

Memorandum of Understanding

between the Ministry of Economic Development and Trade of Ukraine
and the European Bank for Reconstruction and Development
to promote the development of the public procurement sector in Ukraine

Objective

1. The purpose of this Memorandum of Understanding (hereinafter the “Memorandum”) is to outline the endeavours towards co-operation between the Ministry of Economic Development and Trade of Ukraine (hereinafter the “MEDT”) and the European Bank for Reconstruction and Development (hereinafter the “EBRD”), hereinafter the Parties, concerning the improvement of public procurement policies and procedures in Ukraine.

Background

2. The MEDT, as an executive body, being responsible for setting and implementing state policy in public procurement, as well as for coordination of the work related to initiation, preparation and implementation of the projects fostering economic and social development of Ukraine supported by the International Financial Institutions (the “IFIs”), is committed to analysing best international practices in the field of public procurement, including the relevant policies and procedures of the IFIs. The EBRD has a commitment to this process in the Ukraine by virtue of its remit through the Agreement Establishing the European Bank for Reconstruction and Development, dated 29 May 1990. The EBRD, as a regional investor, has a role in promoting this process, specifically by encouraging the development of a healthy balance between competition and the transparency as well as efficiency and economy aspects of public procurement regulations in the Ukraine.
3. Healthy development of the public procurement sector in Ukraine is dependant on improving national practices and regulatory requirements for public procurement. Taking into account the historical development of the Ukrainian public procurement system and the recent evolution of the international public procurement legal instruments, of major current interest is the development of a stable public procurement legal framework in the Ukraine that enables both the efficiency and the integrity of public spending.

The Importance of Regulatory Reform

4. The MEDT recognises that major infrastructure projects are commissioned as public procurement contracts or in the framework of public-private partnership (PPP) and for this reason good public procurement regulations in the Ukraine are crucial. The efficiency of public procurement is strictly related to the legislation in force and the effectiveness of the activities of the regulators of public procurement.
5. In order to benefit from increasing efficiency and transparency of public spending, the MEDT recognises that the national public procurement system should be developed further to enable improved competition, economy and transparency.

Agreements

6. The MEDT and the EBRD will endeavour to commit to the principles of promoting the establishment of stable and competitive public procurement regulatory frameworks in the Ukraine.

This means in particular that the MEDT and the EBRD will endeavour to:


- 1) develop and strengthen further cooperation in the field of public procurement and monitoring of public procurement, as well as legal regulation of public procurement;
 - 2) exchange of information, under current legislation of Ukraine on a permanent basis, for technical assistance and public investment projects in this field (if it is necessary);
 - 3) engage in consultations with regard to the application of the public procurement legislation, as appropriate;
 - 4) adopt forms of interaction in the field of regulation of public procurement, including methodological assistance, exchange of expert surveys and consultants' reports;
 - 5) collaborate in order to conduct systematic training activities with the purpose of:
 - (a) effective training of public procurement specialists, including methodological support and technical assistance;
 - (b) training of trainers in procurement and project management international standards;
 - (c) training of Ukrainian experts on tendering procedures and project management;
 - (d) enhancing institutional capacity in the public procurement and project management of the ministries and other central executive authorities of Ukraine, project management groups, the tender committees, and representatives of local authorities and utilities sector companies, which may be involved in the implementation of the projects funded by the EBRD and Eastern Europe Energy Efficiency and Environment Partnership (E5P) Fund;
 - (e) increasing the awareness of Ukrainian suppliers, contractors and consultants of the procurement policies and practises in respect of tenders carried out within the frameworks of the EBRD financed projects;
 - (f) exchanging experiences and lessons learned in the field of public procurement.
7. Where any of the regulatory requirements remain to be achieved, the MEDT and the EBRD will endeavour to use their best efforts to identify such support and technical assistance as the MEDT may require, where it is feasible, and complies with the Ukrainian laws.

Additional provisions

8. It is understood and agreed that nothing in this Memorandum will constitute, or be construed as, an offer, promise or undertaking by EBRD to finance all or part of any activity or project identified in, or pursuant to, this Memorandum.
9. This Memorandum reflects the views and intentions of the Parties, expressed in good faith. The Parties also recognise that this Memorandum is not a legally binding document.
10. Nothing in this Memorandum will constitute, or be construed as constituting, a waiver, renunciation or other modification of any immunities, privileges or exemptions of the Bank, its Directors, Alternates, officers or employees accorded under the Agreement Establishing the European Bank for Reconstruction and Development, international convention or any applicable law.
11. Any disputes between the Parties to this Memorandum that may arise out of, or in connection with, the provisions of this Memorandum will be settled through consultations and negotiations between the Parties.
12. This Memorandum becomes effective from the date of its signing by both Parties. This Memorandum may be amended only by the mutual written consent of the Parties. This Memorandum may be terminated at any time by either Party giving the other Party six months written notice.

Signed in Kyiv on 25 October 2011 in two originals, each in Ukrainian and English languages being equally authentic. In case of differences in construing and interpretation the English language version will prevail.

For of the Ministry of Economic Development
and Trade of Ukraine



For the European Bank for Reconstruction
and Development

