizations.

The importance of civic monitoring is corroborated by international results. An example is the process of reforming procurements in Paraguay. This country has a long history of monopolizing the public procurements market using corrupt practices (Auriol, Straub & Flochel, 2015, p. 7). The most widespread practice was the use of "exclusive" procedure ("la excepcion", a procedure allowing to bypass the tender) for over-threshold procurements, where tenders are required by law. Thus, according to data by Transparencia Paraguay (2006), almost 24% of the total amount of contracts in 2004-05 went to suppliers who used "exclusions" (p. 94). Experts say that after Transparencia Paraguay's report saw the light, this figure has declined by more than 10%, and the average indicator in 2004-07 was 17% (Auriol, Straub & Flochel, 2015, p. 9). They attribute this effect to popularization of the report in media, which means that contracting authorities and tenderers who used the "exclusive" procedure are afraid of their workings becoming publicly known. Therefore, civic monitoring may have substantial effect on transparency of the procurement system in a particular country. An important aspect in this context is that monitoring results may cause public resonance.

From the standpoint of analysis focus, it seems interesting to compare comprehensive methodologies of government and civic monitoring. For starters, let's take a look at the MEDT report on the performance of Ukraine's procurement system in 2015 (2016a). This methodology covers analysis of legislative changes, key performance indicators of the procurement system (number of procurements for different procedure types, the most active contracting authorities in terms of the aggregate procurement amount, etc.), and statistics of complaints and responses to them. Therefore, the aforementioned report outlines key trends in procurements during this period. Despite the comprehensiveness, the report has several visible flaws, such as the absence of a critical assessment of these trends and of recommendations on how to improve the existing procurement system.

A vivid example of a civic report using this comprehensive methodology is the report by Transparency International Armenia (2015) on monitoring of procurements in Armenia in 2014-15. This organization has analyzed legal innovations, appeal reviews, statistics of procurements from the same supplier and framework agreements. It helped identify negative trends, such as legislative changes giving preferences to suppliers from countries of the Eurasian Economic Union or meagre sanctions against contracting authorities violating procurement rules. As for the control of framework agreements, due to their wide usage – 32% of procurements in terms of the number of tenders and 63% in terms of the value during 1Q 2015 (p. 55) – TI Armenia has developed a multistep methodology of monitoring them. As we can see, MEDT and TI Armenia monitor similar aspects; however, a representative of the public is better at covering threats to transparency of the procurement system. The greater focus of the civic organization on problematic aspects is also visible.

An important aspect in application of comprehensive methodologies is the use of potential of machine-readable data. In this context, a vivid example is the “red flag” methodology developed by K-Monitor and PetaByte in cooperation with Transparency International Hungary (2015). This methodology can be adapted to various legislations for the purpose of application in all EU member states. Its authors propose 31 risk indicators for announcements of procurement procedure (for example, absence of technical requirements to suppliers), and 9 indicators for contract announcements, such as organization of a tender with less than three tenderers (p. 10-18). This methodology allows for monitoring of both the conformance with law and risk factors (p. 25). Thanks to this approach, the public may monitor problematic tenders in large data arrays online. Its limitation is the fact that the presence of a “red flag” does not necessarily mean existence of corruption. To establish violation, further analysis of a problematic tender by experts in the relevant field is required.

In sum, there are reasons pointing out that civic procurement monitoring is less systematic than the government one. However, it can be more effective from the viewpoint of identifying possible violations. What makes it valuable is greater attention to coverage of problems, particularly corruption risks, rather than describing the current state of the procurement system in a particular country. Repeated analysis of large data sets is required to

achieve high-quality civic monitoring. Therefore, it seems prudent to combine automatic risk indicators with manual analysis by experts.

Methodologies used by civil society combine several types of monitoring. They feature substantial attention to the legal basis of procurements, particularly to the observance of applicable norms by contracting authorities and suppliers. Thus, substantial attention in the “red flag” approach developed in Hungary is devoted to the conformity of tender announcements with the terms required by law. The procurement system transparency indicators, for instance, the rate of using framework agreements or exclusive procedures, are also often monitored. These indicators may be combined into comprehensive methodologies, such as identification of suspicious relationships between particular contracting authorities and suppliers when analyzing framework agreements in Armenia.

### 3. Methodology of monitoring procurements in ProZorro

The aforementioned methodologies of procurement monitoring in the world represent a source of ideas for development of a civic monitoring methodology from Transparency International Ukraine. When devising its own approach, the organization took into account the context of development of the procurement system in Ukraine. The result of its efforts is the comprehensive methodology presented in this report.

This methodology is divided into two parts: analysis of development of laws and technologies in the procurement sector and analysis of procurement data (see: Figure 1). The first part is devoted to the control of main legal and technological innovations. The reason for inclusion of the latter is nationwide implementation of the new e-procurement system, ProZorro, in August 2016. Therefore, section two of this report discusses not only the new regulatory acts but also ProZorro’s architecture and the level of data disclosure via this system.

The second part features quantitative and qualitative analysis of procurement data. Data from ProZorro constitutes the basis for analysis. Statistical indicators built on the basis of this data and available via online analytical instruments were used. The analysis is also based on information derived from legal review of suspected corruption cases, for example, TI Ukraine’s letters to contracting authorities. In addition, procurement testimonials were used.

Figure 1

Elements of the public procurement monitoring methodology



Analysis of this data was broken down by procurement types. Each type of procurement has certain specific features. The absence of a uniform approach to analysis stems from different rules of procurement procedures. For example, the percentage of tenderer disqualifications was analyzed for open tenders. At the same time, for open tenders with English-language publication, this indicator is not informative due to the existence of tenderer prequalification practice according to EU procedures.

The analysis covers all procurement types available in the e-procurement system at the time of writing this report. The first ones are non-competitive types: contract reporting and negotiation procedure. Competitive procurements have been reviewed as well: negotiation procedure for defense procurements, open tenders, open tenders with English-language publication, and sub-threshold procurements.

Only one date was used to describe each procurement type, the procurement conclusion (contract signature) date. If a conclusion date falls within the analyzed period, the procurement in question is included to the sampling. This approach allows to compare analysis results for different procurement types. If procurement announcement date is taken into account, the comparison becomes incorrect, because the duration of procurement is different for each procurement type.<sup>4</sup> Moreover, comparisons between reports can be made in the future. If we go by the procurement announcement date, this feature becomes unavailable, because procurements announced during one analyzed

period of time and ending in another<sup>5</sup> are not included to the sampling.

Analyzing contract reporting, relationships between contracting authorities and suppliers have been reviewed on the basis of Transparency International Armenia's approach. This approach seems suitable, because reporting is a type of procurement featuring participation of a large number of suppliers not appearing at competitive tenders. It is possible that these suppliers and particular contracting authorities have hidden agreements. Avoidance of open tenders by contracting authorities was monitored as well. Lots with expected value close to the threshold for obligatory open tenders were reviewed. In this case, contracting authorities may deliberately split the subject of procurement or set artificial limits on lot value.

When analyzing negotiation procedure, attention was focused on the reasons for using it, because this procedure is employed in exceptional cases only. In this case, analysis was based on ideas from the report by Transparencia Paraguay; in particular, reasons for using negotiation procedure were studied in terms of the number and value of lots. Two examples were provided, in which this procedure was applied to procurements usually constituting the subject of competitive tenders. The indicators and variables used in the analysis of negotiation procedure and contract reporting are shown in Table 1 below.

<sup>4</sup> For instance, the period for submitting offers for an open tender is at least 15 days, whereas contracting authorities in certain sectors of economy may sign contracts on the basis of negotiation procedure 5 days after announcing this intention. Therefore, these procedures are inadvisable to compare during the same period of time from the announcement date to the procurement conclusion date. If only the procurement conclusion date is taken into account, this problem disappears.

<sup>5</sup> That means, in particular, procurements announced and concluded in different calendar years.



Table 1

Non-competitive procurements: indicators and variables for analysis

	INDICATOR	VARIABLE
Contract reporting	1. Relationship between the contracting authority and the supplier	1.1. Percentage of supplier's wins in terms of the number of contracting authority's lots
	2. Avoidance of open tenders by contracting authority	1.2. Percentage of supplier's wins in terms of the expected value of contracting authority's lots
		2.1. Average expected value of a contracting authority's lot
Negotiation procedure	1. Justification of using this procedure	1.1. Reasons for use
		1.2. Number of lots for every reason for use
		1.3. Expected value of lots for every reason for use

Competitive procurements were reviewed in two phases: at the level of general trends and for each procurement type. In particular, competition trends have been compared for four types of competitive procurements (see: Table 2). To explain these trends, the number of unique tenderers and the number of lots in ProZorro have been compared during the analyzed period of time. Besides competition, tender offer disqualification trends were cited. In addition, generalized issues of TI Ukraine's legal work with public authorities were outlined, thus providing a partial explanation of the situation with disqualifications.



Table 2

Trends in competitive procurements: indicators and variables for analysis

	INDICATOR	VARIABLE
Competition trend	1. Competition dynamics for each procurement type	1.1. Average number of price offers per month
		1.2. Number of unique tenderers per month
		1.3. Number of lots per month
Disqualification trend	1. Disqualification dynamics for each procurement type	1.1. Percentage of disqualifications per month

Speaking about procurement types (see: Table 3), negotiation procedure for defense procurements was monitored for the purpose of its use by contracting authorities on the basis of ideas from Transparencia Paraguay. Key statistics of using this procedure by contracting authorities with questionable affiliation to Ukraine's defense industry or urgency of procurement were analyzed. The most problematic indicators for this procedure, in

particular, competition and percentage of disqualifications, have been highlighted.

As for the English-language open tenders, country-specific features of this procurement type in Ukraine have been taken into account: prequalification of tenderers, high procurement value, etc. Attention was focused on the tenderers submitting solely unsuccessful offers for a long period of time and on

the contracting authorities whose lots attracted the least number of tenderers, thus highlighting organizers and potential suppliers experiencing recurring problems with the use of this competitive type of procurement.

For open tenders, competition was analyzed on the basis of the average number of offers per tender. The tenderers constantly losing tenders and contracting authorities with the least attractive lots for potential suppliers have been highlighted as well. Considering the nationwide popularity of this procurement procedure, the regional aspect of its use has been analyzed. The situation with cost saving, disqualifications and per capita expenses incurred at open tenders by contracting authorities from all regions has been described, and those with the most problematic indicators have been highlighted.

Sub-threshold procurements have been reviewed from the standpoint that the Law of Ukraine On Public Procurements does not apply to this procurement type. Analysis was based on the results obtained for three comprehensive risk indicators devised for this procurement type: quality of tender announcement, competitive activity and procurement transparency.<sup>6</sup> Orientation toward these indicators is in line with the “red flag” approach from K-Monitor, PetaByte and Transparency International Hungary. Substantial attention was devoted to the avoidance of over-threshold competitive procedure by contracting authorities based on the approach similar to the one applied to the analysis of contract reporting. In addition, like in the case of open tenders, cost savings and disqualifications were analyzed.


<sup>6</sup> These indicators were developed by the TI Ukraine consultant Dmytro Palamarchuk on the basis of ISO 31000 risk management standard and COSO framework (indicator documentation: – [bit.ly](https://bit.ly)).



Table 3

Competitive procurement types: indicators and variables for analysis

	INDICATOR	VARIABLE
Negotiation procedure for defense procurements	1. Competition	1. Average number of price offers per tender
	2. Cost saving	2. Percentage of cost saving
	3. Disqualifications	3. Percentage of disqualifications
	4. Justification for the use of procedure	4. Reason for use
	5. Contracting authority's share	5.1. Contracting authority's share in terms of the number of contracts 5.2. Contracting authority's share in terms of the number of lots 5.3. Contracting authority's share in terms of the expected value of lots
Open tenders with English-language publication	1. Competition	1. Average number of price offers per tender
	2. Cost saving	2. Percentage of cost saving
	3. Disqualifications	3. Percentage of disqualifications
	4. Tenderer's success rate	4.1. Number of tenderer's unsuccessful price offers
	5. Attractiveness of contracting authority's lots	4.2. Value of tenderer's unsuccessful price offers
		5.1. Average number of price offers for contracting authority's lots
		5.2. Expected value of contracting authority's lots
		5.3. Percentage of disqualifications at contracting authority's tenders
Open tenders	1. Competition	1. Average number of price offers per tender
	2. Cost saving	2. Percentage of cost saving
	3. Disqualifications	3. Percentage of disqualifications
	4. Tenderer's success rate	4.1. Number of tenderer's unsuccessful price offers
	5. Attractiveness of contracting authority's lots	4.2. Value of tenderer's unsuccessful price offers
		5. Average number of price offers for contracting authority's lots
	6. Cost saving/Disqualifications/Readiness to spend at open tenders per region	6.1. Percentage of per capita cost saving per region
		6.2. Percentage of per capita disqualifications per region
		6.3. Per capita costs per region
Sub-threshold procurements	1. Cost saving	1. Percentage of cost saving
	2. Disqualifications	2. Percentage of disqualifications
	3. Quality of tender announcement	3.1. Tender offer clarification period
		3.2. Percentage of unanswered questions from tenderers
	4. Competitive activity	4.1. Average number of tenderers per tender
4.2. Average number of unique price offers per tender		
5. Avoidance of open tenders by contracting authority	5. Average expected value of a contracting authority's lot	



In the opinion of TI Ukraine, this methodology allows for comprehensive assessment of ProZorro's procurements. The system's competitiveness, transparency and effectiveness aspects have been covered.

## 4. Analysis periods and sources of data

Analysis of legislative and regulatory changes covers the period from December 2015 to December 2016, beginning from the passage of the Law of Ukraine On Public Procurements. Data from open sources, including legislative and regulatory acts of Ukraine and other countries, were used.

Review of the architecture of ProZorro e-procurement system (DP ProZorro, 2017) and of information disclosure covers the period from April 2015 to December 2016, beginning from the nationwide implementation of the system's pilot project. The analysis was based on open sources, such as research papers and journalist articles, and expert commentaries.

Quantitative procurement data was analyzed for the period of August-December 2016. The sampling included all procurements concluded during this period. Selection of this timeframe was based on the consideration that 2016 was the transitional year for implementation of ProZorro system in Ukraine, and beginning from August, the Law of Ukraine On Public Procurements became applicable to all contracting authorities. The goal was to include as many concluded procurements as possible for the purpose of monitoring their features. Information for this section was obtained from ProZorro's analytics modules: public (Qlik Tech International AB, 2016a) and professional (Qlik Tech International AB, 2016b), accessible free of charge at the request from the organization concerned.

Legal analysis of violations covers the period from October 2016 to January 2017, which commences on the date when TI Ukraine began addressing this area, and includes January 2017, because in that month, most cases of legal analysis concerned procurements concluded in 2016. This information was obtained from publications by TI Ukraine's legal advisors and informal discussions.

Procurement feedbacks used in this report are dated to November-December 2016. This period begins on the date of launching DOZORRO monitoring portal (TI Ukraine, 2017). Information regarding feedbacks was obtained from the aforementioned source.



# SECTION II.

## II. Public procurements in Ukraine: time of changes

Ukraine's public procurement sector is being reformed. New legislative and regulatory acts, technological solutions and approaches to cooperation between the society, government and businesses have appeared during 2015-16. These changes provided the basis for launching higher-quality monitoring of public procurements by civil society. Below are described the key innovations characterizing today's national procurement system. It is worth noting that all aspects mentioned below overlap with each other, and therefore, have been categorized solely for the purpose of briefly explaining the performance of this sector and the challenges to its development.

### 1. Analysis of legal basis

A review of legislative innovations in the public procurement sector should begin with the laws providing foundation for the new Law of Ukraine On Public Procurements. Reform of the procurement sector using information and communication technologies is based on the three main legislative acts. The first one is the Law of Ukraine of 01.05.2015 On Access to Public Information, setting out the principles of disclosing information by the state, in particular, in the open data form (VRU, 2017a). Procurement information is published on the Authorized Agency's web portal for free public access on the basis of this Law. The second one is the Law of Ukraine of 30.09.2015 On Electronic Documents and Electronic Document Flow, facilitating online documentation exchange (VRU, 2017c). In the case of procurements, tender offers are transmitted and evaluated by exchanging electronic documents and data according to standards set out by this Law. The third act is the Law of Ukraine On Electronic Digital Signature, sufficient for e-procurements in the version of 04.02.2009 (VRU, 2017b). This Law sets out the mechanism of ensuring credibility of electronic documents.

The existence of an e-procurement system is provided by the new Law of Ukraine On Public Procurements (the "Law"). It was passed on

25.12.2015, and made the overwhelming majority of innovations in procurements legal (VRU, 2017d). First of all, we would like to note the transition to a new philosophy of this sector's operation, as procurements ceased to be "government" and became "public". Therefore, it was emphasized that procurements are financed with public funds, and their ultimate beneficiary is the entire society. Article 9 of the Law stipulates the right of citizens and civic organizations to carry out control by monitoring procurement information posted in the e-procurement system and inquiries submitted to controlling public authorities. Besides engagement of the public, e-procurements are recognized as based on the public-private partnership.

Effective 1 April 2016, the Law applies to central bodies of executive power and to the contracting authorities in certain sectors of economy, procuring UAH 1 million or more worth of goods and services or UAH 5 million or more worth of works. And effective 1 August, this Law applies to all other contracting authorities, for which the thresholds are set at UAH 200 thousand for goods and services and UAH 1.5 million for works. It is worth noting that certain procurements do not fall within the scope of the Law's applicability. In particular, procurements financed by international organizations are exempted.

