



PUBLIC PROCUREMENT IN UKRAINE – A SYSTEM TRANSFORMED



Last year saw two seismic shifts in Ukraine’s public procurement landscape: accession to the World Trade Organization (WTO) Agreement on Government Procurement (GPA) and the introduction of electronic procurement for the purchase of goods, works and services by government bodies.

These changes, delivered with EBRD support, seek to completely transform public procurement in Ukraine, opening a new era of transparency after decades of endemic corruption linked to government contracts. They are also expected to generate huge savings for the public purse, improve the quality of public service delivery and help promote economic growth.

Particularly as a result of ProZorro, the country’s new electronic procurement system, large numbers of local suppliers are learning to trust the public procurement market for the first time and participate in bidding, which means competition is growing and Ukrainian taxpayers are getting better value for money. ProZorro also constitutes a model for civil society-led reform projects.

WTO GPA accession allows businesses from other GPA countries to bid for Ukrainian public contracts, further stimulating competition while also giving the Ukrainian authorities access to the best suppliers the world has to offer. At the same time, becoming a member of the WTO GPA hugely increases the size of the procurement market available to Ukrainian businesses, creating major new growth opportunities for them. In particular, GPA membership gives Ukrainian companies equal access to procurement markets within the European Union (EU), without having to wait for Ukraine’s EU accession process to be finalised.

“The EBRD played a key role in Ukraine’s WTO GPA accession and in the introduction of electronic procurement – known as e-procurement – at a time of great political turbulence in Ukraine,” says Eliza Niewiadomska, Senior Counsel at the EBRD, who works on procurement reforms. “The Bank’s Legal Transition Programme (LTP) remained a steadfast partner throughout this uncertainty, helping to ensure that the country’s ambitious procurement reform agenda stayed on track while achieving maximum impact.”

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A LEGACY OF CORRUPTION

WTO GPA accession and e-procurement represent the first successful efforts to modernise Ukraine's public procurement in a decade. One long-lasting legacy of the Soviet era was a procurement regime controlled by the country's ruling elite and exploited in their financial and political interests. A dense network of red tape ensured that discretionary decisions about the awarding of public contracts remained hidden from public scrutiny. As well as creating the conditions for opportunistic nepotism and bribery to proliferate, this lack of transparency allowed vertical schemes for the shadow funding of political parties to flourish.

The cost to Ukrainian taxpayers was huge. Typically, procurement spending represents some 10 to 20 per cent of GDP and accounts for up to 50 per cent of direct government expenditure. Ukraine's public procurement budget is valued at 250 billion hryvnia (€8.7 billion equivalent) annually. In 2015, the government estimated that about 50 billion hryvnia (€1.74 billion equivalent) per year was lost to corruption in procurement.

Starting in 2006, the Ukrainian government made several attempts to reform the procurement system. These met with little success and some of the changes even seemed designed to work against the promotion of transparency: many of the more than 20 amendments to the 2010 Public Procurement Law (PPL) introduced exemptions to the rules requiring competitive tendering, thereby increasing the scope for discretionary decision-making about the awarding of public contracts.

SEEDS OF CHANGE

The Ukrainian authorities sowed the seeds for more meaningful procurement reform in 2011 when they asked the EBRD for assistance with their application to join the WTO GPA. This agreement aims to open government procurement markets up to international competition and provide legal guarantees of non-discrimination with regard to the products, services or suppliers of any party to the agreement. Because the GPA commits parties to high levels of transparency, accession to the agreement is an important signal of a country's commitment to good governance and a valuable weapon in the fight against corruption.

There are also huge economic benefits associated with GPA membership. Parties to the GPA include Canada, the EU, Japan, New Zealand, Norway,



Republic of Korea, Switzerland, Taipei China and the United States of America (USA). Government procurement accounts for an average of 15 per cent or more of gross domestic product in developed and developing countries. As a result, GPA members have access to a worldwide procurement market valued at some US\$ 1.7 trillion (€1.6 trillion equivalent) per year.

Countries are required to negotiate accession to the GPA on joining the WTO, which for Ukraine occurred in 2008. The EBRD is committed to helping those of its countries of operations pursuing accession to the GPA with the long and complicated membership negotiation process.

