



Improving Transparency and  
Effectiveness of Public  
Procurement in Ukraine through  
Cooperation with Civil Society

**COMPLETION  
REPORT**

February 2020



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## Executive Summary

The project on Improving Transparency and Effectiveness of Public Procurement in Ukraine through Cooperation with Civil Society, funded by the European Bank for Reconstruction and Development (EBRD), and co-funded by the Partnership for Transparency Fund (PTF), was carried out by PTF from the Fall of 2016 through November 2019. It focused on building the capacity of Ukrainian Civil Society Organizations (CSOs) to serve as independent monitors of public procurement procedures and processes, with the goal of enhancing the transparency and fairness of public procurement in Ukraine.

The adoption of a new Ukrainian law on procurement in 2015 and the introduction in January 2016 of the mandatory use of the newly created e-procurement platform, ProZorro, demonstrated the Government's commitment to enhancing transparency and fairness in the procurement process. This commitment was further underscored by providing civil society groups, enforcement agencies and others with access to relevant procurement information such as tenders for goods and services, results of bidding auctions and winning tenders.

PTF hired the Kyiv School of Economics (KSE) as the local partner to help implement the project. With the help of KSE, a pool of 335 individuals representing 240 Ukrainian CSOs and journalists with the potential and motivation to engage in procurement monitoring was targeted for participation in the training program.

Following a high-profile project launch event in January 2017, a pilot training program with a

small group of CSOs already engaged in procurement monitoring was held at KSE in Kyiv in February 2017. The goal was to assess the CSOs' level of knowledge of the procurement cycle, including risks at each stage, as well as their familiarity with avenues for addressing problems, e.g., agencies and mechanisms to which to refer perceived irregularities.



This pilot revealed that there was a wide gap in knowledge and experience among these participants which resulted in a decision by PTF to design and offer two levels of training, basic and advanced. In November and December 2017, basic training was held by KSE in four major hubs in Ukraine – Dnipro, L'viv, Kharkiv, and Odessa – targeting CSOs in all 24 regions. A total of 113 individuals participated in the basic training. The advanced training took place at KSE in Kyiv in June 2018, with 32 participants representing 25 CSOs and some journalists, drawn from 16 regions of Ukraine. Post-training evaluations showed a high-degree of satisfaction

among the participants with the content, the instructors and the modalities for procurement monitoring and flagging of irregularities to relevant Ukrainian agencies for redress. Training was held in Ukrainian, and the trainers were a mix of KSE staff, external topic experts hired by KSE, representatives of TI-Ukraine, and the Ministry of Economic Development. A PTF member, fluent in Ukrainian and Russian, attended the regional trainings as an observer.

The original project design included a pilot, but with no provision for grants to CSOs to test their ability to carry out actual monitoring after being trained. PTF thus added from its own resources a small grant component to fund three CSOs (selected on the basis of their responses to a Request for Expression of Interest) each for a period of six months (ending up becoming nine months) to engage in monitoring. The education sector was of interest for each of the three CSOs, so the funding from PTF stipulated a focus on that sector. In addition to funding, PTF also provided mentoring, primarily through its local representative based in Kyiv.

The results of the pilot monitoring were mixed. The CSOs reported identifying many irregularities, but their success in having official agencies respond to their requests for review and redress typically went unanswered. However, a six-month period is short, and it is conceivable that a longer period of funded monitoring might have yielded better results.

Overall, the training has measurably enhanced the knowledge of CSOs in how procurement works, how to identify suspicious data, evaluate the potential for abuse and gather supporting information to refer concerns to agencies

charged with investigation and resolution. The existence of ProZorro and its related tools is a significant contribution to enhancing the transparency of public procurement and improving the quality of public goods and services to the citizens of Ukraine.

It is best put training to use soon after the knowledge and skills are acquired. While some of the trained CSOs may have sufficient organizational depth to put into practice what they learned, many operate with volunteers and on a shoestring budget. Furthermore, the ability to successfully promote effective and long-term engagement in public procurement monitoring by well-trained CSOs requires a favorable and stable legal and political environment, including widespread acceptance among procuring entities, control bodies and contractors and a willingness to act on the findings of irregularities. It also requires the development of systematic strategies and implementation plans by CSOs involved, continuous capacity building, and last but not least, sufficient funding for them to carry out monitoring over many months or even years.

PTF therefore recommends that future projects include post initial-training funding for successful CSOs to engage in actual monitoring for a period of at least two years during which they would receive technical support and continuous training. Such funding would preferably come from a neutral source, e.g., multilateral or bilateral donors, but business associations or industry groups could also provide such funding, provided they do not pose a conflict of interest for the independent monitoring activities. Transparency International and PTF can play a future role as objective observers monitoring the flow of money to CSOs to detect abuses.

## I. Project objectives

On September 2, 2016, the European Bank for Reconstruction and Development (EBRD) and the Partnership for Transparency (PTF) signed a contract with an attached Terms of Reference (see Annex 1a), hereafter referred to as the TOR.

The overall objectives of the project were to help ensure that:

- (i) e-procurement procedures and practices (ProZorro) introduced in Ukraine, mandatory since 1 January 2016, are appropriately monitored by Ukrainian Civil Society Organizations (CSOs); and
- (ii) the general public, CSOs, and enforcement agencies have access to information on public procurement.

The project was expected to encourage more transparent and effective use of public funds and ensure improved delivery of good and services to the citizens of Ukraine.

## II. Project rationale

The introduction of the Ukrainian e-procurement system, ProZorro, combined with the highly technical nature of procurement, made enhancing the monitoring capacity of CSOs an urgent priority. This requires both formal training and support for hands-on monitoring to enable CSOs to understand the different areas and stages of the procurement process and to effectively monitor it at national, regional, local and municipal levels.

The task of building CSO capacity was assigned to PTF by EBRD under a contract and TOR (Annex 1a) hereafter called “the Project”. PTF contracted the Kyiv School of Economics (KSE) to conduct the training part of the program and, assisted by PTF, develop the training program including preparatory surveys and pilot program, certain monitoring tools, the project launch event and surveys of training participants after the training was completed.

## III. Project plan, scope, staffing and timetable

The assignment aimed at building the capacity of CSOs to monitor public procurement at the national, regional, local and municipal levels to help ensure long term transparent public procurement. The assignment was in line with the principles of EBRD’s Investment Climate and Governance Initiative (“ICGI”) and supported the Ukrainian Anti-Corruption Initiative. It was also well aligned with the EBRD Country Strategy for Ukraine, which sets improving procurement practices as a priority.

Work on the Project started in the Fall of 2016 with PTF and KSE developing a Project Plan (see Annex 1b) based on the TOR which set out in detail what needed to be done and who would be responsible. The project plan included a staffing plan showing the background and general areas of responsibility of all PTF and KSE staff and consultants assigned to the project (not including the trainers contracted later).

The Project Plan timetable was modified along with some activities in the course of implementation which took 18 months longer than originally planned for a number of reasons: (1) generally the complexity of the working environment in Ukraine, (2) the uneven background of the training participants which was a challenge for developing the training curriculum and material and conducting the training, (3) the complexity in selecting and mobilizing the three CSOs for the pilot monitoring, and (4) the competing demands on the KSE staff who were engaged at the time in a number of donor funded projects.

The final item in the project plan (a component added by PTF) to develop an action plan for expanded CSO monitoring in Ukraine was not implemented because, by the time the project was nearing completion, no funding had been identified to finance it. Moreover, it had become clear that without multi-year funding for CSOs to carry out such monitoring, any proposed plan was unlikely to succeed.

## IV. Project approach

The approach consisted of the following steps.

**Step 1: Identify and select relevant CSOs to carry out monitoring of public procurement.**

A survey conducted by Kyiv School of Economics (KSE), Vox Ukraine and PACT Ukraine found that there were about 150 validated, active and functioning CSOs working in the anti-corruption

area in 2016. To ensure a target audience for the training in all 24 regions, KSE accessed databases of (i) CSOs engaged in anti-corruption and/or monitoring public procurement and (ii) other active CSOs potentially interested in monitoring public procurement. The ProZorro team, TI-Ukraine, the EU Commission-funded project on Harmonization of Ukrainian Legislation with EU, and the World Bank provided information about their ongoing and past efforts to train CSOs in procurement monitoring. A final list of 335 individuals representing 240 CSOs and journalists most suitable for training in public procurement monitoring was prepared. This list was shared with EBRD as per the terms of reference.

**Step 2: Conduct needs assessment of CSO skills and information level to carry out public procurement monitoring.**

The training needs assessment was followed by a two-day pilot training session conducted by KSE in Kyiv on February 10-11, 2017, for a select number of CSOs and individuals (see Annex 2). This yielded useful information, which guided the shape and scope of the training for a wider audience. It confirmed that the training should be divided into basic and advanced, and that conducting the basic training in four hubs, drawing on participants from all regions of Ukraine, was the most efficient way of accomplishing the objectives of this assignment. The initial intent was to train CSOs in data-driven monitoring; however, even though several of the CSOs participating in the pilot training had experience in some aspects of procurement monitoring, it became evident that there was:

- A general lack of knowledge of the procurement cycle and process,
- A lack of understanding of procurement data, i.e., where to find and how to use it, and
- A lack of adequate skills to analyze procurement data, particularly using the methodology developed in the Business Intelligence module of ProZorro (see below).

### Step 3: High-profile launch event in Kyiv

A project launch event was organized by KSE and PTF on 24 January 2017. The event included specialists in procurement as speakers, who covered the most essential topics. The event was attended by 130 participants, which included 45 Ukrainian CSOs and individuals who were active or potentially active in procurement monitoring and 10 local and international journalists. The agenda and list of participants are in Annex 2. The event brought together key actors in charge of monitoring procurement with those designing, implementing and operating the ProZorro system. The event helped forge links within this community in Ukraine which was critical to successful CSO training and monitoring in the future.



The then Deputy Minister of Economic Development and Trade, Mr. Maxim Nefyodov, articulated clearly in his presentation that the launch event helped draw attention in Ukraine to the link between the ProZorro system and successful monitoring by CSOs. He further elaborated on the important role CSOs can play in improving the integrity of the procurement framework and practices in Ukraine. These comments, coming from a high level of the Ukrainian government, demonstrated that the event had fully served the purpose of promoting CSOs' involvement in procurement monitoring, drawing on the ProZorro system.

Most speakers pointed out that at this early stage in the rollout of the ProZorro system, the data were sometimes incomplete and/or inaccurate, and that it would take time to establish a reliable database for effective monitoring of procurement transactions. Furthermore, they also noted that many of the procurement problems which need to be monitored occurred during the execution phase which was not covered by the ProZorro system. The ProZorro data was mainly intended for screening purposes to allow CSOs to zero in on cases where suspected irregularities or potential corruption would need to be investigated. The investigative work would need to draw on sources external to ProZorro as well, including the application of more traditional methods and would need to involve sound and objective judgments. This would require a better understanding among CSOs of the procurement process in general and ProZorro in particular, as well as the legal, institutional and policy environment in which this process takes place.

Discussions and presentations revealed that several Ukrainian CSOs have been active in monitoring procurement, particularly after the Maidan, although so far this monitoring was not based on data and indicators derived from the ProZorro system. Many speakers, discussants and participants expressed confidence that the ProZorro data and analytical tools would enhance the ability of CSOs to monitor the procurement process in Ukraine.

The training to be provided under the Project was welcomed to help CSOs handle ProZorro data and analytical tools and to increase their understanding of the procurement process and environment. This would help CSOs to undertake proper analysis, draw the right conclusions and apply the right judgments. Many speakers emphasized the importance of CSOs learning about the government institutions to which these CSOs should convey their findings and which would take corrective action. This would require that CSOs have a full understanding of the mandates and procedures of these institutions. In this context, several speakers noted that institutions, policies and laws were not yet fully in place to ensure enforcement in the event that irregularities were uncovered through CSOs' monitoring activities.

The feedback from the participants was generally positive. KSE and PTF made extensive media outreach efforts, with the former focusing on Ukrainian and international media with a presence in Kyiv, and PTF providing international coverage, including outreach to bilateral and multilateral donors. The Financial Channel and local news media carried the press release.

Video recordings of the event were also made available: <https://www.youtube.com/watch?v=K2tbYIWUCN8>; [https://www.youtube.com/watch?v=ggDug4vw\\_Us](https://www.youtube.com/watch?v=ggDug4vw_Us); <https://drive.google.com/drive/folders/0B2KXYgSeFnnBWGVscVI3R0J0TTg?usp=sharing>). Video clips of interviews with members of the project and ProZorro teams were prepared in advance and shown during coffee breaks.

EBRD and PTF were satisfied with the speakers, participation, outreach efforts and found that the event's objectives were fully achieved.

#### Step 4: Preparation of monitoring and investigative tools.

The ProZorro e-procurement system in mandatory use since January 2016 allows procurement to be executed, recorded and monitored in a transparent fashion. The system and its component systems, Bi.ProZorro, DoZorro, Risk.DoZorro and Index.DoZorro, are continuously improved and their coverage expanded.

The objectives of the ProZorro e-procurement system are: (i) to increase the transparency and efficiency of public procurement, and (ii) set-up rigorous accountability mechanisms. The ProZorro project originated as a grassroots volunteer-led reform initiative and was created with Transparency International (TI) Ukraine supported by The Open Contracting Partnership (OCP) as its driving force. It was soon funded by a group of international institutions and overseen by them and NGOs. The system was based on the latest international standards of data exchange in public procurement, Open

Contracting Data Standards. The software used by the ProZorro project is open source.

The DoZorro monitoring portal is a platform launched by TI-Ukraine in November 2016. The platform allows all participants in the procurement chain (supplier, buyer, oversight body or citizen) to communicate with each other, provide queries/comments/ feedback to a state procurement entity or supplier, discuss and assess the conditions of a specific procurement, analyze procurements of a certain government authority or institution, prepare and submit a formal appeal to the oversight bodies and much more. According to TI-Ukraine, in 2019 around 25 CSOs were actively participating in the “DoZorro community”, to ask for clarification of issues from procuring authorities. Both the inquiry and the response from the procuring entities are made available in DoZorro.

If violations or irregularities are found, CSOs and other monitors direct appeals to the contracting authorities (tenderers), their governing and control bodies (State Audit Service, Accounting Chamber), law enforcement agencies (Department of Economic Protection of the National Police of Ukraine, National Anti-Corruption Bureau of Ukraine (NABU) or Anti-Monopoly Committee of Ukraine (AMCU). In parallel through legal and media pressure, CSOs are bringing violations of the Law, “On Public Procurement,” in a specific tender to the attention of courts and the public to exercise pressure on those responsible to take action and/or hold them responsible for criminal liability. A description of the dozens of cases found and released by CSOs, including those studied in the PTF/KSE program, can be found

on the DoZorro website (<https://dozorro.org/community/ngo>).

The business analytical tools – <https://bi.prozorro.org> and <https://bipro.prozorro.org> – are also useful for CSO monitoring. The latter is a business intelligence module to work with the data of the ProZorro system with extended functionality but restricted access. The former is the official and publicly available ProZorro analytics module that provides all of ProZorro's open source data with user-friendly interface, data visualization, easy sampling and uploading of data in various formats for further analytics and processing, such as in Excel. For more information of the DoZorro subsystem see TI-Ukraine's website: [Control over Public Procurement](#).

In addition to ProZorro/DoZorro/BiPro other organizations such as YouControl (<https://clarity-project.info/about>) and Anti-Corruption Monitor (Dmytro Ostapchuk), have developed monitoring tools used by CSOs. Against this background the TOR includes an assignment to “further develop the methodology for the monitoring and investigative tools to be used by CSOs for public procurement monitoring purposes.” These tools are described in Chapter 3 of the *Monitoring Public Procurement in Ukraine: Guidelines and Resources for Civil Society* (Annex 7) prepared by PTF and KSE for use by participants in the training. Section 3.2 lists ten risk indicators which have been developed by specifically for Ukrainian CSOs using the ProZorro system. These indicators are derived from a set of general risk indicators originally developed by Transparency International USA and other sources.

## Step 5: Deliver training program.

The training of CSOs to be delivered by KSE was designed by PTF as two separate packages, one for basic training and the other consisting of advanced training based on the feedback and recommendations received from the pilot training and project launch workshop.

### 1. Basic Training

The basic training was delivered in November and December 2017 in several two-day programs, across four regional hubs: Dnipro (November 24-25, 2017), L'viv (November 28-29, 2017), Kharkiv (December 12-13, 2017) and Odessa (December 25-26, 2017). Each of these hubs was selected because its geographic location provided access to a catchment area that included a sizeable number of CSOs. Key

considerations in this approach included: (i) ensuring a sufficiently large number of participants ( $n = >20$  and  $<40$ ) to foster a robust discussion; and (ii) allowing CSOs from different regions to network and learn from each other.

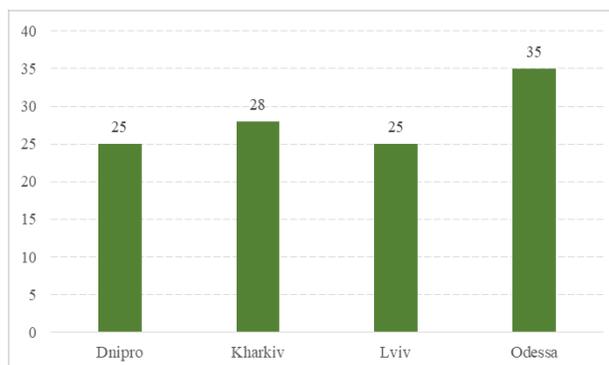


Fig.1. Distribution of participants over training hubs

The distribution of the number of participants by the various regions is shown in Fig. 2 below.

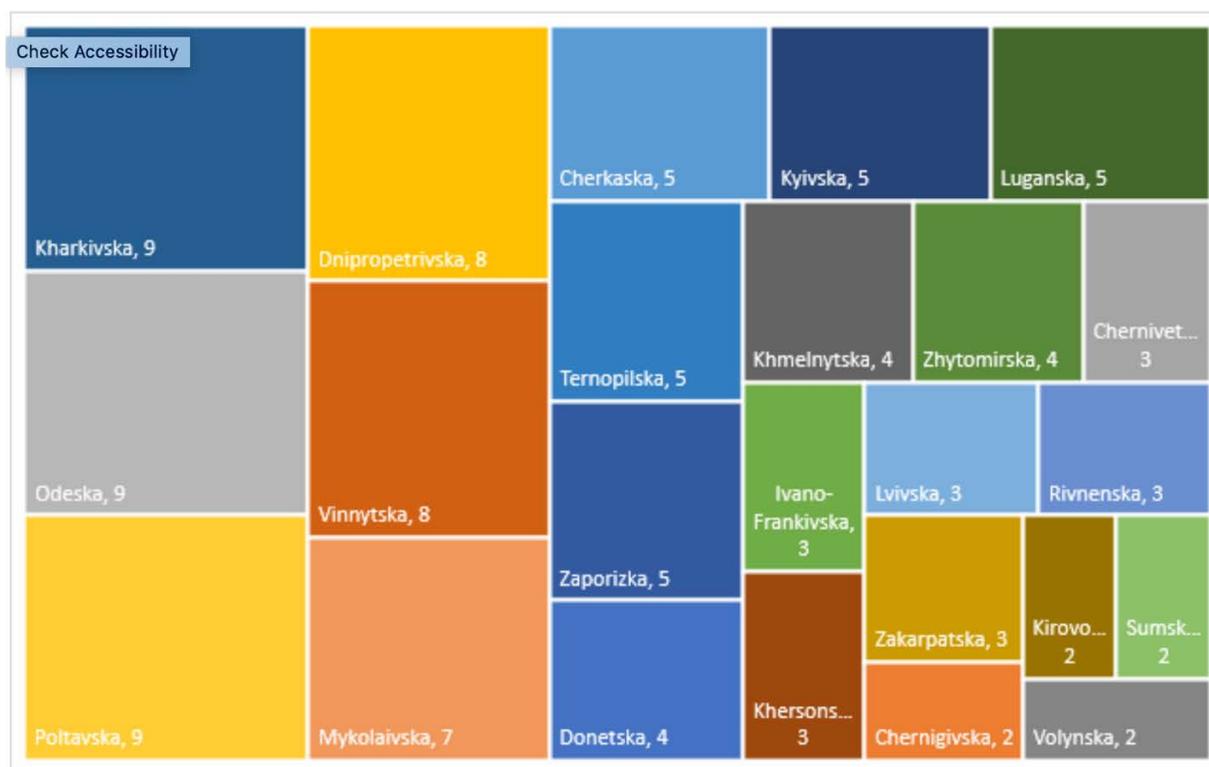


Fig.2. Regional representation of the participants

Of the participants, 71% (80 out of 113) were representatives of CSOs and around 20% were journalists. The balance included representatives of the public sector and higher education institutions. The latter were planning to incorporate a course on public procurement in university curricula. In terms of gender balance, females accounted for 47% of the total number of participants.

**Curriculum.** The training curriculum, including case studies, was developed jointly by PTF and KSE and divided into four modules:

- **Module 1.** Procurement Process: legislation, documentation and e-procurement
- **Module 2.** Procurement Monitoring: methods, tools and data
- **Module 3.** Reporting Monitoring Results
- **Module 4.** Building a Sustainable Monitoring Strategy

The training provided details of the Ukrainian procurement system, its characteristics and evolution. In preparation, PTF did an analysis of the Ukrainian procurement law to guide the development of the curriculum and serve as guidance for the CSOs (see Annex 10).

The training introduced the concept of effective and responsible procurement monitoring, emphasizing risks in procurement, important red flags, risk evaluation and risk indicators. It stressed the importance of a systematic approach with the use of checklists covering different stages of the procurement process, access to reliable data and analytical tools. The training introduced the participants to the use of key ProZorro based information such as

BI.ProZorro, DoZorro, Risk.DoZorro and Index, as well as other procurement information sources showing them the information available and how to interpret it. The roles and responsibilities of the different Ukrainian controlling bodies were explained and the remedies/actions available when irregularities or suspicious activity are identified, which were illustrated by specific examples.

A series of hypothetical case studies presented particular issues and identified specific risks in procurement all based on the Ukrainian context. The issue of the sustainability of procurement monitoring through the development of an effective strategy, including access to adequate and appropriate funding was also discussed. To support their procurement monitoring activities, participants were provided with a compendium of "Guidelines and Resources for Procurement Monitoring." PTF provided examples of CSO guidelines used by PTF and others and supplied material to be included in the guidelines which were then drafted by KSE in Ukrainian. The final version attached as Annex 7 reflects PTF's comments and is an English language version accessible to a larger international audience.

**Trainers.** There was a total of 5 trainers, including 2 from KSE and 3 'topic experts' recruited by KSE. A general training session for these trainers was conducted by KSE in late June 2017, and a tailored workshop on how to present and effectively use case studies was conducted by PTF via video from Washington on October 31, 2017 (see Annex 6).

**Evaluation of basic training program.** The evaluation of the basic training program was

conducted using three questionnaires which were administered to participants at various stages in the training process: (i) pre-training; (ii) immediate post-training; and (iii) several days after training.

The **Pre-training questionnaire**, administered to participants in each location, was sent to applicants selected for the basic training to get more background information on their experience and knowledge in procurement monitoring. The response rate for the pre-training questionnaire was 80% (90 out of 113).

The analysis of the responses showed that only 21 percent of those who responded (19 individuals) did not have any experience in monitoring, (monitoring generally not procurement specifically) while 42 percent (38 individuals) had minimal experience, and 37 percent (33 individuals) reported they did have monitoring experience.

The analysis of the responses to the questions regarding the elements of procurement and monitoring revealed that:

- Participants are familiar with online portals like [ProZorro](#) (as indicated by 72 participants out of 90, and [DoZorro](#) (54 participants out of 90), [BI.ProZorro](#) (43 participants out of 90).
- Only 20 out of 90 respondents said they were familiar with the risk indicators methodology and its application to procurement monitoring. The low level of knowledge about tools and methodologies determined the need for including both conceptual sessions (on the definition of monitoring and risks) and practical cases with the application of tools for procurement monitoring.

- 55% of the participants with any monitoring experience (39 participants out of 71) did not seek any external review (i.e., did not have a peer review) for the materials and appeals their organizations prepare. This can potentially be an issue in terms of the quality of CSOs' work and can lead to errors in the interpretation of results as well as leading to incorrect conclusions.
- 45% of the respondents (32 out of 71) with prior monitoring experience had never submitted an appeal to any government body concerning the results of the monitoring they carried out. Module 3 of the training program addressed the question of when, where, how and whom to contact if a CSO finds a violation in the field of public procurement.
- Only 20% of respondents with experience of monitoring public procurement had sufficient knowledge of the legislative and regulatory framework of public procurement. This finding highlighted the need to include these important aspects which were addressed in Module 1 of the basic training.
- Participants noted that the main areas of their current/planned monitoring were health, education, and activities aimed at addressing the problems of regional development, small and medium enterprises development and other social problems.

**Another evaluation was conducted immediately after the training, focusing on which topics were useful, evaluation of the level of teaching and to obtain suggestions for advanced training.** It had an overall response rate of around 50 percent (56 responses out of 113 who participated in the trainings).

The trainings received very high marks from the respondents. On a five-point scale (with 1 being very poor and 5 being excellent, the average value of the overall impression from the training was 4.55, and the average value of the relevance and usefulness of the training content was 4.64 on a five-point scale (1 not relevant at all to 5 very relevant).