The Law of Ukraine On Public Procurements sets out the key principles and procedures applying in this sphere. One of its most important features is the nondiscrimination principle. Thus, Article 6 sets out equal rights for Ukrainian and foreign companies and sole proprietorships participating in tenders. This approach conforms with rules of the European Union (The EU, 2014, p. 129) with which Ukraine has the Association Agreement since June 2014, and with requirements of the Agreement on Government Procurement under the auspices of the World Trade Organization, to which Ukraine has acceded in May 2016 (MEPT, 2016b). This nondiscriminatory practice is far from being applied in all countries. For example, beginning from 2015 Armenia has been providing 15% of preferences to tenderer companies from Eurasian Economic Union member states (TI Armenia, 2015, p. 7). Unlike the aforementioned approach, Ukrainian law guarantees equal participation conditions for all potential suppliers.

Three procurement procedures are defined: open tender, competitive dialogue and negotiation procedure. The main procedure is open tender. This one requires at least two tenderers for an electronic

descending-price auction, till the end of which the names of tenderers and documents submitted by them are not disclosed. A variation of this procurement type is the open tender procedure with English-language publication, applicable to procurements starting from EUR 133 thousand for goods and services and from EUR 5.15 million for works. In that case, the names of tenderers are known before the auction begins, because the documentation they uploaded must pass prequalification,<sup>7</sup> but their price offers remain undisclosed prior to the auction's commencement.

Negotiation procedure does not envisage an auction, and in the case of competitive dialogue, auction takes place only in the second phase, when final price offers are submitted. These procedures are applied only under clearly stipulated conditions. Their clarity may be considered a positive characteristic, because the use of "exceptions" is one of the biggest opportunities for corruption in procurements. In particular, a study of public procurements in Paraguay in 2004-07 illustrates this assertion: unjustifiable abandonment of open tenders was usually used for corruption purposes (Auriol, Straub & Flochel, 2015, p. 4). Therefore, the new Law appropriately devotes substantial attention to the open tender procedure, in particular, the mechanism of electronic descending-price auction. The use of open tenders is rightly encouraged.

The main criterion for selection of winner is price. If non-price criteria are used, their weight in evaluation of tender offers cannot exceed 30%. Article 28 of the Law attaches priority to the one hundred percent orientation toward the price criterion. For comparison: in South Africa, 20% of weight in evaluation of tender offers goes by default to the ranking of companies by the number of black employees on the basis of a state certificate (Westhuizen, 2015, p. 16). Although this policy pursues important social goals, every reference required from tenderers creates potential corruption risks and additional barriers to participation of potential suppliers in government tenders. Considering that Ukrainian citizens regard their country as quite corrupt (TI, 2016b, p. 5), risks like that should be avoided. Therefore, evaluation of suppliers without additional criteria that increase corruption risks may be considered a positive

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<sup>7</sup> In the case of open tenders without English-language publication, qualification procedure takes place after the auction and applies only to the potential winner.

practice<sup>8</sup> from the standpoint of transparency of procurement process.

Despite the advantages of orientation toward price as the sole criteria for selection, this practice has certain flaws. Abnormally low prices indicate corruption risks in procurements (Popescu, Onofrei & Kelley, 2016, p. 85). For example, contracting authorities in India tend to decline excessively low offers (Shingal, 2014, p. 11). In addition, the best price offer may not take into account the life-cycle cost of goods or works, i.e. cost that includes not only the initial price but also potential operation, maintenance and processing costs. The updated EU directive on public procurements devotes substantial attention to this cost (The EU, 2014, p. 134). A telling example of inefficient procurement is procurement of a cheap product that would have to be repaired several times. In addition, there is an apparent risk of revising the procurement contract by increasing the price offered by the descending-price auction winner, which offsets the auction's results. As we see, the new Law creates equal conditions for participation of suppliers, but it can be improved from the standpoint of increasing the fairness of competition and achieving long-term economic benefits when making procurements. Implementation of these approaches is envisaged by the Strategy of Reforming Procurements until 2023 (CMU, 2016b).

Another innovation is the inclusion to the Law of Ukraine On Public Procurements of e-procurement system's operating principles. This, first of all, is the inclusion of main definitions, i.e. authorized e-platform. It also stipulates basic operating regime of the new system. Besides the Law, the system's functioning is regulated by a number of bylaws: Resolution 166 of the Cabinet of Ministers of Ukraine of 24.02.2016 on the approval of the E-Procurement System Functioning and E-Platform Authorization Procedure, Order 35 of Zovnishtorgvydav Ukrainy State Enterprise (present-day ProZorro SE) of 13.04.2016 on the approval of the sub-threshold procurement procedure,<sup>9</sup> and a number of orders of the Ministry of Economic Development and Trade issued pursuant to the Law (for instance, the order setting out the forms of procurement documents).

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<sup>8</sup> This is true in the case of clearly stated tender terms and conditions and relatively simple subjects of procurement (mostly those ready for use).

<sup>9</sup> The Order 35 is ProZorro SE's internal document not binding upon public authorities. However, its provisions are often used when approving the rules for competitive sub-threshold procurements, and it sets a general framework of the e-system's functioning at these procurements.

The anticorruption potential of electronization of procurements was noted by researchers, in particular, in one of OECD's latest recommendations (2016, p. 22). At the same time, scholars emphasize the importance of legislative framework to receive the expected effect from new electronic systems (Luijken& Martini, 2014, p. 2). Therefore, the adoption of the aforementioned legislative acts may be considered of use for the purposes of monitoring.

The Resolution on the approval of the E-Procurement System Functioning and E-Platform Authorization Procedure sets out a detailed procedure of the e-procurement system's functioning. In particular, it stipulates the amount and due dates of fees payable to authorized e-platforms for their services to contracting authorities and tenderers, and mechanisms of connecting and disconnecting them to/from the system. The main responsibilities of e-platforms include continuous exchange of data with the Authorized Agency's web portal and uninterrupted delivery of services to users during business hours.

In addition, there are four levels of the platform's accreditation, from the handling of sub-threshold procurements by providing functional to contracting authorities to the handling of all procurements by providing functional to contracting authorities and tenderers (see: Table 4). The Authorized Agency makes decisions regarding e-platforms on the basis of recommendations from the ad hoc Authorization Commission which includes representatives of the public. Overall, this Resolution clarifies the procedure of interaction between the government and private platforms when making public procurements.

describes the procedure of sub-threshold procurements (valued below UAH 200 thousand for goods and services and below UAH 1.5 million for works). On the other hand, the Law requires contracting authorities to upload reports on procurements valued between UAH 50 thousand and 200 thousand. As an alternative to this requirement, contracting authorities may conduct sub-threshold auctions fully via the e-procurement system, which automatically generates the required reports. Auctions may be held for procurements starting from UAH 3 thousand. This Order divides the sub-threshold procurement procedure into six phases, from the announcement of tender to publication of contract, and sets the minimum periods for each phase according to its value (see: Figure 2). The Order also sets the mechanisms of responding to violations of the sub-threshold procurement procedure via the public Commission. However, considering that this procurement type covers the bulk of local needs and, consequently, daily corruption, regulation of this procedure by a bylaw is debatable.

**Table 4**

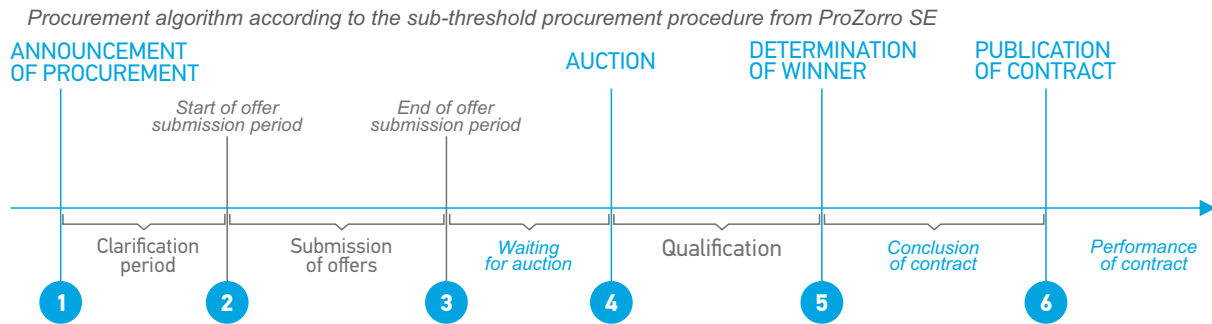
*E-platform accreditation levels*

	SERVICES TO CONTRACTING AUTHORITIES	SERVICES TO CONTRACTING AUTHORITIES AND TENDERERS
Sub-threshold procurements	Level I	Level II
All procurements	Level III	Level IV

The Order on the approval of the sub-threshold procurement procedure is not envisaged by the Law, because electronic descending-price auction is not required for sub-threshold procurements; however, it



Figure 2



The aforementioned bylaws create a platform for the upgrading of public procurements in Ukraine to make the service electronic, protect open competition and overcome corruption. However, they still require further improvement.

Regulation of sub-threshold procurements is problematic. For instance, Cherkasy City Council has abolished the use of electronic system for these procurements, explaining its decision by delays in urgent procurements (Buniakina, 2016). On the other hand, researchers of procurement reforms in other countries, such as Georgia (Huter & Chanturia, 2014) and Albania (European Commission, 2013, p. 21), regard the possibility of making certain procurements outside the newly-created systems as a problem because of the lack of transparency. This argument concurs with the conclusions of IT Ukraine's legal advisors, who note widespread ignoring by contracting authorities of the public Commission's recommendations concerning review of statements of possible violations in sub-threshold procurements (Hohol, 2016). In the opinion of TI Ukraine, the absence of legal instruments of putting pressure on contracting authorities committing violations in sub-threshold procurements is a problem. This procurement type must be included to the Law, and a simplified procedure of conducting sub-threshold procurements, including procedure of reviewing complaints and inquiries, must be set.<sup>10</sup> This way, most sub-threshold procurement auctions will be conducted via the e-procurement system within the applicable timeframes.

Another aspect requiring further legal improvement is monitoring of public procurements by civil society. In particular, the Law stipulates the right of the public to conduct this monitoring, but offers no mechanisms of exercising this right. In the opinion of

<sup>10</sup>In this case, setting a rational threshold for the use of open tenders and exceptions is the key. Transaction costs for contracting authorities and tenderers may offset the advantages provided by full openness of low-value procurements.

TI Ukraine's experts, the inclusion of the e-procurement system's main risk indicators to bylaws would have been a positive step (Yaremenko, 2017). This way, the government would publicly state the indicators it uses to evaluate transparency of procurements. Public activists would be able to monitor these indicators, discuss their expediency and offer alternatives.

As for the e-procurement system's functioning procedure, it also requires improvement. For example, the fee for lodging a complaint against the auction's results is not refundable if the auction is voided. It may have negative effect on the readiness of potential complainants to lodge complaints or even participate in auctions at all. These innovations to the Law are presently being discussed, but it is unclear whether they will be implemented.

In sum, legislation regulating public procurements in Ukraine undergoes important phases of development. The new Law of Ukraine On Public Procurements was created on the basis of the existing legislative framework, in particular, the Laws of Ukraine On Access to Public Information, On Electronic Documents and Electronic Document Flow and On Electronic Digital Signature. This Law sets equal conditions for foreign and Ukrainian suppliers and rules out any quotas or preferences in procurements. It also takes advantage of the possibilities offered by electronization of procurements to achieve greater transparency and convenience. Secondary legislation allows to regulate the functioning of a hybrid procurement system with private e-platforms as one of the links, and the sub-threshold procurements. However, legislation needs to be further improved: in particular, sub-threshold tenders need to be regulated at the level of the Law and key risk indicators of the e-system at the bylaw level; also, functioning procedure of the new system requires further improvement.

## 2. ProZorro architecture

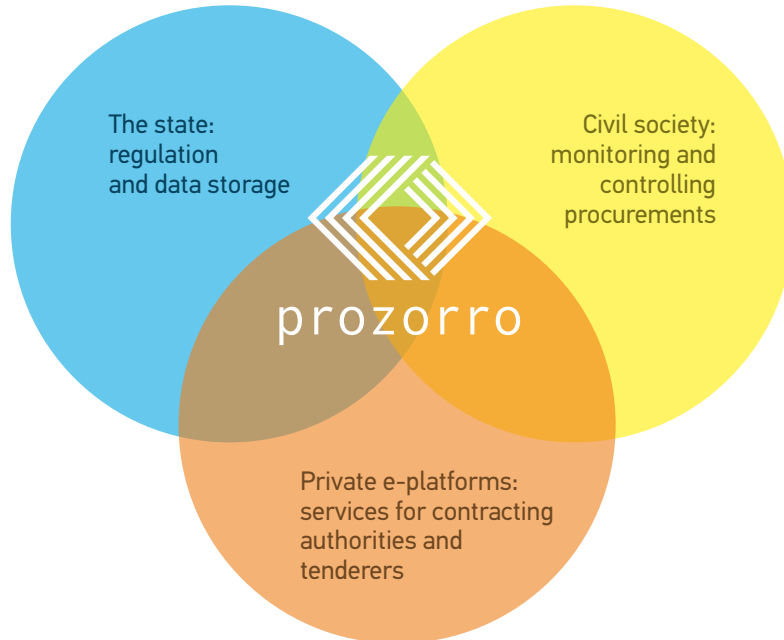
A distinctive feature of the new e-procurement system in Ukraine, named ProZorro, is the two-tier architecture. The first tier is the central database, which from the very beginning was on the balance of Transparency International Ukraine as a representative of civil society. Later, the central database was transferred to the state in the person of MEDT and ProZorro SE. The second tier features private e-platforms providing services to contracting authorities and suppliers. Thanks to this architecture, the system's functioning requires cooperation between representatives of at least two sectors of the society. The solution featuring this architecture contains two components: social and technological, and they deserve closer attention.

Public procurements have been reformed on the basis of a new approach to the relationship between the state, businesses and the public. Specialists of MEDT's procurements department and ProZorro SE

(2016, slide 4) consider cooperation of these three sectors a feature of the new system (see: Figure 3). The state is responsible for setting rules, professionalization and data storage. Businesses provide services to contracting authorities and suppliers. Civil society monitors and controls procurements. It is worth noting that equal cooperation between the three sectors is not common in all countries. For example, a study by the European Bank for Reconstruction and Development (2015, p. 75) shows that Ukraine's maritime neighbor Turkey has been reforming public procurements according to the "top-down" approach since the mid-2000s. Prime Minister's decisions and their implementation by central government authorities form the procurement sector's agenda. In the case of ProZorro, the approach is rather the opposite, "bottom-up", because the reform was initiated by civil society and businesses with the support from international donors, and later was institutionalized by the state.

Figure 3

*The state-business- civil society partnership triangle*

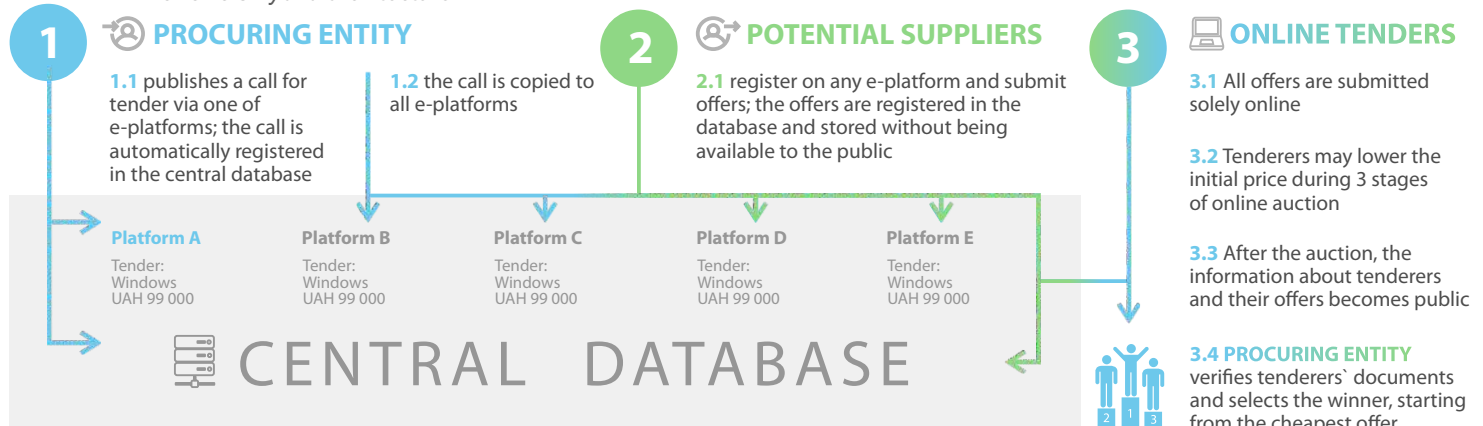


Cooperation between the three sectors is reflected in ProZorro's architecture. At the time of the pilot project, the central database was administered by civil society in the person of Transparency International Ukraine. After the entry into force of the new law on procurements in late 2015, the database was passed to the state in the person of ProZorro SE. An important aspect is that the system's users do not interact with the central database directly,

thus ensuring preservation and integrity of data. To provide services to users, there exist private e-platforms continuously connected to the central database via API (see: Figure 4) (Urjumelashvili & Marghania, 2015). Information from the central database is duplicated on all platforms authorized to maintain own database. Therefore, not only an end user can select a platform with the most convenient service, but corruption on part of the system's owner may be monitored at the platform level.

Figure 4

ProZorro's hybrid architecture




As of the end of 2016, the two-tier architecture of the new public procurement system, built on an open code, was unmatched in the world. At the time of writing this report, the first attempt to implement this architecture abroad was being made in Moldova (UNIAN, 2016). With no countries to make a comparison, it is worth noting that ProZorro has received two international awards during the first year of operation: The World Procurement Awards 2016 (Procurement Leaders, 2017) and The Open Government Awards 2016 (Open Government Partnership, 2017). In the opinion of representatives of the Ministry of Economic Development and Trade of Ukraine, the former award praises the system's effectiveness from economic viewpoint, while the latter recognizes the role of civil society in development of this system (Nefyodov, 2016). Until comparative studies with other countries are made, it is fair to say that ProZorro has received certain international recognition from the viewpoint of effectiveness of procurement reform and participation of the public in the creation of this system.