NEW GPA STANDARDS

In 2012, a year after the Bank began working with Ukraine on this issue, the WTO adopted a revised GPA that created modern policy standards, including new provisions relating to the prevention of corrupt practices, and expanded trade access for GPA parties. An important part of the new GPA text, which came into force in April 2014, related to the use of e-procurement tools for public tenders.

The revisions to the GPA provided further motivation for a number of countries to consider accession to the agreement as a step in their reform process. This growing interest prompted the EBRD and the WTO GPA Secretariat, which had already collaborated informally on promoting increased membership, to cooperate in a more structured way, resulting in the creation of the EBRD GPA Technical Cooperation Facility (the EBRD GPA TC Facility).

Launched in May 2014, the EBRD GPA TC Facility provided Ukraine and four other countries with an assessment of their legal compliance with the standards of the GPA and with policy advice throughout the GPA accession negotiation process. The donor-funded instrument also promoted capacity building through training sessions and conferences and delivered technical advice on bringing national procurement legislation in line with GPA standards.

“We helped the Ukrainian government work out how to approach the whole accession process,” says Eliza. “As well as giving them advice on how to change their procurement legislation, we worked with the Ministry of Economic Development and Trade (MEDT) of Ukraine to devise a negotiation strategy and advised the ministerial team during their negotiations with the GPA parties.”

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A RELIABLE PARTNER IN TIMES OF CRISIS

The EBRD maintained this cooperation with the Ukrainian authorities throughout the political crisis that erupted in early 2014 when protests on Kiev’s Maidan square led to the departure of President Viktor Yanukovich.

Ukraine adopted new public procurement legislation in April 2014. This was revised in September 2015 and again in December 2015 to reflect the mandatory GPA standards. Ukraine completed its GPA accession negotiations in November 2015, ratified its accession to the WTO Agreement in April 2016 and officially joined the GPA in May of that year.

“WTO GPA accession opens the door to Ukrainian companies hoping to work in much larger procurement markets and in particular gives them equal treatment on high value procurement projects in the European Union,” says Eliza. “It also allows foreign bidders to enter the Ukrainian procurement market, ensuring that the Ukrainian government has access to the best quality goods and services and that Ukrainian taxpayers get the best value for money. This is especially important for those tenders where the latest technology is needed.”

Following accession, the EBRD continues to work closely with the Ukrainian government on implementing the reforms required by the GPA. The Bank is also working with Ukrainian businesses to encourage them to compete for public tenders in GPA countries. In particular, the EBRD’s Trade Facilitation Programme (TFP) provides Ukrainian companies with advice and financial support regarding procurement opportunities now open to them in Europe and globally.

E-PROCUREMENT – MAKING TRANSPARENT PUBLIC PROCUREMENT A REALITY

The second major change to the government purchase of goods, works and services in Ukraine is the introduction of electronic procurement. Electronic exchange of tender information and documents increase the speed and efficiency of purchasing processes. In addition, electronic tendering removes much of the opportunity for dishonest practices – such as soliciting bribes for preferential treatment – that can arise in paper-based procurement systems. Without e-procurement, even the best public procurement legislation is open to abuse by unscrupulous officials when it comes to implementation.

According to Transparency International, the global anti-corruption non-governmental organisation (NGO): “the benefits of e-procurement are many and include improvements in market access and competition, promotion of integrity, reduced information costs, easier access to information and increased transparency and accountability (...) E-procurement also has the capacity to prevent and reduce the opportunities for corruption in the different stages of public procurement.”

Transparency International adds, however, that: “countries have to invest in coherent legal frameworks, training and oversight capacity to ensure that the potential benefits of e-procurement in terms of reducing corruption are exploited to their maximum.”

THE PUSH FOR E-PROCUREMENT

In Ukraine, the Maidan revolution of early 2014 provided a significant opportunity to renew efforts to combat corruption in the public procurement system. At the time, this system involved more than 16,000 contracting authorities and 25,000 tender committees. These oversaw more than 1.5 million transactions per year, of which about 100,000 were above the thresholds of 100,000 hryvnia (€3,480 equivalent) for goods and 1.5 million hryvnia (€0.052 million equivalent) for works.

The change of government saw a large number of civil society activists, many of whom had a track record of campaigning against corruption, take up positions in the new administration. The new PPL of April 2014 reduced from 43 to 13 the number of types of public contract that were exempt from competitive tendering, while also bringing Ukrainian legislation closer to EU standards and the requirements of the WTO GPA. In late 2014, a new draft law that sought to implement e-procurement went before lawmakers but failed to win enough support to pass into legislation.