The trainers also received very high evaluations from the participants with an average score of above 4.5 on a five-point scale.\* In particular, participants were interested in procurement data analysis, and suggesting greater use of practical cases and exercises to study risk indicators. In addition, the participants were interested in sector-specific tenders (e.g. medical supplies).

A majority of the respondents (35 out of 56) reported that their organizations had been involved in some form of procurement monitoring which was primarily monitoring of procurement of goods, works and services conducted by local governments. There were several CSOs monitoring sector specific procurement, such as medical supplies. Most of the participants with prior monitoring experience did intend to expand their monitoring efforts after the training, though they admitted that their staff lacked skills and financing to conduct monitoring. The CSOs also expressed the need for technical assistance on a continuing and sustainable basis to help conduct monitoring of procurement and subsequent follow up with concerned authorities.

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\* The evaluation used a five point scale – with 1 being very poor and 5 being excellent. The trainers were evaluated on five dimensions: (1) content, (2) clarity, (3) presentation style,

The last, **follow-up evaluation of the basic training**, was to test the knowledge gained by the participants as the basis for selecting participants for the advanced training planned in Kyiv and to provide inputs for the design of the advanced training program. The response rate was very good compared to the evaluation conducted immediately following basic training – viz. 65% (73 out of 113 participants responded) versus roughly 50% (56 out of 113 participants in the earlier evaluation).

The main points from this evaluation are summarized below:

- Only one-third of the participants had taken part in previous procurement-related training (which may or may not have included procurement monitoring). This training was organized by Transparency International Ukraine, the Institute of Analytics and Advocacy, the UNDP Anti-Corruption School and events organized by large CSOs (for example, CSO Public Control“);
- Most of the participants who had no prior experience in monitoring of public procurement demonstrated better post-training knowledge of the legislative environment of public procurement and monitoring approaches, which were emphasized in the basic training program;
- Most participants noted that as a result of the training, they increased their awareness of the variety of monitoring tools and learned more about the capabilities and functions of each of them.

(4) interaction with participants and (5) use of practical examples and use of analytical online tools.

**Inputs for the design of the advanced training program.** Based on the above feedback, the following was considered in the design of the advanced training program:

- Advanced training participants should already have conducted procurement monitoring and be capable of working with data;
- Topics should focus on more technical issues of procurement monitoring such as working with data and analytical tools and incorporate more practical examples and cases.

The participants in the advanced training should be given opportunity to work with analytical tools under trainers' supervision, and go over in detail all steps of monitoring, from identification of the risks to communication of the results.

## 2. Advanced Training

The project did not initially include any plans for both basic and advanced training. However, the feedback and analysis from the pilot and basic training revealed that most CSOs:

- (i) lacked adequate knowledge of the public procurement cycle, process and regulations even after the basic training; and
- (ii) Lacked the skills to engage in data-driven monitoring.

Based on the above findings, the original plan for the training program was modified. A multidisciplinary training program in public procurement and monitoring basics for a large number of CSOs, covering all regions, and a

**Table 1: Comparison of main aspects of basic and advanced training**

	Basic Training	Advanced Training
Purpose	To improve understanding of the legal and technical environment of public procurement in Ukraine, risk and monitoring methodologies, sources of data for and ways to report violations	To build up practical skills of working with procurement data in order to perform evidence-based monitoring
Audience	CSOs and journalists with no or a little experience in public procurement monitoring	CSOs and journalists who successfully completed basic training or/and have solid experience in public procurement monitoring and can demonstrate it in entrance test.
Coverage	Participants from 24 regions of Ukraine	Participants from most regions of Ukraine
Total participants	113	32
Number of trainings	4 two-day trainings	1 three-day training

more advanced training for a smaller number of CSOs (25-30 individuals) from as many regions as possible who had mastered the basics and had the potential to absorb higher level training in

the use of advanced tools of procurement analysis was adopted. Some of these CSOs were then expected to move on to actual monitoring.

The approach for the development and implementation of the Advanced Training is described below:

- **Data-driven monitoring of e-procurement:** This became possible in Ukraine only with the launch of the ProZorro e-procurement system and analytical modules such as BiPro (<https://bipro.prozorro.org>, see above) These IT systems make it possible to view major procurement indicators at the country and project-levels, and download and analyze large sets of the transaction-level procurement data;
- **Hands-on workshop:** The objective of the three-day 'hands-on workshop' was to enhance the skills of CSOs to engage in data-driven monitoring of e-procurement, using the ProZorro platform and the BI module. The focus was on the data architecture and the variables, as well as learning how to extract, transform and analyze large procurement data sets in ProZorro/DoZorro, Bi.ProZorro and Bipro.ProZorro. Participants learned about pre-defined data objects as well as how to generate their own reports, using the custom selection tool. These sessions also included a detailed explanation of the procurement database structure and the differences between data extraction from the

standard ProZorro system and the professional BI module.

- **Interactive training:** This included validation of common risk-hypotheses using procurement data. Participants learned how to identify potential violations/suspicious cases, based on procurement data. Using concrete examples, trainers explained how to check suspected violations using simple analytical tools.

The Advanced Training also provided current information on international procurement reform projects such as the USAID TAPAS and the European Union SIGMA programs to encourage CSOs to provide feedback to such programs on where continued improvements may be needed to train government procurement officials.

The advanced training was built on the information and knowledge that was the focus of the basic training, i.e., the principles and best practices in procurement, institutional and legal framework for procurement in Ukraine and an introduction to ProZorro. The advanced training was therefore designed to be a complement to the basic training as well as the training provided by TI-Ukraine to bring as many CSOs as possible to a level where they could monitor procurement effectively. The emphasis in the advanced training was on a 'hands on' approach to using quantitative tools to probe data and to assess the likelihood of some irregularity or abuse. The advanced program included working with professional analytics modules such as (<https://bipro.prozorro.org/>), not just the basic public version (<https://bi.prozorro.org/>). The full curriculum of the advanced training program is provided in Annex 3.

The three-day training was held from June 15-17, 2018 at the Kyiv School of Economics (KSE), which has suitable classroom facilities and all requisite equipment, including computers to facilitate online demonstration of tools. Kyiv was chosen because of its central location to which participants from the 16 regions could travel. Trainers included project staff based at KSE, TI Ukraine, and external consultants.



**Selection of Participants.** The participants were drawn primarily from the pool of those that had completed the basic training and who had also demonstrated capacity and interest to benefit from advanced training, as well as a number of CSOs already trained by TI-Ukraine and who were already using the DoZorro monitoring portal, indicating they were already active in procurement monitoring.

The selection process for advanced training was conducted in three stages to ensure that participants met the following five criteria:

- Knowledge of procurement and ProZorro.
- Experience in monitoring procurement with or without ProZorro.

- Motivation, meaning the CSO serious about procurement monitoring as a public service.
- Regional dispersion. The target was to have CSOs that were based in or working in as many of the 24 regions of Ukraine as possible.
- Sustainability, meaning having the capability to mobilize the resources to sustain monitoring over the long run.

The initial selection process concentrated on those who had successfully completed the basic training. Candidate selection criteria included:

- Completed the test and questionnaire administered after basic training.
- Actively engaged during the basic training.
- Expressed interest in data processing.
- Some familiarity with the Bi.Pro tool.

Based on these criteria, a list of 43 candidates representing 17 regions of Ukraine was identified. To increase coverage, the search was expanded to identify candidates that were not part of the basic training but had participated in other similar training and expressed interest and the ability to learn advanced tools. Members of the DoZorro community satisfied these conditions and the list was expanded to include 16 interested candidates from the DoZorro community but who were not part of the basic training provided under this program. Thus, the final list of potential participants included 59 people from 21 regions of Ukraine.

All individuals on the list received email letters inviting them to register for the advanced training to be held in June 2018. The candidates had to confirm their interest by filling in a brief application form and contact information for

follow-up interviews. For candidates who did not reply to the invitation letter there was a follow-up telephone call to confirm receipt of the invitation and to inquire about their interest in the advanced training.

Lastly, follow-up interviews that were conducted to obtain more detailed information about the expectations and experience of the candidates. In particular, candidates answered questions about their experience in monitoring of public procurement and questions about preferences for any specific topics or instruments applicants would like to see addressed during the training.

The final list of interested candidates after the interviews consisted of 34 participants representing 18 regions of Ukraine. Of those, 85% (29 participants) were representatives of CSOs, with the balance being journalists or from academia. Out of this list, 27 individuals had participated in the basic training provided under this program, and 7 were CSOs from the DoZorro community. This latter group was given a placement test to evaluate their knowledge and level of expertise in public procurement in order to ensure they met the selection criteria.

In the time that elapsed between participant selection and the start of training, four of those selected dropped out. KSE permitted two additional participants (TI Ukraine staff and a journalist writing about corruption schemes in procurement) to join the training, bringing the final number of participants to 32, representing 16 regions of Ukraine. Of these, 29 individuals represented 25 CSOs. Two more people from TI Ukraine participated in the first day of training.

### ***Evaluation of the advanced training program.***

**Participant Feedback.** Overall, the participants gave high ratings for content, methodology and approach taken in the advanced training.

Following the training, participants were asked to fill in an online questionnaire to evaluate it. As of July 4<sup>th</sup>, 2018, 16 responses had been received, i.e., around 50% response rate. On a five-point scale (1=very bad, 5=excellent), the average rating for organization and location of the training was above 4.5, and the average rating of the relevance and usefulness of the training content was 4.75 on a five-point scale (1=not relevant, 5=very relevant). All respondents but one stated they had received an adequate level of information to conduct better monitoring.

The trainers also received very high evaluations from the participants: all averages ranged from 4.27 to 4.75 on a five-point scale (1=very bad, 5=excellent). The trainers were evaluated along the following dimensions: (1) content, (2) clarity, (3) interaction with participants.

Out of 16 respondents to the post-training questionnaire, only one did not have some prior or existing engagement in procurement monitoring. All participants who completed the questionnaire stated that they would be monitoring public procurement after the training. All except one indicated that monitoring of procurement would be at the local level. The most frequently mentioned sector was construction, followed by education and health. Around 40% of the respondents indicated that the staff of their organization did not have enough knowledge and expertise in monitoring. In particular, their staff needs to be trained in how to find and use information, how to use

tools such as risk indicators, what to do with monitoring results. Sixty per cent of respondents indicated they lacked funding to monitor, with the majority planning to apply for donor funding.

### **Feedback from trainers.**

Inna Memetova: "Participants showed significant interest in opportunities that BiPro and Application Programming Interface (API) provide for monitoring and data analysis. On average, the level of information absorption was intermediate for BI Professional Tools and is elementary for API data extraction. Thus, my recommendations are to focus on automation of CSOs' tasks based on BiPro and to enhance overall proficiency and understanding of functions and opportunities in BiPro. Also, some workshops on Excel and other MS office tools might be useful for CSOs, as they are the most common tools for data analysis."

Khrystyna Artemenko: "I consider it may be useful to have more time for the workshops to exchange the experience, approaches and skills more actively, as a lot of questions remained. Construction has a lot of external regulations and it takes time to become familiar with them. It also may be useful to compare the quality and completeness of the analysis of the effectiveness of certain procurement procedures, identify systemic violations when procuring from a particular supplier, and existing bottlenecks and monitoring practices."

Olga Zelenyak: "Medical procurement is a very specific sphere, as the reform of the health financing system is ongoing and it creates additional complexity for procurement of such goods and services. The level of interaction between trainer and the audience was not

homogeneous. Participants who already had experience in monitoring of healthcare procurement were more active. I appreciate the ability of participants to process the material, they were quite active, asked questions and shared their thoughts. It would be useful to foresee the possibility of using practical tasks with the National List of Drugs, the Register of Drugs to obtain the practical experience of working with these registries. In my opinion, the efficiency of monitoring is positively influenced by studying the specifics of procurement by area. In addition to construction and healthcare procurement, it could be the procurement of food and catering services, since these purchases are socially relevant, and there is a significant spending at the local level. It also has its own peculiarities."

**Result of the advanced training.** As a result of this advanced 'hands-on' training, participating CSOs were able to analyze their own hypotheses about irregularities or systemic problems in procurement, using data infrastructure available in Ukraine. CSOs that successfully completed the advanced training are expected to be better able to act as local champions in their region to monitor public procurement transactions by undertaking actual monitoring of local procurement projects and train others.



## V. Pilot CSO monitoring component

**Objective:** Assist 2-3 CSOs in implementing public procurement monitoring at the local and municipal level for the first six months after completion of the training sessions.

To ensure the long-term sustainability of the training and promote hands-on engagement in public procurement monitoring in general, three CSOs were selected and funded to conduct monitoring at the local or municipal level for a period of six months. Selection of these CSOs was based upon their response to a call for Expression of Interest (EOI), issued to those organizations that participated in the advanced training. In order to be able to make comparisons of monitoring activities and outcomes across regions, PTF selected CSOs that were focused on the education sector. The successful organizations were “Philosophy of the Heart”, “Development of Public Procurement” and “Women’s Anti-Corruption Movement” (ZHAR) based in the Vinnytsia oblast (Central Ukraine), Kharkiv oblast (Eastern Ukraine) and Khmelnytsky oblast (Western Ukraine).

The CSOs were also selected to have a wider geographic representation across the country, i.e., outside the capital. This is in the spirit of the TOR agreed between EBRD and PTF to bring new players into the area of procurement monitoring. All three have established a functional relationship with local authorities, which is not always the case in Ukraine.

Two of the CSOs, ZHAR and Philosophy of the Heart, are experienced in the anti-corruption field and are cooperating with other regional NGOs working on the issue. The CSO, “Development of Public Procurement,” has the required legal expertise on local government procurement but less experience than the others in anti-corruption work. All three CSOs were judged to have the capacity to conduct the proposed projects which resulted from negotiations with PTF, based on the original proposals received from the CSOs.

PTF provided grants to each participating CSO as funding for monitoring was not included in the EBRD project.

A unified methodology was agreed and implemented by the three CSOs selected so as to share experiences and compare outcomes. The methodology was developed in a number of consultative sessions between PTF and the three CSOs. PTF placed an expert in Kyiv, Donald Bowser, to have face-to-face contact with the CSOs and help with the procurement monitoring methodology and preparation of a monitoring plan.

The methodology was ambitious considering the state of procurement practices and the spotty use of ProZorro in the education sector at the local level. It was agreed that setting a high standard for minimum acceptable performance from the beginning was the best approach. Failure to reach that standard could be analyzed and remedies identified, flagged to authorities and, if not considered by the authorities, public campaigns could be initiated to draw attention to problems and remedies identified.

In a period of about nine months between November 2018 and July 2019, CSOs monitored and analyzed procurement practices of 131 entities procuring construction, equipment and services for schools in the amount of UAH 1,280,000,000 (USD 51,200,000) under 7,089 separate purchases in three regions: Kharkivska oblast, Vinnytska oblast, Khmelnytska oblast.

In the following three months the findings were documented and analyzed by the CSOs and PTF and discussed in three video conferences during the week starting November 25, 2019. During these discussions all three CSOs confirmed the usefulness of the participatory process in developing the methodology and its application. In total, the three CSOs registered 163 queries with procurement entities and control agencies. Only a few responses were received and so far no remedial actions have been taken. The low response rate could be partly due to the short time elapsed since the queries were made. This response rate could be compared with estimates from about three dozen CSOs nationwide which have been actively involved in monitoring procurement using the DoZorro portal to make queries to procurement entities and control bodies. Since the start of the portal (2017- 2019), about 33,000 queries have been sent to different authorities (both executive and law enforcement agencies) and about 3,500 responses have been received (about 10%). Of the CSOs making queries, 10 of them were trained under the PTF/ KSE program. They made about 12,000 inquiries and received about 1,100 responses.

This contrasts with estimates from the Open Contracting Partnership (OCP) which shows significantly better outcomes. "Dozorro currently

unites 22 CSOs that are actively monitoring procurement and have used the platform to find over 5,000 cases of suspicious activity in the last six months. Around half of these cases have been resolved so far, including over 1,200 cases where tenders were changed as a result of the feedback. So the fix rate is approximately 48% of resolved cases or 25% of all cases. In addition, 22 criminal charges and 79 sanctions have also been issued" (Karolis Granickas, *Learning insights: The latest impacts emerging from Ukraine's Prozorro reforms*, OCP).

Estimates of response rates and resolution and fix rates thus vary significantly. Different definitions of resolution and fix rates in particular could be one explanation. The type of CSOs making queries also matters. Well established and better connected CSOs would likely get better response and resolution rates. This may partly explain the low rates for the local CSOs participating in the pilot monitoring. Overall we conclude that response and fix rates are problems that need to be addressed for CSO monitoring to have impact.

Details on the pilot monitoring component of the Project can be found in a separate report (Annex 8). Conclusions and recommendations are summarized below in section VIII.

## VI. Final survey of participants

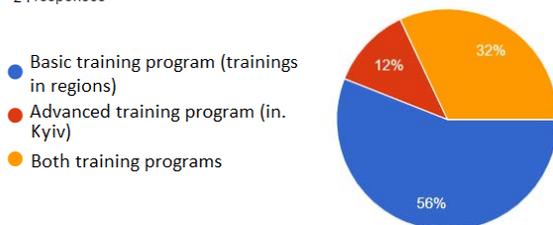
As 16 months had elapsed since the completion of the advanced training, PTF, with its own funding, contracted KSE to gauge the longer

term impact of the training. KSE surveyed training program participants in November/December 2019, sending 114 participants electronic questionnaires, designed by PTF and KSE. Each CSO that did not respond received a phone call asking them to complete the questionnaire.

As we had anticipated, the response rate was low and mostly from those CSOs which were engaged in procurement monitoring. From November 25 to December 5, responses were received from 24 CSOs. Most of those who responded participated in the basic training.

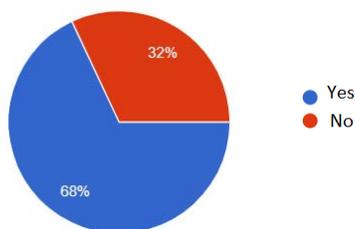
#### Distribution of respondents by training program

24 responses



#### Did you train other NGOs?

24 responses



Source: Kyiv School of Economics

Most of the respondents, after being trained by KSE, conducted their own training for other NGOs and community activists. In total, the responders provided 129 trainings sessions in the last two years. As the content and length of

the training sessions was not defined we cannot draw firm conclusions as to their extent and impact but the responses show that a number of CSOs made use of the program to train others.

Although most of the CSOs which responded continue to monitor public procurement, some have stopped doing so. The reasons given for terminating procurement monitoring were that this was not the primary focus of the CSO and that funding for such activity had run out. Almost all respondents said that procurement is only part of their NGO's competence and focus, and sometimes not the core one. This does not come as a surprise as very few CSOs in Ukraine primarily focus on procurement monitoring. The tools most frequently used by CSOs for monitoring as stated in the answers to survey questions and gathered from other surveys of CSOs engaged in procurement monitoring were: the [prozorro.gov.ua](http://prozorro.gov.ua) website; <https://dozorro.org/> and <https://bi.prozorro.org/>. The advanced business intelligence module, <https://bipro.prozorro.org/> was less used partly because access to it is restricted.

## VII. Project cost and financing of the capacity building program

The total project expenditure from 2016 to 2020 is estimated at about US\$560,000 including the costs of a webinar to disseminate results to be held in early 2020. The EBRD grant funded €200,000 as shown in the table below. PTF co-financed the project from its own resources

(about US\$345,000) mainly covering the time spent by PTF Project Advisers working on the project. In addition to the consultants funded by the EBRD grant, the following consultants funded by PTF worked on the project: Lars Jeurling, Ram Janakiram, Karin Millett, Mariya Myroshnychenko, Wayne Wittig, Alfonso Sanchez and Jorge Claro.

**Table 2: EBRD Funded Project Expenditures**

KSE Contract: Project launch event, Fees for trainers, preparation of training materials, participant travel, boarding and lodging, communication	€104,510
Technical consultant Sabine Engelhard	€53,300
International Travel	€27,000
Donald Bowser technical support to CSOs in the field	€13,490
Training material not paid by KSE	€1,700
<b>Total</b>	<b>€200,000</b>

## VIII. Conclusions and recommendations

The adoption of the e-platform ProZorro, as well as the amendments to the Public Procurement Law of Ukraine made in the past five years, were key factors in making training of CSOs in public procurement monitoring under this project both timely and relevant.

While PTF, together with KSE, were not the only entities providing training in the new environment (others included a large EU funded project), the focus of the training provided under this project as well as under a part of the training provided by TI-Ukraine/Open Contracting Partnership (OCP) was exclusively on building capacity of CSOs and journalists to understand the public procurement cycle and the risks that can arise at each stage of the procurement. The training focused on how to use the tools provided by ProZorro/DoZorro to identify irregularities and/or abuses as well as how to bring those to the attention of relevant authorities. The pilot monitoring component tested the skills acquired by CSOs in the training as well as the usefulness of the tools available for monitoring of procurement.

### Findings:

- 1) CSO training has limitations in environments where CSOs do not have access to adequate funding to make use of the training by engaging in monitoring of public procurement. Such funding needs to be 'neutral', i.e., not provided by any single entity that has a particular agenda other than seeking to ensure an open and fair public procurement process and better outcomes for citizens. Funding sources can be groups of players in a given sector or bilateral/multilateral donors.
- 2) Procurement monitoring is a complex activity, requiring technical skills and experience to sustain the monitoring over long periods in a professional, transparent and unbiased way. Training under the Project has enhanced CSO

technical skills, including better understanding and use of ProZorro and DoZorro tools. However, only practice over a long period with access to professional support when needed can equip CSOs with the necessary practical skills and experience to do credible professional monitoring. Proving that CSOs can do so is necessary for them to become respected partners to procurement entities and contractors in performing a role as independent and objective monitors operating without political bias and in a transparent fashion. Organizations like TI and PTF can play an important role providing such long term professional support and act as “monitors of the monitors” certifying the professionalism and objectiveness of the CSO monitors.

- 3) ProZorro is now widely used by procurement managers in Ukraine including at local levels but the data input is still rather poor. Poor data severely limits the quality and coverage of CSO monitoring.
- 4) The ultimate objective of CSO training in procurement monitoring is to create a credible, informed and unbiased ‘watchdog’ whose role and findings can be taken seriously by procuring entities and control agencies, resulting in corrective action being taken when justified. Such credible CSOs should expect their queries to be addressed and, if irregularities are confirmed, corrective action taken.

The DoZorro system has a convenient built-in system for recording CSO queries and for procurement entities and control entities to

respond. The current response rate varies widely between entities and localities but is generally low. The “fix rate”, i.e. when action is taken to successfully correct a problem, is lower. Many or perhaps most of the CSO queries do not in the end point to irregularities or even less to corrupt or criminal behavior. Nevertheless, a “fix rate” of next to zero, such as in the case of the three CSOs taking part in the pilot monitoring component, is not credible and is an indication that CSO monitoring is not yet taken seriously by procuring entities and control agencies.

There are in practice few penalties for violations of the Law on Procurement or departures from best procurement practices. The process for determining that such violations have occurred is very long with the final stage in courts, which rarely convict anyone. This means that even if CSOs identify and report on a violation and the responsible agency and courts take action to investigate, it is not clear that the responsible persons will face any consequences.

- 5) Many of the most useful tools for analyzing procurement, identifying risks, irregularities and poor management are part of the so called BiPro tool in ProZorro (<https://bipro.prozorro.org/>). There are by design a limited number of licenses to use this tool and those licenses are given out selectively by the administrators of the ProZorro system and only to those CSOs using BiPro frequently. This puts local CSOs at a disadvantage when it comes to using the ProZorro system to monitor procurement,

even though training in BiPro was included in the EBRD/PTF/KSE and the TI-Ukraine/OCP training programs. Only one of the three CSOs in the pilot monitoring component had access to BiPro.

6) A number of issues were identified by the three CSOs funded by PTF over the brief nine-month pilot monitoring period:

- To avoid the use of competitive procurement methods, contracts are often divided/split. The monitoring by the three CSOs clearly and consistently shows that when desks and chairs are procured through competitive bidding with contracts above 200,000 UAH the price is lower, sometimes by as much as 30%.
- Even above the applicable thresholds for competitive bidding electronic means are sometimes deliberately not used for the execution of the procurement processes.
- The characteristics of the procured goods/equipment are often not sufficiently specified in ProZorro to allow meaningful monitoring.
- Negotiated procedure is often used in a situation where it is not warranted.
- Direct contracts, which are frequently used, are not adequately justified.
- Procurement notices sometimes advertised for shorter periods than required by law.
- Technical specifications are too narrow resulting in little or no competition and in many cases a specific brand/tradename forms part of the specifications.

- Contracts are sometimes concluded ahead of their incorporation in the Procurement Plan.
- Tender committees often do not have the necessary competence.
- There are frequently extensive variations in prices possibly indicating lack of competition/corruption in many cases.
- Insufficient attempts are made to group needs so as to purchase in bulk. This is because procurement is often done by individual schools which do not procure enough to allow for efficient procurement using competitive procedures.

Based on these findings, PTF and KSE encourage the EBRD, Ukrainian government, control, regulatory, audit bodies and Ukrainian CSOs to consider the following actions:

- Any future training programs designed to build the capacity of CSOs to engage in actual procurement monitoring should include funding for said monitoring over two or three years for which organizations successfully completing training could compete. Promote initiatives designed to provide CSOs with long-term financial support for monitoring. This could include a special donor funded facility as well as longer-term initiatives designed to generate local funding from public and private sources.
- In addition to formal training, qualified CSOs need to be given long-term technical support by organizations such as TI and PTF. Explore the potential for creating a more permanent facility designed to

provide technical support for CSO procurement monitoring on an ongoing basis. Such a facility could be housed in an institution such as KSE or TI-Ukraine.