Transparency International Hungary (2015). Another example is the publication of a report by Transparencia Paraguay, revealing the practice of abusing "exclusive" procedures when selecting winners of procurement tenders in Paraguay. Publication of this report caused social resonance, which resulted in the decreasing number of abuses of these procedures (Auriol, Straub & Flochel, 2015, p. 9). Therefore, development of civic control over ProZorro remains a hot topic.

Summing up the foregoing, it is worth reiterating that the new procurement system in Ukraine is a hybrid one, combining a central database with service platforms. At the core of this system is cooperation between businesses, civil society and the state, with the emphasis on "bottom-up" initiatives and the transfer of a functional system to the state. This trilateral cooperation is reflected in an open source technological solution.<sup>11</sup> Moreover, the system has an open API, providing e-platforms and the public with access to information from the central database and enabling analysis of this information using various analytical instruments. ProZorro has received two international awards during the first year of operation by the state.

International practice emphasizes the importance of engaging the public in monitoring of public procurements. For example, the Hungarian approach with over 30 risk indicators, serving as the benchmark for other EU states, was developed by the nonprofit organizations K-Monitor, PetaByte and

<sup>11</sup> The system code is available online. Any independent expert can analyze this code for the existence of flaws or mechanisms for abuse by the administrator, and therefore, detect potential corruption on part of the system's owner.



However, this solution does not guarantee the absence of corruption on part of the users, specifically concrete contracting authorities and suppliers. Their actions require constant monitoring, in particular, by the broad public. After the end of the pilot project, one of the main challenges to ProZorro's development seems to be institutionalization of civic monitoring mechanisms.

### 3. Data disclosure and analysis

The transition to an electronic system enables disclosure of public procurement data online. Most part of this data is machine-readable and compliant with international formats. There are analytical instruments specifically developed to work with this data. However, certain information (e.g. contracts in .pdf format) requires manual processing by specialists. Let's take a closer look at the nature of this data and how it can be analyzed.

Assessment of the scope of data disclosure in ProZorro is the subject of studies that have just commenced. One of the first studies is a report by the European Bank for Reconstruction and Development, stating that the new system publishes data in the international machine-readable format Open Contracting Data Standard, which allows for comparison with the procurement data from other countries (2015, p. 81). The level of disclosing this data is assessed by Open Contracting Partnership, which develops the OCDS format. In particular, this organization studies publication of data at all key stages of procurement: planning, procurement and performance of contract (Luijken & Martini, 2014, p. 2). OCP distinguishes three levels of data publication: ordinary data fields, fields of medium-level complexity and advanced fields. As of October 2016, according to OCP's commentary that will be included to the organization's future reports, ProZorro data was evaluated by 94% in terms of publication of basic procurement information, by 66% in terms of medium-complexity information and by 15% in terms of advanced information. Development of advanced fields of open data was designated as the key need.

It is important to note that most data in the system concerns the stage of procurement tender. It covers the period from publication of a tender announcement to the conclusion of contract with the winning supplier. Only the contracting authority's annual plan is disclosed at the planning stage, while changes in the contract and the final amount are disclosed at the contract performance stage. The

disclosure of this information is an important step, but in order to overcome corruption in the entire cycle of public procurements, it seems prudent to continue publication of information at other stages besides the procurement tender. For example, completion reports and financial reports may be uploaded to the system at the contract performance stage, and an appropriate field in the OCDS format may be added to mark the availability/unavailability of these reports. In the opinion of TI Ukraine, contracting authority should use the electronic system at each stage, not only to organize a tender, thus continuously providing information regarding the status of procurement.

To analyze the procurement data that may be posted in the machine-readable format, TI Ukraine has developed two analytical modules: public and professional (see: Figure 5). As of the end of 2016, the former contained 17 cards with key statistical indicators of the system's performance, for example, "Analysis of requests and complaints" and "Non-competitive procedures". The key value of this module is online visualization of diverse statistical information regarding the system's performance. On the other hand, the professional module enables to create new combinations of statistical indicators. In addition, this module enables the sorting of sub-threshold procurements based on three comprehensive risk indicators in test mode. A comparison of these modules with their analogues in other countries, for example, modules for public procurements in Nigeria (Public and Private Development Centre, 2016) or procurements in Albania's healthcare sector (Albanian Institute of Science, 2016), reveals that the number and accuracy of ProZorro's statistical performance indicators are quite high.

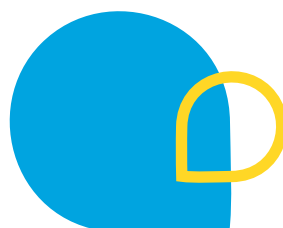




Figure 5

Homepage of ProZorro's public analytical module with all procedures as of 31.12.2016




Besides these modules, it is possible to perform manual analysis of documents published in the system. Most documents uploaded by contracting authorities and suppliers require expert evaluation. Usually, determination of the presence or absence of corruption in a particular procurement procedure requires legally substantiated interpretation and examination of the subject of procurement, in which machine-assisted analysis will hardly be helpful. This aspect is handled by specialized civic organizations, such as the Anticorruption Action Center or Public Control. The monitoring portal DOZORRO represents one of the first attempts to establish a centralized monitoring channel that would combine the work with analytical modules and interpretation of documents. TI Ukraine's vision is to develop a single platform for civic procurement monitoring, which must become an aggregator of feedbacks and the starting point for investigations by specialized organizations.

Among the flaws in data handling at this stage of ProZorro's development is the absence of sophisticated risk indicators embedded in analytical modules. Presently, automatic signaling of problematic tenders on the basis of certain indicators is available only for sub-threshold procurements. Consequently, there is no public search of tenders based on specified indicators. An example of such search is the public analytical portal in Georgia, where tenders may be sorted on the basis of six risk indicators (TI Georgia, 2016). Overall, the set of automated risk indicators must be

substantially expanded, and public instruments for work with this set must be created.

Another flaw is insufficient disclosure of data regarding planning and contract performance phases. Transition, to the maximum possible extent, of contracting authorities' work to online mode seems an advisable area of development. The quality of the data may be improved as well. Researchers from the Office for Financial and Economic Analysis at the Verkhovna Rada of Ukraine (2017) point out certain distortion of statistics due to errors made by contracting authorities when entering data manually, e.g. stating a phone number instead of price (p. 4). In this report, contract amount statistics are seldom used because of the manual entering of data. The system needs greater quantity and higher quality of machine-readable data.

Yet another flaw is the fact that the system is not integrated with certain important registers and procedures of the Law of Ukraine On Public Procurements. For instance, integration with the Unified State Register of Legal Entities, Sole Proprietorships and Civic Formations of the Ministry of Justice of Ukraine is absent at the time of writing this report (2017). This integration would allow to identify problematic suppliers at the tender offer submission stage. Moreover, not every procedure provided by the Law is presently available in the e-procurement system. For instance, framework agreements are noticeably absent, as their functional is still in the development phase. As we can see, in



order to fully deploy ProZorro, it seems advisable to automate all processes and add all procedures to the system.

Overall, ProZorro discloses a relatively high amount of procurement data. An important area of development seems to be publication of more complex data, e.g. contract performance information, and automation of the process of entering this data (wherever possible) to avoid errors. Extension of the contracting authorities' work with the system onto the whole procurement cycle is also necessary to combat corruption.

From the standpoint of monitoring infrastructure, there are two analytical modules developed and supported by TI Ukraine: for viewing key statistics and for doing research. These instruments allow for use of machine-readable data. Still, their usefulness for civic monitoring purposes has the potential for growth in the event of further development of risk indicators and data verification. In addition, other monitoring services are being developed on the basis of open data in ProZorro, such as Anticorruption Monitor<sup>12</sup> or YouControl.<sup>13</sup>

Documents regarding concluded procurements are uploaded for manual processing using free access. These documents contain substantial amount of procurement information not available in the machine-readable format. They require analysis by experts from specialized civic organizations. The next step may be work via a single procurement monitoring platform. This platform would help specialists representing the public make assessments using the capabilities of all available analytical instruments, and manage monitoring procedures.

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<sup>12</sup> Anticorruption Monitor website – [acm-ua.org](http://acm-ua.org)

<sup>13</sup> YouControl website – [youcontrol.com.ua](http://youcontrol.com.ua)

# SECTION III.

### III. First five months of ProZorro's operation

Public procurements via ProZorro may be classified into groups based on various criteria. This section offers analysis of procurements concluded, i.e. reaching the point of signing a contract between contracting authority and supplier,<sup>14</sup> between 1 August and 31 December 2016. It means that the scope of analysis included procurements started prior to the extension of applicability of the Law On Public Procurements onto all contracting authorities in August 2016.<sup>15</sup> This decision allowed to enlarge the scope of data for analysis: at the stage of transition to a new system, it may be considered appropriate.

The analysis covers all procurement types available in ProZorro as of the end of 2016. We have reviewed the procedures designated by the Law above the thresholds of UAH 200 thousand for goods and services and UAH 1.5 million for works: open tenders and open tenders with English-language publication as a variation with somewhat different rules. Negotiation procedure was analyzed as well. In addition, we analyzed two procurement types used on the basis of bylaws, i.e. contract reporting and sub-threshold procurements. Moreover, we included negotiation procedure for defense procurements with the competitive selection option, regulated by the separate Law of Ukraine On the Procedure of Procuring Goods, Works and Services for Guaranteed Satisfaction of Defense Needs (VRU, 2017). Each of the aforementioned procurement types has certain specifics, which were taken into account in the analysis methodology.

<sup>14</sup> Sampling was made by sorting procurements based on "Status" and "Last status date (period)" indicators in the professional analytical module [bipro.prozorro.org](http://bipro.prozorro.org).

<sup>15</sup> The mentioned procurements were included for the purpose of enlarging the sampling for analysis. The purpose of this analysis is to study specifics of various procurement types, whereas it could be statistically imperfect due to transition to a new procurement system in 2016. It is expected that the 2017 report with the similar sampling will not have these problems.

#### 1. General characteristics of concluded procurements

From the effective date of the Law On Public Procurements in August to the end of 2016, ProZorro has successfully concluded over 232 thousand procurement tenders containing almost 241 thousand lots with the expected value of over UAH 90.5 billion (see: Table 5). Of that amount, almost UAH 5.4 billion was saved.<sup>16</sup> This cost saving was achieved thanks to participation of almost 56 thousand companies and sole proprietorships, which submitted over 248 thousand offers. Almost 238 thousand contracts have been signed upon conclusion of procurement tenders. All that formed the dataset for subsequent analysis.



<sup>16</sup> Cost saving is the difference between expected value of a lot and the winning offer.

Table 5

Procurement statistics for all procurement types, August-December 2016

	All procurement types	Sub-threshold procurements	Open tenders	Open tenders with English-language publication	Contract reporting	Negotiation procedure	Negotiation procedure for defense procurements
Number of lots	240.958	90.988	16.652	1.296	123.412	7.965	645
Expected value of lots (UAH)	90.723.061.708	10.289.860.262	20.084.673.232	17.909.274.322	21.529.175.411	15.373.500.579	5.536.577.902
Saving (UAH)	5.383.891.926	1.551.685.377	2.235.948.449	1.391.210.287	0	0	205.047.813
Number of unique tenderers	56.331 <sup>17</sup>	21.476	11.167	1.116	38.018	2.641	367
Number of price offers	248.594	198.759	44.939	3.372	0	0	1.524
Average number of price offers	2,3	2,2	2,9	2,9	–	–	2,5
Number of contracts	238.229	90.314	14.896	1.079	123.412	7.965	563

<sup>17</sup> The number of unique tenderers for all procedures differs from the number of unique tenderers for each procedure. A tenderer may be unique for each separate procedure, but is counted only once for all procedures.

Cost savings are not calculated for two procurement types: “contract reporting” and “negotiation procedure”. These procurement types do not envisage electronic descending-price auction, and therefore, the contract is signed with the supplier chosen at the contracting authority’s discretion. The absence of cost saving calculation is explained by the fact that most contracting authorities state expected value of procurement after negotiation with the “winner”, which makes calculation of saving redundant. Below, we will call these procurements non-competitive. A detailed analysis of these procedures can be found in section 2 of this part of the report.

“Sub-threshold procurements”, “open tenders”, “open tenders with English-language publication” and “negotiation procedure for defense procurements” are open for the submission of competitive offers. They envisage participation of several tenderers competing by lowering the price. Therefore, we will call these procurements competitive, and review them in section 3 of this part of the report.

## 2. Non-competitive procurements

First, let’s review the procurement procedures we call non-competitive. ProZorro is often evaluated on the basis of cost savings or competition produced by electronic descending-price auctions (Kondratova and Samofalov, 2017). However, non-competitive procurements were responsible for 54.6% of lots and 40.7% of expected value of concluded procurements via ProZorro during the second half of 2016. These procurements contain corruption risks not inherent in competitive tenders. Because of that, they represent an interesting subject for analysis from the viewpoint of procurement corruptness.

### 2.1. Contract reporting

Reporting may be considered the main type of procurement during the analyzed period of 2016: 51.2% of all lots were published and 51.8% of all contracts made for procurements of this type. The expected value of its lots is almost UAH 21.5 billion, or 23.7% of the total value of lots in ProZorro – the highest figure for all types of e-procurement. It is worth noting that contracting authorities used this method to make contracts with over 38 thousand

unique tenderers, or 67.5% of the total number of unique tenderers in this system. Among the typical violations handled by TI Ukraine's legal advisors during November 2016 – January 2017,<sup>18</sup> two groups, “possible avoidance of competitive procurement procedures” and “too high contract prices”, concern mostly reports. As we can see, most e-procurements in ProZorro during the analyzed period have been made via reporting.<sup>19</sup> The overwhelming majority of suppliers did not participate in competitive procurements.

## Nota bene



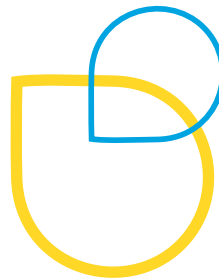
*Contract reporting is required from contracting authorities for procurements between UAH 50 thousand and 200 thousand for goods and services and UAH 1.5 million for works, if these contracting authorities do not make sub-threshold procurement. For contracting authorities in certain sectors of economy, the lower threshold remains UAH 50 thousand, and the upper threshold is set at UAH 1 million for goods and services and UAH 5 million for works.*

### 2.1.1. Relationship between the contracting authority and supplier

There are various approaches to the analysis of contract reporting. The first of those used in this study was borrowed from methodology of Transparency International Armenia: combination of the number of lots and expected value, distributed between the contracting authority and a particular supplier. According to this method, procurement data was sorted on the basis of two indicators of relationship between suppliers and contracting authorities: percentage of a contracting authority's engagement with a particular supplier in terms of the number of lots<sup>20</sup> and expected value of lots.<sup>21</sup> In this subsection, a relationship is regarded as close, if at least 70% of contracts and at least 50% of

expected value of procurements of a particular contracting authority is handled by the same supplier. Our analysis covered contracting authorities which reported on at least 40 lots. This framework was set empirically: above these indicators, the instances of relationship between contracting authorities and suppliers are almost nonexistent. It is important to stress that these limits may vary depending on the dataset taken for analysis.

The analysis has revealed four instances in which over 70% of contracts and 50% of the total value of contracting authority's lots went to the same supplier (see: Table 6). In all these cases, only one contracting authority made contracts with the supplier, and solely via reporting procedure. During the selected period, these suppliers have not won a single competitive procurement tender. Three of these cases involved supply of foods to small towns and villages, and the fourth one concerned repair of outdoor lighting in Zaporizhia. In the case of lighting repair, a natural monopoly may be involved. On the other hand, the food procurements did not exceed UAH 200 thousand, and were repeated every month. Therefore, the contracting authorities did not take the opportunity to make a sub-threshold procurement, even though they had time to do it.



<sup>18</sup> Violations reviewed in January 2017 were included to the analysis, because they mostly concern the procurements completed in late 2016.

<sup>19</sup> The assumption made to explain these statistics is that a substantial number of competitive procurements in 2016 were made prior to the effective date of the new Law. It will be possible to check whether contract reporting is the main procurement type by analyzing procurements concluded in the first half of 2017.

<sup>20</sup> The number of lots equals the number of contracts for concluded non-competitive procurements.

<sup>21</sup> Similar to the previous note, the expected value of lots equals to the value of contracts.

Table 6

Close relationship between contracting authorities and suppliers when reporting on contracts: more than 70% of contracts and 50% of value

Organizer	Reports	Number of lots	Percentage of participation	Expected value of lots (UAH)	Percentage of participation
Miliiv Village Council	All tenderers	90	100%	142.559	100%
	Sole Proprietor O.S. Hakman	82	91%	98.626	69%
Department of Infrastructure and Landscaping, Zaporizhia City Council	All tenderers	89	100%	16.115.121	100%
	Zaporizhmisksvitlo, Municipal Enterprise of Outdoor Lighting Networks	80	90%	14.679.810	91%
Petrychanka Psycho-Neurological Boarding Institution	All tenderers	194	100%	856.250	100%
	Sole Proprietor Vasyl Vasyliovych Kushnirchuk	144	74%	462.614	54%
NPNBI	All tenderers	49	100%	234.949	100%
	Sole Proprietor I.Y. Adzhalov	44	90%	163.650	70%

The second sampling was made using the following combination: the percentage of participation in terms of the value exceeds 60% and in terms of the number of contracts 50% (see: Table 7). The value-based limit was lowered, because the instances of too high percentage of participation in terms of this indicator are almost nonexistent.