Faced with this reversal, the Deputy Head of the Presidential Administration, Dmitry Shimkiv, suggested launching a pilot e-procurement project in order to establish the potential benefits of electronic tendering and purchasing and to help understand how it could be regulated. The pilot would apply to below-threshold tenders. These account for around half of Ukraine’s procurement budget but, because they were not regulated by Ukrainian procurement legislation, a pilot project could proceed without the need for a government licence.

INTRODUCING PROZORRO

To launch the pilot project, officials drew on a civil society initiative led by Transparency International Ukraine called ProZorro. The project (whose name means “transparent” in Ukrainian) is the result of what ProZorro’s promoters describe as a “golden triangle” of partnership between civil society, businesses and regulators. In keeping with this model of maximum stakeholder participation, ProZorro promotes open data, relies on open-source software and draws on crowdfunding and donations to meet its costs.

A pilot of ProZorro was launched in February 2015 for voluntary use by contracting authorities for micro-value procurement transactions. Thanks to its successful early results, in April 2015 ProZorro volunteer Olexandr Starodubtsev was appointed to a regulatory position in charge of public procurement reform in Ukraine, further strengthening the collaboration between the government and civil society on the pilot.

The EBRD contributed to ProZorro by working with two technical experts on the design of the e-procurement concept. The experts, David Marghania and Tato Urjumelashvili, had implemented electronic procurement reforms in their home country, Georgia, and worked with the Bank on public procurement reforms in the Kyrgyz Republic, Mongolia, Tajikistan and Tunisia. For the Ukrainian public procurement market the pair devised a hybrid model that stores all procurement data in one central database, but allows suppliers and contracting authorities to access that data from a number of different electronic platforms, choosing the one that best serves their needs.





INNOVATIVE MODEL

This multi-platform model allowed ProZorro to take advantage of the large number of existing commercial electronic platforms in Ukraine. As well as avoiding the costs and potential technical difficulties associated with building a single platform from scratch, this hybrid approach kept ownership of the platforms within the private sector. E-platforms charge suppliers a small access fee, part of which is used to pay for the administration of the central database unit. As a result, both the platforms and the central unit remain financially independent from any political decisions.

Using an application programming interface (API), all the platforms in ProZorro are connected to the central database and information about any public tender announcement is shared with them and their users simultaneously. Stakeholders can use any commercial platform linked to the central unit to ask questions and submit bids. All data formats, tender procedures and other rules are standardised and made uniform for all of the commercial platform operators. Information relating to the tender process, including suppliers' offers, can be accessed and monitored by anyone.

All of the data from ProZorro is structured in line with the Open Contracting Data Standard,² making cross-country data comparison and analysis possible. The code for the central database is based on the open-source Apache 2.0 licence, free software licence written by the Apache Software Foundation, an American non-profit corporation. It is freely available for download on the internet. Opening of the source code allows Ukraine's very strong programming community to help improve the system and helps other countries wishing to implement a similar system.

Civil society plays a role in monitoring the ProZorro system through a business intelligence (BI) module that is open to everyone. The creation of this module was made possible thanks to a donation from Qlik, a leading BI software company based in the USA.

The low costs of the ProZorro pilot were covered by the donation from Qlik, EBRD funding for the technical experts and a US\$ 35,000 (€33,000 equivalent) contribution to Transparency International Ukraine from the seven commercial platform operators involved in launching the project. Owing to Transparency International's very strong reputation, its role in the pilot project was a key factor in eliciting funding from private and international donors.

Volunteers from Ukrainian IT companies and business schools and other individuals worked for the project on a *pro bono* basis.

STRONG RESULTS

The results of the pilot project were very encouraging. By March 2016, more than 3,900 governmental organisations from across Ukraine had joined ProZorro and saved more than 1.5 billion hryvnia (€52.2 million equivalent). These public agencies in the fields of defence, policing, customs, health, infrastructure and energy, among others, had awarded more than 85,000 tenders through ProZorro by July 2016. The pilot was supported by more than 30 training sessions organised in the Ukrainian regions, in addition to online training.