- Measures, including penalties, to improve (ProZorro) data input are needed not only to improve CSO monitoring but perhaps even more importantly to improve the procurement process and its integrity.
  - Responses by Procurement Entities and Control Bodies to queries by CSO monitors should be centrally monitored in the ProZorro system. Procurement entities and control bodies which consistently neglect to respond and act should be flagged.
  - Make BiPro more readily available to monitoring CSOs and journalists.
  - Control/regulatory/audit bodies to focus on the issues listed under item 6 above as being commonly observed irregularities reported by the CSOs participating in the Project's local pilot monitoring exercise.
  - Training material, guidelines and checklists produced under the EBRD/PTF funded project to be distributed widely among CSOs engaged in procurement monitoring.
  - Training material, guidelines and checklists produced under the EBRD/PTF funded project to be used in the preparation and implementation of similar projects world-wide and disseminated widely including through webinars.
  - Support/carry out periodic surveys to establish the consistency with which Pro-Zorro is being used across the country
- (particularly at the local level) including coverage with respect to smaller contracts size, quality of data inputs etc.
- Support/conduct a systematic review of procurement entities and control/regulatory/audit bodies response and fix rates to queries raised by CSOs.

## Annex 1a: EBRD-PTF Contract and Terms of Reference

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Richard Stern  
Partnership for Transparency Fund  
1100 Vermont Avenue NW  
Suite 500  
Washington DC 20005  
USA

2 September 2016

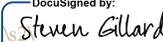
Dear Mr Stern

Please find enclosed the Consultancy Contract number **C33620/1476/8923** for **Ukraine: Improving Transparency and Effectiveness of Public Procurement in Ukraine through Cooperation with Civil Society**.

May I particularly draw your attention to the requirement to comply with **the Rules for the Preparation of Invoices**, to avoid unnecessary delays in payment.

Any queries on this Consultancy Contract should be directed to **James Yoo** in Technical Cooperation ([YooJ@ebrd.com](mailto:YooJ@ebrd.com)).

Yours sincerely

DocuSigned by:  
  
704A639A1EEF451...

**Steven Gillard**  
Associate Director, Head TC Operations  
Technical Cooperation

Enc.

DS  


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Contract No.: C33620/1476/8923

### CONSULTANCY CONTRACT

CONTRACT No. C33620/1476/8923 (the “Contract”), dated 2 September 2016 between the European Bank for Reconstruction and Development (the “Bank” or “EBRD”), an international financial institution established under the Agreement Establishing the European Bank for Reconstruction and Development, a multilateral treaty signed in Paris on 29th May 1990, with its headquarters at One Exchange Square, London EC2A 2JN, United Kingdom, and **Partnership for Transparency Fund** (the “Consultant”) with its principal office at **1100 15th St NW, Ste 400, WASHINGTON DC, United States** (the “Home Office”).

Whereas the governments of various countries through the **EBRD-Ukraine Stabilisation and Sustainable Growth Multi-Donor Account** have agreed to provide a grant to the Bank for the purpose of this assignment, the parties agree as follows:

1. **Duties of the Consultant**

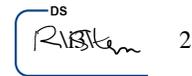
The Consultant shall make available for the **Improving Transparency and Effectiveness of Public Procurement in Ukraine through Cooperation with Civil Society** (the “Project”) the experts named in Schedule B (the “Experts”) who shall perform the services in accordance with the terms of reference attached as Schedule A (the “Services”). By Entering into this Contract, the Consultant is relying on all the assurances provided by the Bank in this Contract, including those stated in Schedule A which are an integral part of this Contract.

2. **Term of Engagement**

Except as the Bank may otherwise agree, the Consultant shall commence the Services on **1 September 2016** (the “Start Date”). It is presently envisaged that the Services will be completed on or before **31 August 2018** (the “End Date”), and the period between the Start Date and the End Date, inclusive, shall be referred to as the “Term of Engagement”). The Consultant shall be engaged by the Bank for the Term of Engagement, provided that the Bank may at any time upon giving the Consultant reasonable notice in writing, suspend or terminate this Contract.

3. **Payments and Invoicing**

- (a) The Bank shall pay to the Consultant remuneration in respect of Services satisfactorily performed during the Term of Engagement, and shall reimburse approved expenses, as set out in Schedule B. Invoices shall be prepared and submitted in accordance with the Rules for the Preparation of Invoices set out in Schedule B.
- (b) The Bank shall pay an advance (the “Advance”) of up to **EUR 20,000.00** on execution and delivery of the Contract and submission of an invoice by the Consultant to the Bank.



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Contract No.: C33620/1476/8923

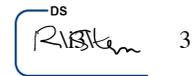
- (c) The Advance shall be reflected in, and offset against the Consultant's first invoice and, if the first invoice is not for a sum equal to or greater than the amount of the Advance, then against each subsequent invoice until the full amount of the Advance has been fully offset. In the event the Contract is terminated for any reason prior to the full amount of the Advance being accounted for, the Consultant shall repay to the Bank, upon demand, such amount of the Advance which has not been offset against invoices for Services provided to the date of termination.
- (d) All payments under this Contract shall be made in **EUR** according to the following payment schedule and submission of an original invoice for each lump sum:
- **EUR 50,000.00 (EUR 70,000.00 minus the Advance EUR 20,000.00) on the Bank's acceptance of the Inception Report (D1) in accordance with Schedule A Terms of Reference;**
  - **EUR 20,000.00 on the Bank's acceptance of the report on the launch event (D2a and D2b) in accordance with Schedule A Terms of Reference;**
  - **EUR 30,000.00 on the Bank's acceptance of the report on drafted training curriculum and materials (D3) in accordance with Schedule A Terms of Reference;**
  - **EUR 20,000.00 on the Bank's acceptance of the mid-term report on training delivered (D4a) in accordance with Schedule A Terms of Reference;**
  - **EUR 20,000.00 on the Bank's acceptance of the final report on training delivered (D4b) in accordance with Schedule A Terms of Reference;**
  - **EUR 20,000.00 on the Bank's acceptance of the report on assistance given to CSOs with piloting the new monitoring approach on local and municipal level for six months after the training sessions (D5) in accordance with Schedule A Terms of Reference; and**
  - **EUR 20,000.00 on the Bank's acceptance of the final report (D6) in accordance with Schedule A Terms of Reference.**
- (e) Any Payments to the Consultant will be made solely to the following bank account:

**Suntrust Bank  
1275 K St NW  
WASHINGTON DC  
20005  
United States**

**Account No.: 1000186546965 Sort Code: SNTRUS3A**



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Contract No.: C33620/1476/8923

4. **Reports**

Except as the Bank may otherwise agree, the Consultant shall submit to **Cristina Buzasu** (the “**Operation Leader**”) of the **PA/Civil Society Engagement Unit team**, the work, findings or reports as set out in Schedule A. All reports or documents produced for the Bank shall be created in the version of Microsoft’s “Word for Windows” and/or “Excel” software, and shall be compatible with “Acrobat”. The Bank will not accept reports or documents formatted in other software.

The source of funding as mentioned in the Preamble of this Contract shall be referred to on the cover sheet of all reports, documents and/or presentations.

5. **Maximum Contract Amount**

Except as the Bank may otherwise agree, total payments, including fees, per diem allowances, expenses and any other payment, to the Consultant under this Contract shall not exceed **EUR 200,000.00** or its equivalent (the “**Maximum Contract Amount**”). The Maximum Contract Amount shall not include any amounts which may be payable by the Bank pursuant to Clause 10 in respect of indirect taxes, including value added tax (“**VAT**”), chargeable by the Consultant on the Services provided hereunder, which are not otherwise recoverable.

6. **Consultant's Liability and Indemnity**

- (a) Subject to Clauses 6 (b), (c), (d) and (e), the Consultant shall be liable for and indemnify and hold harmless the Bank, its directors, officers, employees and agents in respect of:
- i. any act or omission, whether negligent, tortious or otherwise, of the Consultant, its Expert(s), directors, officers, employees, subcontractors or agents relating to or arising from the provision of the Services or the matters contemplated in this Contract;
  - ii. any breach by the Consultant, its Expert(s), directors, officers, employees, subcontractors or agents of any of the Consultant's or Expert(s)' obligations under this Contract;
  - iii. any death or injury to a person resulting from the Consultant's, its Expert(s)', directors', officers', employees', subcontractors' or agents' negligence;
  - iv. the infringement or alleged infringement by the Consultant, its Expert(s), directors, officers, employees, subcontractors or agents of any patent, copyright, registered design or trade mark right of any third party (an “Intellectual Property Infringement”); or
  - v. any failure of the Consultant, its Expert(s), directors, officers, employees, subcontractors or agents to comply with any applicable law, rule or regulation.



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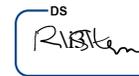
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- (b) The Consultant shall indemnify, hold harmless and, subject to the Bank's privileges and immunities, defend the Bank, against all claims, damages, costs (including legal costs), expenses, taxes, penalties, liabilities, proceedings, losses arising from, out of or in connection with Clause 6 (a) (i) or (ii) up to an amount equal to the higher of professional liability insurance proceeds or one multiple **of the Maximum Contract Amount**, except that such ceiling shall not apply to actions, claims, losses or damages caused by the Consultant's or Experts' reckless conduct or fraudulent behaviour.
- (c) The Consultant shall fully indemnify, hold harmless and, subject to the Bank's privileges and immunities, defend the Bank, against all claims, damages, costs (including legal costs), expenses, taxes, penalties, liabilities, proceedings, losses arising from, out of or in connection with paragraphs 6 (a) (iii), (iv) or (v).
- (d) The Bank agrees to give the Consultant no less than **15** days (following notification by the Bank) in which to remedy any breach by the Consultant, its Experts, directors, officers, employees, permitted subcontractors or agents of any of the Consultant's or Experts' obligations under this Contract which is, in the discretion of the Bank, capable of being remedied.
- (e) In respect of the indemnification referred to in paragraph 6(a) (iv), the Bank shall provide the Consultant with notice of any Intellectual Property Infringement forthwith upon becoming aware the same.

#### 7. Insurance

- (a) The Consultant shall maintain at its own cost a comprehensive insurance policy including without limitation professional liability insurance in respect of any liability which may arise under Clause 6 or any other provision of this Contract.
- (b) Upon request the Consultant shall provide the Bank with a copy of the Certificate of Insurance and allow the Bank to inspect such document. However, neither inspection nor receipt of such Certificate copy shall constitute acceptance by the Bank of the terms therefor nor a waiver of the Consultant's obligations hereunder.
- (c) All types of insurance are the sole responsibility of the Consultant who shall ensure that appropriate cover is in place before starting to perform the Services. The Bank reserves the right to require evidence that the Consultant has taken out the necessary insurance.



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8. **Notices and Requests**

Any notice or request required or permitted to be given or made under this Contract shall be in writing. Such notice or request shall be deemed to be duly given or made when it shall have been delivered by hand, mail, cable, e-mail or fax to the party to which it is required to be given or made at such party's address specified below:

For the Bank:	European Bank for Reconstruction and Development One Exchange Square, London EC2A 2JN, United Kingdom
Attention:	<b>Cristina Buzasu</b>
Fax Number:	<b>+442073386910</b>
E-mail:	<b>BUZASUC@EBRD.COM</b>
For the Consultant:	The Home Office: <b>As per page 2.</b>
E-mail:	<b>rstern@ptfund.org</b>

9. **Contract Schedules**

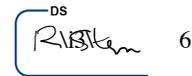
The Schedules to this Contract are incorporated in this Contract by reference and shall have the same force and effect as if fully set forth herein. In the event of any inconsistencies between the Contract and the Schedules attached, the following order shall prevail: the Contract; Schedule A, Terms of Reference; Schedule B, Staffing and Breakdown of Costs; and Schedule C, General Conditions of Contract. Any reference to this Contract shall include, where the context permits, a reference to its Schedules.

10. **Indirect Taxes**

Without consideration of the Bank's tax status as an international financial institution, the Consultant shall determine whether any indirect taxes, including VAT, are chargeable by the Consultant in respect of the Services or this Contract. The Consultant shall advise the Bank of its determination and the basis upon which it was formed. If such indirect taxes, including VAT, are chargeable, the Bank shall pay, subject to its privileges and immunities, such indirect tax.

11. **Effectiveness**

This Contract shall become effective as of the date first above written upon the due execution of this Contract by both the Bank and the Consultant and shall continue in full force and effect, subject to Clause 12, until (i) the Services and all payments therefore have been completed, or (ii) the earlier termination of this Contract.





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## SCHEDULE A

### TERMS OF REFERENCE

#### **Ukraine: Improving Transparency and Effectiveness of Public Procurement in Ukraine through Cooperation with Civil Society**

##### **1. Background**

Improving the investment climate and strengthening economic governance remain core challenges to Ukraine's economic and political transition. In particular, corruption is regarded as one of the main impediments hindering the business environment in the country. Corruption is present at all stages of public procurement, from the development of tender agreements to the signing of contracts and implementation, resulting in significant financial losses. Until recently, procurement procedures were organised via a paper-based system, severely reducing the efficiency and transparency of the process.

Public procurement is one of the most critical aspects of good governance in Ukraine, where the involvement of civil society can add real value in terms of enhancing transparency and addressing corruption. Civil society in Ukraine has been actively promoting anti-corruption measures and a robust reform of public procurement, especially since the "Maidan" movement. Transparency International Ukraine and other civil society organisations (CSOs) have created a coalition of civic activists, experts, academics, and journalists to tackle corruption nationwide. This has resulted in the development of a new Anti-Corruption Strategy for 2014–2017 and the launch of a National Agency on the Prevention of Corruption.

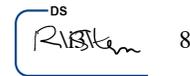
Reform of public procurement is an important part of the anti-corruption efforts of civil society in Ukraine. Led by Transparency International Ukraine, CSOs and relevant experts have created ProZorro, an electronic system for public procurement. The ProZorro Project was initiated in Kiev in May 2014 by a group of civil society stakeholders interested in developing an electronic procurement platform for all Ukrainian public agencies. Their goal was to provide an accessible electronic procurement solution to be used on a voluntary basis, with the goal of reducing corruption in the public procurement sector in Ukraine.

All documents related to public procurement procedures (such as annual plans, tender notices, tender documentation, bids, decisions of evaluation committees, contracts, payments etc.) are thus made publicly available online through ProZorro. The objective of ProZorro is not only the substantial increase in the transparency and efficiency of public procurement, but also the set-up of rigorous accountability mechanisms. The ProZorro Project was established on a *pro bono* basis and in accordance with the latest international standards of data exchange in public procurement, Open Contracting Data Standards. The software used by the ProZorro Project is an open source software, with its source code available at <http://api-docs.openprocurement.org/en/latest/>.

Based on a memorandum of understanding between Transparency International Ukraine and operators of commercial electronic procurement platforms, a small-scale central unit solution was commissioned by Transparency International and built on a proof-of-concept basis. Upon completing the development of the central unit, commercial platforms were connected to provide end-user interaction via an Application Programming Interface (API), and the ProZorro Project was launched and started piloting electronic bidding in Ukraine in January 2015. However, due



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to the limited resources of the project sponsor, as well as the lack of relevant legislation in Ukraine, the scope of the Prozorro Project pilot has been limited to micro procurement, i.e. low value purchases beneath the threshold established by the Ukrainian Public Procurement Law.

Presently, the Government of Ukraine is determined to reform public procurement and develop a fully operational eProcurement system that supports all public procurement procedures and offers several procurement methods for contracting entities in the public sector. The new public procurement law introducing mandatory eProcurement is expected to be adopted by January 2016.

In 2016, the Prozorro Project is therefore expected to be extended to support micro, low and high value procurement, in compliance with the provisions of the 2012 text of the Agreement on Government Procurement of the World Trade Organization (the WTO GPA) and the 2014 European Union Directives on public procurement. The long term goal of the Prozorro Project is to establish an “end-to-end” electronic procurement process, including e-invoicing and e-payment, as well as modern purchasing tools, such as online framework agreements with catalogues and dynamic purchasing system, in compliance with GPA/ EU international best practice.

The Ministry of Economic Development and Trade of Ukraine (MEDT), currently working together with Transparency International Ukraine on implementing the Prozorro Project, has requested donors’ assistance to support further development of the system. In response to the Government’s request, the Legal Transition Team (LTT) in cooperation with the Civil Society Engagement Unit (CSEU) and the Procurement Policy Department (PPD) have developed a Technical Cooperation (TC) project aimed at enabling the transparent and predictable execution of procurement procedures, which would strengthen investor confidence and contribute to improving the business climate more broadly in the country

This TC Project is divided into three assignments. Assignments 1-2 will be carried out by the LTT in cooperation with the PPD. Assignment 3 will be carried out by the CSEU in cooperation with the PPD.

**Assignment 1:**

- 1) Design of a dedicated monitoring methodology for electronic public procurement procedures;
- 2) Piloting the new monitoring procedure for a period of 24 months;

**Assignment 2:**

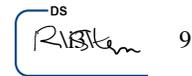
- 3) Acquisition of a monitoring and analytical tool for Prozorro;
- 4) Development and launch of the dedicated analytical solution for Prozorro via a dedicated website;

**Assignment 3:**

- 5) Development of monitoring and investigative tools and training for CSOs to be involved in monitoring on local and municipal level;
- 6) Assist 2-3 CSOs in implementing monitoring at the local and municipal level for a period of 6 months after completion of the training sessions (5 and 6 collectively the “Assignment”).



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## 2. Objectives

**The Assignment comprises components 5 and 6 of the proposed TC project and is intended to complement and support the implementation of the previous two Assignments.**

The overall objectives of the Assignment are to ensure that (1) e-procurement procedures introduced in Ukraine (mandatory since 1 January 2016) are appropriately monitored and (2) the general public, CSOs, and enforcement agencies have access to independent information on public procurement procedures. The project is expected to encourage more transparent and effective use of public funds.

The Assignment is fully in line with the LTT Action Plan 2013-2015 approved on 15 November 2012 (the “Action Plan”), which includes Ukraine among the countries that are the primary targets for e-procurement reforms. The Assignment is also in line with the Civil Society Capacity Building Framework (approved by the Strategy and Policy Committee on 3 July 2014) which aims at identifying, initiating and implementing TC projects building CSOs’ capacity and awareness of the EBRD’s policy dialogue initiatives and investments.

Due to the technical nature of procurement, enhancing the capacity of CSOs is necessary to enable them to understand the different areas and stages of the procurement process, to improve the transparency and efficiency of public procurement, and effectively to monitor procurement at the local and municipal level.

## 3. Scope of Work

The Assignment has two main components:

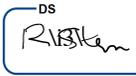
- (i) Development of monitoring and investigative tools and training for CSOs to enable them to be involved in the effective monitoring of public procurement; and
- (ii) Assist 2-3 CSOs in implementing monitoring at the local and municipal level for the first six months after the completion of the training sessions

The Assignment is aimed at building the capacity of CSOs to monitor public procurement on the local and municipal level. The engagement of CSOs in monitoring public procurement will also help ensure long term transparent public procurement. The Assignment is in line with the principles of the Bank’s Investment Climate and Governance Initiative (“ICGI”) and supports the Ukrainian Anti-Corruption Initiative. It is also well aligned with the Country Strategy for Ukraine, which sets improving procurement practices as a priority.

The Bank intends to engage a consultant (the “Consultant”) to perform these two components by undertaking the following tasks, *inter alia*:

### a) Identify and select relevant CSOs

From the 24 regions of Ukraine the Consultant will identify and select local CSOs that are relevant for monitoring public procurement on the local and municipal level. The Consultant will submit a list of CSOs to the Bank for its review and prior approval before the preparation and delivery of training.



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**b) Conduct needs assessment of the CSOs' skills and information level**

Following the Bank's approval of the list of CSOs, the Consultant will assess the selected CSOs' information and training needs about public procurement procedures, develop a questionnaire with the approval of EBRD, and interview a representative sample of CSOs using the questionnaire.

**c) Draft Inception Report**

Based on the findings of the assessment phase, the Consultant will prepare an Inception Report comprising an indicative plan and recommendations for training sessions to be organised for the 24 regions of Ukraine (indicative dates, locations, agendas and topics to be covered), as well as a work plan and detailed time frame.

**d) Conduct a pilot training program**

The pilot training program will test the proposed training module on 2-3 CSOs. This will include testing investigative and monitoring tools developed by the project. The findings will be used to develop training curriculum and materials. The results of the pilot will be presented at the Launch Event.

**e) Organise a high-profile launch event in Kiev**

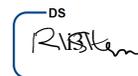
The Consultant will ensure that in addition to the intended technical impact, the Assignment's visibility will improve public understanding of measures aimed at reforming public procurement in Ukraine and the role played by the EBRD in contributing to the country's anticorruption efforts. In this context, the Consultant will organize a high-profile launch event in Kiev with relevant authorities, civil society representatives, businesses, donors and EBRD representatives. The event will mark the beginning of the implementation of the Assignment. An appropriate outreach strategy and communication products related to the event, including multimedia products such as a short documentary film and other visual support materials, will be designed and implemented by the Consultant. The Consultant will be expected to ensure strong local media presence at the event and subsequently wide media coverage.

**f) Develop monitoring and investigative tools**

The Consultant, jointly with the Kyiv School of Economics contracted as a local expert, will further develop the methodology for the monitoring and investigative tools to be used by CSOs for public procurement monitoring purposes.

**g) Design of training curriculum and materials**

The Consultant will design the curriculum and related training material for the training sessions. The sessions' purpose is to enhance CSOs' capacity and skills to enable them to be effectively involved in procurement monitoring on the local and municipal level.



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**h) Deliver training sessions for CSOs**

The Consultant will organise up to 24 training workshops for the regions of Ukraine for the approved list of CSOs. The Consultant shall be responsible for distributing the training material and guidelines to participants at each workshop session. Pre- and post-workshops questionnaires will be provided to the participants to measure their level of knowledge and plan the follow-up phase. The training workshops will be attended by participants as identified in the assessment phase. The Consultant shall provide a list of participants to EBRD in advance of each workshop for review.

**i) Assist 2-3 CSOs in implementing public procurement monitoring at the local and municipal level for the first six months after the completion of the training sessions.**

To ensure long-term sustainability of the training sessions and the public procurement process in general, the Consultant will assist the selected CSOs to implement monitoring on the local and municipal level and offer email advice to them during the first six months following the training sessions.

**4. Implementation Arrangements**

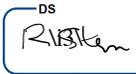
The Consultant shall report to the Bank's Operation Leader (OL), Cristina Buzasu, on all aspects of the Assignment, and work with other Bank team members as required. The Consultant shall work closely with the Ministry of Economic Development and Trade, keeping the Bank informed of the Assignment's progress as required, and bring any matters affecting the implementation and preparation of deliverables to the attention of the OL as soon as possible.

The Bank shall facilitate access to relevant information for the Consultant during the Assignment to the extent possible, including information from the related assignments on the design and implementation of the Prozorro E-Procurement system and other tools as required. In the event that the provision of relevant information to the Consultant is delayed, the Bank shall inform the Consultant and make adjustments to the work plan as required.

**5. Deliverables**

The Consultant shall provide the following deliverables to the Bank by deadlines to be agreed with the Bank during the Assignment:

No.	Deliverable
D1	Inception Report
D2a	Report on Launch event in Kiev (including outreach, communication and media products)
D2b	Report on the development of the methodology for monitoring and investigative tools to

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	be used by CSOs
D3	Report on drafted training curriculum and materials
D4a D4b	Report on training sessions delivered (D4a: Mid-term Report; D4b: Final report)
D5	Report on assistance given to CSOs with piloting the new monitoring approach on local and municipal level for six months after the training sessions
D6	Final Report

All reports and materials shall be prepared and submitted to the Bank in English both in paper format and in electronic form (Microsoft Office format).



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**SCHEDULE B**

**Staffing and Breakdown of Costs**

**(All amounts to be exclusive of indirect taxes, including VAT,  
which may be chargeable by the Consultant)**

**Ukraine: Improving Transparency and Effectiveness of Public Procurement in  
Ukraine through Cooperation with Civil Society**

EUR

**1. Fees:**

Name of Expert	Job Title		Total
Jorge Claro	Procurement Trainer	Lump sums inclusive of all fees and expenses, in accordance with Section 3(d) of the Consultancy Contract.	200,000.00
Sabine Engelhard	Legal / Procurement Trainer		
Ram Janakiram	Procurement Specialist		
Ram Janakiram	Procurement Specialist		
Lars Jeurling	Project Coordinator		
Alfonso Sanchez	Procurement Specialist		
Wayne Wittig	Legal / Procurement Specialist		
<b>Total Fees:</b>			<b>200,000.00</b>

<b>TOTAL MAXIMUM CONTRACT AMOUNT (Contract Ceiling Amount)</b>	<b>200,000.00</b>
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**Invoices must be prepared according to the attached Rules for the Preparation of Invoices. The Bank shall not be responsible for delays in paying invoices if the Consultant's invoices do not comply with the attached Rules. Unless otherwise stated, any equipment included in the Contract and purchased by the Consultant shall be disposed of at the end of the Contract in accordance with the Bank's directions.**



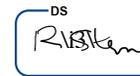

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### **RULES FOR THE PREPARATION OF INVOICES**

The following points shall be observed when submitting invoices for payment.