Table 7

Close relationship between contracting authorities and suppliers when reporting on contracts: more than 60% of value and 50% of contracts

Organizer	Reports	Number of lots	Percentage of participation	Expected value of lots (UAH)	Percentage of participation
Department of Housing and Utilities, Melitopol City Council of the Zaporizhia Oblast	All tenderers	92	100%	22.103.970	100%
	ABZ Private Enterprise	53	58%	13.295.202	60%
Slava Specialized Myrhorod Sanatorium	All tenderers	103	100%	4.954.405	100%
	Sole Proprietor V. I. Serhiienko	50	49%	3.131.691	63%
Vynnytsiamiskteplo-energo Municipal Enterprise of Vinnytsia City Council	All tenderers	134	100%	12.336.219	100%
	TB Technostyle Limited Liability Company	104	78%	8.349.056	68%
Novosavytske Psycho-Neurological Boarding Institution	All tenderers	111	100%	524.316	100%
	Sole Proprietor I.Y. Adzhalov	60	54%	273.854	52%
	Sole Proprietor B.Y. Adzhalov	41	37%	231.781	44%

The analysis has revealed four instances of close relationship. In two of them, suppliers received contracts on the basis of reports not only from the mentioned contracting authority, and they have won competitive tenders as well. In particular, supply of foods to Slava Specialized Myrhorod Sanatorium amounts to only 12.7% of all contracts made by Sole Proprietor Volodymyr Ivanovych Serhiienko during this period, and also, this tenderer has won competitive tenders; therefore, his relationship with the contracting authority is hardly abnormal. On the other hand, the case worth closer attention involves Novosavyske Psycho-Neurological Boarding Institution and the Adzhalov brothers, who received the total of 96% of contract value and 91% of lots on food procurement from this contracting authority. This procuring entity requires scrutiny by controlling authorities.



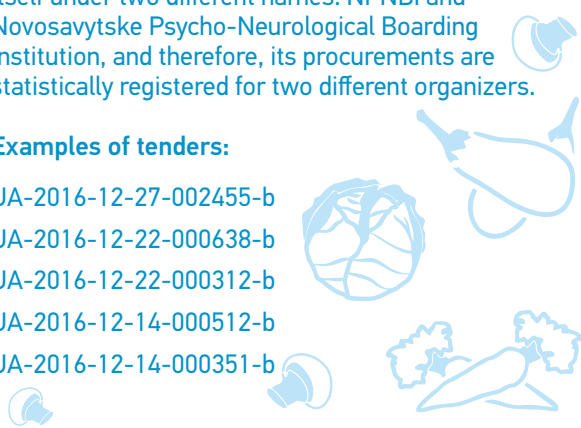
### **CASE 1:** *Vegetables from the Adzhalov brothers*

#### **Description of problem:**

Two suppliers, brothers I.Y. Adzhalov and B.Y. Adzhalov, work with only one contracting authority procuring food supplies from them. In total, they received 145 out of the 160 lots available from this contracting authority. Their lots are valued at almost UAH 670 thousand. The aforementioned tenderers do not participate in competitive procurements. An interesting fact: the organizer of this tender introduces itself under two different names: NPNBI and Novosavyske Psycho-Neurological Boarding Institution, and therefore, its procurements are statistically registered for two different organizers.

#### **Examples of tenders:**

- UA-2016-12-27-002455-b
- UA-2016-12-22-000638-b
- UA-2016-12-22-000312-b
- UA-2016-12-14-000512-b
- UA-2016-12-14-000351-b



#### **2.1.2. Avoidance of open tenders**

Ordinary contracting authorities may enter into direct contracts solely in the cases when the expected value of a subject of procurement does not exceed UAH 200 thousand for goods and services and UAH 1.5 million for works. In order to identify avoidance of open competitive tenders, it is advisable to analyze procurements close to the aforementioned thresholds. The expected value of a subject of

procurement is calculated as the fraction obtained by dividing the expected value of all lots of a contracting authority by the number of these lots.

In the case of goods and services, we selected for analysis purposes the expected value of lots from UAH 185 thousand (inclusively) to UAH 200 thousand. The analysis has revealed 3,829 cases when the average price of contract between a particular contracting authority and tenderer fell within this range. Of them, only 97 contained five or more lots, whereas the overwhelming majority were separate procurements from unique tenderers. It is worth noting that these 97 cases alone were responsible for over UAH 198 million in expected value (see: Annex 1). Such a large dataset may contain numerous unidentified violations. Another problematic aspect is checking procurement documentation of almost 4 thousand organizers.



### **CASE 2:**

### *Approach of Krasnoarmiiskvuhillia State Enterprise*

#### **Description of problem:**

12 lots of boiler equipment and spare parts thereto, valued at almost UAH 2.3 million in total, have been bought from Alliance Trade Group Limited. The average value of one lot is almost UAH 190 thousand, and in three cases exceeds UAH 195 thousand. Splitting of the subject of procurement is probable in this case. Moreover, the contracting authority continues this practice in 2017 regardless of the subject of procurement, as TI Ukraine's legal advisors have discovered (Hohol, 2017).

#### **Examples of tenders:**

- UA-2016-12-02-000989-c
- UA-2016-12-02-000958-c
- UA-2016-12-02-000802-b
- UA-2016-12-02-000559-b
- UA-2016-12-02-000420-b



Speaking about works, the price range for analysis of e-procurements was set between UAH 1.45 million inclusively and UAH 1.5 million. 174 cases fell within this range. Considering that works require more time and resources than providing goods and services, there can't be many lots. Only 11 cases with more than two lots have been found, while the



overwhelming majority were separate procurements from new tenderers. It is important to stress that these 11 cases alone are responsible for UAH 68 million in expected value (see: Annex 2). In this respect, civic monitoring is easier comparing to the procurement of goods and services, because the number of cases for analysis is much lower.



### CASE 3:

#### Cartridge filling – priceless

#### Description of problem:

By reporting on the contract, Snake Workshop LLC has filled 137 printer cartridges for the National School of Judges of Ukraine in November-December 2016 for the payment of UAH 30.6 thousand. And in January 2017, the same supplier has won an open tender, featuring nine tenderers, on the supply of cartridges to Ukragroleasing National Joint-Stock Company. The price offer for the filling of 1150 cartridges was almost UAH 50 thousand. In the case of contract reporting, there is a high probability of the contracting authority setting artificial payment limits, whereas the market price of these services is lower (Tamrazov, 2017)

#### Examples of tenders:

UA-2016-12-02-000506-b

UA-2016-11-04-000857-a

UA-2017-01-11-000249-c



In sum, contract reporting requires civic monitoring, because during the analyzed period, this procedure was responsible for over half of concluded contracts, almost quarter of spending and registration of two-thirds of unique tenderers in the e-procurement system. A search of close relationships between contracting authorities and suppliers over a long period of time has revealed six instances in which the winner works with one contracting authority only, via reports. Almost UAH 30 million was spent on these procurements alone. A search of avoidance of open tenders has revealed 3,829 instances involving procurement of goods and services, and 174 instances of procurement of works falling within the risk zone. Almost UAH 266 million was spent on those of them listed in annexes to this report. The potential reasons for spending such substantial amounts via contract reporting may include the contracting authority's unwillingness to conduct sub-threshold procurements, supplier's unpreparedness for competition, splitting the subject of procurement

to avoid open tenders, and contracting authority setting expected value non-conformant with market prices.

## 2.2. Negotiation procedure

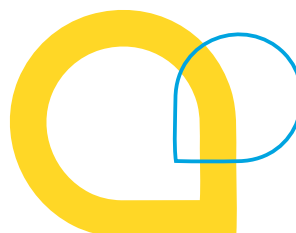
This procedure is discussed in our report briefly. The reason is that it is used mostly for procurements from natural monopolists. An example is the supply of utility services. When monitoring this procedure, it is important to pay attention to the subject of procurement and supplier. In particular, AMCU (2016) has the list of suppliers authorized to use negotiation procedure.

### Nota bene



*Contracting authorities may use negotiation procedure for procurements starting from UAH 200 thousand for goods and services and UAH 1.5 million for works. For contracting authorities in certain sectors of economy, the threshold is UAH 1 million for goods and UAH 5 million for works.*

During the selected period, only 3.3% of lots have been procured via negotiation. The expected value of these lots is quite substantial: over UAH 15 billion, or almost 16.9% of the total expected value, because the services like, for example, heat supply are relatively expensive. During November 2016 – January 2017, TI Ukraine's legal advisors registered no violations under this procedure. So, it has a niche purpose: procurements in the conditions of monopoly. An analysis of procurements under this procedure must be focused on deviations from the aforementioned purpose.



**Table 8***Reasons for using negotiation procedure*

REASON	NUMBER OF LOTS	EXPECTED VALUE (UAH)
<b>ALL REASONS</b>	<b>7.965</b>	<b>15.373.500.579</b>
Absence of competition	<b>5.026</b>	<b>10.657.193.907</b>
Procurement of works of art	<b>637</b>	<b>584.329.984</b>
Procurement of legal services	<b>21</b>	<b>439.708.876</b>
Contracting authority has canceled the tender twice	<b>1.656</b>	<b>1.546.036.715</b>
Urgent procurement	<b>118</b>	<b>258.272.970</b>
Additional construction work is required	<b>182</b>	<b>861.515.788</b>
Additional procurement is required	<b>316</b>	<b>1.019.544.794</b>
Not stated	<b>9</b>	<b>6.897.545</b>

Predictably, the most common reason for using negotiation procedure is the “absence of competition” (see: Table 8). This reason resulted in the use of negotiation in the case of 63.1% of lots with the expected value of 69.3% of the total value of lots under this procedure. The second most common reason is cancellation of tender by the contracting authority twice: 20.8% and 10.1%, respectively. The cancellation may be justified or not – for example, because of ungrounded disqualification of tenderers. This reason was used for spending almost UAH 1.5 billion via negotiation. The four other reasons, such as procurement of works of art and additional works, are responsible for less than 16% of lots and 21% of value in total. The legality of their use must also be checked using particular procurements as examples.



#### CASE 4:

#### Unique school textbooks

#### Description of problem:

Department of Education, Youth and Sport of Sarny Raion State Administration has procured 13 lots of textbooks for 4 th to 7 th grades under negotiation procedure. In each case, the reason was cancellation of two previous tenders. The value of these procurements was over UAH 300 thousand. The contracting authority’s inclination toward negotiation is noticeable: this procedure is used with different suppliers.

#### Examples of tenders:

- UA-2016-12-16-000791-b
- UA-2016-11-11-000439-a
- UA-2016-11-04-000753-a
- UA-2016-11-04-000579-c
- UA-2016-11-04-000488-c



The use of negotiation procedure to procure works of art is rare. Nevertheless, 637 lots valued at over UAH 0.5 billion have found their supplier during the analyzed period thanks to this variant of negotiation procedure. These instances require detailed analysis for the purpose of justification of using negotiation.



#### CASE 5:

#### Eurovision Song Contest: a view from the inside

#### Description of problem:

Two lots of works of art have been procured: one for development of stage design valued at UAH 4.8 million, and the other for development of the contest’s creative concept valued at over UAH 400 thousand. According to internal orders, the National Television and Radio Company of Ukraine has organized two internal competitions for these procurements. No appeal procedure has been set, due to urgency of procurements. At the same time, the aforementioned procurements have been made in late December 2016, whereas the resolution of the Cabinet of Ministers of Ukraine ordering them has appeared on 21 October, i.e. more than two months earlier.

#### Examples of tenders:

- UA-2016-12-22-003323-b
- UA-2016-12-22-003325-b



Overall, negotiation procedure is used in the exceptional cases provided by the Law. It is responsible for a small number of procurements (3.3% of the total number of lots), but their value is quite substantial (16.9% of the total expected value). Procurements under this procedure must be checked for the impossibility of competitive tenders. In particular, almost UAH 1.5 billion was spent via negotiation because of the cancellation of two tenders, and further UAH 0.5 billion-plus on the procurement of works of art. The example of procurements as part of preparation for the Eurovision casts doubts on the urgency of these purchases. Possible problems include untimely procurement planning by contracting authority or relationship with a supplier chosen in advance.

### 3. Competitive procurements

Creation of a competitive environment has been declared the goal of the Law of Ukraine On Public Procurements. Most legislative acts in the public procurement sector regulate competitive tenders, whereas non-competitive procedures are exceptions with a clearly defined scope of application. Because of that, it is important to evaluate ProZorro’s performance based on competitive tenders.

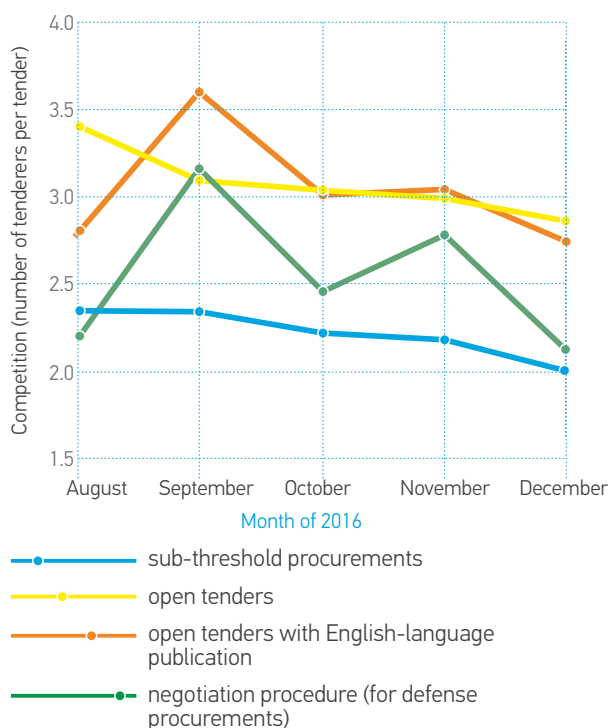
#### 3.1. Competition trends

During the analyzed period, each competitive procurement type showed a somewhat different

competition trend.<sup>22</sup> Thus, sub-threshold procurements<sup>23</sup> demonstrated a trend toward monthly decline of competition from 2.3 offers per tender in September to 2.05 in December (see: Diagram 1). Similar pattern is observed for open tenders: a monthly decline from 3.3 in August to 2.8 in December. These two procurement types are the most common: they were used to submit 98% of all price offers and announce lots with 33.5% of expected value of all procurements concluded via ProZorro. In the case of open tenders with English-language publication and negotiation procedure for defense procurements, competition does not have such a linear trend, fluctuating monthly. However, these procurement types are responsible for only 2% of price offers. Therefore, it is fair to say that overall, competition has the tendency to decline.

Diagram 1

Competition dynamics, August-December 2016



Negative competition trend is an interesting subject for analysis, especially in the context of positive characteristics and awards received by ProZorro. The following were considered among the possible reasons for declining competition:

<sup>22</sup> The competition indicator is measured on the basis of the average number of offers received during one procurement tender.

<sup>23</sup> It is worth noting that the average level of competition in sub-threshold procurements takes into account all successful tenders attended by at least one tenderer. For open tenders, successful procedure requires at least two tenderers. If sub-threshold procurements with only one tenderer were to be excluded from statistics, the level of competition would exceed three offers per tender.

- declining number of tenderers;
- growing number of e-procurements, outpacing the growth of the number of tenderers.

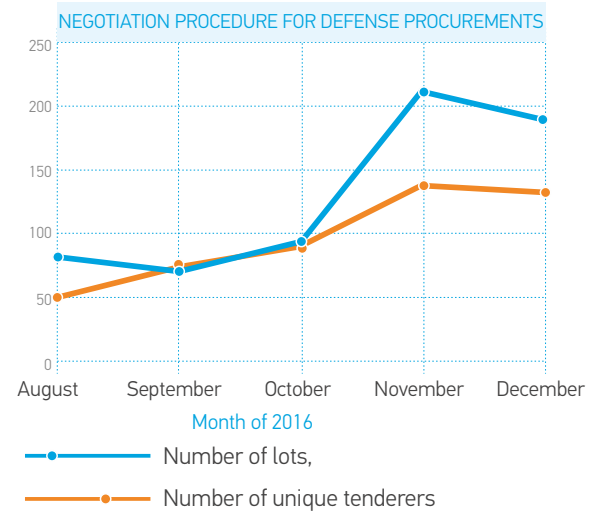
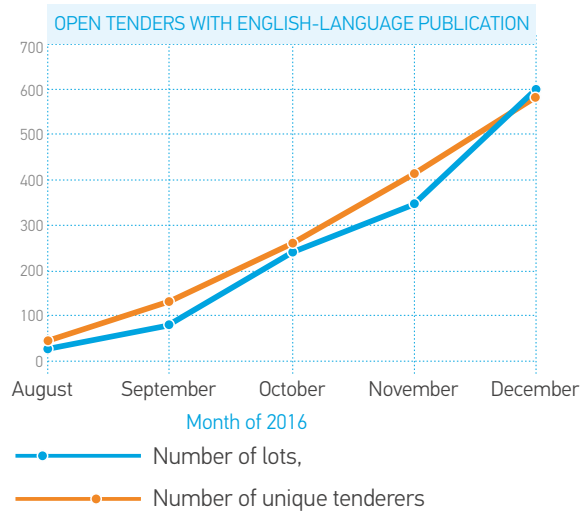
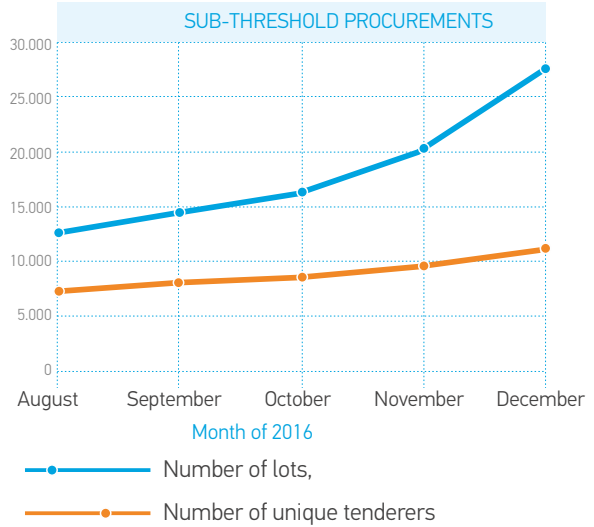
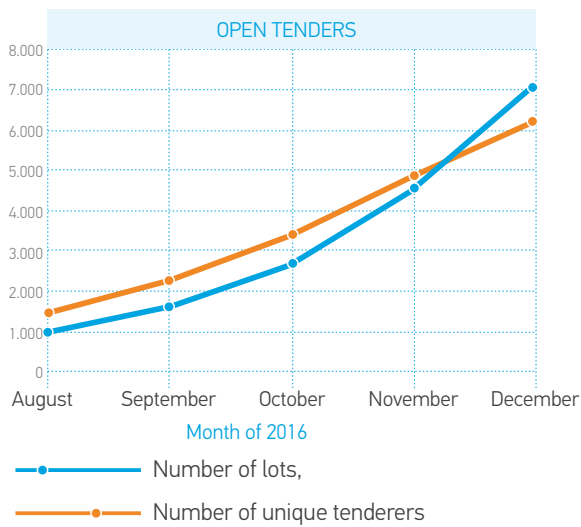
The first hypothesis was checked on the basis of the number of unique tenderers participating in procurements under a particular procedure during particular month. For sub-threshold procurements, open tenders and open tenders with English-language publication, this number was increasing every month. For instance, for sub-threshold procurements the number of tenderers was 7,168 in August, 8,150 in September, 8,513 in October, 9,412 in November, reaching 10,988 in December. This trend was confirmed for negotiation procedure for defense procurements as well, except in December when the number of tenderers was slightly lower than in November: 133 and 138, respectively. Therefore, this hypothesis turned out to be wrong. It is fair to say that the number of tenderers at e-procurement tenders has been continuously growing during the second half of 2016.