Based on the lessons learned from ProZorro, the Ukrainian parliament passed new legislation on public procurement in December 2015. This came into effect on 1 August 2016, making electronic procurement procedures conducted on ProZorro mandatory for all purchases by all public bodies in Ukraine.

Ukraine's National Reforms Council has recognised the value of ProZorro and lauded public procurement as the most successful reform in the country. ProZorro's achievements received international acknowledgement when the project won the prize for best public sector initiative at the prestigious World Procurement Awards in London in May 2016, beating entries from Australia, the UK and the USA.

"Since its full roll-out, ProZorro has been operating electronic procurement procedures in compliance with the 2012 WTO GPA and with EU procurement policies and its user numbers are consistently growing," says Olexandr Starodubtsev, now Director

of Public Procurement at the MEDT. "Each week new contracting entities are posting their procurement notices on ProZorro and new suppliers are getting access to public contracts. We keep improving the system's functionality and user experience while also saving public money, as anyone can see in real time by visiting the ProZorro monitoring website.³ Since its launch in February 2015 ProZorro has saved 4.46 billion hryvnia (€155 million equivalent)!"

Olexandr adds: "On the technology side, we are proud that ProZorro applications are open source and open data ready and that all of its data is structured in line with the Open Contracting Data Standard, enabling cross-country procurement information comparison and analysis. This makes ProZorro a showcase for the Open Contracting Partnership, which is an international initiative aimed at enhancing disclosure and participation in public contracting."



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ONGOING SUPPORT FOR PROCUREMENT REFORMS

Now that e-procurement is a reality in Ukraine, the focus of EBRD work in this area is on making sure ProZorro delivers procurement that is suitable for different types of public contract and is compliant with WTO standards. Another concern is to provide training that helps public bodies and suppliers get the most out of the new system.

“We need to create an understanding among procurement officers as well as within the business community of how to operate in the electronic environment,” says Eliza. “For that purpose, we have been funding TC projects in other EBRD countries of operations to develop workshops and seminars promoting knowledge on electronic public procurement. We have also included the case of Ukraine in the recent policy publication *Are you ready for eProcurement?* which is available on ebrd.com.”⁴

In addition, the EBRD is working to give civil society the tools to effectively monitor electronic public procurement procedures. In cooperation with Transparency International Ukraine and the Partnership for Transparency Fund, the EBRD set up a project funded by the Czech Republic and the EBRD-Ukraine Stabilisation and Sustainable Growth Multi-Donor Account.

This project works on developing tools for monitoring electronic procurement conducted on ProZorro. It will also provide training for civil society organisations so that they can use these new tools to monitor local and municipal procurement transactions as effectively as possible. Robust independent monitoring of ProZorro is important for the credibility of the new system and builds confidence in the wider investment climate.

Potential investors also need to know that there is an effective complaints mechanism for private contractors bidding for public contracts. The Anti-Monopoly Committee of Ukraine (AMCU), the public procurement review body, needs to handle complaints swiftly and transparently to establish the trust of investors and ensure the smooth running of the procurement market. For this reason, an EBRD technical cooperation project will provide high-quality judicial skills training for the AMCU. This will take into account key tribunal competencies, such as how to conduct hearings, find best remedies and manage conflicts of interest.

COMPLETE OVERHAUL

“What has been achieved in Ukraine is an overhaul of the entire system of public procurement, sparked and delivered by civil activists and marked by their determination to change the relationship between the public and private sectors in Ukraine,” says Eliza. “With the WTO GPA accession process providing a global policy context, ProZorro has gained the trust of local business thanks to its innovative approach and robust review and remediation procedures.

“Now the Ukrainian government is making open access to public information a standard for its new policies. This is a welcome shift that enables civil society to play a role in increasing the transparency and accountability of public decisions. The combination of sound policy standards and the determination to implement them has started paying off in Ukraine.”

- 1 Unless otherwise stated, Mike McDonough, Staff Writer, EBRD Communications, wrote the majority of the articles in this year's journal. He also co-edited this edition. He can be contacted on McDonouM@ebrd.com
- 2 <http://standard.open-contracting.org/latest/en/#> (last accessed on 9 January 2017).
- 3 <https://prozorro.gov.ua/en/monitoring/> (last accessed on 9 January 2017).
- 4 <http://www.ebrd.com/what-we-do/sectors/legal-reform/public-procurement.html>