- **All invoices shall be addressed and sent to:**  
Donor Funded Operations  
European Bank for Reconstruction and Development  
One Exchange Square, London EC2A 2JN, UK
- The Contract number and name of Operation Leader (see Clause 4. Reports of the Contract) shall be quoted on the invoice.
- Invoices shall be marked to show the Consultant's business address, invoice number and date. The name and telephone number of a person who may be contacted in case of need to raise queries shall be quoted on the invoice.
- The Bank will only make payments after the original signed copy of the Contract has been returned to Technical Cooperation and only on submission of original invoices and original supporting receipts (no faxes or copies shall be acceptable).
- Invoice payments will be made by direct transfer to the bank account referred to in Clause 3 of the Contract.
- Full details of the bank account, where payment shall be made, as set out in the Contract must be supplied on the invoices, including currency of the account.
- Period during which Services were performed must be stated.
- Invoices shall be itemised in the order set out in Schedule B.
- Fees and per diem must be invoiced as per Clause 3(b) of Schedule C.
- Reimbursable expenses, including Air Travel, Local Travel and Miscellaneous costs must be invoiced in the currency of the Contract, according to Clause 3(b) of Schedule C.
- Exchange rates for reimbursable expenses should be stated in the invoice. Conversions shall be made at the rates published in the Financial Times on the first Monday of the relevant month (the month that the invoice was prepared) if it is convertible or against submission of evidence of the exchange rate applied when purchasing local currency for the corresponding reimbursable expenses.
- Any change to the Contract necessitating an amendment to the Contract should be completed prior to submission of an invoice.
- The last of the invoices (or, as the case may be, the only invoice) issued by the Consultant for the Services shall be called the "Final Invoice" and shall be indicated as such. The Final Invoice shall not be issued until all the Consultant's obligations for performing the Services have been satisfactorily fulfilled. The "Final Invoice" must be submitted within three months of the earlier of the completion of the Services and the End date of the Contract.
- For reimbursement of air travel costs, original ticket stubs must be submitted, together with boarding cards and travel agency receipts.
- A numbered list detailing each reimbursable item shall be submitted, with correspondingly numbered original receipts for each item attached.
- Purchase of goods by the Consultant under the Contract will be subject to the Bank's Procurement Policies and Rules in particular paragraphs 3.12 and 3.13.



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- Prior to issuing the first invoice, in accordance with Clause 10 of the Contract, the Consultant should confirm with the Bank whether VAT can be charged or whether the invoice(s) should be zero rated for VAT purposes due to the Bank's privileges and immunities.
- Any applicable VAT charged by Consultant shall be separately itemised on the invoices.
- Any questions regarding these Rules should be addressed to the Budget Officer, Technical Cooperation, telephone: + 44 20 7338 6927.



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**SCHEDULE C**  
**Consultancy Contract**

**General Conditions of Contract (Firms)**

**1. Fees**

- (a) Where the fee is expressed in terms of a daily rate, the time spent in performing the Services shall be determined on the basis of the number of days actually spent by the Expert(s) in performing the Services including necessary travel time. In calculating fees payable on a monthly basis, the time spent in performing the services shall be determined on the basis of a minimum number of twenty-two (22) working days per calendar month.
- (b) Where the fee is paid as a fixed fee or lump sum it shall include all ancillary services such as secretarial services and research, as may be incurred for the purposes of the Services as specified in the Contract. Unless otherwise specified in the Contract, per diem allowances and travel expenses and all other miscellaneous expenses shall be deemed to be included in the fixed fee or lump sum payment.
- (c) The fees specified in the Contract shall be deemed to include provision for all leave, insurance, social welfare charges or contributions to which the Consultant may be or may become liable to pay (by law or by agreement) during the Term of Engagement. The Consultant has full and sole responsibility for complying with any applicable law, regulation, administrative rule or guidance in this respect and shall indemnify the Bank against any claim against the Bank for non-compliance thereof, whether made before or after the termination or expiry of the Contract. Except as may be otherwise specified in the Contract, the fees shall also be deemed to include all administrative expenses, and other overheads of the Consultant.
- (d) Except as otherwise agreed between the Bank and the Consultant, no fees shall be paid in respect of work performed other than during the Term of Engagement as specified in the Contract.

**2. Allowances and Expenses**

Where the Contract is not a lump sum or fixed fee Contract, the Bank shall pay the following allowances, costs, and expenses if so provided in schedules, subject to the provisions of the Contract:

- (a) Per diem: a per diem allowance when an Expert is requested by the Bank to be away from the usual place of residence. The per diem allowance shall cover the cost of hotel room, food and incidental expenses, but not local travel. To the extent provided in the Contract, the per diem allowance will be paid for each night spent away from the Home Office location or the Expert's usual place of residence. No per diem allowance shall be paid for periods of leave or day of return.

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- (b) An accommodation allowance when the Expert is required by the Contract to be away from the usual place of residence and to reside in the place and country of assignment for a period of three (3) months or more. For the purpose of determining this period as well as the entitlement to the allowance, short absences from the place and country of assignment shall not be counted.
- (c) Travel expenses: all travel expenses actually and properly incurred by the Experts in travelling for the purposes of the Services including the cost of local transport by an appropriate means of public transport between the Expert's usual place of residence and the nearest convenient international airport when travelling away from the Home Office. All travel should be via the most cost-effective routes and methods available. Air travel shall be made at fares no higher than full Economy Class fare (commonly designated as fare basis Y). Travel by train may be made in the first class, apart from EuroStar, which shall be in second class. Travel by private car shall only be made if provided for in the Contract. The cost for a private car shall be reimbursed at the mileage rate applied at the time by the Bank for reimbursement of such cost.
- (d) Miscellaneous expenses: expenses of the Expert(s) arising directly out of the Services as the Bank may in its sole discretion determine. Each miscellaneous expense shall be specifically itemised in Schedule B.
- (e) Except as otherwise provided for in the Contract, travel expenses and miscellaneous expenses are reimbursable at cost to the Consultant, inclusive of any applicable VAT paid if such VAT are not otherwise recoverable by the Consultant.

### 3. Payment of Fees and Expenses

- (a) Where the Term of Engagement is less than two months, the fees, per diem allowance and reimbursable expenses owing to the Consultant shall be payable upon completion of the Term of Engagement or termination of the Contract whichever is earlier after deduction of any advance payments made to the Consultant. When the Term of Engagement is two months or more, the Consultant shall be paid in such periodic instalments as specified in the Contract. Payments by the Bank to the Consultant shall be made upon submission by the Consultant of an itemised numbered invoice in respect of the relevant period of Services during the Term of Engagement showing the amounts payable by the Bank supported by such receipts, vouchers, time sheets and other evidence as the Bank may reasonably require.
- (b) The fees and per diem allowance shall be invoiced and paid in the currency specified in the Contract. Reimbursable expenses shall be invoiced and paid in the currency of the Contract after conversion from the currency in which they were incurred to the Contract currency, at a conversion rate set out in the Financial Times on the first Monday of the month of the invoice, if it is convertible, or against submission of evidence of the exchange rate



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applied when purchasing local currency for the corresponding reimbursable expenses.

#### 4. Immunities

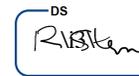
The Bank shall make all reasonable endeavours to ensure that the Experts receive in member countries of the Bank in which the Services are being provided, the privileges, immunities and exemptions accorded to an expert performing a mission for the Bank under Articles 51 and 52 of the Agreement Establishing the Bank. The Consultant and Experts hereby acknowledge that any privileges, immunities and exemptions afforded to them are afforded solely in relation to the provision of the Services and can at any time be waived by the Bank.

#### 5. Replacement of Expert(s)

- (a) The engagement of the Consultant by the Bank is conditional upon the Expert(s) being in good health and not subject to any physical or mental disability which may interfere with the performance of the Services. To this end the Consultant shall, furnish the Bank with all such medical or other evidence as the Bank may reasonably require, if so requested by the Bank.
- (b) The Consultant shall also ensure that every Expert, employee or agent who may have access either a) to the Bank's IT facilities or b) to the Bank's Headquarters or resident offices has had his or her references in respect of previous employment history critically reviewed and subsequently confirmed by the Consultant prior to the granting of such access. The Consultant confirms that it, or a suitably qualified third party agency, has performed a background check regarding each Expert's criminal record, an employment and education verification, and that the Consultant is satisfied that the background check has not revealed any material discrepancies or issues. The Consultant shall supply a summary of its findings to the Bank upon the Bank's request.
- (c) The Bank, at any time, and at its sole discretion, may review the Consultant's or the Expert(s)' references, background checks, criminal record, employment and education records in respect of any previous employment history. Without prejudice to Clause 8 of the General Conditions or to the application of the Bank's Enforcement Policy and Procedures, the Bank may, at its discretion, by summary notice in writing terminate the Contract if any material discrepancies or issues have been discovered. The Bank is entitled to demand the replacement of any Expert(s) if, in the opinion of the Bank, the Consultant has failed to comply to the Bank's satisfaction with Clause 5 (c), Clause 8 or, if any material discrepancies or issues have been discovered, during the review, or if the Expert is unable to effectively provide the services due to reasons related to health, language, ability, professional or personal qualifications



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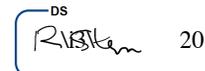
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and conduct. The Consultant shall bear all additional costs incurred in connection with a replacement of Expert(s) pursuant to this paragraph, as well as any additional expenses arising for or in relation to the substitute personnel.

- (d) The Bank may require the replacement of the Expert(s) for reasons other than those referred to in Clause 5(c) . In such cases, the Bank may in its sole discretion reimburse such expenses as are unavoidable in connection with the replacement. Insofar as such expenses concern fees and ancillary expenses, in respect of the Expert(s) replaced, these shall be deemed avoidable if they arise more than three (3) months after the Bank has requested the replacement, unless the Consultant can prove that the incurring of such costs beyond this period of time was unavoidable.
- (e) Following a demand for replacement of the Expert(s) by the Bank, the Consultant shall assign new Expert(s) without delay, unless the Bank explicitly requests that this shall not be done. The new Expert shall possess qualifications and experience acceptable to the Bank and the relevant fees shall be at a rate no higher than that agreed for the previous Expert.
- (f) The Consultant shall not be permitted to replace or substitute Expert(s) without the prior written consent of the Bank. The Bank, may in its sole discretion determine whether or not such consent shall be given.

#### 6. Termination and Termination Procedure

- (a) Without limiting the provision of Clause 5, if at any time in the opinion of the Bank whether for reasons of health or otherwise, the Expert(s) are unable to perform or to complete the Services in an adequate manner, the Bank may terminate the Contract.
- (b) The Bank may, at any time, by summary notice in writing suspend or terminate the Contract if the Consultant or the Expert(s) commits any material breach of their obligations hereunder or shall have engaged in conduct likely to bring the Bank into disrepute.
- (c) Upon receipt of notice of termination by the Bank according to Clause 2 of the Contract, or the giving of notice of termination under Clause 6 (a) or (b) of the General Conditions, the Consultant shall take immediate steps to terminate the Services in a prompt and orderly manner to reduce losses and to keep further expenditures to a minimum. If the Contract is a fixed-fee or lump sum Contract, the Consultant shall be entitled to that proportion of the Maximum Contract Amount, which represents the work completed or Services, provided up to the date of termination.
- (d) Upon termination of the Contract by the Bank (unless such termination shall have been caused by the default of the Consultant), the Consultant



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shall be entitled to be reimbursed in full for such fees, per diems and expenses as shall have been duly incurred prior to the date of such termination. The Consultant shall also be entitled to unavoidable reasonable costs incidental to the orderly termination of the Services, but shall be entitled to receive no other or further payment. Insofar as such incidental costs concern fees and ancillary expenses in respect of termination of the Contract by the Bank, these shall be deemed avoidable unless the Consultant can prove that the incurring of such costs beyond the date of termination was unavoidable.

- (e) In no event shall payments pursuant to this Clause 6(d) exceed the Maximum Contract Amount.

## 7. General Covenants

The Consultant covenants and agrees that:

- (a) During the Term of Engagement, the Expert(s) shall devote the appropriate time and attention to the performance of the Services and shall at all times act with due diligence and efficiency and in accordance with the Terms of Reference set out in Schedule A to the Contract. The Expert(s) shall make or assist in making all such reports and recommendations as may be reasonably required by the Bank within the general scope of the Services, and shall at all times co-operate with the Bank, its employees and agents in the interests of the Project.

After the Term of Engagement, including during any Project evaluation by the Bank, the Expert(s), shall continue to co-operate with the Bank to such reasonable extent as may be necessary to clarify or explain any reports or recommendations made by the Expert(s).

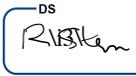
- (b) At all times, the Consultant and the Expert(s) shall act with appropriate propriety and discretion and in particular shall refrain from making any public statement concerning the Project, the Bank, or the Services without the prior approval of the Bank. The Consultant and the Experts shall refrain from engaging in any unreasonable political activity.
- (c) Except with the prior written consent of the Bank, the Consultant shall not disclose nor cause or permit the Expert(s), the Consultant's employees, agents and sub-contractors to disclose to unauthorised persons nor use for the Consultant's or the Expert's, the Consultant's employees', agents' or sub-contractors' own purposes any information relating to the Services, the Project or the Bank, including information in respect of rates of remuneration and conditions of employment. Neither the Consultant nor the Expert(s) shall have authority to commit the Bank in any way whatsoever, and shall make this clear as circumstances warrant.

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- (d) The Expert(s) shall report immediately to the Bank any accident, injury or any damage to the property of the Bank or to the property or person of any third parties occurring in or arising out of the performance of the Services and any act, matter or thing which within the Expert(s)' knowledge may have caused such accident or injury. The Expert(s) shall also report immediately to the Bank any circumstances or events which might reasonably be expected to hinder or prejudice the performance of the Services including circumstances and events relating to the Expert(s)' transport and accommodation.
- (e) The Consultant shall not assign or subcontract the Contract or any part thereof except with the prior consent in writing of the Bank and only to a firm or a person approved by the Bank. The Bank may at its sole discretion refuse to consent.
- (f) Except as otherwise agreed, all reports, notes, drawings, specifications, statistics, plans and other documents and data compiled or made by the Consultant or the Expert(s) while performing the Services and all equipment furnished to the Consultant by the Bank, or purchased by the Consultant with funds supplied or reimbursed by the Bank hereunder shall be the property of the Bank and upon termination of the Services shall be disposed of as the Bank shall direct. The Consultant may retain copies of such documents and data but shall not use the same for purposes unrelated to the Services without prior written approval of the Bank.
- (g) After the conclusion of the Term of Engagement, neither the Consultant nor the Expert(s) shall without the prior written consent of the Bank engage in any subsequent work on or in connection with the Project or arising out of the Project for a period of two years provided, however, that such consent shall not be unreasonably withheld.
- (h) The Consultant shall ensure that no circumstances arise during the Term of Engagement in which the Consultant's activities under the Contract conflict or might conflict with the personal interest of the Consultant or the Expert(s) or with any services which the Consultant or the Expert(s) may render to third parties.
- (i) The Consultant shall respect and abide by all applicable laws, regulations, administrative rules and guidance of the country of the assignment.
- (j) Where the Bank has entered into an agreement with a third party for the provision to the Expert(s) of transport, accommodation or other facilities, whether in the country of assignment or elsewhere, the Expert(s) shall, so far as may be practicable, utilise such facilities.
- (k) Any improvement or design made or process or information discovered or copyright work produced by or on behalf of the Consultant in connection with or relating to the Services (whether capable of being patented or



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- i. that the Consultant and the Expert(s) shall, at all times during the term of this Contract, comply with the Bank's Enforcement Policy and Procedures including reporting to the Bank any suspicion the Consultant and/or the Expert(s) have, or is/are informed of, regarding the use of a Prohibited Practice in relation to a Bank Project.
  - ii. not to undertake any Retaliation, or permit any Retaliation to be undertaken by any of its Experts, employees, managers, officers, directors, subcontractors, consortium members or associates or other persons engaged by the Consultant against any Expert who reported or intends to report a Prohibited Practice .
- (b) The Bank, without prejudice to any other remedy for breach of contract may, by written notice, terminate this Contract if in its judgement, the Consultant or the Expert(s) has engaged in Prohibited Practices in competing for or in executing the Contract or has engaged in Retaliation.
- (c) For the purposes of this Clause,
- i. **"Bank Project"** has the meaning given to it in the Bank's Enforcement Policy and Procedures.
  - ii. **"Prohibited Practices"** are one or more of the following, as defined in the Bank's Enforcement Policy and Procedures as of the date of this Contract:
    - a **"coercive practice"** which means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
    - a **"collusive practice"** which means an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
    - a **"corrupt practice"** which means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
    - a **"fraudulent practice"** which means any act or omission, including a misrepresentation, that knowingly or recklessly<sup>1</sup> misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation-; and
    - a **"theft"** which means the misappropriation of property

<sup>1</sup> To act knowingly or recklessly requires that the information or representation being conveyed is false or that the actor is indifferent as to whether the information or representation is true or false. Mere inaccuracy in information or representation, committed through simple negligence, is not tantamount to a fraudulent practice.



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belonging to another party.

- iii. **“Retaliation”** is any direct or indirect detrimental action recommended, threatened or taken because an individual reported to the Bank any suspicion or information received regarding the use of a Prohibited Practice in relation to a Bank Project.

#### 9. **Inspection and Audit by the Bank**

The Consultant shall permit the Bank or its designated representative(s), upon reasonable notice, periodically during and after the Term of Engagement to inspect the Consultant’s accounts and records relating to the performance of the Contract and make copies thereof and to have them audited by auditors appointed by the Bank, if so required by the Bank.

#### 10. **Force Majeure**

- (a) If either party is temporarily unable as a result of an event of Force Majeure to meet any obligations under the Contract, such party shall give to the other party written notice of the event within fourteen (14) days after its occurrence.
- (b) The parties shall take all reasonable measures to minimise the consequences of any event of Force Majeure.
- (c) Neither party shall be liable to the other party for loss or damage sustained by such other party arising from any event referred to in Clause 10(a) or delays arising from such event.
- (d) Any period of time required by a party to perform an obligation, or complete any action or task pursuant to this Contract, shall be extended for a period equal to the time during which such party was unable to perform such action as a result of Force Majeure.
- (e) During any period of the Consultant’s inability to perform the Services in whole or in part, as a result of an event of Force Majeure, the Bank, in its sole discretion, may determine whether or not the Consultant shall be entitled to continue to be paid under the terms of this Contract and reimbursed for additional costs reasonably and necessarily incurred by them during such period and in reactivating the Services after the end of such period.
- (f) The term "Force Majeure", as employed herein shall mean acts of God, strikes, lock-outs or other industrial disturbances, acts of the public enemy, wars, blockades, insurrection, riots, epidemics, landslides, earthquakes, storms, lightning, floods, washouts, civil disturbances, explosions, and any

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other similar events, not within the control of either party and which by the exercise of due diligence neither party is able to overcome.

## 11. Insurance

- (a) The Bank's Travel Accident insurance, Baggage insurance, or any other Bank insurances will not apply to the Consultant or its Experts, employees or any permitted subcontractor used by the Consultant. The Consultant shall be responsible for appropriate insurance coverage and for assuring that any Experts, employees and subcontractors it uses also maintain adequate insurance coverage. In addition to the coverage referred to in Clause 7 of the Contract, the Consultant shall take out and maintain insurance against the risks and for the coverage set forth below:
- i) in the event the Consultant's Expert(s), or employees are using owned, or leased vehicles in carrying out Services under this Contract in the country of assignment, adequate motor vehicle insurance cover in accordance with local standards;
  - ii) workers' compensation and employer liability insurance, or its equivalent, in respect of the Consultant the Expert(s), and the Consultant's employees, in accordance with the provisions of applicable law, covering work activity in the jurisdiction(s) where work is to be carried out, and during the course of travel, as well as, with respect to such Expert(s) or employees, any life, health, accident, travel or other insurance as may be appropriate;
  - iii) insurance or self insurance against loss or damage to (a) the Consultant's and Expert(s)' personal property used in the performance of Services and (b) any documents prepared by the Consultant in the performance of Services; and
  - iv) insurance against loss of or damage to the equipment purchased in whole or in part with funds provided under this Contract and against loss of or damage to Consultant's property, including papers and documents, necessary to the Services.
- (b) At the Bank's request, the Consultant shall promptly provide evidence to the Bank showing that such insurance has been taken out, maintained and that the current premia have been paid.

## 12. Tax Liabilities

Subject to the provisions of Clause 10 of the Contract, the Consultant shall be liable for and pay any taxes (such as income tax) arising out of or in connection with the Services, or the Contract wherever arising, including but not limited to the country (ies) of assignment.

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### 13. Relationship of the Parties

Nothing contained in these Conditions or in the Contract shall be construed as establishing or creating any relationship other than that of independent contractor between the Bank on the one part and the Consultant and the Expert(s) on the other part.

### 14. Exclusion of Third Party Rights

A person who is not a party to this Contract has no rights under the Contracts (Rights of Third Party) Act 1999 or otherwise to enforce any term of this Contract in his/her or its favour except that legally recognised successors or permitted assignees shall be deemed to be a party to this Contract.

### 15. Bank's Liability

Notwithstanding any other provision of this Contract, the Bank shall not be liable to the Consultant under or in connection with this Contract for any loss or damage (including consequential or indirect loss or damage, such as loss of property, profit or business revenue) whether or not caused by the negligent act or omission of the Bank. This provision shall not apply in relation to (a) any negligent act or omission of the Bank, which gives rise to death, or personal injury of the Consultant's personnel or Experts, or (b) any Retaliation by EBRD personnel against the Consultant or an Expert, to the extent such Retaliation has been established in accordance with the terms of this Contract.

### 16. Amendment and Non-Waiver of Contract Terms and Conditions

The Contract as amended from time to time in accordance with this section contains the entire agreement between the parties and supersedes all prior arrangements or agreements whether written or oral, express or implied. Any amendment, waiver or relaxation whether partly or wholly of any of the terms or conditions of the Contract shall be valid only if in writing and signed by or on behalf of the Bank's Director of Technical Cooperation and shall apply only to a particular occasion and for the specific purpose. Any specific waiver or relaxation shall not constitute a waiver or relaxation of any succeeding breach of the same or other terms or conditions.

### 17. Governing Law and Dispute Settlement

- (a) This Contract shall be governed by and construed in accordance with English law. Any non-contractual obligations arising out of or in connection with this Contract shall be governed by and construed in accordance with English law.
- (b) Any dispute controversy or claim arising out of, or relating to this Contract or the breach, termination or invalidity hereof or any non-contractual obligations arising out of or in connection with this Contract which cannot be amicably settled, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as in force and effect on the date of this Contract. There shall be one (1) arbitrator, and the appointing authority for the purposes of the



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UNCITRAL Rules shall be the LCIA (London Court of International Arbitration). The seat and place of arbitration shall be London, England and the English language shall be used throughout the arbitral proceedings. The Parties hereby waive any rights under the Arbitration Act 1996 or otherwise to appeal any arbitration award to, or to seek determination of a preliminary point of law by, the courts of England or elsewhere. The arbitrator shall not be authorised to grant, and the Consultant agrees that it shall not seek from any judicial authority, any interim measures or pre-award relief against the Bank, any provisions of the UNCITRAL Arbitration Rules notwithstanding.

- (c) Nothing in this Contract shall be construed as a waiver, renunciation or modification by the Bank of any immunities, privileges and exemptions of the Bank accorded under the Agreement Establishing the European Bank for Reconstruction for Development, international convention or any applicable law. Notwithstanding the foregoing, the Bank has made an express submission to arbitration under Section 17(b) of this Contract and accordingly, and without prejudice to its other privileges and immunities (including, without limitation, the inviolability of its archives), it acknowledges that it does not have immunity from suit and legal process under Article 5(2) of Statutory Instrument 1991, No. 757 (The European Bank for Reconstruction and Development (Immunities and Privileges) Order 1991), or any similar provision under English law, in respect of the enforcement of an arbitration award duly made against it as a result of its express submission to arbitration pursuant to Section 17(b) of this Contract.

**18. Validity of Certain Provisions**

The expiration or termination of this Contract howsoever arising shall not affect the provisions hereof that are expressed to operate or have effect thereafter. Furthermore, the invalidity of any part of this Contract does not affect the validity of other parts of the Contract.

**19. Language**

English shall be the sole Contract language and except as otherwise agreed or required by the Bank all communication, documentation and reports under this Contract shall be prepared and presented in the English language. In any dispute over language the English version shall prevail.

**20. Further Assurances**

The Consultant shall, or shall cause the Experts to, at any time and from time to time, upon the Bank's request, execute and deliver such further documents and do such further acts and things as the Bank may reasonably request in order to evidence, carry out and give full legal effect to the terms, conditions, intent and meaning of this Contract.

**21. Time is of the Essence**

Time is of the essence under this Contract.



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**22. Cumulative Remedies**

The rights, powers and remedies of the Bank under this Contract are cumulative and in addition to and not in substitution for any rights, power or remedy that may be available to the Bank at law or in equity.

**23. Counterparts**

This Contract may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Contract.

**24. Consortia, Subcontractors and Association**

When the Consultant is permitted by the Bank to associate with individual consultants, consultancy firms, partnerships, entities or other persons, in a consortium or through subcontracting or association, as appropriate, the Consultant will ensure that each such consortium member, subcontractor and/or associate fully complies with the Consultant's obligations under this Contract. The Consultant shall be liable for the acts or omissions of such consortia members, subcontractors and/or associates. The Consultant will not be relieved of its obligations under this Contract by use of such individual consultants, firms, partnerships, entities or other persons.