The second hypothesis assumes that the number of procurements is growing faster than the market activity. The check was done by comparing the growth of the number of lots and the number of unique tenderers (see: Diagram 2). In the case of sub-threshold procurements, the number of tenderers increases by half, whereas the number of lots increases more than twofold during the period selected for analysis. It is worth noting that the number of lots is growing every month. This trend is maintained by the open tender procedure as well, where the number of lots at concluded procurement tenders in December has exceeded the number of tenderers: 7,040 and 6,177, respectively. Note that the greater number of lots versus the number of tenderers is a norm. In the case of the other two procedures, indicators are fluctuating, but still, the number of lots is increasing faster. Therefore, this hypothesis was confirmed: the e-procurement system undergoes the period when the number of procurements is growing at the speedier rate than the number of tenderers. It may be explained by the fact that its use became mandatory at the national level effective August 2016.<sup>24</sup> Potential suppliers do not cover such a rapid growth of the market.

<sup>24</sup> This statement is valid for the selected data array: procurements concluded during August-December 2016. Some of these procurements have started prior to the effective date of the Law in early August. Therefore, we observe a gradual increase of the number of concluded lots during the selected months, peaking in December (when the least number of procurement tenders started before August were left in the system).

Diagram 2

Dynamics of the number of lots (blue) and the number of unique tenderers (red) for competitive procurements, August-December 2016



Overall, the competition trend in ProZorro was negative during the second half of 2016. This statement is based on the monthly linear decline of competition for sub-threshold procurements and open tenders, for which 98% of price offers were submitted. The indicators went down to 2.05 offers per sub-threshold procurement tender and 2.8 offers per open tender in December. However, the absolute number of tenderers in the e-procurement system was growing, particularly for the aforementioned procurement types. The negative competition trend may be explained by the fact that as of the effective date of the new Law, the number of concluded procurement tenders in ProZorro was growing faster than the number of potential suppliers.

### 3.2. Disqualification trends and government monitoring

From the viewpoint of engaging potential tenderers, it is worth taking a look at the dynamics of the

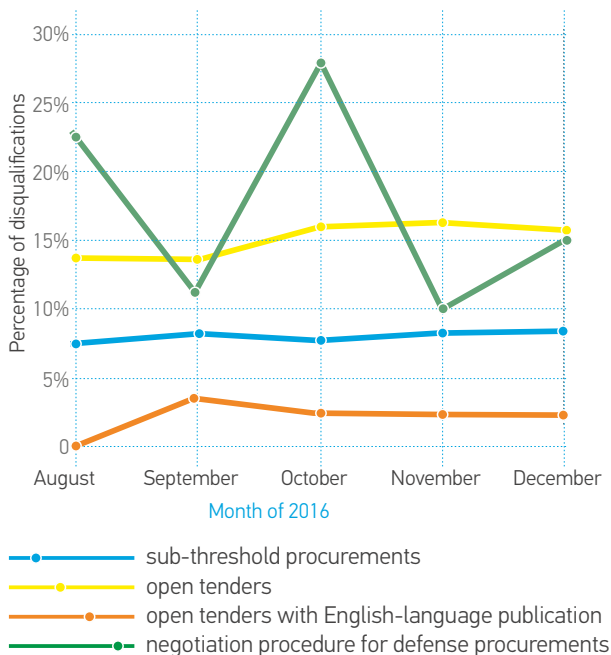
percentage of disqualified offers in the system.<sup>25</sup> For sub-threshold procurements, the percentage of disqualifications has been growing every month except October: from 7.7% in August to 8.5% in December (see: Diagram 3). For open tenders, this indicator has increased from almost 14% during August and September to almost 16% in October, staying at this level during the last three months. For negotiation procedure for defense procurements, a characteristic feature was fluctuation of the percentage of disqualifications: 11.3% in September and 27.9% in October. The procedure of tenders with English-language publication was the only one for which the percentage of disqualifications was low, staying within the 2% to 3% range. However, this data does not take into account prequalification,

<sup>25</sup> The percentage of disqualifications was calculated by dividing the number of disqualified offers by the total number of offers for the particular procurement type during a selected period.

when the main selection of offers for this procedure takes place. As we see, the percentage of disqualifications at sub-threshold procurements and open tenders is gradually increasing. This situation may have adverse effect on participation of potential suppliers.

**Diagram 3**

*Dynamics of the percentage of disqualifications, August-December 2016*



Justification of a tenderer's disqualification depends on national processes related to ProZorro. Firstly, the procurement appeal system has certain flaws today. In particular, if results of a tender are voided after submitting an appeal to AMCU, which requires a fee, the fee amount is not refunded to the appellant. Secondly, inquiries from TI Ukraine's legal advisors regarding violations have revealed that monitoring of procurements by public bodies undergoes transformation. The functions of these bodies overlap, and internal processes of punishing offenders are not in place. One can assume that potential suppliers will not be interested in spending time and other resources on participation in e-procurements, if they won't be provided with simple appeal mechanisms, or if the risks of punishment for illegal actions for contracting authorities will be low.

**PUBLIC BODIES RESPONSIBLE FOR MONITORING OF PROCUREMENTS, AND THEIR FUNCTIONS**

**Antimonopoly Committee (appeal body):** reviewing complaints from tenderers and identifying conspiracy in tenders. Handling over-threshold procurements only.

**State Audit Service:** regular audit of contracting authorities' economic and financial activity, scheduled and unscheduled audits of procurements, audit of tenderers' documentation. Auditing and monitoring all procurements.

**Accounting Chamber:** has functions similar to SASU, when procurements are financed from the state (not local) budget. Annually checking the effectiveness of performance of MEDT as regulator, AMCU as appeal body and ProZorro SE as e-procurement system administrator.

**State Treasury Service:** to process payments under contracts financed from the budget, it checks the availability of the annual procurement plan, procurement contract and procurement report.

**Law enforcement agencies (National Police of Ukraine, National Anticorruption Bureau of Ukraine and others):** handling crimes committed in official capacity, particularly corruption in procurements.

Therefore, we observe a gradual increase of the percentage of disqualifications at sub-threshold procurements and open tenders. For negotiation procedure for defense procurements, this percentage is too high in principle, reaching a quarter of all offers in some months. Justice in disqualifications is hard to achieve due to deficiencies in the procedure of appealing procurements and overlapping functions of controlling bodies. As a result, offenders-contracting authorities often remain unpunished. This situation may have adverse effect on the influx of new tenderers in ProZorro.

### 3.3. Negotiation procedure for defense procurements

This procedure is used for procurements intended to strengthen the nation's defense sector. It is regulated by the separate Law of Ukraine On the Procedure of Procuring Goods, Works and Services for Guaranteed Satisfaction of Defense Needs.

Requirements to the tender documentation are less strict than in the case of open tenders. For instance, particular products may be stated in the tender documentation. In addition, one tenderer is sufficient for the procurement tender to go ahead.

## Nota bene



*During a special period, during the anti-terrorist operation and during the state of emergency, certain contracting authorities may use negotiation procedure for defense procurements worth from UAH 200 thousand for goods and services and from UAH 1.5 million for works.*

The number of lots during the analyzed period was quite limited: 645, with the expected value of almost UAH 5.5 billion. 563 contracts have been signed for these lots, of which 49.7% were signed by Department of Public Procurements of the Ministry of Defense of Ukraine as the contracting authority, and the other by various military units. Note the

small number of unique tenderers (367) which submitted 1,524 price offers – more than four per tenderer on average. 15.7% of these offers have been disqualified. As we see, the circle of contracting authorities and potential suppliers is quite narrow. The risk of avoiding open tenders is present. We also see a high percentage of disqualifications.

In terms of expected value, over 60% of lots belong to three contracting authorities: Ministry of Defense of Ukraine, Center for Services to the National Police of Ukraine (the "Center") and the National Police of Ukraine (see: Table 9). An interesting fact is active use of this procedure by the police. The Center has concluded four contracts: one for cars (worth almost UAH 834 million<sup>26</sup>) and three for clothes (for almost UAH 25 million). The scale of procurement attracts attention in the first-mentioned contract, and in the latter case, the winner was always the same: Tornado Limited Liability Company. Only three unique tenderers attended the Center's four tenders.

<sup>26</sup> The contracting authority enters the value of contract in the system manually. Errors in data are possible, and therefore, this indicator found limited use in this report. In the event of large amounts, such as the aforementioned procurements of the National Police of Ukraine, we can count on higher credibility of data.

Table 9

Top three contracting authorities in terms of expected value for negotiation procedure for defense procurements

Organizer	Number of lots	Expected value of lots (UAH)	Number of unique tenderers	Number of contracts	Saving (UAH)
Total	418	4.992.365.216	183	341	153.214.630
Ministry of Defense of Ukraine	353	3.436.362.692	148	280	150.151.611
Center for Services to the National Police of Ukraine	4	984.565.212	3	4	132.325
National Police of Ukraine	61	571.437.313	32	57	2.930.693

Regarding procurements by the National Police of Ukraine, it has signed 57 contracts worth the total of almost UAH 563 million. The National Police has procured Renault Duster Expression vehicles worth almost UAH 10 million, and only one company participated in the tender: Niko Prime Megapolis LLC. In addition, the National Police has procured personal computers (two tenderers, price lowered by mere 0.3%), clothes (one tenderer) and shoulder boards (one tenderer). In all of the aforementioned cases, justification of the use of defense procedure is questionable. Overall, the Center and the National Police have 10.8% of the total number of contracts and 29.8% of the total value of contracts under this procedure, which requires thorough analysis.



### CASE 6:

### Japanese vehicles protecting Ukraine

#### Description of problem:

Procurement of one lot of Mitsubishi Outlander vehicles with the expected value of almost UAH 960 million. Supplier and sole tenderer: Niko Diamond LLC. TI Ukraine's legal advisors have discovered violation of the procurement procedure: this product represents a subject of procurement at open tenders. The delivery term of 252 days also casts doubt on the urgency of this procurement for enhancement of the nation's defense capability. In addition, although this procurement should have been made from a Japanese manufacturer, it was not necessary to procure that particular vehicle model (Lakhtionov, 2016).

#### Examples of tenders:

UA-2016-11-16-001476-a

In sum, characteristic features of negotiation procedure for defense procurements are limited competition: 2.5 offers per tender on average, and therefore, low cost savings, amounting to only 3.7%.<sup>27</sup> These indicators may be explained by the existing possibility of including too detailed requirements in the technical documentation and by the fact that participation of one potential supplier in a tender is sufficient. Also, the use by contracting authorities of broad opportunities offered by this procedure results



in the high percentage of disqualified offers: 15.7%. During the analyzed period, we noted high activity in this procedure of two contracting authorities belonging to the National Police of Ukraine. At the same time, they procured goods that should have been procured under the open tender procedure, and the number of unique tenderers was lower than the number of lots. Further monitoring of the use of this procedure by the aforementioned contracting authorities is required.

### 3.4. Open tenders with English-language publication

The distinctive feature of this procurement type is prequalification of potential suppliers according to the procurement procedures used in the EU. The number of lots during the analyzed period was small (1,296), but their expected value was quite high: almost UAH 18 billion. The number of unique tenderers was 1,116, and they have submitted 3,372 price offers – almost three per tenderer on average. Only 82 of these offers (or 2.4%) have been disqualified by contracting authorities. TI Ukraine's legal advisors discovered no instances of violating this procedure during November 2016 – January 2017. As we see, the number of tenderers was small, and the value of lots relatively high. At the same time, the percentage of disqualified offers was insignificant due to prequalification of tenderers.

## Nota bene



*The use of open tenders with English-language publication is intended for high-value procurements, and required by international treaties binding upon Ukraine, in particular, the WTO Agreement on Government Procurement and EU-Ukraine Association Agreement. This procedure is required for procurements of goods and services with the expected value of more than EUR 133 thousand and works with the expected value of more than EUR 5,150 thousand. These thresholds are the same for all contracting authorities.*

With prequalification in place, regular participation in tenders without winning a contract begs to be analyzed. Bearing that in mind, we have analyzed the instances when potential suppliers were losing 10 or more lots (see: Table 10). There were six such an unsuccessful tenderers in total: Industrial Equipment LLC, Privat-Kabel Factory NVO LLC, Mechanic Pavlohrad LLC, Avtomahistral-Pivden LLC, Badm-B LLC and M.T.K. Medical Center LLC. Typically for this

<sup>27</sup> For concluded tenders, the percentage of cost saving was calculated by dividing the winning offer by the expected value of the lot.



procurement type, all tenderers were companies, not sole proprietorships. All together, the aforementioned companies have submitted

86 unsuccessful offers worth almost UAH 1,012 million. Such an inefficient participation in tenders requires close attention from the civil society.

**Table 10**

*Tenderers losing 10 or more lots in open tenders with English-language publication*

Tenderer	Number of price offers	Amount of offers (UAH)	Number of winning offers
Industrial Equipment LLC	18	6.997.065	0
Privat-Kabel Factory NVO LLC	15	5.337.315	0
Mechanic Pavlohrad LLC	14	2.720.000	0
Avtomahistral-Pivden LLC	14	955.778.892	0
Badm-B LLC	13	24.813.866	0
M.T.K. Medical Center LLC	12	16.320.252	0

This procedure has the best indicator of competitiveness among all: almost three offers per tender. Possible explanations include clear rules of tender and existence of English-language publication. In a situation like this, large number of lots and small number of tenderers per tender for the same contracting authority are untypical. There were three contracting authorities with more than 10 lots and less than two tenderers per tender on

average: Lvivuhillia SE, Selydivuhillia SE and the Fund for Social Security of the Disabled (see: Table 11). At the same time, these contracting authorities have added 101 lots with the expected value of almost UAH 335 million. An interesting observation: in the case of Lvivuhillia SE, the percentage of disqualifications was much higher than average: 9.5%. Because of the low activity of tenderers, cost savings did not exceed the average figure for his procurement procedure for all three organizers.

**Table 11**

*Tender organizers with more than 10 lots and less than two tenderers per tender on average in open tenders with English-language publication*

Organizer	Number of lots	Expected value of lots (UAH)	Average number of tenderers	Number of price offers	Number of disqualifications
Lvivuhillia SE	62	15.437.837	1,35	84	8
Selydivuhillia SE	27	302.330.000	1,78	48	2
Fund for Social Security of the Disabled	12	16.861.652	1,33	16	0

Overall, open tenders with English-language publication have quite strict requirements to potential suppliers due to high expected value of lots. Their specific feature is prequalification of tenderers. Under these conditions, the absence of winning offers from regular participants of these tenders requires attention from the public. We have identified six potential suppliers whose effectiveness of participation in tenders is questionable. In addition, comparing to other procurement types, this type has high competitiveness indicator: almost three offers per tender on average, and the cost saving of 7.7%. Given these competitiveness and cost saving indicators, the instances of low competition for lots of a particular contracting authority require further analysis. Three tender organizers had problems with this indicator during the analyzed period.

### 3.5. Open tenders

In terms of the number of lots – 16,652 – open tenders are behind of sub-threshold procurements and contract reporting only. The expected value of these lots reaches UAH 20.8 billion, a figure comparable with that for contract reporting. The average number of offers is 2.9 and the cost saving indicator is 11.1%. At the same time, most typical violations analyzed by TI Ukraine’s legal advisors for the period from November 2016 to January 2017 concern this procedure and sub-threshold procurements: “discriminatory requirements”, “unfounded disqualification” and “unfounded determination of winners”. The percentage of disqualified offers – 15.8% – is also quite high, which may indicate the existence of violations.

