

Amendments to the Law of Ukraine “On public procurement”

On April 19, 2020, amendments to the Law on Public Procurement, adopted in September last year, came into force.

The amendments introduce a lot of innovations that significantly change the usual procedures for the procurement participants and customers.

One of the main amendments is the reduction of “sub-threshold purchase from 200 thousand UAH to 50 thousand UAH. With this, the customer must now report (publish on ProZorro) information on concluded contracts, regardless of their amount (previously, information about contracts less than 50 thousand UAH was not published).

Purchases worth from 50 thousand UAH up to 200 thousand UAH are conducted under a simplified procedure, the main feature of which is the reduced purchase term - the announcement is published 6 working days before the date of submission of offers. For purchases less than 50 thousand UAH an electronic catalog system is created - in fact the price offers of companies for various goods that the customer can use when purchasing.

Another new procurement procedure is tendering with a limited number of participants. In fact, this is a well-known international donor procurement procedure, a two-step procurement procedure. In the first stage, a qualification selection of procurement participants is conducted. The number of participants who submitted a proposal must be at least four. In the second stage, which should be admitted to at least three participants, direct bidding is made directly but among the participants who have qualified in the first stage.

Important innovations also apply directly to the open tender procedure. Thus, customers can use the new additional criterion in the form of financial capacity of participants. However, the minimum size can not be more than the expected value of the purchase itself.

Another important innovation of the procedure is the ability to eliminate minor deficiencies in the tender offer of the winning tenderer within 24 hours from the date of announcement. From now on, the customer will no longer be able to reject participants for formal reasons in the absence of separate pages of documents or errors in the submitted offer.

It is also worth noting the introduction of a new term - an abnormally low purchase price. If the price of the most economically advantageous bid by auction results is less than 40 percent or more than the arithmetic mean of the price of the other participants at the initial stage of the auction, and/or is less than 30 percent or more than the next bid/quoted bid price. According to the results of the electronic auction, the system automatically marks the bidder's price as abnormally low.

In such a case, the participant is obliged to provide a justification for its price and must reject the offer of the winner, if such justification does not confirm the reality of the bid.

Additional conditions for rejection of the participant's proposal were introduced: the presence of tax arrears and fees and negative experience with the bidder over the last three years.

As a whole, amendments to the law should increase the level of control and transparency of procurement procedures and eliminate a number of critical problems that have existed and have been widely used for abuses in the past.

However, new procedures should be tested in practice for their feasibility and effectiveness.

This Legal Alert is intended as a general overview of latest changes in legislation of Ukraine and does not constitute a legal advice.

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