Such permitted individual consultants, firms, partnerships entities or other persons in the consortia, association or subcontracting arrangement may only be changed with the prior consent of the Bank.

**25. EBRD Logo**

The Consultant is advised that the Bank's logo is a registered service mark and shall not reproduce such logo without the express written permission of the Bank.



## Annex 1b: Project Plan

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### ANNEX 1 B

*Improving Transparency and Effectiveness of Public Procurement in Ukraine through Cooperation with Civil Society.*

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### PROJECT WORK PLAN

#### Introduction

**This Project Work Plan elaborates on Section 3: Key Activities, of the Terms of Reference of the contract between PTF and KSE dated November 10, 2016.**

Public procurement is a major item in state and local government budgets in Ukraine. There is considerable evidence that this procurement could be done more efficiently and more transparently reducing the corruption that is currently plaguing Ukraine. For this purpose the new law on public procurement enacted in early 2016 provides for an E-procurement system (ProZorro) to be implemented. ProZorro is now up and running and has already resulted in a reduction in the cost of procurement. The government is in the process of empowering several government bodies to operate and monitor the ProZorro system. In addition the law gives civil society a role in monitoring public procurement. This role still needs to be clarified based on the experience of Civil Society Organizations (CSOs) in Ukraine and other countries. The monitoring done so far in Ukraine has been on a case by case basis. CSO monitoring based on data from the ProZorro system could become more comprehensive and systematic. CSOs need to be trained and equipped to play such a role.

Against this background the objectives of the project are to:

- (i) Identify analytical data elements in the ProZorro E-procurement system which can be used to monitor the efficacy and integrity of the procurement;
- (ii) Build capacity of the civil society organizations to effectively monitor government procurement using the analytical tools developed under “Objective 1” above. The training program, which will be closely coordinated with ongoing and planned training of CSOs by TI-Ukraine and by “the Harmonization of Public Procurement System in Ukraine with EU Standards”, will cover:

- a. Basic procurement principles and practice of the reformed government procurement system that support open, competitive transactions using public funds;
- b. The general objectives, plans, strategies and methodologies to monitor procurement as developed by Ukrainian, European Union, and other national and international organizations and CSOs within the Ukrainian legal, policy, and institutional setting; and
- c. The use of the tools developed or to be developed with EBRD and other funding based on information generated by the ProZorro system and from other sources. These tools should allow CSOs to monitor procurement transactions in accordance with Ukrainian laws and regulations and best international practices.

The assignment will target CSOs and activists in all parts of Ukraine, especially outside of Kyiv, who are:

- (i) engaged in anti-corruption activities or monitoring public procurement transactions, as members of Civil Society Organizations,
- (ii) CSOs not already engaged in such activities but with the interest and potential to develop expertise in monitoring public procurement transactions
- (iii) Journalists who work in areas related to corruption investigation or, preferably, monitoring of public procurement.

The project includes organizing a high profile “Launch Event” in Kyiv and follow-up assistance to select CSOs engaged in procurement monitoring. The duration of the project is from September 1, 2016 until August 31, 2018

### *The Plan*

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#### *Milestone 1*

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#### **Task 1. Develop the detailed Project Plan**

- 1.1 KSE and PTF held discussions October 24-28, 2016 with stakeholders to familiarize the team with the latest developments of procurement reform, ProZorro tools and applications and CSO experiences of monitoring public procurement. The discussions also covered selection criteria for CSOs, and individuals to participate in the training, the design of the pilot training (see below) and of the CSO training needs assessment.
  - a. Meetings with members of ProZorro team, Department of monitoring and inspection of government procurement of the State Audit Service of Ukraine (October 24, 2016);
  - b. Meeting with the Acting Director General of the State-Owned Enterprise «ProZorro» (October 25, 2016);
  - c. Meetings with the State commissioner of the Anti-Monopoly Committee of Ukraine, representative of the EU Harmonization Project, representative of the

- National Police of Ukraine, head of CenterUA project, Editor in Chief of the magazine «Nashigroshi» (October 26, 2016) ;
- d. Meetings with the representatives of Anti-corruption Headquarters of Kyiv, head of project «Nashigroshi Zaporizhia», Chief Analyst at the Policy Analysis Department of TI Ukraine (October 27, 2016);
  - e. Meeting with the country director and other representatives of the World Bank (October 28, 2016);
  - f. Several working meetings of the PTF and KSE teams.

- 1.2 Develop Project Work Plan based on the meeting results.
  - a. Update the draft Project Work Plan (KSE Team, completed November 10, 2016)
  - b. Review and edit the draft Project Work Plan (PTF Team, completed November 15, 2016)
  - c. Finalize Project Work Plan (KSE Team, completed November 25, 2016)

*Input from the PTF: Participated in the meetings (24-28.10.2016), reviewed and approved the plan.*

**Task 2. Develop analytical tools for CSO monitoring of public procurement (the Monitoring Toolkit) including measureable risk indicators.**

- 2.1 Outline the risks and respective analytical instruments to reveal the risks that will be used in the Monitoring Toolkit
  - a. Select Risk Indicators (RI) that are most relevant for CSO monitoring (KSE Team, December 11, 2016);
  - b. Test selected RI using the data of ProZorro system (KSE Team, December 18, 2016)
  - c. Review the list of RI and tests by PTF team (December 25, 2016)
  - d. Describe with examples the calculation of Risk Indicators (based on the type of procurement and the stage of the procurement process, probability of occurrence and impact); prepare templates for application of the RIs to the tenders in ProZorro (KSE Team, January 10, 2016).
  - e. Prepare guidelines (to be modified following the Pilot training) of how to monitor public procurement based on:
    - i. different types of procurement (goods, works and services);
    - ii. different procurement methods (open tender, competitive dialogue, and negotiated purchase);
    - iii. different phases of the procurement process (needs assessment/planning, bidding, bid evaluation, contract implementation/contract management, contract payments). These guidelines will build on materials such as:
      - 1) the Procurement Monitoring Guide prepared by TI USA;
      - 2) the data obtained from ProZorro and other relevant sources using the Risk Assessment Methodology.

The guideline should also put the methodology in a wider perspective of public procurement monitoring, its purposes and conceptual approaches (KSE Team, January 15, 2017).

- f. Develop at least two case studies applying RI to ProZorro data for use in Pilot and subsequent training to help CSOs understand how they can identify anomalies/shortcomings in procurement (KSE Team, January 15, 2017).
- g. Develop a list of potential actions for CSOs to consider as a response to anomalies in procurement identified through use of RI (KSE Team, January 15, 2017).

- h. Identify CSOs who can prepare case studies on monitoring public procurement based on their experience in Ukraine (KSE Team, January 15, 2017)

*Input from PTF: Review and improve the list of RIs, guidelines, case studies and list of potential actions (January 18, 2017).*

### **Task 3. Prepare the documents/case studies for the Monitoring Toolkit**

- 3.1 Compile all the relevant documents (laws, regulations, reports) on monitoring of public procurement in Ukraine and selected countries ( to be identified) to be distributed to the participants. This should be provided in electronic form (KSE Team, December 27, 2016)

*Input from PTF: Review and make suggestions on the package of documents for the Monitoring Toolkit (PTF Team, 29 December, 2016)*

#### **Deliverables:**

1. Guidelines on monitoring of public procurement for the CSOs (short version);
2. Package of documents for the Monitoring Toolkit
3. Project Work Plan

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#### *Milestone 2*

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### **Task 1. Finalize the Plan for the Pilot training**

- 1.1. Develop curriculum of the Pilot training
  - a. Develop draft curriculum of the Pilot training and preliminary phase 2 curriculum based, among other, on feed-back from ex-ante needs assessment, see below ( KSE Team, December 13, 2016);
  - b. Receive feedback about curriculum from advanced CSOs (who will not be part of the Pilot training) (KSE Team, December 18, 2016)
  - c. Review and improve the curriculum of the Pilot training (PTF Team, December 29, 2016);
  - d. Finalize curriculum of the Pilot training (KSE Team, January 10, 2017);

*Input from the PTF: review and suggestions to the curriculum of the Pilot training*

- 1.2. Select the trainers for the Pilot training. The list of trainers should include the PTF team, TI-Ukraine trainer on Business Indicators, as well as KSE team and other lecturers.
  - a. Prepare the list of trainers (KSE Team, November 30, 2016);
  - b. Prepare a list of questions for potential contributors to the training from other countries (KSE team November 30, 2016). Representatives from CSOs in Chile and representatives from Chile COMPRA would be invited (by December 10, 2016) to video record their training lectures for the Pilot, Training Program and Launch Event. Additionally, the feasibility of having some representatives of Chile COMPRA and Chilean CSOs to attend in

person the Pilot and the Launch Event to share experience and good practices is being explored.

- c. Review and approve the list of trainers and contact potential trainers from abroad (PTF Team, December 12, 2016);

*Input from the PTF: Review and approve the list of trainers, mobilize and organize trainers from abroad.*

**Task 2. Select the CSOs and journalists for the Pilot training, conduct needs assessment.**

- 2.1. Develop draft list of participants (trainees) for the Pilot training (KSE Team, December 1, 2016);
- 2.2. Develop an ex-ante and ex-post survey design (needs assessment) of trainees (KSE Team, December 5, 2016);
- 2.3. Approve the list of trainees of the Pilot training and ex-ante and ex-post survey design of participants (PTF team, December 12, 2016)
- 2.4. Launch the ex-ante survey of the trainees (December 13, 2016)

*Input from PTF: Approval the list of trainees of the Pilot training and ex-ante and ex-post survey design of participants*

**Task 3. Prepare materials for the Pilot training and conduct training**

- 3.1 Develop the training materials including webinars materials, study guides, Monitoring, Toolkit etc. for distribution (KSE team and Chile team January 11, 2017)
- 3.2 Conduct the two-day pilot training program (23-24 January 2017, TBC)

*Input from PTF: PTF reviews training material and PTF trainers participate in the pilot training*

**Task 4. Evaluation of the Pilot training program and preparation for phase 2.**

- 4.1 Analyze strategy developed in Pilot Training by participants for potential to apply it as a model for CSOs and to inform Phase 2 training. (PTF and KSE teams, January 30, 2017)
- 4.2 Analyze the ex post survey results and conduct ex-post evaluation of the Pilot training program based on feedback from participants: how well trainees absorbed the material, usefulness of material, what was practical and applicable in the Ukrainian context, additional topics to be covered, etc. (KSE Team, January 30, 2017)
- 4.3 Conduct dialogue with the participants in pilot to get their sense what changes may be required in the program for less experienced/less sophisticated CSOs to benefit fully.
- 4.4 Develop preliminary draft Phase 2 training program based on Pilot training evaluation (KSE Team, February 8, 2017)
- 4.5 Design phase 2 training needs assessment (KSE Team, February 20, 2017)

*Input from PTF: Review result of KSE analysis of the Pilot training results, assist in design of training needs assessment and phase 2 training program*

**Deliverables:**

1. Training curriculum and materials ready for use in the Pilot. Trainers and trainees selected.
2. Pilot training conducted and evaluation completed.

3. Phase 2 training needs assessment designed and Phase 2 training curriculum drafted

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*Milestone 3*

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**Task 1. Design and conduct the Launch Event**

1.1 Design the Launch Event program which should include the objectives, topics to be covered, main speakers by topics, expected results of the Launch Event, duration of presentations, list of attendees, logistics, etc.

- a. Finalize the Launch Event program with the above details (See Annex 3) (PTF, KSE Team, EBRD, TI-Ukraine November 30, 2016);
- b. Send invitations to the key speakers by December 1, 2016 and participants by December 20 (KSE/TI-Ukraine, EBRD, and PTF),

*Input from PTF: Suggest experts to make presentations at the Launch Event (by November 14, 2016 and further on), review Launch Event program.*

1.2 Organize the Launch Event (logistics, promotion - including prep of the promo video, invitations, agenda, moderators) (KSE team, December 15, 2016)

**Task 2. Conduct the Launch Event (26-27 January 2017)**

**Task 3. Start promotional campaign of the phase 2 Training Program and selection process of the CSOs – web site, newspapers, TV, radio, flyers, etc.**

- 3.1 Announce the program and invite potential participants from the CSOs and journalists to apply for training in phase 2 (See Annex 2 for the selection criteria) (KSE Team, February 1, 2017)
- 3.2 Promote program in relevant social networks (KSE Team, continuously, starting from February 1, 2017)
- 3.2 Prepare and publish relevant articles in various media (KSE and PTF, continuously)

*Input from PTF: Co-authoring articles for the media related to the practices of monitoring of public procurement.*

**Task 4. Select participants among the CSOs and anti-corruption journalists in 24 regions for the Phase 2 training in 5 locations through the open call and assess the needs of the selected group**

- 4.1. Evaluate the applications and prepare the draft list of participants for the phase 2 Training Program among the CSOs and anti-corruption organizations (KSE Team, February 20, 2017)
- 4.2. Receive feedback from PTF team on draft list of participants of the phase 2 Training Program (PTF Team, February 23, 2017)
- 4.3. Finalize the list of participants in phase 2 Program (KSE Team, February 28, 2017)
- 4.4. Conduct the training needs assessment (KSE Team, March 3, 2017)

*Input from PTF: Approve the list of trainees; assist in analyzing results of training needs assessment for phase 2.*

**Deliverables:**

1. Launch event completed.
2. Selection of trainees among the CSOs and anti-corruption journalists for the phase 2 training completed. Training needs assessment completed.

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*Milestone 4*

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**Task 1 Finalize plans for phase 2 training**

1.1 Update curriculum

- a. Revise curriculum for Phase 2 training based on evaluation of Pilot program and phase 2 training needs assessment (KSE Team, March 15, 2017)
- b. Feedback from PTF team on revised curriculum (PTF Team, March 20, 2017)
- c. Finalize the curriculum of Phase 2 training (KSE Team, March 25, 2017)
  - i. Update the training materials for the phase 2 program (KSE Team, March 31, 2017)
  - ii. Together with CSOs identified earlier finalize case studies on monitoring public procurement based on their experience in Ukraine for use in the phase 2 training (KSE and PTF teams, March 31, 2017.)

*Input from PTF: Review and approve the updated curriculum and training material*

**Task 2. Prepare Monitoring Toolkit for distribution**

- 2.1 Finalize guidelines for phase 2 on monitoring of public procurement for the CSOs ( long version) (KSE team March 31, 2017)

**Task 3. Select the trainers, including from participants in pilot training, for the Phase 2 program (consider adding one more call for applications) (KSE Team, March 31, 2017)**

*Input from PTF: PTF helps identify trainers and approves KSE list, assists in developing case studies and finalizing guidelines.*

**Task 4. Contract trainers (KSE team, April 10, 2017)**

**Task 5. Conduct preparatory session for the trainers of the Phase 2 Program (Training for Trainers)**

- 5.1 Prepare (print/copy/electronic format) training materials and layout of Training for Trainers session (KSE Team, April 15, 2017)
- 5.2 Conduct Training for Trainers (KSE Team, April 24-25, 2017, TBC)
- 5.3 Adjust the curriculum of the Phase 2 Program to take into account feedback from the Training for Trainers session (KSE Team, April 30, 2017)

*Input from PTF: PTF assists in preparing the Training for Trainers and participates in the Training session.*

**Task 6. Launch the phase 2 training course (KSE team, May 10, 2017)**

**Deliverables:**

1. Training materials and curriculum for phase 2 procurement training completed.
2. Final monitoring guidelines completed
3. Group of trainers prepared to conduct the course.
4. Phase 2 training is launched.

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*Milestone 5*

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**Task 1. Phase 2 Training in the regions (including video presentations with international experience) ,**

- 1.1 Training №1 in the .... (on May 30, 2017)
- 1.2 Training №2 in the .... (on June 30, 2017)
- 1.3 Training №3 in the .... (on July 30, 2017)
- 1.4 Training №4 in the .... (on August 30, 2017)
- 1.5 Training №5 in the .... (on September 30, 2017)
- 1.6 Training №6 in the .... (on October 30, 2017)

**Task 2. Evaluation of the impact of the training program using, among other, indicators listed in Annex 1 and including ex-post needs assessment survey to evaluate the learning outcomes (KSE team, December 31, 2017).**

*Input from PTF: PTF trainers (TBC) participate in phase 2 training. PTF arranges trainers from abroad. PTF participates in evaluation of impact.*

**Deliverable:**

1. Completion of training phase of Phase 2 procurement program for CSOs and evaluation of program.

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*Milestone 6*

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**Task 1 Mentoring (on a pilot basis) of 2-3 CSOs engaged in procurement monitoring mainly by phone/email (PTF until March 8, 2018).**

**Task 2 Work with CSOs, ProZorro team and other relevant specialists/organizations to prepare an action plan to monitor procurement through the ProZorro system and develop effective methods to ensure value-for-money in the delivery of goods and services to the public based on tools, legislation, regulations, reports and case studies referred to in milestone 1, tasks 2 and 3 above. This will go beyond agreed terms of reference and require additional financing which PTF will attempt to mobilize (KSE and PTF teams by August 31, 2018)**

**Task 3 Project completion report to EBRD, (PTF by August 31, 2018.)**

**Deliverables:**

1. Completion of PTF mentoring of 2-3 CSOs ,
2. Project Completion report submitted to EBRD.

*Annex 1*  
*Performance indicators*

***Performance indicators (Short Term within 1 year of completion of Phase 2 Training)***

***Indicator 1. Number of people (disaggregated by gender) who are able to monitor public procurement process (number of participants of the trainings)***

***Indicator 2. Number of CSOs (disaggregated by level, national/local) and sector which can monitor public procurement process (number of CSOs who took part in the trainings)***

***Indicator 3. Capacity index to monitor public procurement process (share of participants trained who increased their awareness and capacity to monitor public procurement process based on self-evaluation of participants).***

***Indicator 4. Public awareness (number of mentions of the project or trainers of the program in the media within 90 days of completion of the training)***

*Annex 2*  
*Participant selection*  
*criteria and selection process for*  
*the phase 2 Training Program*

The trainings will focus primarily on the following audiences:

- CSOs that are registered as civic organizations, charitable foundations or in other legal form (non-profit) which are working for at least two years in monitoring government reforms, public procurement, advocacy and demonstrated results (such as improving transparency, reducing corruption in public procurement, etc. CSOs which have already received assistance from donors e.g. USAID, SIDA, EU, could be promising candidates. Journalists; who have been working in the area of anti-corruption and/or monitoring of public procurement for at least 2 years.
- Must show transparency in their operations, preferably have multiple sources of funding with sustainable plan for self-financing, active in social media, and have an updated website
- Have an organizational and governance structure which is transparent, dedicated staff of at least five persons
- Work in partnerships/collaboration with other organizations with similar goals and mission

The selection process will allow for the participation of as many people as possible from the CSO's who are interested to learn and work in the area of monitoring of public procurement.

*Selection process (key points):*

1. KSE and PTF launch the open call for the applications and promote the announcement in various media and KSE's social network;
2. Application package should include:
  - a. Brief information about the organization (including name, area of work, year of registration/creation, number of employees, region, website link and social media links, sources of financing, organizational structure, examples of work carried out in the area of public procurement (if any)),
  - b. Evidence of participation of the applicants in anti-corruption and or public procurement monitoring in the form of publications or video presentations.
  - c. Detailed CV of the applicant and cover letter on how this training would help in their work and what they would like to learn from this training
3. Applications fulfilling the major requirements will be graded by the KSE and PTF teams to select the list of CSOs and persons for the training;
4. Selected CSOs and individual participants) will be requested to provide the feedback on the training program
5. CSOs that will show a low level of awareness about the ProZorro system will be asked to familiarize themselves with it. KSE Team will provide such participants with the preparatory materials before the training.

*Annex 3*  
*Launch Event Draft Concept*

The objective of the Launch event is to highlight the critical role which CSO's can play in monitoring public procurement to improve transparency and reduce corruption in Ukraine. This will be achieved by showcasing the monitoring tools in the ProZorro system, including tools developed by KSE and programs supported by EBRD and others in building capacity of CSO's in public procurement monitoring and presenting good practice examples from Ukraine and around the world on the role CSO's have played in monitoring public procurement.

Suggested format and sequence of presentations for the one day Launch Event:

- Opening address by the EBRD, relevant Government of Ukraine representatives, partners of the EBRD in the projects in Ukraine;
- Policy panel outlining the scope and history of the E-procurement reform in Ukraine
- Discussion – comments – questions and answers from audience
- Presentation by the ProZorro team focusing on how the ProZorro system will help in improving transparency in public procurement and provide the needed data and information for CSO's to monitor public procurement in Ukraine
- Discussion – comments – questions and answers from audience
- Presentation by KSE on procurement monitoring tools – showing data analytics, key elements of the training program and action plan for building capacity of CSOs in monitoring of public procurement in Ukraine
- Discussion – comments – questions and answers from audience
- Concluding remarks

Some of the guests to be invited:

- EBRD team working in Ukraine: Biljana, Cristina, Eliza, Tato, David, high level EBRD representatives (Sergey Guriev? Sevki Acuner?), PTF team; KSE, selected CSO's from Ukraine
- Open Contracting Partnership representatives, Omydiar network representative, USAID/TAPAS, Transparency international (Ukraine and other countries), EU, World Bank, UNDP; USAID, Sida and other donors involved in building capacities of CSOs.
- Country representatives from the EBRD Procurement Unit group: Georgia? Moldova? Chile, Cyprus, Portugal, other.

*Annex 4*

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*Summary of Project Plan*

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**TIMELINE OF THE PROJECT**

Activity	Responsible	01.08.2016	01.09.2016	01.10.2016	01.11.2016	01.12.2016	01.01.2017
<b>Milestone 1</b>							
1. KSE and PTF held discussions October 24-28, 2016 with stakeholders to familiarize the team with the latest developments of procurement reform, Prozorro tools and applications and CSO experiences of monitoring public procurement. The discussions also covered selection criteria for CSO, and individuals to participate in the training, the design of the pilot training and of the CSO training needs assessment	KSE team/PTF team			24-28.10.2016			
a. Update the draft Project Work Plan	Olha Tereshchenko, Elena Besedina				10.11.2016		
b. Review and improve draft Project Work Plan	PTF team				15.11.2016		
c. Finalize Project Work Plan	Olha Tereshchenko, Elena Besedina				23.11.2016		
2. Outline the risks and respective analytical instruments to reveal these risks that will be used in the Monitoring Toolkit							
a. Select Risk Indicators (RI) that are most relevant for CSO monitoring	Dmitry Palamarchuk					11.12.2016	
b. Test selected RI using the data of ProZorro system	Inna Memetova					18.12.2016	
c. Review the list of RI and tests by PTF team	PTF team					25.12.2016	
d. Describe with examples the estimation of Risk Indicators (based on the type of procurement and the stage of the procurement process, probability of occurrence and impact); prepare templates of application of the RIs to the tenders in ProZorro	Dmitry Palamarchuk, Inna Memetova						10.01.2017
e. Prepare guidelines (to be modified following the Pilot) of how to monitor public procurement	Olha Tereshchenko, Elena Besedina						15.01.2017
f. Develop at least two case studies applying RI to ProZorro data for use in Pilot and subsequent training to help CSOs understand how they can identify anomalies/shortcomings in procurement	Dmitry Palamarchuk, Inna Memetova						15.01.2017
g. Develop list of potential actions for CSOs to consider as a response to anomalies in procurement identified through use of RI	Olha Tereshchenko, Elena Besedina						15.01.2017
h. Identify CSOs who can prepare case studies on monitoring public procurement based on their experience in Ukraine	Olha Tereshchenko, Elena Besedina						15.01.2017
i. Review and improve the list of RIs, guidelines, case studies and list of potential actions	PTF team						18.01.2017
3. Compile all the relevant documents (laws, regulations, reports) on monitoring of public procurement in Ukraine and selected countries (to be identified) to be distributed to the participants. This should be provided in electronic form	Olha Tereshchenko, Elena Besedina					27.12.2016	
4. Review and make suggestions on the package of documents for the Monitoring Toolkit	PTF team					29.12.2016	

Activity	Responsible	01.08.2016	01.09.2016	01.10.2016	01.11.2016	01.12.2016	01.01.2017	01.02.2017
<b>Milestone 2</b>								
1. Develop curriculum of the Pilot Program								
a. Develop draft curriculum of the Pilot Program and preliminary phase 2 curriculum based, among other, on feedback from ex-ante needs assessment	Olha Tereshchenko, Elena Besedina					13.12.2016		
b. Receipt feedback about curriculum from advanced CSOs (who will not be part of the Pilot Program)	Olha Tereshchenko					18.12.2016		
c. Review and improve the curriculum of the Pilot Program	PTF team					29.12.2016		
d. Finalize curriculum of the Pilot training	Olha Tereshchenko, Elena Besedina						13.01.2017	
2. Select the trainers for the Pilot training. The list of trainers should include the PTF team, TI trainer on Business Indicators, as well as KSE team and other lecturers.								
a. Prepare the list of trainers	Olha Tereshchenko, Elena Besedina				30.11.2016			
b. Prepare a list of questions for potential contributors to the training from other countries	Olha Tereshchenko, Elena Besedina				30.11.2016			
c. Representatives from CSOs in Chile and representatives from Chile COMPRA would be invited to video record their training lectures for the Pilot	PTF team					10.12.2016		
d. Review and approve the list of trainers and contact potential trainers from abroad	PTF team					12.12.2016		
3. Develop draft list of participants (trainees) for the Pilot training	Olha Tereshchenko					01.12.2016		
4. Develop an ex-ante and ex-post survey design (needs assessment) of trainees	Olha Tereshchenko, Elena Besedina					05.12.2016		
5. Approve the list of trainees of the Pilot training and ex-ante and ex-post survey design of participants	PTF team					12.12.2016		
6. Launch the ex-ante survey of the trainees	Olha Tereshchenko					13.12.2016		
7. Develop the training materials including webinars materials, study guides, Monitoring, Toolkit etc. for distribution	Olha Tereshchenko, Elena Besedina						11.01.2017	
8. Conduct the two day pilot training program	Olha Tereshchenko, Elena Besedina						23-24.01.2017 (TBC)	
9. Analyze the ex post survey results and conduct ex-post evaluation of the Pilot training program	Olha Tereshchenko, Elena Besedina						30.01.2017	
10. Develop preliminary draft Phase 2 training program based on Pilot training evaluation	Olha Tereshchenko, Elena Besedina							08.02.2017
11. Design phase 2 training needs assessment	Olha Tereshchenko, Elena Besedina							20.02.2017