## Nota bene



*The open tender procedure is used for procurements of goods and services starting from UAH 200 thousand, and works from UAH 1.5 million. For contracting authorities in certain sectors of economy, the thresholds are UAH 1 million and UAH 5 million, respectively. The upper thresholds for the open tender procedure are EUR 133 thousand and EUR 5,150 thousand, requiring open tenders with English-language publication.*

One of the key indicators for open tenders is the average number of offers. International experience proves that 2.9 offers per lot is quite good. For instance, the similar competitiveness indicator for electronic tenders<sup>28</sup> in Georgia in 2016 was 2.1 (TI

Georgia, 2016). However, one should remember that the size of the public procurement market<sup>28</sup> in that country is much smaller than in Ukraine. Also, in the case of Georgian procedure, one tenderer is enough to make a procurement. The key factor which Transparency International Georgia cites to explain the existence of competition is the continuous growth of the number of tenderers in the e-procurement system. That corroborates the aforementioned assumptions concerning ProZorro: while the number of tenderers increases at a slower rate than the number of tenders, competition has the potential to grow. Therefore, under favorable conditions of government regulation, 2.9 offers per tender should not remain the peak of competition at open tenders in Ukraine.



### CASE 7:

*What uniforms does Ukrzaliznytsia PJSC need?*

#### Description of problem:

South-Western Railway Company of Ukrzaliznytsia PJSC has announced a tender for the procurement of uniforms with the expected value of UAH 1,499,381. The contracting authority has declined six tenderers and signed the contract with the tenderer which offered one of the highest prices (UAH 1,439,343.97). Five tenderers have been declined due to nonconformity with technical requirements. Analysis of technical specifications stated in the tender documentation has revealed that: 1) they were laid down in general phrases; 2) information regarding the length of sleeves or trousers, shoulder width, etc. was unavailable; 3) there were no references to the applicable DSTU and GOST standards. Declining tenderers because of the nonconformity with technical specification like this was unlawful.

#### Examples of tenders:

UA-2016-07-20-000195-c



<sup>28</sup> This procedure applies to procurements starting from 200,000 Georgian lari. We have downloaded the array of data related to e-procurements for the period from 2011 to 2016 via “Download all tender data” section on [tendermonitor.ge](http://tendermonitor.ge) website. In this array, data was sorted based on “2016” year, “e-tender” procurement type (the name in Georgian), and the contract amount. Competitiveness indicator: “Average - num\_bidders” (average number of tenderers per tender). A tenderer was counted every time it submitted a price offer. The corresponding indicator in Ukraine’s e-procurement system is the average number of offers per tender.

Considering the wide use of this procedure, it seems expedient to analyze the tenderers regularly losing competition. Bearing in mind the much greater number of procurements than in the case of open tenders with English-language publication, we set the limit at 20 lots (see: Table 12). There are five winless tenderers: Pavlo Pavlovych Serb, SP Filatova, Avtotrans-Dik LLC, Avtopartner 1 LLC and SP Anatolii Ivanovych Shestak. It is worth noting

that reasons for failing to win may differ for each of them. For example, SP Anatolii Ivanovych Shestak loses despite submitting low-price offers. Perhaps the quality of this tenderer's offers do not meet the contracting authorities' requirements. But for the first four tenderers from this list, the highly-probably explanation is the "partnership" with the winners, for they have never won a tender after submitting almost 50 offers or more.

**Table 12**

*Tenderers losing 20 or more lots under open tender procedure*

Tenderer	Number of price offers	Amount of offers (UAH)	Number of winning offers
Pavlo Pavlovych Serb	114	42.695.337	0
SP Filatova	66	2.181.808	0
Avtotrans-Dik LLC	47	169.423	0
Avtopartner 1 LLC	48	113.799.317	0
SP Anatolii Ivanovych Shestak	26	693.297	0

After the tenderers which have not won a single time, let's take a look at organizers whose lots do not attract potential suppliers. We have selected contracting authorities which announced more than 60 lots, and for which the number of unique tenderers was lower than the number of lots and the average number of offers less than 2.5 (see: Table 13). Thus, Health Department of the executive body of Kyiv City Council (Kyiv City State Administration) has announced 98 lots which drew interest from 63 unique tenderers, and received 2.16 offers per tender on average, of which 12% have been disqualified.

Consequently, the cost saving amounted to mere 3.44%. In the cases of Vinnytsia Regional Highly-Specialized Center for Clinical Endocrinology (6.5%) and Centralized Accounting Office of Sports Schools (0%), disqualifications have not been a problem. Still, the number of unique tenderers for these organizers was too low: 8 and 5, respectively, and the cost savings were low as well. These three contracting authorities have announced 239 lots with the expected value of over UAH 103 million. It is worth noting that this amount was spent almost entirely at the tenders featuring only two tenderers.

**Table 13**

*Tender organizers with more than 60 lots, the number of unique tenderers lower than the number of lots and the average number of offers below 2.5 under open tender procedure*

Organizer	Number of lots	Number of unique tenderers	Number of price offers	Number of disqualifications	Expected value of lots (UAH)	Average number of offers per tender	% of cost saving
Health Department of the executive body of Kyiv City Council (Kyiv City State Administration)	98	63	178	22	84.777.258	2,16	3,44%
Vinnytsia Regional Highly-Specialized Center for Clinical Endocrinology	74	8	138	9	7.328.813	2,15	4,65%
Centralized Accounting Office of Sports Schools	67	5	135	0	11.091.200	2,01	0,24%

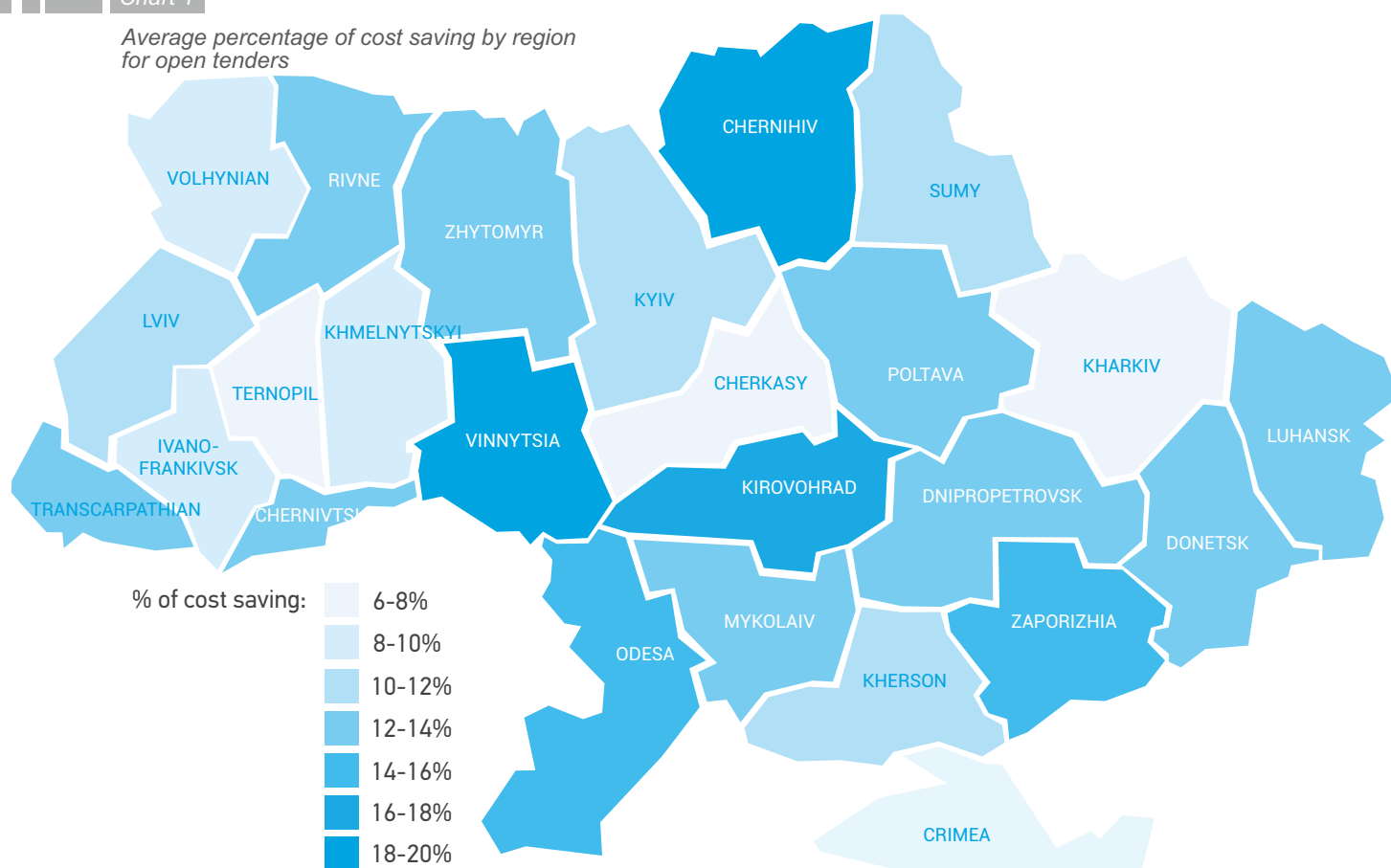
Comparing the cost saving and disqualification indicators for different regions seems to be an important element of analysis, because open tender is the primary procurement procedure for the whole country. The lowest cost savings have been achieved in the following regions: Cherkasy (7.1%), Kharkiv (7.5%), Ternopil (7.6%), Volhynian (8.5%) and Khmelnytskyi (8.9%) Oblasts (see: Diagram 4 below). It is worth noting that the number of population in these regions varies substantially: from just over 1 million in the Volhynian to almost 2.7 million in the Kharkiv Oblast.<sup>29</sup> However, the common feature of

all these regions is high percentage of disqualifications from tenders: this indicator was below the national average (15.8%) only in the Ternopil Oblast (14.2%), exceeding 17% in all other cases. Moreover, two of the aforementioned regions are ranked among the “top five” in terms of the percentage of disqualifications: Kherson (24.8%), Kharkiv (19.8%), Zhytomyr (19.2%), Luhansk (19.3%) and Volhynian (18.5%) Oblasts. Notably, cost savings hardly depend on the region’s population. On the other hand, regions where contracting authorities are disqualifying tenderers more often also tend to suffer from low cost savings.

<sup>29</sup> Data by the State Statistics Committee – [ukrstat.org](http://ukrstat.org), population as of 1 January 2017.

Chart 1

Average percentage of cost saving by region for open tenders



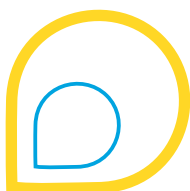
In terms of the per capita number of open tender procurements, there are significant differences between regions. In particular, the difference between the regions with the highest (Kirovohrad Oblast, UAH 5,101) and lowest (Transcarpathian Oblast, UAH 84) value of this indicator is more than sixtyfold. Like in the case of cost saving, the number of population is hardly likely to have effect on per capita spending, because these regions have the comparable population: 959 thousand and 1,256 thousand, respectively. In addition, the Kyiv (UAH 2,784) and Kirovohrad Oblasts are much farther

ahead of others in terms of per capita spending. Excluding these two regions, the average spending indicator for Ukraine drops down by almost half: from UAH 617 to 315. Besides the Transcarpathian Oblast, the least active contracting authorities are located in the Luhansk (UAH 103), Ternopil (UAH 118), Volhynian (UAH 126) and Sumy (UAH 169) Oblasts. As we see, the Ternopil and Volhynian Oblasts fall behind in terms of not only the cost saving indicator but also the readiness to conduct open tenders.

Overall, detailed specification in open tenders in the Law of Ukraine On Public Procurements allows for better monitoring of violations committed in the course of these tenders. The average competitiveness – 2.9 offers per tender – has the potential to grow when the number of offers will begin to increase faster than the number of procurements. We have also identified five tenderers and three organizers which were extremely unsuccessful at using this procedure: the former have won neither of the 301 price offers they submitted, and the latter spent UAH 103 million with the percentage of cost saving close to zero. A comparison of regions has revealed that the Kharkiv and Volhynian Oblasts have “distinguished” themselves with low cost savings (7.5% and 8.5%, respectively) and high percentage of disqualifications (19.8% and 18.5%, respectively), while the Ternopil and Volhynian Oblasts stood out with the low cost savings and the lack of readiness to spend at open tenders (UAH 118 and UAH 126, respectively). It is worth emphasizing that at the same time, the overall cost saving under this procedure is quite high: 11.1%. In the opinion of TI Ukraine, open tenders must be encouraged, and further development of instruments for monitoring of this procedure seems to be an expedient measure.

### 3.6. Sub-threshold procurements

A specific feature of sub-threshold procurements is the fact that the Law On Public Procurements regulates the principles of this procurement procedure only. The number of lots was 90,988, but their value was twice as low as in the case of open tenders: UAH 10,290 million. The number of unique tenderers (21,476) and the cost saving indicator (15.1%) were the best among all procedures. As for typical violations, they were the same as in open tenders: “discriminatory requirements”, “unfounded disqualification” and “unfounded determination of winners”. The percentage of disqualified offers (8.2%) was much lower than for open tenders. Therefore, sub-threshold procurements cover the most of competitive lots and unique tenderers. The cost saving indicator is the highest among all procedures, while the percentage of disqualifications is lower than in the case of open tenders, but still high.



## Nota bene



*According to the Law of Ukraine On Public Procurements, contracting authorities have the choice of using a sub-threshold procurement or publish a report on procurement contract for procurements of goods and services worth between UAH 50 thousand and 200 thousand, and procurements of works worth up to UAH 1.5 million. For contracting authorities in certain sectors of economy, the upper thresholds are UAH 1 million and 5 million, respectively. A number of contracting authorities have decided to use sub-threshold procurements starting from UAH 3 thousand (Kyiv City State Administration, Dnipropetrovsk Oblast State Administration, etc.).*

In terms of risk indicators, 78.5% of sub-threshold procurement tenders have problems with competitive activity. The main reason for that was the low number of unique price offers (55.3%),<sup>30</sup> whereas other factors, such as low cost saving (31.7%) and the minimum number of suppliers (26.7%), had much lower impact. In the case of shorter terms and the absence of requirements to the number of tenderers, initial tender offers usually do not change. Speaking about the next indicator, it is worth noting that the quality of announcements was very low: 53.7% of problematic tenders, of which 38.7% were due to insufficient clarification period. This problem is evidenced by the fact that sub-threshold procurements contain a substantial percentage of unanswered questions: 17.4% of all questions from tenderers. As we see, suppliers need some time to get adapted to a limited clarification period. Also, contracting authorities do not respond to inquiries on time, which may be caused by insufficient regulation of this procedure.

Like in the case of contract reporting, sub-threshold procurements should be monitored for splitting of lots to avoid open tenders. Thus, we have identified 176 organizers with the average expected value of lots falling within the range from UAH 185 thousand inclusively to UAH 200 thousand. In 64 cases, this figure was from UAH 199,000, with the total expected value of close to UAH 13.5 million (see: Annex 3). In this sampling, the civil society should review documentation of each tender separately in order to prove or refute violations.

<sup>30</sup> Presently, a procurement is assigned the status of problematic based on the risk indicator, if at least one of the parameters of this indicator is problematic.

A vivid example is the procurements by M. Gorky Central Park of Culture and Leisure. The subject of the first of them was New Year's postcards worth UAH 198,450.<sup>31</sup> The announcement includes the model of the printer on which these postcards must have been printed: Bizhub C1060 Konica Minolta. In the end, only one tenderer came along, SP Larysa Petrivna Hobeliovska, who became the winner. The second procurement concerned an anti-icing product, amounting to UAH 199,900.<sup>32</sup> The tender documentation stated the specific product: Anti-ice manufactured by Heissner GmbH. As a result, the tender featuring three tenderers was won by the one which offered the highest price: Albus Group LLC, bidding UAH 167,000. In the protocol of opening tender offers, the contracting authority states that the product may be indicated due to inapplicability of the Law. As we see, the contracting authority was likely avoiding an open tender in order to benefit from "advantages" of sub-threshold procurement.



### CASE 8:

#### *Air balloons for celebration of the Independence Day*

#### Description of problem:

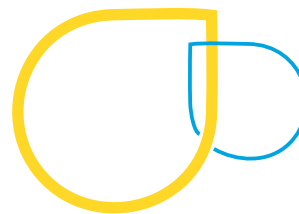
To commemorate the 25<sup>th</sup> anniversary of Ukraine's independence, Department of Information and Internal Policy of Donetsk Oblast State Administration has procured a set of air balloons worth over UAH 19 thousand. Two tenderers with the cheapest offers have been disqualified, and the winner was named on 29.08.2016, five days after the event. After reviewing the complaint from one of the disqualified tenderers, the Civic Commission for Appeals issued a recommendation to cancel the procurement. The contracting authority has disregarded this decision, as well as the letter of inquiry from TI Ukraine.

#### Examples of tenders:

[UA-2016-08-19-000260-b](#)



Overall, sub-threshold procurements may be considered the least transparent among competitive procedures. Its high cost savings (15.1%) are achieved due to the large number of cheap procurements always attracting at least one supplier, rather than due to rational regulation by the state. The main risk is the low number of unique price offers, found in 55.3% of tenders, which may be related to the sufficiency of one tenderer for the procedure to go ahead and shortened procurement terms. The insufficiently short clarification period and, therefore, large percentage of unanswered questions (17.4%) are also worth highlighting. As far as possible violations are concerned, we have identified 174 organizers with tenders worth UAH 13.5 thousand, which should be checked for the avoidance of open tenders. Documentation of sub-threshold procurement tenders requires special attention, because manual analysis allows to identify instances of abusing this procurement type.



<sup>31</sup> Tender webpage – [prozorro.gov.ua/tender/UA-2016-11-25-001875-a](http://prozorro.gov.ua/tender/UA-2016-11-25-001875-a)

<sup>32</sup> Tender webpage – [prozorro.gov.ua/tender/UA-2016-10-11-001792-b](http://prozorro.gov.ua/tender/UA-2016-10-11-001792-b)



# CONCLUSIONS AND RECOMMENDATIONS

# Conclusions and recommendations

Based on monitoring of public procurements in Ukraine, we can draw a number of conclusions and provide several recommendations.