Activity	Responsible	01.05.2017	01.06.2017	01.07.2017	01.08.2017	01.09.2017	01.10.2017	01.11.2017	01.12.2017							
<b>Milestone 5</b>																
Training №1	Olha Tereshchenko, Elena Besedina	30.05.2017														
Training №2	Olha Tereshchenko, Elena Besedina		30.06.2017													
Training №3	Olha Tereshchenko, Elena Besedina			30.07.2017												
Training №4	Olha Tereshchenko, Elena Besedina				30.08.2017											
Training №5	Olha Tereshchenko, Elena Besedina					30.09.2017										
Training №6	Olha Tereshchenko, Elena Besedina						30.10.2017									
Evaluation of the impact of the training program using, among other, indicators listed in Annex 1 and including ex-post needs assessment survey to evaluate the learning outcomes	Olha Tereshchenko, Elena Besedina								31.12.2017							
Activity	Responsible	01.06.2017	01.07.2017	01.08.2017	01.09.2017	01.10.2017	01.11.2017	01.12.2017	01.01.2018	01.02.2018	01.03.2018	01.04.2018	01.05.2018	01.06.2018	01.07.2018	01.08.2018
<b>Milestone 6</b>																
1. Mentoring (on a pilot basis) of 2-3 CSOs engaged in procurement monitoring mainly by phone/email	PTF team	March 8														
2. Work with CSOs, Prozorro team and other relevant specialists/organizations to prepare an action plan to monitor procurement through the ProZorro system and develop effective methods to ensure value-for-money in the delivery of goods and services to the public based on tools, legislation, regulations, reports and case studies referred to in milestone 1, tasks 2 and 3 above.	KSE team/PTF team															31.08.2018
Project completion report to EBRD	PTF team															31.08.2018

Activity	Responsible	01.08.2016	01.09.2016	01.10.2016	01.11.2016	01.12.2016	01.01.2017	01.02.2017	01.03.2017
<b>Milestone 3</b>									
1. Finalize the Launch Event program with the above details	PTF, KSE Team, EBRD, TI-Ukraine					30.12.2016			
2. Send invitations to the key speakers by December 1, 2016 and participants by December 20	PTF, KSE Team, EBRD, TI-Ukraine					01.12.2016 20.12.2016			
3. Suggest experts to make presentations at the Launch Event	PTF team				14.11.2016 and further on				
4. Organize the Launch Event	Olha Tereshchenko					15.12.2016			
Conduct the Launch Event	KSE team/PTF team						24-25.01.2017		
5. Announce the program and invite potential participants from the CSOs and journalists to apply for training in phase 2	Olha Tereshchenko							01.02.2017	
	Olha Tereshchenko							continuously, starting from 01.02.2017	
6. Promote program in relevant social networks	KSE team/PTF team	continuously							
7. Prepare and publish relevant articles in various media									
8. Evaluate the applications and prepare the draft list of participants for the phase 2 Training Program among the CSOs and anti-corruption organizations	Olha Tereshchenko, Elena Besedina							20.02.2017	
9. Approve draft list of participants of the phase 2 Training Program	PTF team							23.02.2017	
10. Finalize the list of participants in phase 2 Program	Olha Tereshchenko, Elena Besedina							28.02.2017	
11. Conduct the training needs assessment	Olha Tereshchenko, Elena Besedina								03.03.2017
Activity	Responsible	01.03.2017	01.04.2017	01.05.2017	01.06.2017	01.07.2017	01.08.2017	01.09.2017	01.10.2017
<b>Milestone 4</b>									
1. Update curriculum									
a. Revise curriculum for Phase 2 training based on evaluation of Pilot program and phase 2 training needs assessment	Olha Tereshchenko, Elena Besedina	15.03.2017							
b. Feedback from PTF team on revised curriculum	PTF team	20.03.2017							
c. Finalize the curriculum of Phase 2 training	Olha Tereshchenko, Elena Besedina	25.03.2017							
d. Update the training materials for the phase 2 program	Olha Tereshchenko, Elena Besedina	31.03.2017							
e. Together with CSOs identified earlier finalize case studies on monitoring public procurement based on their experience in Ukraine for use in the phase 2 training	Olha Tereshchenko, Elena Besedina	31.03.2017							
2. Finalize guidelines for phase 2 on monitoring of public procurement for the CSOs ( long version)	Olha Tereshchenko, Elena Besedina	31.03.2017							
3. Select the trainers and resource persons, including from participants in pilot training, for the Phase 2 program	Olha Tereshchenko, Elena Besedina	31.03.2017							
4. Prepare (print/copy/electronic format) training materials and layout of Training for Trainers session	Olha Tereshchenko		10.04.2017						
5. Conduct Training for Trainers	Olha Tereshchenko, Elena Besedina		24-25.04.2017 (TBC)						
6. Adjust the curriculum of the Phase 2 Program to take into account feedback from the Training for Trainers session	Olha Tereshchenko, Elena Besedina		30.04.2017						
7. Contract trainers	Olha Tereshchenko		15.04.2017						
8. Launch the phase 2 training course	Olha Tereshchenko, Elena Besedina			10.05.2017					

Annex 5  
Project staffing

ANNEX 5  
PROJECT STAFFING

KSE TEAM COMPOSITION & TASK ASSIGNMENTS

Key Personnel

Name of Staff & Firm associated with <sup>1</sup>	Area of Expertise Relevant to the Assignment	Designation for this Assignment <sup>2</sup>	Assigned Tasks or Deliverables	Location <sup>3</sup>	Number of Days
<del>Тимофій Милованов</del>	Roll Call vote analysis, political economy	KSE president and associate prof at Pittsburgh University, Program co-Investigator	Review and approval of the risk-indicators methodology and educational plan	Ukrainian spending time in both the US and Kyiv	5% LoE (4 days), 4 months
Elena Besedina	Econometric Analysis, Public Administration, firm level data expert	KSE Assistant Prof, Program co-Investigator	Review and approval of the risk-indicators methodology and educational plan	Kyiv based	13% LoE (47.2 days), 18 months
Dmytro Palamarchuk	Прозорра architecture, developer of the risk indicators, product owner and developer of BI system for Прозорра	To be employed by the KSE as a Monitoring Program Director	M1, M5, M6, upgrade of the risk-indicators methodology	Kyiv based	50% LoE (121 days), 12 months

<sup>1</sup> Indicate if the proposed staff is an employee or agent of your consulting firm/organization or a sub consultant.

<sup>2</sup> Title or position as described in the TOR or otherwise named in your proposed Organization and Staffing under Section D, sub section (c).

<sup>3</sup> Relative to the assignment subject of the Contract, indicate if the staff/consultant local or international.

<del>Natalia Shapoval</del>	Labour Economics, Health Economics, Public Health	KSE Policy Projects Director, Program co-Investigator	M4, development of the educational program and course materials	Kyiv	5% LoE ( 20 days), 18 months
<del>Olha Tereshchenko</del>	Organization	KSE Program Officer	All organizational issues	Kyiv	60.6% LoE (216 days), 18 months
<del>Inna Mametova</del>	Data Analysis	KSE Researcher	Conducting monitoring and preparing publications	Kyiv	75% LoE (270 days), 18 months

#### PTF TEAM COMPOSITION & TASK ASSIGNMENTS

Name & Affiliation of Team Member	Area of Expertise Relevant to the Assignment	Designation for this Assignment	Assigned Tasks or Deliverables	Location	Number of Days
Lars Jeurling PTF	Project Management, Civil Society Engagement Procurement	PTF Project Manager. Chief- Liaison Officer with all Partners	Manage PTF contribution. Report to EBRD	Washington, DC	50
<del>Ram Janakiram</del>	Engineering, Contracting	Senior project engineer	Advice on training needs assessment; Selection and mentoring and evaluation of training program; the design of monitoring tools; contracting technical issues facing CSOs	Washington DC	50

Sabine Engelhard	Lawyer specialized in procurement policy and teaching	Project procurement Lawyer	Advice on procurement training program design and content. Review of training materials and legislation. Help ensure that training curriculum is consistent with Ukrainian procurement legislation	Washington DC	30
Karin Millet	CSO engagement and evaluation	CSO engagement and evaluation adviser	Advice on CSO selection; Advice on M&E measures - monitoring outputs and outcomes - reviewing progress reports from KSE against established M&E measures.		30
Wayne Wittig	Public Procurement /contracting procedures	Procurement policy and procurement/contracting technical adviser	Advice on CSO Monitoring Strategy Development and implementation; Advice on procurement and contracting technical issues		30
Wilson Gallagher	Accounting and reporting	Administrative officer	In coordination with KSE ensure that records and accounts are adequate and up to date	Washington DC	50
Alfonso Sanchez	Senior procurement specialist with world-wide experience	International procurement policy and implementation senior adviser.	Review and advice on key deliverables of the project to ensure that the training is reflecting best	Washington DC	10

			international practice		
Hadi Abusokka	Senior International Lawyer	Contracting legal adviser	Advise on EBRD, KSE and other contracts	Washington DC	8
Pietronella van den Oever	E-Learning Design. Socio-Economic Analysis	International case studies coordinator	Organize learning activities presenting international case studies	Washington, DC	8
Oscar Caballo	Telecommunications Specialist, extensive Knowledge of CHILECOMPRA procurement system	Analyst and Writer, CHILECOMPRA case study	Prepare and present CHILECOMPRA and CSO procurement monitoring case studies	Santiago, Chile	12
Elena Mora	Senior Officer, CHILECOMPRA	Resource person on CHILECOMPRA for Ukraine Procurement Monitoring Training	Presents principles and experiences with CHILECOMPRA and answers CSO's questions	Santiago, Chile	7
Bjorn Wallenius	Telecommunications Specialist. Knowledge of CHILECOMPRA system	Facilitator and Reviewer/commentator on CHILECOMPRA case study	Monitors and provides comments on CHILECOMPRA case study	Rhode Island, USA	3

## Annex 2: Launch Event

### Annex 2 : Launch Event

#### (i) Program of the launch event

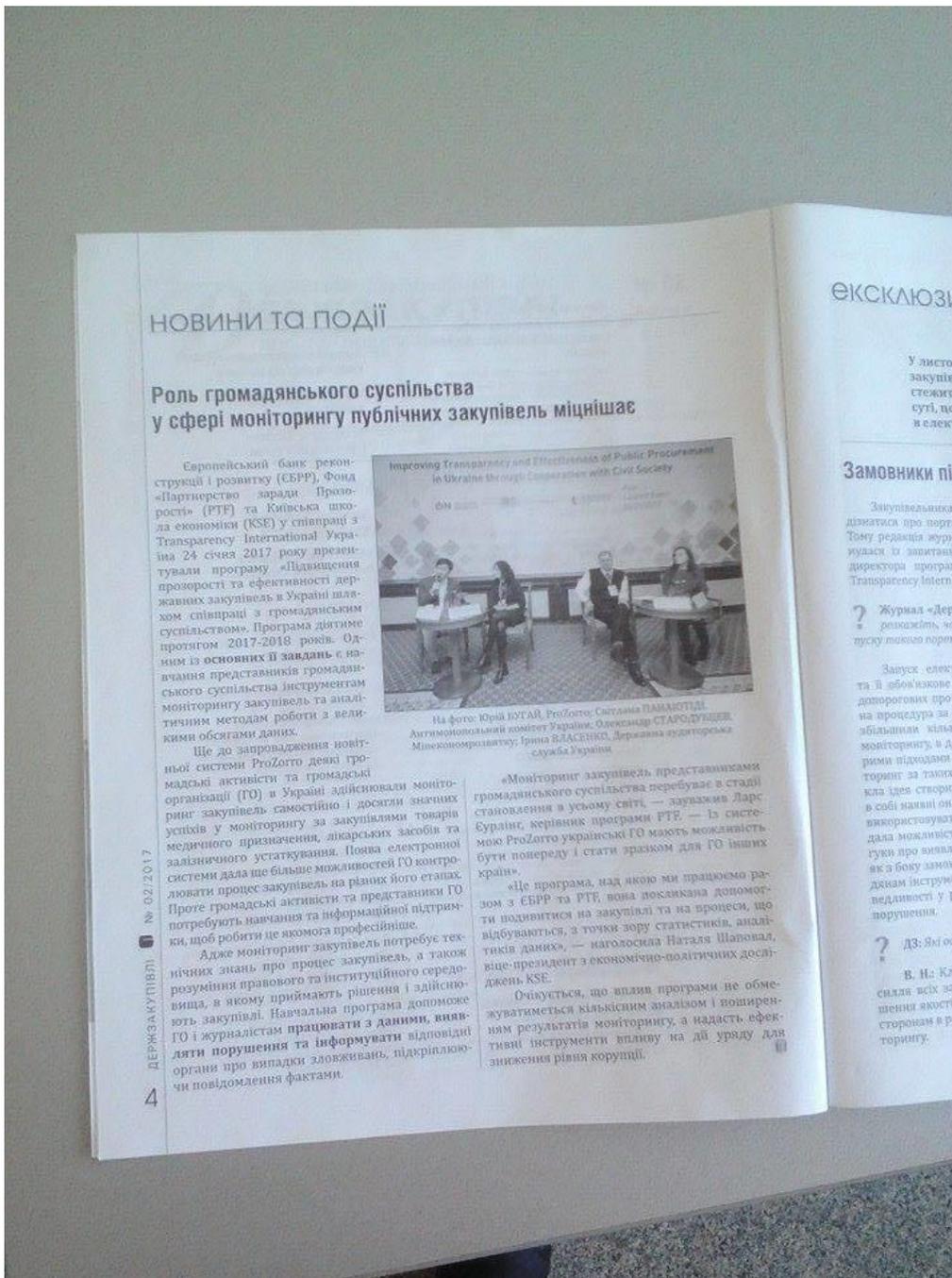
#### Improving Transparency and Effectiveness of Public Procurement in Ukraine through Cooperation with Civil Society

#### Launch Event, January 24, 2017 Program

9:20 – 10:00	<b>Registration. Welcome coffee</b>
10:00 – 10:30/// S ///	<b>Open remarks</b> <ul style="list-style-type: none"> <li>• Natalia Shapoval (Kyiv School of Economics)</li> <li>• Maxim Nefyodov ( Deputy Minister of the Ministry of Economic Development and Trade of Ukraine )</li> <li>• Sevki Acuner (EBRD)</li> <li>• Stephen King (Omidyar Network)</li> <li>• Lindsey Marchessault (Open Contracting Partnership)</li> </ul>
10:30 – 10:50	<b>Time for questions</b>
10:50 – 11:30	<b>Role of Civil Society in Procurement Monitoring Infrastructure and Ways to Sustainability</b> <p>Moderator: Natalia Shapoval (Kyiv School of Economics)</p> <ul style="list-style-type: none"> <li>• Cristina Buzasu (EBRD)</li> <li>• Lars Jeurling (PTF)</li> <li>• Olena Boytsun (Omidyar)</li> <li>• Lesia Chmil (USAID)</li> </ul>
11:30 – 11:45	<b>Coffee break</b>
11:45 – 13:00	<b>Global procurement monitoring - best practices and challenges</b> <p>Moderator: Evgeny Smirnov (EBRD)</p> <ul style="list-style-type: none"> <li>• Jiří Skuhrovec (Zindex)</li> <li>• Levan Natroshvili (TI Georgia )</li> <li>• /Karolis Granickas (Open Contracting Partnership)</li> <li>• Ian Makgill (Spend network)</li> <li>• Sandor Lederer (K-monitor)</li> <li>• Andrew Mandelbaum (Development Gateway)</li> </ul>
13:00 – 14:00	<b>Lunch</b>

14:00 - 14:45	<b>Ecosystem of procurement &amp; monitoring</b>
	<p>Moderator: Yuriy Bugay (ProZorro)</p> <ul style="list-style-type: none"> <li>• National Police (Representative)</li> <li>• Irina Vlasenko (State Audit Service of Ukraine)</li> <li>• Svitlana Panaiotidi (The Antimonopoly Committee of Ukraine)</li> <li>• Olexandr Starodubtsev (Ministry of Economic Development and Trade of Ukraine)</li> </ul>
14:45 – 15:45	<b>Monitoring tools made in Ukraine</b>
	<p>Moderator: Boris Davidenko (VoxUkraine)</p> <ul style="list-style-type: none"> <li>• Victor Nestulia (TI Ukraine)</li> <li>• Dmitry Palamarchuk (Kyiv School of Economics)</li> <li>• Dmytro Ostapchuk (Anti Corruption monitor)</li> <li>• Denys Peresolkin (YouControl)</li> </ul>
/15:45 – 16:00	<b>Coffee break</b>
16:00 – 17:15	<b>Real cases - how Ukrainian civil society uses its monitoring infrastructure</b>
	<p>Moderator: Kateryna Gorchinskaya (Hromadske TV)</p> <ul style="list-style-type: none"> <li>• Oleksa Shalayskiy (Nashi Groshi)</li> <li>• Artem Romanyukov (Dnipro Civic Control)</li> <li>• Olena Shcherban (Anti Corruption Action Center )</li> <li>• Olga Zelenyak (Eidos)</li> </ul>
17:15 – 17:30	<b>Closing remarks</b>
17:30 – 19:30	<b>Cocktails</b>

**(ii) Article on the launch event in the local newspaper**



## Annex 3: Curriculum of Pilot Training

### Annex 3

Pilot training 10-11/02/2017			
Monitoring and data analytics in the public procurement			
TIME	SESSION	TRAINER	Learning Objectives/Key Points
<b>1<sup>st</sup> day</b>			
8:30-9:15	<i>Registration, morning coffee</i>		
09:15- 09:30	Welcome, Objectives & Administrative details	Elena Besedina	The ultimate objective of the Pilot training is to extend training of CSOs to up to 24 regions, ensuring full coverage of the country.
09:30-10:40	The basic principles of procurement, Review of Procurement Reforms and Institutions in Ukraine and Key Elements of Open Competitive Procurement systems	Lilia Lakhtionova, Deputy Director Department of Public Procurement (MEDT)	Overview of the policy, legislative and institutional basis for reforms and monitoring work in Ukraine.  Outcome: Understanding of policy, legislative and institutional basis for reforms and monitoring work in Ukraine  General understanding of procurement procedure
10:40-11:20	Basics of ProZorro System and data analysis	Yuri Bugay (ProZorro team)	Overview of how CSO procurement monitoring has been conducted in other countries where such monitoring has been done successfully  Outcomes: Understanding how CSOs can interact with municipal, regional and national authorities to have influence
11:20 – 12:15	Introduction to procurement monitoring: Role of Monitoring Institutions at National, Regional and Municipal levels  Complaint procedures	Nataliia Shapoval Olha Tereshchenko (KSE)	Understanding of ProZorro goals, plans and statistics available to the public including the investigative monitoring tools developed by the project for all purposes including CSOs  Outcome: Awareness of the structure and usefulness of ProZorro
12:15 – 13:00	<i>Lunch</i>		
13:00 – 14:45	Procurement procedures, procurement data,	Dmytro Palamarchuk (KSE)	Focus on the procurement process under different procurement modalities and on the use of data collected in ProZorro.

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	public monitoring: public bi, pro bi		<p>Outcomes:</p> <ol style="list-style-type: none"> <li>1. CSOs understand the procurement process.</li> <li>2. CSOs are aware of different levels of data available in ProZorro.</li> <li>3. CSOs understand how data generated by the ProZorro system can be used to help CSOs monitor procurement</li> </ol> <p>Focus on Key Players in monitoring the procurement process and a limited number of red flags or risk indicators as examples for using on-line tools</p> <p>Outcomes:</p> <ol style="list-style-type: none"> <li>1. CSOs will understand the open data available within the ProZorro data base,</li> <li>2. Understand best international practices of monitoring with data analysis technics applicable to procurement data.</li> </ol>
14:45 – 15:00	<i>Coffee break</i>		
15:00 – 16:45	How CSOs can use risk indicators in procurement monitoring	Dmytro Palamarchuk (KSE)	<p>Information on available tools to uncover anomalies in procurement and when and what additional tools will be available in the future</p> <p>Outcomes: CSOs understand what means are currently available to monitor procurement</p>
16:45 - 17:00	<i>Closing remarks</i>		
<b>2<sup>nd</sup> day</b>			
9:00 – 11:00	Practice session on using risk indicators for procurement monitoring: risks in excel	Inna Memetova (KSE)	<p>Review and hands-on computer use of available tools</p> <p>Outcomes: Familiarization with techniques for extracting information</p>

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			from ProZorro and awareness of limitations of the data
11:00–11:15	<i>Coffee break</i>		
11:15-12:15	Practice session on using risk indicators for procurement monitoring	Inna Memetova (KSE)	Review and hands-on computer use of available tools  Outcomes: Familiarization with techniques
12:15-13:15	Monitoring procurement in specific sectors: <ul style="list-style-type: none"><li>- Construction</li><li>- Health Care</li></ul>	Natalia Forsyuk (COST) Olena Scherban (anti-corruption action centre)	Discussion of Ukrainian bidding documents and contracts essential provisions for Health and Construction  Outcomes: Familiarity with bidding documents, relevant information in ProZorro data base and key areas to focus monitoring efforts
13:15-13:50	<i>Lunch</i>		
13:50-15:40	Working group discussions to develop suggestions for: <ul style="list-style-type: none"><li>(1) Popularization of DoZorro among CSOs as a platform for sharing procurement monitoring results;</li><li>(2) Near term improvements in course presentation in Phase 2 Training and;</li><li>(3) Longer term improvements recommendations for effective and sustainable CSOs Monitoring Strategy in Ukraine based on</li></ul>	KSE team	Encourage mixing of CSO representatives in small groups to achieve cross fertilization of ideas to improve system and create sustainable CSO network to conduct monitoring  Outcomes: 1. Familiarization with DoZorro, increased exchange among CSOs cross-fertilization. 2. Suggested improvements for Phase 2 training 3. Suggestions for CSOs to organize themselves into sustainable monitoring units.