Analysis of international methodologies of civic monitoring allows for a conclusion that their combination would be an expedient measure. The methodology offered in this report combines several monitoring types. The key components are monitoring of legal and technological changes in the procurement sector and analysis of procurement data. Our conclusions and recommendations are based on the analysis of these components.

Beginning with the changes in Ukraine's procurement sector, it is worth noting that they are quite significant. The Law of Ukraine On Public Procurements went into effect in August 2016. It stipulates equal participation conditions for Ukrainian and foreign suppliers and eliminates any procurement quotas. This legislative act also envisages electronization of procurements to improve transparency. Ancillary legislative instruments allow to regulate ProZorro system and sub-threshold procurements. At the same time, further improvement of legislation is required. In particular, without legislative regulation of sub-threshold procurements, local authorities abuse the contract reporting procedure. Another problem is that the system's key risk indicators are not defined at the bylaw level. The government must undertake monitoring of procurements based on these indicators, and the public would have a basis for constructive criticism.

ProZorro is a hybrid e-procurement system, combining a single central database and numerous e-platforms connected to it. This architecture helps substantially minimize corruption on part of the system's owner. In addition, the system has an open API, which allows to store information from the central database and analyze it using online analytical instruments. However, this system does not rule out corruption on part of the users, namely particular contracting authorities and suppliers. Their actions require continuous response from the public. At the time of writing this report, institutionalization of ProZorro's civic monitoring mechanisms seemed to be one of the challenges to development of this system.

Disclosure of procurement data in the machine-readable format in ProZorro is the subject of studies that have just commenced. The only conclusion drawn at the time of writing this report is the positive assessment of data disclosure level according to the Open Contracting Data Standard. At the same time, publication of more complex data is necessary. For instance, contract performance-related information is presently unavailable. Automation of the process of entering this data also seems advisable in order to avoid errors. In the opinion of TI Ukraine, the work of contracting authorities with the e-procurement system must cover the entire procurement cycle.

From the standpoint of monitoring infrastructure, there are two analytical modules developed by TI Ukraine and available free of charge: for viewing statistics and for doing research. These instruments allow for use of machine-readable data. Still, their usefulness for civic monitoring purposes has the potential for growth in the event of integration of risk indicators and data verification. In addition, other monitoring services are being developed on the basis of open data in ProZorro, such as Anticorruption Monitor or YouControl.

Besides machine-readable data, ProZorro publishes open documents regarding concluded procurements. These documents contain substantial amount of procurement information not available in the machine-readable format. They require analysis by experts from specialized civic organizations. The next step may be work via a single procurement monitoring platform. This platform would help specialists representing the public make assessments using the capabilities of all available analytical instruments, and manage monitoring procedures.

Speaking about analysis of procurement data, it is worth noting that ProZorro is often evaluated on the basis of cost savings or competition resulting from electronic descending-price auctions. Nevertheless, non-competitive procurements are responsible for 54.6% of lots and 40.7% of the expected value of procurement tenders concluded via ProZorro in the second half of 2016. These tenders contain corruption risks not found in competitive tenders.

Contract reporting is the most non-competitive type of procurement: more than half of all lots procured via the e-procurement system belong to this type. The expected value of these lots is almost UAH 21.5 billion, or almost one-quarter of the total value. We have discovered six instances when the winner



works with one contracting authority only via contract reporting. Almost UAH 30 million was spent on these procurements alone. In terms of the possible avoidance of open tenders, there are 3,922 instances of procurement of goods and services and 184 instances of work procurement that require public scrutiny. Almost UAH 268 million was spent on those of them mentioned in the annexes hereto. Potential reasons for spending such a substantial amounts via contract reporting may include the unwillingness of contracting authorities to go for a sub-threshold procurement, supplier's unpreparedness for competition, splitting the subject of procurement to avoid open tenders, and contracting authority setting expected value nonconformant with market prices. Negotiation procedure is used in the exceptional cases provided by the Law On Public Procurements. It is responsible for a small number of procurements (3.3% of the total number of lots), but their value is quite substantial (16.9% of the total expected value). Procurements under this procedure must be checked for the impossibility of competitive tenders. In particular, almost UAH 1.5 billion was spent via negotiation because of the cancellation of two tenders, and further UAH 0.5 billion-plus on the procurement of works of art. The example of procurements as part of preparation for the Eurovision casts doubts on the urgency of these procurements. Possible problems include untimely procurement planning by contracting authority or relationship with a supplier chosen in advance.

Creation of a competitive environment has been declared the goal of the Law of Ukraine On Public Procurements. Most legislative acts in the public procurement sector regulate competitive procurement tenders. Because of that, it is important to evaluate ProZorro's performance based on competitive tenders, besides non-competitive procurement types.

The competition trend was negative during the second half of 2016. Monthly linear decline of competition for sub-threshold procurements and open tenders, for which 98% of price offers were submitted, is clearly visible. The indicators went down from 2.3 to 2.05 offers per sub-threshold procurement tender and from 3.3 to 2.8 offers per open tender. However, the absolute number of tenderers in the e-procurement system was growing, particularly for the aforementioned procurement types. The negative competition trend may be explained by the fact that as of the effective date of the new Law, the number of concluded

procurement tenders in ProZorro was increasing faster than the number of potential suppliers. We expect that in 2017, the number of lots will stabilize while more new tenderers will appear at tenders, turning the competition trend into a positive one.

Another trend is the gradual increase of the percentage of disqualifications. In particular, this indicator went up from 7.7% to 8.5% for sub-threshold procurements and from 13.8% to 15.8% for open tenders. In the case of negotiation procedure for defense procurements, this percentage fluctuates substantially, reaching a quarter of all offers in some months. Presently, tenderers find it hard to achieve justice in disqualifications due to deficiencies in the procedure of appealing procurements and overlapping functions of controlling bodies. As a result, offenders-contracting authorities often remain unpunished. This situation may have adverse effect on the desire of businesses to participate in ProZorro tenders.

Negotiation procedure for defense procurements has only 2.5 offers per tender on average, and therefore, low cost savings, amounting to only 3.7%. These indicators may be explained by the existing possibility of including too detailed requirements in the technical documentation and by the fact that participation of one potential supplier in a tender is sufficient. Also, the use by contracting authorities of broad opportunities offered by this procedure results in the high percentage of disqualified offers: 15.7%. During the analyzed period, we noted high activity in this procedure of two contracting authorities belonging to the National Police of Ukraine. At the same time, they procured goods that should have been procured under the open tender procedure, and the competition was low. Further monitoring of the use of this procedure by the aforementioned contracting authorities is required.

Open tenders with English-language publication have high competitiveness indicator: almost three offers per tender on average, and the cost saving of 7.7%. This procurement type has strict requirements to potential suppliers due to high expected value of lots. Its specific feature is prequalification of tenderers. Under these conditions, the absence of winning offers from regular participants of these tenders requires attention from the public. We have identified six potential suppliers whose effectiveness of participation in tenders is questionable. Also, regular low participation in lots of a particular contracting authority requires thorough analysis.

Three auction organizers have had problems with this indicator during the analyzed period.

Open tenders as the main procurement procedure under the Law On Public Procurements were responsible for 6.9% of lots and 22.1% of expected value. The average competitiveness indicator for this procedure is 2.9 offers per tender. This indicator has the potential to grow, because the number of procurements concluded in the second half of 2016 was growing faster than the number of offers from businesses due to transition to ProZorro. We have also identified five tenderers and three organizers which were extremely unsuccessful at using this procedure: the former have won neither of the 301 price offers they submitted, and the latter spent UAH 103 million with the percentage of cost saving close to zero. A comparison of regions has revealed that the Kharkiv and Volhynian Oblasts have “distinguished” themselves with low cost savings (7.5% and 8.5%, respectively) and high percentage of disqualifications (19.8% and 18.5%, respectively), while the Ternopil and Volhynian Oblasts combine low cost savings with the lack of readiness to spend at open tenders (UAH 118 and UAH 126 per capita, respectively). It is worth emphasizing that at the same time, the overall cost saving under this procedure is quite high: 11.1%. In the opinion of TI Ukraine, open tenders must be encouraged, and further development of instruments for monitoring of this procedure seems to be an expedient measure.

Sub-threshold procurements may be considered the least transparent among competitive procedures. Its high cost savings (15.1%) are probably achieved due to the large number of cheap lots (with 37.8% of lots being responsible for only 11.3% of expected value) always attracting at least one potential supplier, while government regulation remains flawed. The main risk is the low number of unique price offers, found in 55.3% of tenders, which may be related to the sufficiency of at least one tenderer for the procedure to go ahead and shortened procurement terms. The insufficiently short clarification period and, therefore, large percentage of unanswered questions (17.4%) are also worth highlighting. As far as possible violations are concerned, we have identified 174 organizers whose tenders should be checked for the avoidance of open tenders. Documentation of sub-threshold procurement tenders requires special attention, because its analysis allows to identify instances of abusing this procurement type.

Overall, the changes in Ukraine’s public procurement sector are positive. Thanks to improvement of legislative framework and implementation of ProZorro e-procurement system, the capabilities of civic control have been greatly enhanced. Nevertheless, the phase of transition to e-procurement system cannot be considered completed. The key objective today is to develop cooperation between the state and the broad public to punish offenders and encourage positive practices. This cooperation would facilitate not only transparency but also effectiveness of public procurements.



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# Annex 1

Список випадків із 5 та більше лотів, придбаних шляхом звітування про укладений договір, коли середня очікувана вартість лоту між замовником та постачальником знаходиться в діапазоні від 185 тис. грн включно до 200 тис. грн.

Замовник	Постачальник	К-сть лотів	Частка участі	Очікувана вартість (грн)	Частка участі
Усі замовники	Усі постачальники	1 024	-	198 840 274	-
Відділ капітального будівництва Білоцерківської міської ради	ТОВ «Білоцерків-теплоенерго»	64	34%	12 168 046	27%
Державне підприємство «Селидіввугілля»	ТОВ «ДОНЕНЕРГО-ЕКСПОРТ»	59	17%	11 688 579	14%
Державне підприємство «Селидіввугілля»	ТОВ «ФЕБРЕРО»	50	15%	9 999 952	12%
Державне підприємство «Селидіввугілля»	ТОВ «ДТК-ТРЕЙДІНГ»	37	11%	7 399 967	9%
Державне підприємство «Селидіввугілля»	ТОВ «ТРИАЛТРЕЙД»	36	11%	7 199 964	9%
Управління житлово-комунального господарства Ізмаїльської міської ради	Приватне акціонерне товариство «Ізмаїл-агрошляхбуд»	33	28%	6 255 850	20%
Управління житлово-комунального господарства, благоустрою та екології Тернопільської міської ради	Товариство з обмеженою відповідальністю «АВАКС ПРОФ»	27	17%	5 369 400	11%
Департамент житлово-комунального господарства Херсонської міської ради	Приватне акціонерне підприємство «Херсонліфт»	25	18%	4 647 600	17%
Західне територіальне квартирно-експлуатаційне управління	Філія «ЛПП» ДП МО України «ЦПІ»	23	66%	4 526 000	33%
Комунальна корпорація «Київавтодор»	КП «Шляхово-експлуатаційне управління по ремонту та утриманню автомобільних шляхів та споруд на них Голосіївського району» м. Києва	23	8%	4 373 100	5%
Державне підприємство «Селидіввугілля»	ТОВ «ЕНЕРДЖИ УКРЕЙН»	18	5%	3 599 982	4%
Житлово-комунальний відділ Покровської міської ради Донецької області	ФОП Єфремов І.В.	15	3%	2 998 500	4%
Квартирно-експлуатаційний відділ м. Львова	ПАТ «Львівобленерго» Бориславський ВЕП	15	52%	2 827 747	60%
Старосинявська селищна рада	ТОВ «УКРАВТО-ЗАПЧАСТИНА»	15	31%	2 832 540	44%
Управління освіти і науки	ПП «ВКФ КОНКОРД»	15	23%	2 985 000	25%

Замовник	Постачальник	К-сть лотів	Частка участі	Очікувана вартість (грн)	Частка участі
ГП «Управління містобудування, архітектури та житлово-комунального господарства Знам'янської міської ради»	філія «Знам'янський райавтодор» ДП «Кіровоградський облавтодор» ПАТ «Державна акціонерна компанія «Автомобільні дороги України»	14	54%	2 742 800	24%
Житлово-комунальний відділ Покровської міської ради Донецької області	ФОП Бочко	14	3%	2 796 206	4%
КОМУНАЛЬНЕ ПІДПРИЄМСТВО «СПЕЦІАЛІЗОВАНИЙ МОНТАЖНО-ЕКСПЛУАТАЦІЙНИЙ ПІДРОЗДІЛ»	ПРИВАТНЕ ПІДПРИЄМСТВО «ПРОНЕТ»	14	15%	2 710 308	15%
Державне підприємство «Красноармійськвугілля»	ТОВ «Альянс-Трейд-Груп ЛТД»	12	5%	2 275 788	6%
Виконавчий комітет Апостолівської міської ради	ТОВ «Борисгруп»	11	24%	2 049 943	12%
Відділ освіти Покровської міської ради Донецької області	ФОП Соболев Євген Андрійович	11	6%	2 084 400	5%
Державне підприємство «Селидіввугілля»	ПП ТВО «ТЕХНАБ»	11	3%	2 199 989	3%
Комунальний заклад «Степнянська загально-освітня школа I-III ступенів Слобожанської селищної ради»	ПП «Союздорбуд»	11	85%	2 106 779	96%
Борзнянська міська рада	ТОВ «Борзнянська ПШМК»	10	67%	1 929 239	80%
Відділ освіти Покровської міської ради Донецької області	ФОП Лиховидова Віра Павлівна	10	5%	1 897 700	5%
ДВНЗ «Національна академія внутрішніх справ»	ТОВ Північ-Вікна	10	4%	1 880 257	6%
Департамент охорони здоров'я Херсонської обласної державної адміністрації	ТОВАРИСТВО З ОБМЕЖЕНОЮ ВІДПОВІДАЛЬНІСТЮ «ЗДРАВО»	10	100%	1 929 396	100%
Державне підприємство «Селидіввугілля»	ТОВ «БІРІНГ»	10	3%	1 999 990	2%
Корнинська сільська рада	ТОВ «Будівельна компанія "Будальянс груп»	10	16%	1 870 130	33%
Головне управління Державної міграційної служби України в Одеській області	ФОП «СКОРІКОВА МАРИНА ВОЛОДИМИРІВНА»	9	23%	1 687 372	38%
ДК «ГАЗ УКРАЇНИ» НАК «НАФТОГАЗ УКРАЇНИ»	ФОП Удовиченко В.М.	9	45%	1 719 000	66%
Житлово-комунальний відділ Покровської міської ради Донецької області	Товариство з обмеженою відповідальністю «ДОР СТРОЙ»	9	2%	1 735 549	2%
Маловиськівська міська рада	Філія «Маловиськівський райавтодор»	9	43%	1 751 003	66%



Замовник	Постачальник	К-сть лотів	Частка участі	Очікувана вартість (грн)	Частка участі
Управління міського господарства виконавчого комітету Мукачівської міської ради	Фізична особа-підприємець Колошко В.О.	9	15%	1 715 798	7%
Баранинська сільська рада	Будавтодор	8	31%	1 520 273	21%
Відокремлений підрозділ «Шахта 1-3 «Новгородівська» Державного підприємства «Селидіввугілля»	Товариство з обмеженою відповідальністю Виробнича фірма «Корнер-ПАК»	8	80%	1 599 992	82%
Департамент житлово - комунального господарства Херсонської міської ради	ФОП Ходикін Віктор Миколайович	8	6%	1 500 074	5%
Департамент міського господарства Одеської міської ради	Приватне підприємство «ЮНІВЕРСІБУД»	8	2%	1 520 430	2%
КП «Техкомунбуд»	Дочірнє підприємство «Полтавський облавтодор» відкритого акціонерного товариства «Державна акціонерна компанія «Автомобільні дороги України»	8	24%	1 546 868	21%
Національний університет оборони України імені Івана Черняхівського	ТОВ «Скай-Мед»	8	20%	1 546 227	26%
Оконська сільська рада	Публічне акціонерне товариство «Волинь-обленерго»	8	100%	1 513 465	100%
ПАТ Прикарпаття-обленерго	ТОВ Мегаватсервіс	8	7%	1 551 320	5%
Адміністрація Корабельного району Миколаївської міської ради	ТОВ «Гідротехнології»	7	14%	1 397 966	8%
Відділ культури Мирноградської міської ради	ФОП Жук Олена Вікторівна	7	47%	1 393 630	63%
Пасіки-Зубрицька сільська рада	ФОП Татаринцев О.В	7	39%	1 295 239	28%
Перечинська міська рада Закарпатської області	ФОП Вайс Олександр Олександрович	7	23%	1 308 547	31%
Смирновська сільська рада Більмацького району Запорізької обл.	ТОВ «Геокар»	7	54%	1 398 739	32%
Управління капітального будівництва	Дніпроцивільпроект	7	25%	1 300 000	14%
АРЦИЗЬКА МІСЬКА РАДА	КП «Благоустрій»	6	7%	1 149 962	23%
ВЕЛИКОДОЛИНЬСЬКА СЕЛИЩНА РАДА ОВДІОПОЛЬСЬКОГО РАЙОНУ ОДЕСЬКОЇ ОБЛ.	ТОВ «Меркурій-1»	6	18%	1 176 744	19%
Відділ освіти Барвінківської районної державної адміністрації	ПП «Строй Сити XXI»	6	32%	1 122 382	41%



Замовник	Постачальник	К-сть лотів	Частка участі	Очікувана вартість (грн)	Частка участі
Гатненська сільська рада	ФОП Манукян Смбат Володович	6	26%	1 110 100	27%
Департамент житлово - комунального господарства Херсонської міської ради	ТОВ «Сервісбуд-інвест»	6	4%	1 160 075	4%
Департамент міського господарства Ужгородської міської ради	ТОВ ВКП Мерістема	6	4%	1 191 023	3%
ДП Відділ освіти Полтавської районної державної адміністрації	ПП «Полтавагаззбуд-сервіс»	6	6%	1 113 923	5%
Кинашівська сільська рада	ПП «ШЛЯХБУД-КОМПЛЕКТ»	6	100%	1 159 273	100%
КП «Житомир-водоканал»	Приватне підприємство «Євродом Комфорт»	6	16%	1 185 807	10%
КУ Центр фінансування та господарської діяльності закладів та установ системи освіти Київського району м. Одеси	ТОВ «Алеф Люкс»	6	9%	1 124 545	9%
Прокуратура Донецької області	ТОВ «Параллель-ОПТ»	6	19%	1 198 852	23%
УДМС України в Чернігівській області	Товариство з обмеженою відповідальністю «ТЕНЗАСОЮЗБУД»	6	15%	1 166 557	25%
УПРАВЛІННЯ БУДИНКАМИ М. БУСЬКА	ДП «Базис Плюс»	6	67%	1 127 771	71%
Управління освіти адміністрації Київського району Харківської міської ради	ТОВ «ФІРМА «КОЛОРИТ-СТРОЙ»	6	27%	1 125 127	25%
УПРАВЛІННЯ ОСВІТИ, МОЛОДІ ТА СПОРТУ ВЕЛИКОНОВО-СІЛКІВСЬКОЇ РАЙОННОЇ ДЕРЖАВНОЇ АДМІНІСТРАЦІЇ	Идеал	6	11%	1 185 485	29%
ВИКОНАВЧИЙ КОМІТЕТ ДОБРОПІЛЬСЬКОЇ МІСЬКОЇ РАДИ	ТОВ КСІЛ-Україна	5	18%	991 008	25%
ВИКОНАВЧИЙ КОМІТЕТ ІРПІНСЬКОЇ МІСЬКОЇ РАДИ	КП «Ірпінжитло-інвестбуд»	5	9%	964 680	3%
ВИКОНАВЧИЙ КОМІТЕТ СОЛОНЯНСЬКОЇ СЕЛИЩНОЇ РАДИ	ПП «ЕВРОДОРСТРОЙ»	5	9%	971 275	6%
Відділ освіти Золотоніської районної державної адміністрації Черкаської області	ФОП МОРОЗ АНДРІЙ ОЛЕКСІЙОВИЧ	5	2%	934 929	11%
Відділ освіти Тетіївської РДА	ТОВ «КІІВОБЛГАЗ ЗБУТ»	5	28%	999 500	30%
Відокремлений підрозділ «Шахта «Росія» Державного підприємства «Селидіввугілля»	Товариство з обмеженою відповідальністю Виробнича фірма «Корнер-ПАК»	5	38%	999 995	45%



Замовник	Постачальник	К-сть лотів	Частка участі	Очікувана вартість (грн)	Частка участі
Грнополопківська сільська рада	Рожищенський райавтодор	5	33%	974 877	36%
Головне управління Національної поліції у місті Києві	ТОВ «НВЦ «Інфозахист»	5	10%	988 380	15%
ГП "НОСІВСЬКА СЕЛЕКЦІЙНО-ДОСЛІДНА СТАНЦІЯ МИРОНІВСЬКОГО ІНСТИТУТУ ПШЕНИЦІ ІМЕНІ В.М. РЕМЕСЛА НАЦІОНАЛЬНОЇ АКАДЕМІЇ АГРАРНИХ НАУК УКРАЇНИ"	ТОВ "ВКФ «Агронафтопродукт»	5	25%	998 808	29%
ДВНЗ «Національна академія внутрішніх справ»	ТОВ Український виробничо-буд. Альянс Центр	5	2%	987 100	3%
Департамент житлово - комунального господарства Херсонської міської ради	ПП ПБМФ «Промальп»	5	4%	932 460	3%
Департамент житлово - комунального господарства Херсонської міської ради	Приватна фірма «Оттиск»	5	4%	981 450	4%
Департамент патрульної поліції	ТОВ«Едванс Компані»	5	3%	986 064	4%
Державна установа "Національний науковий центр радіаційної медицини Національної академії медичних наук України"	ТОВ «Юрія - Фарм»	5	45%	999 739	46%
Державне підприємство «Селидіввугілля»	ТОВ «ЛІДЕР ПРОМСНАБ»	5	1%	999 995	1%
КОМУНАЛЬНЕ ПІДПРИЄМСТВО «ДОБРОПІЛЬСЬКА СЛУЖБА ЄДИНОГО ЗАМОВНИКА»	ТОВ КСІЛ-Україна	5	9%	992 648	11%
КОМУНАЛЬНЕ ПІДПРИЄМСТВО "ОБЛТРАНСБУД"	ООО «Арев буд»	5	3%	986 697	1%
Комунальне підприємство «Управління міського господарства»	ФОП Єфремов І.В.	5	4%	999 500	7%
КП «ЖИТЛОВО-ЕКСПЛУАТАЦІЙНА КОНТОРА-1 ЮВІЛЕЙНОЇ СЕЛИЩНОЇ РАДИ»	Товариство з обмеженою відповідальністю «Еленберг»	5	5%	938 600	10%
Михайлівська селищна рада Михайлівського району Запорізької обл.	ФОП Геворгян Геворг Гришасевич	5	25%	996 757	25%
Надвірнянська міська рада	КП «Надвірнаводо-канал»	5	15%	998 913	23%
НАЦІОНАЛЬНИЙ УНІВЕРСИТЕТ «ОДЕСЬКА ЮРИДИЧНА АКАДЕМІЯ»	ФОП Павлівський Руслан Олександрович	5	6%	994 861	7%
Нововодолазька селищна рада	ФОП Бережньов А.Г.	5	17%	927 295	23%
Новолуганська сільська рада	ФОП Світенко Роман Олегович	5	83%	941 443	83%

Замовник	Постачальник	К-сть лотів	Частка участі	Очікувана вартість (грн)	Частка участі
ПАТ «АК "Київводоканал»	Товариство з обмеженою відповідальністю «НВП Хімпродукт»	5	4%	980 000	1%
ПАТ «Чернігівобленерго»	ТОВ «Промінвестбуд Славутич»	5	4%	993 885	6%
Служба автомобільних доріг у Тернопільській області	ФОП Гуменний Михайло Іванович	5	20%	959 663	16%
Територіальне управління Державної судової адміністрації України в Київській обл.	ФОП Мусієнко Людмила Михайлівна	5	29%	949 996	22%
Територіальне управління державної судової адміністрації України в Львівській обл.	ПП МЕБЛІ СЕРВІС	5	13%	950 300	11%
Управління житлово-комунального господарства Ізмаїльської міської ради	ФОП Арнаут Іван Дмитрович	5	4%	978 084	3%
Управління освіти Бахмутської міської ради	ФОП Татаринів Євген Леонідович	5	17%	997 674	16%
Управління освіти Дарницької районної в місті Києві державної адміністрації	Товариство з обмеженою відповідальністю «Науково-виробниче підприємство «ТПН-ЕКОТЕХ»	5	6%	967 340	7%
Управління освіти Дарницької районної в місті Києві державної адміністрації	ФОП Яворська Лілія Володимирівна	5	6%	997 286	8%
Устилузька міська рада	ТзОВ «Луцьккомунбуд»	5	23%	934 802	27%

## Annex 2

Список випадків із 2 та більше лотів, придбаних шляхом звітування про укладений договір, коли середня очікувана вартість лоту між замовником та постачальником знаходиться в діапазоні від 1,45 млн грн включно до 1,5 млн грн.

Замовник	Постачальник	К-сть лотів	Частка участі	Очікувана вартість (грн)	Частка участі
Усі замовники	Усі постачальники	46	-	68 067 006	-
ПАТ Київобленерго	Товариство з обмеженою відповідальністю «ІБК ЕНЕРГОКАПІТАЛ»	7	5%	10 428 844	7%
Відокремлений підрозділ «Складське господарство державного підприємства «Національна атомна енергогенеруюча компанія «Енергоатом»	ТОВ «Атоммонтаж-сервіс»	5	38%	7 322 419	56%
Управління капітального будівництва Луганської обласної державної адміністрації	Колективне підприємство «Кремінський Агрошляхбуд»	5	6%	7 267 660	10%
Управління капітального будівництва Одеської міської ради	Береж Буд Товариство з обмеженою відповідальністю	5	3%	7 484 528	7%
Державне підприємство «Селідіввугілля»	ТОВ «НОВГОРОДСЬКИЙ МАШИНО-БУДІВЕЛЬНИЙ ЗАВОД»	4	1%	5 999 996	7%
Кремінська обласна спеціальна загальноосвітня школа-інтернат	ТОВ «Н.В.М.»	4	100%	5 876 200	100%
Національний Фармацевтичний Університет	Товариство з обмеженою відповідальністю «ІНВЕСТБІЛДІНГ ГРУП»	4	1%	5 964 000	49%
КП Одеська обласна енергозберігаюча компанія	ТОВАРИСТВО З ОБМЕЖЕНОЮ ВІДПОВІДАЛЬНІСТЮ «ПРИМОРСТРОЙ»	3	4%	4 495 800	26%
НАЦІОНАЛЬНИЙ УНІВЕРСИТЕТ «ОДЕСЬКА ЮРИДИЧНА АКАДЕМІЯ»	Товариство з обмеженою відповідальністю «УКРПРОМСТРОЙ»	3	3%	4 434 688	33%
ПРИВАТНЕ АКЦІОНЕРНЕ ТОВАРИСТВО «ЛЬВІВСЬКИЙ ЛОКОМОТИВО-РЕМОНТНИЙ ЗАВОД»	ТОВАРИСТВО З ОБМЕЖЕНОЮ ВІДПОВІДАЛЬНІСТЮ «ДОНЕЦЬК-СПЕЦСТАЛЬ»	3	11%	4 380 000	7%
Служба зовнішньої розвідки України	ТОВ «НАВІГАТОР КОРПОРЕЙШН»	3	7%	4 412 870	8%

## Annex 3

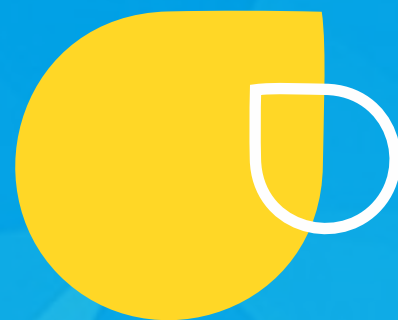
Список замовників, для яких середня очікувана вартість лотів, придбаних на допороговій закупівлі, знаходиться між 199 тис. грн включно та 200 тис. грн.

Замовник	К-сть лотів	Очікувана вартість (грн)
<b>Усі замовники</b>	<b>68</b>	<b>13 562 745</b>
1 Державна пожежно-рятувальна частина Головного управління ДСНС України у Миколаївській області	1	199 000
3 ДПРЗ У ДСНС України у Чернігівській області	1	199 000
27 ДЕРЖАВНА ПОЖЕЖНО - РЯТУВАЛЬНА ЧАСТИНА УПРАВЛІННЯ ДЕРЖАВНОЇ СЛУЖБИ УКРАЇНИ З НАДЗВИЧАЙНИХ СИТУАЦІЙ У КІРОВОГРАДСЬКІЙ ОБЛАСТІ	1	199 000
30 Державна пожежно-рятувальна частина Управління ДСНС України у Кіровоградській області	1	199 000
Військова частина А3955	1	199 000
Військова частина А0177	1	199 000
Військова частина А3723	1	199 000
Головне територіальне управління юстиції у Хмельницькій області	1	199 000
ДП «26 Державна пожежно-рятувальна частина Управління Державної служби України з надзвичайних ситуацій у Кіровоградській області»	1	199 000
ДПРЧ-31 У ДСНС України у Кіровоградській області	1	199 000
ДПРЧ-33 У ДСНС України у Кіровоградській області	1	199 000
КЗ «Центр первинної медико-санітарної допомоги Онуфріївського району»	1	199 000
Київське державне хореографічне училище	1	199 000
Комунальне підприємство «Житомирський обласний лікувально-санаторний центр радіаційного захисту для дитячого та дорослого населення «Дениші» Житомирської обласної ради	1	199 000
КУ «Пологівська районна стоматологічна поліклініка» Пологівської районної ради Запорізької області	1	199 000
Макарівська квартирно-експлуатаційна частина району	1	199 000
Надвірнянська міська рада	1	199 000
Немирівська районна державна лікарня ветеринарної медицини	1	199 000
ОБ'ЄДНАННЯ СПІВВЛАСНИКІВ БАГАТОКВАРТИРНОГО БУДИНКУ «СОНЯЧНИЙ 8 ДНІПРО»	1	199 000
Об'єднання співвласників багатоквартирного будинку «Тополя-3/21»	1	199 000
Об'єднання співвласників багатоквартирного будинку «Тверська 13»	1	199 000
ОСББ «ШТУРМАНСЬКИЙ 7»	1	199 000
Хмельницький обласний центр екстреної медичної допомоги та медицини катастроф	1	199 000



Замовник	К-сть лотів	Очікувана вартість (грн)
23 ДПРЧ ГУ ДСНС України у Миколаївській області	1	199 080
12 ДПРЧ ГУ ДСНС України у Микол. обл.	1	199 180
Головне управління Пенсійного фонду України в Кіровоградській області	1	199 200
Головне управління Пенсійного фонду України в Тернопільській області	1	199 200
4 Державна пожежно-рятувальна частина Головного управління ДСНС України у Миколаївській області	1	199 425
13 Державна пожежно-рятувальна частина ГУДСНС України у Миколаївській області	1	199 500
14 ДПРЧ ГУ ДСНС України у Миколаївській області	1	199 500
17 ДПРЧ ГУ ДСНС України у Миколаївській області	1	199 500
18 Державна пожежно-рятувальна частина Головного управління Державної служби України з надзвичайних ситуацій у Миколаївській області	1	199 500
19 Державна пожежно-рятувальна частина Головного управління Державної служби України з надзвичайних ситуацій у Миколаївській області	1	199 500
25 Державна пожежно-рятувальна частина Головного управління ДСНС України у Миколаївській області	1	199 500
Військова частина А1201	1	199 500
Клепачівська сільська рада Хорольського району Полтавської області	1	199 500
КОМУНАЛЬНИЙ ЗАКЛАД «ЗАПОРІЗЬКА ЗАГАЛЬНООСВІТНЯ САНАТОРНА ШКОЛА-ІНТЕРНАТ №7 І-ІІ СТУПЕНІВ» ЗОР	1	199 500
Об'єднання співвласників багатоквартирного будинку «Панікахи 97»	1	199 500
Державне підприємство «Шахта ім. М.С. Сургая»	1	199 796
ДЕРЖАВНИЙ ПРОФЕСІЙНО-ТЕХНІЧНИЙ НАВЧАЛЬНИЙ ЗАКЛАД «ВІННИЦЬКЕ ВИЩЕ ПРОФЕСІЙНЕ УЧИЛИЩЕ СФЕРИ ПОСЛУГ»	1	199 800
КЗ ЛОР «ЛОЦ МСЕ»	1	199 850
Відділ освіти Пулинської районної державної адміністрації Житомирської області	1	199 900
Відділ транспорту, зв'язку та енергетики Краматорської міської ради	1	199 900
Комунальне спортивно-оздоровче підприємство «Буковина»	1	199 900
КП «Історико-культурний заповідник «Кладовища по вул. Зеленій»	1	199 900
Об'єднання співвласників багатоквартирного будинку «Кристал по вулиці Янтарна 79 у м.Дніпропетровську»	1	199 900
ОБ'ЄДНАННЯ СПІВВЛАСНИКІВ БАГАТОКВАРТИРНОГО БУДИНКУ «МАЛИНОВСЬКОГО, 10»	1	199 900
ОСББ «Квартет-Л3»	1	199 900
Стрийське об'єднане управління Пенсійного фонду України Львівської області	1	199 902

Замовник	К-сть лотів	Очікувана вартість (грн)
4 Державний пожежно-рятувальний загін Головного управління державної служби України з надзвичайних ситуацій у Рівненській області	1	199 925
Яблунівська сільська рада	1	199 938
Пролетарська сільська рада	1	199 987
ЛЬВІВСЬКИЙ ОБЛАСНИЙ ЦЕНТР СЛУЖБИ КРОВІ	1	199 990
Турківська комунальна центральна районна лікарня	1	199 990
Господарський суд Вінницької області	1	199 998
ОБ'ЄДНАННЯ СПІВВЛАСНИКІВ БАГАТОКВАРТИРНОГО БУДИНКУ «ДАРНИЦЬКА, 19»	1	199 998
ЖИТЛОВО-БУДІВЕЛЬНИЙ КООПЕРАТИВ №185 «СОЮЗ»	1	199 999
Об'єднання співвласників багатоквартирного будинку «Недріна, 47»	1	199 999
ОБ'ЄДНАННЯ СПІВВЛАСНИКІВ БАГАТОКВАРТИРНОГО БУДИНКУ «ЩЕРБИНИ-31»	1	199 999
ОСББ «Слави 18»	1	199 999
Відділ освіти і науки Таращанської РДА	2	398 000
КОМУНАЛЬНЕ ПІДПРИЄМСТВО «ЦЕНТРАЛЬНИЙ ПАРК КУЛЬТУРИ ТА ВІДПОЧИНКУ ІМЕНІ М. ГОРЬКОГО»	2	399 400
ГО «Федерація легкої атлетики м. Кієва»	3	599 790



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