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	CSOs experience so far which could help target the phase 2 training more effectively		
15:40 – 16:00	<i>Coffee break</i>		
16:00 – 17:30	Plenary session to develop consensus strategy for Phase 2 Training and longer term improvements	Nataliia Shapoval	Outcomes: <ol style="list-style-type: none"> <li>1. Recommendations for organizing Phase 2 training and for the phase 2 curriculum.</li> <li>2. Recommendations for how CSO should organize and cooperate to do procurement monitoring after the training is completed.</li> </ol>
17:30 – 18:00	<b>Testing</b>		

## Annex 4: Curriculum of basic procurement monitoring training program

### Annex 4 : Curriculum for Basic Procurement Monitoring Training for CSOs developed by PTF and KSE

**Objective :** to provide CSOs with tools and knowledge to conduct effective procurement monitoring.

Topics	Learning Objectives
<b>Module 1. Procurement Process: legislation, documentation and e-procurement</b>	
1.1. The objectives of public procurement: <ul style="list-style-type: none"> <li>underlying principles of public procurement;</li> <li>the applicable procurement framework;</li> </ul>	<ul style="list-style-type: none"> <li>Overview of the legal and institutional procurement framework.</li> </ul>
1.2. The procurement process and e-procurement system (ProZorro) <ul style="list-style-type: none"> <li>the procurement process;</li> <li>procurement methods available.</li> <li>architecture of the ProZorro system, scope covered by the system, mandatory use of the system (or not mandatory), management of the system, access to the system, type of information available in the system (modules, data bases ...), accessibility of the information, reliability of such information, financing and updating of the E-procurement system, sustainability]</li> </ul>	<ul style="list-style-type: none"> <li>Understanding of the procurement process and how it is reflected in the E-procurement system</li> <li>Understanding of the E-procurement system (coverage, functions, risks, and limitations)</li> </ul>
1.3. Procurement documentation and its reflection in the e-procurement: <ul style="list-style-type: none"> <li>Procurement plans, procurement notices, bidding documents, conditions of contracts, contract forms, contract amendments...</li> <li>Examples of procurement documentation for particular sectors such as construction, health.</li> <li>Characteristics and importance of technical specifications and Terms of Reference</li> <li>Importance of evaluation criteria/requirements</li> </ul>	<ul style="list-style-type: none"> <li>Understanding the documentation aspect of procurement and its importance.</li> </ul>
<b>Module 2. Procurement Monitoring: Methods, tools and data</b>	

Topics	Learning Objectives
<b>Module 1. Procurement Process: legislation, documentation and e-procurement</b>	
<p>2.1. What is procurement monitoring?</p> <ul style="list-style-type: none"> <li>• Explaining the different ways to monitor</li> <li>• such as concurrent monitoring (by procurement transaction)</li> <li>• After the fact monitoring (based on aggregated information)</li> <li>• Monitoring of contract execution and contract management.</li> </ul>	<ul style="list-style-type: none"> <li>• Understanding of the monitoring methods and scope</li> </ul>
<p>2.2. Procurement data, sources of information (databases in the E-procurement system or outside, electronic registries...):</p> <ul style="list-style-type: none"> <li>• Using evidence-based information</li> <li>• Group work on how to find information and analyse it using different sources of information.</li> </ul>	<p>Understanding</p> <ul style="list-style-type: none"> <li>• Where the information is and what it entails?</li> <li>• How to navigate it?</li> <li>• How to organize it?</li> <li>• Which information is relevant?</li> </ul>
<p>2.3. Risks in procurement and risk indicators in practice</p> <ul style="list-style-type: none"> <li>• Red flags in procurement (probability of risk/situation occurring and risk impact/degree of severity).</li> <li>• How to use risk indicators in procurement monitoring.</li> <li>• Risk indicators in the data available</li> <li>• Group work on how to use risk indicators with practical cases.</li> </ul>	<ul style="list-style-type: none"> <li>• Identification of specific risks through the occurrence of specific situations in the procurement process, including contract execution and management.</li> <li>• Understanding of how to use available information for risk indicators</li> <li>• Recognition of specific risks and situations.</li> </ul>
<p>2.4. Ethics and Integrity in procurement monitoring; data interpretation</p> <ul style="list-style-type: none"> <li>• Procurement data interpretation: how to avoid incorrect judgement</li> </ul>	<ul style="list-style-type: none"> <li>• Recognition that not every occurrence of a situation means that there is fraud and/or corruption</li> </ul>

Topics	Learning Objectives
<b>Module 1. Procurement Process: legislation, documentation and e-procurement</b>	
<p>3.1. Ethics and Integrity in procurement; control and monitoring by the government bodies:</p> <ul style="list-style-type: none"> <li>• Role of control institutions.</li> <li>• Role of appeals body.</li> <li>• Role of judiciary.</li> <li>• Who has access to these institutions?</li> <li>• Who has access to the appeals body (bodies)?</li> <li>• Who has access to the judiciary?</li> <li>• Which decisions/actions can these institutions take?</li> <li>• Which decisions can the appeals body (bodies) take?</li> <li>• Which decisions can the judiciary take?</li> </ul>	<ul style="list-style-type: none"> <li>• Understanding which institutions exist and what their mandate is.</li> <li>• Understanding the role of the judiciary.</li> <li>• Understanding the role of an appeals body (bodies)</li> </ul>
<p>3.2. Who do CSOs turn to when they uncover irregularities and/or fraud and corruption (available avenues)?</p> <ul style="list-style-type: none"> <li>• Which recourses do CSOs have (remedies)?</li> <li>• How can CSOs share their findings?</li> </ul>	<ul style="list-style-type: none"> <li>• Understanding what CSOs can do with findings, the impact they can have.</li> </ul>
<p>4.1 How do CSOs design a sustainable monitoring strategy?</p> <ul style="list-style-type: none"> <li>• What to monitor (sectors, level of risks, and timing of monitoring, concurrent monitoring, after the fact, contract execution and contract management...)</li> <li>• Level of staffing,</li> <li>• Level of training,</li> <li>• Sources of financing</li> </ul>	<ul style="list-style-type: none"> <li>• CSOs are able to develop a long term and systematic monitoring strategy</li> </ul>

## Annex 5: Curriculum of advanced procurement monitoring training program

### Annex 5: Curriculum for Advanced Procurement Monitoring Training for CSOs developed by PTF and KSE

**General objective:** To build up practical skills of the selected CSOs and journalist to work with procurement data in order to perform evidence-based monitoring.

Time	Speakers	Topics	Learning Objectives	Name of document to be provided to the participants	Name of the presentation to be made during the training	Comments
<b>Day 1</b>						
<b>Module 1. Data architecture and variables available in ProZorro database</b>						
09:30 – 10:00	<i>Registration. Welcome coffee</i>					
10:00 - 12:30	Inna Memetova, KSE	1.1. Access to the system, type of information available in the system (modules, data bases ...), accessibility of the information, reliability of such information]	Understanding of the data availability in ProZorro database <ul style="list-style-type: none"> <li>• Where the information is and what it entails?</li> <li>• How to navigate it?</li> <li>• How to organize it?</li> <li>• Which information is relevant?</li> </ul>	Handout of the presentation	ProZorro as data system: how to access and use for monitoring purposes	
12:30 – 13:30	<i>Lunch</i>					

Time	Speakers	Topics	Learning Objectives	Name of document to be provided to the participants	Name of the presentation to be made during the training
13:30 – 15:30	<b>Serhiy Pavlyuk,</b> <b>TI Ukraine</b>	2.1. Practical knowledge on how to work with the main source of procurement data – BI Professional module. In particular, participants will learn about <ul style="list-style-type: none"> <li>pre-defined objects</li> <li>how to make own report under BI using custom selection tool.</li> </ul>	Ability to use pre-defined objects  Ability to make own report under BI using custom selection tool	Handout of the presentation	Business Intelligence product for public procurement as a key to effective monitoring
<b>15:30 – 16:00</b>					
16:00 – 18:00	<b>Artur Kovalchuk,</b> <b>KSE</b>	2.1. Practical knowledge on how to work with the primary source of procurement data – Application programming interface (API)	Ability to extract the data from API	Handout of the presentation, example of code for API data retrieving in Python/R	Application programming interface as a primary source of procurement data

Time	Speakers	Topics	Learning Objectives	Name of document to be provided to the participants	Name of the presentation to be made during the training
9:30 – /11:00	<b>Khrystyna Artemenko, Procurement consultant</b>	.1. Peculiarities of tendering procedures, requirements in construction works	Understanding of the procurement process for works in construction sector	Handout of the presentation	Construction works in public procurement : main features
<b>11:00 – 11:30</b>					
11:30 – 13:00	<b>Khrystyna Artemenko, Procurement consultant</b>	Peculiarities of tendering procedures, requirements in construction works (continue)	Understanding of the procurement process for works in construction sector	Handout of the presentation	Construction works in public procurement : main features

13:00/ – 14:00					
Time	Speakers	Topics	Learning Objectives	Name of document to be provided to the participants	Name of the presentation to be made during the training
14:00 – 15:30	<b>Olga Zelenyak,</b> <b>NGO Eidos</b>	Monitoring of Procurement of medical supplies: CSO practical experience <ul style="list-style-type: none"> <li>analytical work with the professional version of the analytics module bipro.prozorro;</li> <li>monitoring of public procurement for detection of: discriminatory conditions, violations in procedures, signs of conspiracy of participants;</li> <li>appeal of procurement procedures to the DASU bodies;</li> <li>preparing recommendations to authorities to avoid corruption risks during procurement procedures;</li> </ul>	Understanding of the procurement monitoring process in practice	Handout of the presentation	Procurement of medical supplies: best practices.
15:30 – 16:00					
16:00 – 18:00	<b>Inna Memetova</b> <b>KSE</b>	4.1. Application of Practical experience on finding violations/suspicious cases based on procurement data.	<ul style="list-style-type: none"> <li>Understanding of how to look for and find violations/suspicious cases based on procurement data.</li> </ul>	Methodology of calculation for <a href="#">examples</a> provided	Planning, Tendering and Contracting at risk

		Format. Group work on how to find information and analyze it using different sources of information.	<ul style="list-style-type: none"> <li>Ability to use evidence-based information for monitoring</li> </ul>		
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Time	Speakers	Topics	Learning Objectives	Name of document to be provided to the participants	Name of the presentation to be made during the training
9:30 /– 11:00	<b>Inna Memetova</b> KSE	4.1. Application of Practical experience on finding violations/suspicious cases based on procurement data.  Format. Group work on how to find information and analyze it using different sources of information (continue)	<ul style="list-style-type: none"> <li>Understanding of how to look for and find violations/suspicious cases based on procurement data.</li> <li>Ability to use evidence-based information for monitoring</li> </ul>	Methodology of calculation for <a href="#">examples</a> provided	
<b>11:00 – 11:30</b>					
11:30 – 13:00	<b>All instructors</b>	5.1 Group work on participants' questions and problems.	Ability to investigate and monitor procurement tenders using advanced data analysis	NA	

13:00 – 14:00				
14:00 – 16:00	All instructors	<b>5.2 Collective review of the results.</b> Participants will prepare presentations on their findings and share them among other colleagues to promote the culture of peer-review	Ability to share and discuss findings of procurement monitoring	
16:00-16:30///	All instructors			

## Annex 6: Training of trainer material

### 1. Identifying the need and planning the procurement

Risk	Likely consequences	Action
<b>Understatement of the need</b> <b>Under-specification</b>	Procurement of unsuitable product or service Money wasted Need not satisfied	Analyze and understand need accurately
<b>Overstatement of the need</b>	Greater expense Poor competition	Analyze need accurately Use functional and performance requirements
<b>Misinterpretation of needs</b>	Totally unacceptable procurement or not most suitable product or service Time lost Increased costs Possible downtime	Improve consultation with users Improve consultation with users Obtain clear statement of work and definition of need
<b>Insufficient funding</b>	Delay in carrying out the procurement (partial procurement) Additional costs for re-tender	Obtain appropriate approvals before undertaking process Improve planning
<b>Impractical timeframe</b>	Inadequate responses from tenderers Reduced competition Delivery schedule not met	Improve forecasting, planning and consultation with users Improve communication with potential tenderers
<b>Probity/integrity/ethics issues</b>	Increased procurement costs Misuse of resources Most suitable product not obtained Unethical conduct	Implement best practice policies, guidelines and practices Maintain ethical environment Improve training of personnel Put suitable controls and reviews in place Consider using a probity/integrity/ethics adviser Improve communication with potential bidders

### 2. Developing the technical specifications and TOR

Risk	Likely consequences	Action
<b>Narrow definition or commercial specification (e.g. use of brand name)</b> <b>Narrow TOR</b>	Fewer alternatives Most suitable product or service may not be obtained Increased costs	Define the technical specification in terms of required outputs Use functional and performance technical specifications
<b>Definition of inappropriate product or service</b>	Need not satisfied Time lost Increased costs Possible downtime	Ensure technical specifications are consistent with needs analysis Improve market knowledge Use functional and performance technical specifications
<b>Biased specifications/TOR</b>	Insufficient responses Non-responsive bids Product offered not meeting needs Difficult to evaluate  Claims of unfair dealings	Be familiar with requirements  Use functional and performance technical specifications

Risk	Likely consequences	Action
<b>Probity/ethics issues</b>		Implement a control mechanism to review specification before release
<b>Inadequate statement of requirements</b>	Variety of bids Insufficient responses Products offered not meeting needs Difficult to evaluate	Be familiar with requirements Use functional and performance technical specifications Use an Expression of Interest or a prequalification process to clarify requirements (be careful not to infringe intellectual property rights or copyright)

### 3. Selecting the procurement method

Risk	Likely consequences	Action
<b>Failure to identify potential sources</b>	Lack of bids from suitable bidders	Improve procurement planning processes Improve market knowledge Seek industry participation
<b>Selecting inappropriate method</b>	Need to seek bids again Possible cost variations	Improve implementation of procurement policies, guidelines and practices
<b>Packaging contracts inappropriately</b>	Failure to obtain Value for Money Approach not Fit for Purpose	Improve tender documentation and clearly identify the evaluation criteria in bidding documents
<b>Dividing contracts</b>	Restricting competition	Provide staff with appropriate training and experience

### 4. Procurement documentation

Risk	Likely consequences	Action
<b>Terms and conditions unacceptable to tenderers (payment conditions, risk allocation, international commercial terms)</b>	Loading of costs in bids	Use standard documentation
	Having to modify tender terms and conditions	Check appropriate legislation, regulation and policy
	Disruption	Select appropriate documentation for procurement type (i.e. goods, services, goods and services, or information technology related)
	Low response	Improve tender planning
		Assess and allocate risks appropriately
		Check appropriate legislation, regulation and policy
		Use commercially acceptable terms
		Provide staff with appropriate tender planning and procurement skills

Risk	Likely consequences	Action
<b>Providing inadequate information</b>	<p>Loading of costs in bids</p> <p>Variations in bids</p> <p>Having to provide clarification information, causing delays in tender closing</p> <p>Additional costs</p> <p>Non-responsive bids</p> <p>No bids</p>	<p>Ensure staff have appropriate tender planning and documentation training and experience</p> <p>Improve tender planning and preparation</p> <p>Review tender documents before issuing them and ensure evaluation criteria contain the critical factors on which assessment of tenders will be based</p>

## 5. Inviting, clarifying and closing bids

Risk	Likely consequences	Action
<b>Failure to adequately address enquiries from tenderers</b>	<p>Claims of unfair practices</p> <p>Conditional bids submitted by bidders</p> <p>Withdrawal of bids</p>	<p>Implement standardized procedures for responding to requests for clarifications</p> <p>Provide staff with appropriate tender management training and experience</p> <p>Respond in a timely manner to requests for clarifications</p> <p>Allow adequate time for tenderers to respond</p>
<b>Actual or perceived favoritism in providing information</b> <b>Unethical behavior</b>	<p>Complaints from tenderers</p> <p>Withdrawal of bids</p> <p>Potential procurement complaints</p>	<p>As above</p> <p>Answer requests for clarifications in writing and provide copies to all potential tenderers</p> <p>Ensure that all potential tenderers are provided with any addenda to bidding documents</p>
<b>Actual or perceived breach of confidentiality</b>	<p>Complaints from tenderers</p> <p>Mistrust by tenderers</p>	<p>Establish formal security procedures</p> <p>Train staff in their obligations</p> <p>Perform regular procurement audits and reviews of security processes</p> <p>Advise tenderers of security measures</p>
<b>Insufficient number of responses</b>	<p>Need to re-bid (new process)</p> <p>Increased costs</p> <p>Delayed delivery of goods, works, consulting services and non-consulting services to the client</p>	<p>Use appropriate tender advertisement strategy to increase competition (e.g. consider advertising tenders in other publications/ web sites, technical publications, as well as the local paper)</p>

Risk	Likely consequences	Action
	Poor Value for Money due to limited competition	<p>Provide potential tenderers with advance notice of tender requests</p> <p>Improve tender documentation and technical specifications and TOR</p> <p>Allow sufficient time for tenderers to respond</p>
<b>No response from known quality suppliers</b>	<p>Reduced competition</p> <p>Increased costs of products or services</p>	<p>Actions as above for insufficient number of responses</p> <p>Improve your market knowledge</p> <p>Review technical specifications/TOR or conditions of contract</p> <p>Seek feedback from known suppliers on their lack of response</p>

## 6. Evaluating bids

Risk	Likely consequences	Action
<b>Failure to follow effective evaluation procedures</b>	<p>Inconsistent evaluations</p> <p>Possible complaints from tenderers</p> <p>Subjective not objective evaluation of bids</p>	<p>Provide staff with appropriate tender assessment and evaluation training and experience</p> <p>Improve tender assessment and evaluation processes</p> <p>Maintain procurement audit and review evaluation procedures</p> <p>Ensure that Evaluation Committee members declare any conflicts of interest</p> <p>Ensure that Evaluation Committee members understand and sign a confidentiality agreement</p> <p>Resolution/mitigation of conflict of interest</p>
<b>Breaches of security</b>	<p>Claims of unethical or unfair practices</p> <p>Loss of faith with tenderers</p>	<p>Maintain, procurement audit and review security procedures</p> <p>Provide staff with appropriate training and experience and monitor performance</p> <p>Ensure that Evaluation Committee members understand</p>

Risk	Likely consequences	Action
		and sign Confidentiality Agreements
<b>bids fail to meet needs</b>	Need to call new tenders (new process)  Additional costs  Delay in delivery	Improve market knowledge  Improve tender documentation  Conduct market research  Develop functional and performance technical specifications and position-based or functional Terms of Reference
<b>Failure to identify a clear winner</b>  <b>Decision made on subjective grounds</b>	Claims of unethical and unfair behavior  Complaints from tenderers	Ensure evaluation criteria contain the critical factors on which the evaluation of tenders will be based and that they are clearly identifiable to tenderers in tender documents  Ensure evaluation criteria are appropriate and measurable (Fit for Purpose)  Ensure that Evaluation Committee members sign Declaration of Conflict of Interest and Confidentiality Agreements

## 7. Selecting the successful bidder

Risk	Likely consequences	Action
<b>Selecting an inappropriate supplier</b>	Failure to fulfil the contract	Provide staff with appropriate tender evaluation, financial and technical skills training and commercial expertise  Improve evaluation procedures  Improve evaluation criteria and clearly identify them to tenderers in tender documents  Reject unacceptable bids  Perform technical and financial evaluations as well as post-qualification before awarding contract Procurement Review Committee to review tender and selection process prior to awarding contract
<b>Selecting inappropriate product</b>	Failure to meet the client's need	Ensure users are involved in the evaluation/selection process  Improve technical evaluation procedures and train staff as appropriate

Risk	Likely consequences	Action
		Internal review mechanism to review bidding and selection process prior to awarding contract

## 8. Negotiations

Risk	Likely consequences	Action
<b>Not matching the expectations of client and tenderer</b>	<ul style="list-style-type: none"> <li>Contract disputes</li> <li>Delivery delays</li> <li>Cost variations</li> <li>Reduction in Value for Money (VfM)</li> <li>Procurement of less suitable product</li> <li>Inefficient use of resources</li> </ul>	<ul style="list-style-type: none"> <li>Improve communication, including ensuring that Conditions of Contract form part of the bidding documents</li> <li>Provide staff with training in contract planning and management</li> <li>Define terms carefully</li> <li>Record each party's obligations</li> <li>Clarify all ambiguities before signing the contract</li> </ul>
<b>Deadlock on details of agreement</b>	<ul style="list-style-type: none"> <li>Delays in delivery</li> <li>Break in negotiations</li> <li>Need to go to second-highest-ranked proposal or second best-evaluated bid</li> <li>Need to re-bid (new process)</li> <li>Possible cost of legal action</li> </ul>	<ul style="list-style-type: none"> <li>Look at alternatives to share risk</li> <li>Distinguish between essential and non-essential goals and requirements</li> </ul>
<b>Failure to secure mandatory conditions</b>	<ul style="list-style-type: none"> <li>Inability to finalize contract</li> <li>Delays in delivery</li> <li>Variations in cost</li> <li>Inefficient use of resources</li> </ul>	<ul style="list-style-type: none"> <li>Establish baseline before negotiations</li> <li>Distinguish essential goals from others</li> <li>Consider variations to contract</li> <li>Provide negotiators with adequate training</li> </ul>
<b>Failure to secure agreement in relation to Confidentiality Policy</b>	<ul style="list-style-type: none"> <li>Inability to finalize contract</li> <li>Delays in delivery</li> <li>Inefficient use of resources</li> <li>Break in negotiations</li> <li>Need to go to second highest-ranked proposal, second best-evaluated bid</li> <li>Need to re-bid (new process)</li> </ul>	<ul style="list-style-type: none"> <li>Ensure potential suppliers/contractors aware of Policy requirements before submitting bids</li> <li>Seek exemptions from confidentiality requirements</li> </ul>
<b>Unfair or onerous requirements on the tenderer in the contract conditions</b>	<ul style="list-style-type: none"> <li>Contract disputes</li> <li>Invalidity of contract</li> <li>Legal action</li> </ul>	<ul style="list-style-type: none"> <li>Provide negotiators with adequate training and support</li> <li>Negotiate commercial terms</li> <li>Terms should be fair and reasonable</li> </ul>

Risk	Likely consequences	Action
	Poor supplier/customer relationship	
<b>Failure to reflect the terms offered and agreed in the contract</b>	Contract disputes	Check final draft of contract with successful tenderer (initial pages of draft)
	Legal action	
<b>Inadvertently creating a contract without the delegate's prior approval</b>	Poor supplier/customer relationship	Keep records of all negotiations and agreements (use signed minutes)
	Expense of negotiating out of the contract and paying damages	Procedure in place to ensure delegate's approval obtained first
	Committing to other associated work prior to main contract existing	Provide negotiators with adequate training

## 9. Contract management

Risk	Likely consequences	Action
<b>Variations in price and foreign exchange</b>	Cost overruns	Agree on prices and the basis of prices
		Agree on a formula for calculating variations
<b>Unwillingness of the supplier to accept the contract</b>	Delays in delivery	Seek legal redress if non-acceptance causes loss (liquidated damages)
	Need to restart procurement (new process)	Negotiate but retain integrity of the contract
<b>Failure of either party to fulfil the conditions of the contract</b>	Contract disputes	Ensure good contract administration and performance management
	Failure to satisfy needs	Hold regular inspections / meetings and ensure progress reports
	Delays in delivery	
	Downtime	Ensure all staff know responsibilities and conditions
<b>Inadequately administering the contract</b>	Legal action	Ensure good record keeping and documentation
	Cost increases	Maintain up-to-date procedures and practices (standardized practices, templates performance support tools)
	Failure of contract	
	Full benefits not achieved	Ensure all staff are suitably trained and experienced in contract planning and management
<b>Commencement of work by the supplier/contractor before contract is exchanged or letter of acceptance issued</b>	Delivery of unsatisfactory product	
	Potential liability to pay for unauthorized work	Confirm verbal acceptance of contract with written advice
	Possibility of legal action for perceived breach of contract	Accept all contracts in writing
<b>Unauthorized increase in scope of work</b>	Unanticipated cost increases	Ensure approvals are received before allowing work to start
	Contract disputes	Ensure all contract amendments are issued timely, in writing

Risk	Likely consequences	Action
		Record all discussions and negotiations  Confirm instructions in writing
<b>Loss of intellectual property</b>	Loss of commercial opportunity  Unwarranted reliance on supplier for product support	Ensure suitable clauses are included in the contract
<b>Failure to meet liabilities of third parties (e.g. royalties or third party property insurance)</b>	Legal action  Damage to the agency's/organization's professional reputation	I
<b>Loss or damage to goods in transit</b>	Delays in delivery  Downtime  Liability disputes	Include appropriate packaging instructions in specifications  Agree on insurance coverage for supplier/contractor to provide  Accept delivery only after inspection  Know when title of goods/ownership of works is transferred to buyer (commercial terms)
<b>Fraud &amp; Corruption (Prohibited Practices)</b>	Misuse of resources  Not achieving Value for Money  Legal action  Disruption to procurement activities	Maintain an ethical environment  Follow and maintain fraud & corruption (Prohibited Practices) control procedures
<b>Key personnel not available</b>	Progress on project disrupted  Less expertise  Not achieving Value for Money	Include requirement in specifications/TOR and ensure compliance in post-tender negotiation  Know the market  Accept risk and manage possible delay

## 10. Evaluating the procurement process

Risk	Likely consequences	Action
<b>Failure to evaluate procurement and management processes</b>	Failure to improve procurement and management processes  Missing an opportunity to learn from experience and improve procurement and management processes in the next project	Develop systematic evaluation methods, techniques and evaluation criteria  (Project Completion Reports)
<b>Failure to identify and address problems</b>	Procurement objectives not achieved  Possible failure in the future	Agree on performance criteria (with supplier/contractor and customer)  Develop good relationships with suppliers/contractors

Risk	Likely consequences	Action
		Include a performance evaluation clause in the contract  Implement performance management strategies

## 11. Assets Disposal

Risk	Likely consequences	Action
<b>Collusive bidding at auction</b>	Not achieving best return	Set reserve prices
<b>Ethical issues (Prohibited Practices)</b>	Claims of unethical and unfair practices	Deal with reputable firms  Include disposal clause in initial contract  Have appropriate legislation/regulations in place  Develop specific disposal procedures
<b>Inadequate tender management</b>	Claims of bias and favoritism to organizations or individuals  Reduction in Value for Money  Complaints	Maintain ethical environment Sell by open tender  Document reasons for decision  Provide staff with appropriate training

## Annex 7: Guidelines and Resources for Procurement Monitoring



### Monitoring Public Procurement in Ukraine: Guidelines and Resources for Civil Society

This guide, *Monitoring Procurement in Ukraine: Guidelines and Resources for Civil Society*, was produced by the Kyiv School of Economics (KSE) with support from the Partnership for Transparency Fund (PTF) based in Washington DC, in implementation of the project entitled "Improving Transparency and Effectiveness of Public Procurement in Ukraine through Cooperation with Civil Society". This capacity building project was funded by the European Bank for Reconstruction and Development (EBRD) and the Partnership for Transparency Fund (PTF) and implemented by PTF, in partnership with KSE in Ukraine. PTF and KSE gratefully acknowledge the financial support of EBRD.

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## 1. Introduction

The purpose of this guide and associated training held in Kyiv and a number of regions of Ukraine in 2017 and 2018 is to help civil society organizations (CSOs) in Ukraine to proactively and responsibly engage in monitoring of public procurement to enhance transparency and fairness in the public procurement process. This effort is timely in light of the Law on Public Procurement that was approved by the parliament of Ukraine, the Rada, in December 2015, and the development of an e-procurement platform, ProZorro, which was launched in 2016. (Details on the Law and ProZorro can be found in the Annexes to this guide.)

The training familiarized CSOs and journalists with the public procurement process in Ukraine and acquainted them with methodologies and tools to monitor procurement at all stages of the process. These tools included 'risk indicators' and 'red flags' used internationally as well as risk indicators developed by Transparency International Ukraine, specifically tailored to the ProZorro system.

This guide is based on the training materials, and references other relevant sources. It is intended to serve both as a resource for those who underwent the training as well as for others seeking information on monitoring public procurement in Ukraine.

## 2. Introduction to Procurement Monitoring: Methods and Tools

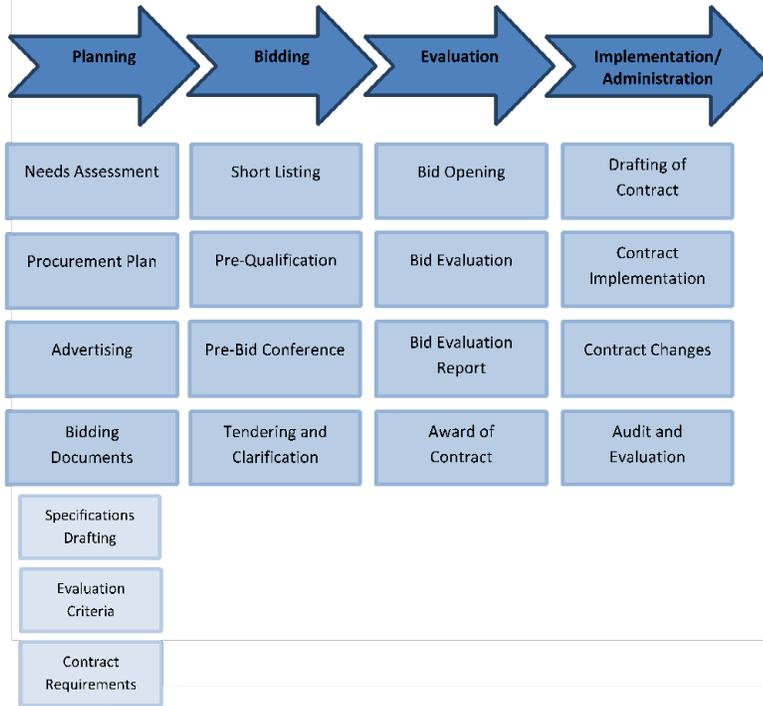
### 2.1 What is public procurement?

Public procurement refers to purchase of, or contracting for, goods, services and public works by governmental agencies at national, state and local levels. The sphere of procurement accounts for a sizeable share of public expenditures in most countries. According to the Ministry of Economic Development and Trade of Ukraine, the value of contracts signed for procurements in 2016 was 192,412,922,000 UAH (US\$7,527,296,000).

Below is a diagram of the general stages of procurement in most countries.



Figure 1: Stages of Procurement



Source: Transparency International USA, *Procurement Monitoring Guide: A Tool for Civil Society*. 2017.

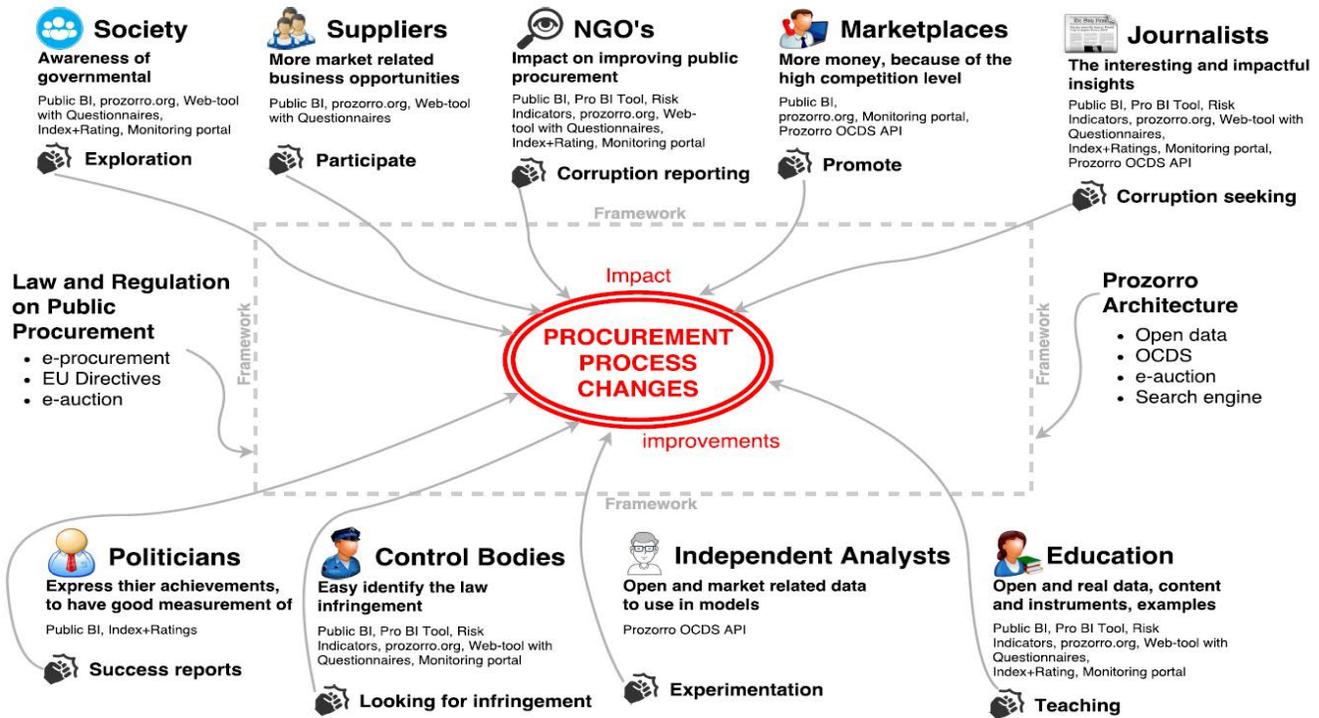
## 2.2 The Process of Monitoring

Monitoring is a process of periodic and continuous observation of the implementation of a process or program by timely collection of systematic information on the functioning, effectiveness, transparency, environmental impact and other process variables. Monitoring is best carried out continuously at scheduled intervals; for example, weekly, monthly, or quarterly. If monitoring is to be carried out on a regular basis, it is important to adhere to the proposed schedule of data collection in order to ensure that important elements are not missed.

Given the large proportion of public expenditures allotted to public procurement in most countries, it is an activity that provides significant opportunities for corruption. As such, there are many segments of a society that have a strong interest in monitoring public procurement in order to ensure openness, fairness and transparency. The chart below shows the ways in which a number of different players can be involved in monitoring and have a positive impact on procurement. Civil society can play an important role in such monitoring by identifying irregularities or abuses and seeking to bring these to the attention of responsible authorities who are in a position to address them.



**How the key players in monitoring of Public Procurement have impact on the procurement process through their interest, using tools and through their actions**



**2.3 The Goals Of Monitoring In Public Procurement**

Monitoring in the field of public procurement has the following functions:

At the system level:

- Provide an assessment of how the public procurement system develops in general, and the direction in which it moves and how effective it is. Some trends can only be identified after years of observation, thus providing the input necessary for policy formulation;
- Identify the need for any changes in the system;
- Define short-term and long-term goals and assess progress in achieving them. Analyze the potential impact of alternative solutions;
- Provide policy advice on procurement and decision making;
- Provide information that is relevant to decisions of other actors in both public and private sectors.



At the level of specific procurement actions, detect the following:

- Potential unethical behaviors
- Patterns of irregularities or abuses
- Anomalies in data and contracting decisions.
- Violations of laws, regulations or procedures.
- Inefficiencies resulting from poor planning and waste.
- Inefficiencies resulting from poor contract management
- Needs for institutional strengthening
- Needs for training

## 2.4 The Role of Civil Society

Corruption in public procurement affects the efficiency of public spending and impedes economic growth. In the end, the cost of corruption is paid by citizens who have to put up with poor quality or insufficient number of goods, works or services provided under government contracts. Nevertheless, shortcomings in the field of government contracts arise not only as a result of corruption but also due to other factors, such as inadequate planning and ineffective management as well as insufficient institutional capacity of customers. Citizens, as end-users of goods, works and services provided by public authorities, can play an important role in monitoring public procurement processes, ensuring the efficiency and transparency of the procurement process and the rational use of funds, while the interaction of civil society organizations (CSOs) with the authorities contributes to improvement of productivity and procurement quality.

CSOs' activity, aimed at ensuring the transparency and integrity of the public procurement system, is a prerequisite for the establishment of an effective procurement system. In addition, increasing transparency through monitoring by CSOs contributes to reducing opportunities for corruption, as customers and suppliers are aware of the monitoring activities carried out by third parties. Currently, there is a need to develop CSOs' ability to engage in effective monitoring functions, which would create credibility and yield qualitative and quantitative results. For example, creating coalitions with professional associations or academia could be useful and provide support to CSOs in proper interpretation of technical issues uncovered as a result of public procurement during monitoring. At the same time, engagement of CSOs in monitoring does not mean that they will take over state and management functions and powers, rather they only observe the procurement process on the basis of publicly available information, as well as check the quality, timeliness, ultimate price paid for contracts, and amount of final outcomes/results.



Training of civil society actors to engage in independent monitoring has the following main objectives:

- Ensuring the transparency and integrity of the public procurement process through methodological assistance to CSOs through the development of technologies such as allowing monitoring procurement processes and evaluating its results.
- Promoting public understanding of the role and importance of public procurement for the provision of adequate public services and the development of the local community and society as a whole. Encouraging citizens to participate in government decision-making processes, particularly when such decisions have a significant impact on the level and living conditions of the local community.
- Facilitating accountability of authorities and strengthening trust between authorities and the public.
- Overcoming the gap between government, civil society and the private sector.
- Improving the efficiency and rationality of public spending through a constructive dialogue between the authorities and CSOs.

Monitoring by CSOs can occur at the:

- National Level involving an assessment of the efficiency of public procurement in general;
- Contracting Authority level – involving an assessment of contract performance; and
- Supplier level – involving an assessment of the reliability of the supplier

### *Examples of Civil Society Monitoring*

**Case 1.** In the Philippines, a group of CSOs started a campaign to engage civil society to mobilize public opinion to support public procurement reform. Within two years, the campaign contributed to the adoption by the national legislature of a new procurement law in 2003. Simple procurement procedures, envisaged by law, allowed citizens to submit reports in case of suspicious customer behavior, a semi-independent state authority was created to prevent and investigate government corruption.

The success of this movement depended on various factors. First, the Philippines leadership took the lead by setting up a working group to study procurement reform and develop a new law in the country. Some members of the group used their technical expertise to get state support for reform through the creation of a non-governmental organization Procurement Watch Inc. (PWI). This association allowed PWI to be a critical link between citizens and the government. PWI has conducted customer training sessions on a new law on the procurement and publication of information on the right to public procurement data for the public. At the same time, PWI generates greater civil society capacity to monitor public procurement processes. PWI has created a mechanism for responding to information



from observers (among citizens) about possible fraud and abuse. This was critical, given that citizens sometimes refused to report violations and complain to public servants fearing persecution.

**Case 2.** Another example of government and civil society cooperation in the field of procurement monitoring is the monitoring by civil society of supply and the expenses for purchasing textbooks for schoolchildren in the Philippines. The Department of Education in the Philippines introduced a plan for cooperation with civil society organizations to monitor production and provision of textbooks for schoolchildren. As a result of this transparent practice, the average price per unit of the textbook was halved, with savings of about 68.5 million pesos. Similarly, audit of 165,000 textbooks by civil society textbooks led to the repair and replacement of 62,000 defective textbooks. The percentage of supply of teaching aids to educational institutions has also increased significantly.

Factors contributing to the success of the program included actions to counter the negative image of the Education Department. In the 1990s, the Education Department in the Philippines faced serious criticism from the public about corruption, in particular, in the purchase of textbooks for children. The new government, which came to power in 2003, appointed a new head of the Department who assumed responsibility for the reform process and introduced democratic practices, and civil society monitored every step of the procurement process. The Department of Education organized a seminar in which it invited civil society to participate in decision-making, leading to the selection of qualified agencies for the preparation and delivery of textbooks.

In addition, the creation of a coalition among civil society organizations headed by the Government Watch (G-Watch) has proven to be very effective in reaching geographic coverage in checking the quality and delivery of textbooks. Almost 6,000 volunteers from civil society groups have joined a large-scale national effort for four months, during which textbooks were delivered to 4,800 schools and educational institutions. However, despite good results, monitoring was only able to measure the results rather than influence the decision-making process.

## 2.5 What Types of Monitoring Exist?

The following forms of monitoring can be distinguished:

- Compliance audit (procedural compliance);
- Efficiency evaluation / performance evaluation; and
- Performance audit (effectiveness of the process, the controls, and the institutions)

**Compliance audit.** The compliance audit is to verify that the legal rules are properly applied to procurement practices. This type of monitoring means verification of the actions of authorized bodies in terms of their formal (legal) compliance. Monitoring is carried out by checking (verifying) the legality



of actions taken by customers (for example, at the stage of qualification of the winner) or their omissions (for example, the absence of published procurement plans, tender documents or bid from the winning bidder). These checks do not relate to the assessment of government spending in terms of the effectiveness.

Although compliance audits are not specifically designed for the implementation of certain state policies, in the end they will have an effect on the application of such policies. Audits are also not related to the monitoring of the implementation of a certain state policy, but it in turn affects the adjustment of legislation, compliance with which is the subject of monitoring carried out in the context of the compliance audit. For example, if state policy is to increase the participation of small and medium-size enterprises (SMEs) in public procurement, then compliance with the rules on the use of competitive procedures (according to the law), selection rules and qualifications will contribute to the implementation of the this established legislative state policy.

**Evaluating efficiency / measuring performance.** Measuring performance is the desire to answer the main question: " Does the system of procurement and operations allow achieving Value for Money?" This type of monitoring focuses on assessing the functioning of the procurement system in terms of its effectiveness. To do this, the bodies involved in monitoring should collect and analyze a wide range of indicators that characterize procurement processes.

Indicators should generally include:

- Information on the number of published procurement procedures and / or those that were started during the reporting period (required to assess the competitiveness and openness of the market);
- The average length of the procedure - from the moment of announcement to the signing of the contract. In combination with other metrics it can help to define problems during the tendering process as well as give recommendations, for example optimal length of the period of offers and reception time to receive offers;
- The number of procurement processes cancelled (this could indicate poor planning capacity on the part of the Contracting Authority (CA)) or poor capacity in the preparation of tender documents; alternatively it could also indicate poor preparation of potential bidders in submitting bids (no responsive bids);
- Estimated cost of the contract and prices for selected tenders (useful for comparison with other similar tenders and to rate them according to some average or median benchmark as well as estimate the effect of competition or/lack of competition);
- The number of tenders submitted in a particular procedure ( to help judge the competitiveness of procurement procedures);



- The number of tenderers rejected in the procurement process. This could be an indicator of the quality of bidders' preparation as well as the quality of Contracting Authority's (CA's) decisions. If, in combination with rejections there are claims/complaints on CA's decisions or repetitive rejections, this could be a sign of favoritism;
- Number of complaints filed for one announced purchase; (The number and the quality of complaints and the (percentage of complaints satisfied) can indicate problems with the quality of CA's and bidders' preparation for the tender;
- Transparency of procurement processes, expressed as the share of open procedures in the total number of procedures; A lower percentage of uncompetitive procedures indicates a more open and transparent public procurement system;
- Competitiveness of procurement procedures, measured by the number of tenders submitted on average in response to procurement announcements; A low number of bids will not only lead to higher prices paid by customers for purchased goods, services or works, but this may also indicate the use of biased technical specifications that artificially restrict competition;
- Provision of fair value of for money, measured by savings made by customers and satisfactory contractual outcomes.

Comparison of current metrics with metrics for previous reporting periods allows you to draw conclusions about how the system is evolving.

**Performance audit.** This refers to auditing the overall performance (procurement proceedings and results) of an entity in order to verify that procurement operations are in line with institution's or project's overall objectives while obtaining the right quality at the right time and right price, achieving Value for Money.

**"Value For Money (VfM)"** should be understood as the **optimal combination of price, quality, delivery and performance parameters** that best meet the procuring entity's procurement requirements taking into consideration parameters such as (but not limited to) life cycle ownership cost, where relevant. In VfM price is not determinative (other factors are also taken into consideration).

Performance audit focuses on: 1) Economy; 2) Efficiency; and 3) Effectiveness.

Performance audit promotes accountability. It can serve as a basis to recognize the need for change (for instance an institutional change or a change in process). It can generate questions such as:

- Are things done the right way?
- Are the right things being done?



It can provide answers to questions such as:

- Do we get Value for Money?
- Is it possible to spend the money better and more wisely?

Performance audits can be carried out at different levels to assess policy and compliance with policy:

- National level - assessment of the efficiency of public procurement in general;
- Level of authorized body - assessment of contract performance;
- Supplier level - Assess the reliability of the supplier

Audits in general and procurement audits in particular are mandated by law and/or regulations. In Ukraine, the exercise of such activities has been entrusted to the State Audit Service of Ukraine. Concerning procurement monitoring by CSOs, this is not a mandated activity but rather a voluntary one authorized by the procurement legislation. Procurement monitoring by CSOs will have similarities and even some overlap with the audit activities mentioned above, nevertheless, as explained in this Guide, it is different.

### 3. Risks in Procurement

#### 3.1 Risks at different Stages of the Procurement Process

This section considers potential risks in the procurement process, how a methodology can be developed, and specific tools used to help detect the risks.

##### Economic Justification

Public procurement in its simplest form is the mechanism of selecting suppliers/contractors to deliver goods and services to the government and concluding a contract in accordance with contractual law. Contractual law is based on the principle of bilateral voluntary exchange. In a well-functioning and regulated market economy, such exchanges maximize economic benefits under conditions acceptable to both parties.

*In the context of public procurement, we understand risk as the probability that actions or inactivity of the participants in procurement will lead to an unequal exchange, as a result of which the needs of the final consumers of the public goods, works or services will not be fully satisfied.*



Any methodology for identifying risks depends on the specifics of the public procurement system within a country and the available data. Let's take a look at a methodology developed by TI USA based on the use of a Checklist.

### 3.1.1 Red Flags-Methodology developed by TI USA

The red flags are indicators of possible fraud and corruption and/or other problems that may exist in a given procurement process. Red flag indicators can help CSOs monitor the procurement processes in a more structured and efficient way. TI USA<sup>†</sup> has developed a system of red flags for each stage of the procurement process, along with tips for their detection, what the presence of a red flag could potentially mean, and what to do when a red flag is found. Using red flags, CSOs should understand that flags do not necessarily point to fraud and corruption, and that sometimes this might indicate the possibility of corruption or just inefficiency.

Red flags should be used as auxiliary tools and should not replace observation and evaluations by monitoring specialists. Red flags are considered at each of the four procurement stages: Planning, announcement of a tender, evaluating proposals/qualifying a winner, and managing contracts.

**Examples of what to look for when using a Red Flag/Checklist method in the context of Ukraine.**

**Planning** – CSOs should analyze procurement plans to determine whether:

- Procurement items are not consistent with identified needs;
- Unnecessary items are included in the list of items to be procured;
- Appropriate allocation of items to lots (e.g., mango is not bought in the same lot as carrots);
- Timing for the process is reasonable (i.e. strawberries are not bought in January);
- Procurement plans do not appear to meet identified needs;
- Quantity/value of the purchased item is excessive/or insufficient;
- The scheduled announcement period does not match the legal requirements;
- Purchases are concentrated in certain periods for no apparent reason;
- Methods of procurement do not meet requirements of legislation or the legal rules of the tender.

**Announcement** –

- Lack of tender documentation;

<sup>†</sup> Procurement Monitoring Guide: A Tool for Civil Society. Transparency International USA



- Specific qualification requirements that imply the discrimination of participants (for example, the indication of a procurement item's trademark when it could be substituted by similar products);
- Uploading price offers before the auction;
- Uploading tender offer documents after the auction (except under Article 17);
- Reverse Auctions in which participants do not change their "bids".

#### *Proposal evaluation / qualification –*

- Rejection of participants for minor mistakes;
- Massive disqualifications for the same reasons;
- Absence / incomplete set of documents submitted by the winner.

#### *Contract management –*

##### Concluded contract:

- The terms of the contract differ significantly from the conditions specified in the tender and the model contract. Documents: The period of validity of the contract is atypically short or long.
- No contract in the system. Lack of appendixes to the contract in the system.
- Changes to the contract:
  - The essential terms of the contract were changed;
  - Customer and supplier are affiliated (beneficiary ownership);
  - The object of the procurement purchase and/or its technical qualitative characteristics were changed;
  - Abuse of contract changes: frequent and unjustified additional amendments/and/or agreements;
- Missing parts of the contract in the system such as annexes if they were part of the original contract.

### **3.1.2 Check list developed by PTF/KSE**

Checklists are used to ensure that monitoring is complete - that all key aspects of a specific procurement process have been verified. For the purposes of civil society organizations in Ukraine, a [Checklist](#) was developed by PTF/KSE taking into account suggestions from TI USA Procurement Guide, World Bank recommendations and OECD reports that were adapted to domestic needs and available procurement data.



### *The list was created to:*

- Conduct monitoring of a specific tender (real time monitoring), qualitative evaluation of documentation at all stages of the procurement process in order to analyze the quality of the procedure and the efficiency of the allocation of resources.
- Create the base (data bank) of issues, places where possible problems can occur, and possible assessments of what is happening in the procurement process. The purpose of the list is also to serve as a tool to assess the potential risk of inefficiency in a particular procedure, which, in turn, may be caused by corruption.

### *The list was created for:*

- People who do not have a very deep knowledge of the procurement process, as well as quantitative methods for evaluating them, but want to evaluate the tender objectively and draw a conclusion about the progress and results of the procurement process.
- People who have identified the tender for monitoring (links, posts in the FB, bi.prozorro.org, dozorro.org, future auto risk indicators, the Best Practices Index) and they need to understand the essence of what is happening, what to pay attention to, and which methodology to use for assessing the possible positive/negative results of each decision or action of participants in the procurement process.
- People who, monitoring the tender, cannot accurately evaluate one part of the tender process, and they need some "arbitrator" from the point of view of possible options - both undesirable consequences and the normal course of the process.
- CSOs that systematically monitor procurement and analyze the economic essence and effectiveness through the study of documents and outcomes. The tool will help them carry out this work more systematically by collecting data and will establish a formal monitoring process and a general understanding of possible issues that occur during the monitoring process.

### *Not all types of procurement procedures are covered by the Checklist*

- Not all types of procurement are of the same economic nature, for example, public utilities, repairs, construction, maintenance, require a different approach than purchasing common goods.
- The checklist focuses more on purchasing common goods as it is likely that this type of procurement might be more easily understandable to the public and also the economic essence of such purchases can be compared empirically.
- Not all types of customers (procuring entities) have the same behavior during the procurement process.



## 4. Tools for Monitoring Public Procurement by Civil Society

### 4.1 *The ProZorro system: the base for public procurement monitoring and risk analysis*

The main tool for monitoring public procurement in Ukraine is ProZorro, which is a fully online public procurement platform and a collaborative environment that ensures open access to public procurement (tenders) in Ukraine. Fully implemented in 2016 as a hybrid (both centralized public and decentralized private marketplaces) system. Since then, it has been globally recognized as one of the most innovative public procurement systems delivering government services in a stakeholder-focused, transparent, effective, fair and low-cost way.

Public purchasing accounts for a sizable part of Ukraine's GDP. Annually, about UAH 600 billion (approximately EUR 20 billion) worth of goods and services are transacted with the help of tenders. It is estimated that ProZorro may be responsible for saving about 10% of overall public spending due to increased competition and better transparency.

All of the functionality offered by this online portal are available to the general public without the need to register and without any barriers to access. All public tender information is available in Ukrainian, and above certain value thresholds procurement announcements are also available in English. This way, ProZorro ensures transparent and efficient spending of public funds by simplifying monitoring activities for civil society and by enabling enhanced, open competition among businesses that aim to supply goods and services to the government entities (Evolution and development of the ProZorro system are described in detail in Annex II).

The principles of openness, transparency and availability of data and, in general, the reform provided an excellent opportunity to create and develop monitoring tools for the public. In general, before ProZorro, public involvement in detection of violations and monitoring of procurement was limited: It was possible to have access to proposals, but only through physical inspection during this process (which could potentially create issues of a different types such as breach of confidentiality). Additionally, information on procurement documents or contracts had to be officially requested. Statistical information was available only in extremely limited form from the State Statistics Agency or on the website of search system of the State Enterprise "Zovnishtorgvydav" [ips.vdz.ua](http://ips.vdz.ua), or again by request and other limited methods.

Today, physical presence at the moment of disclosure of documents is not mandatory, nor is it needed since all documents are in the system. Documents cannot be deleted or manipulated, all data is available through the API (Application Programming Interface i.e., set of functions and procedures



allowing the creation of applications that access the features or data of the operating system) and real-time statistics are available to anyone. The technical capabilities and principles on which the system was built allow anyone to create their own initiatives and projects regarding new tools. This increases the speed of work, since checking of one particular procurement no longer has so many obstacles regarding access to data.

Nevertheless, there is still information that can be hard to access and process through automated mechanisms. Therefore, monitoring tools have been created and expanded in tandem with the development of the electronic procurement system.

#### 4.2 Key tools available

Among the key tools currently available are analytical systems, monitoring portals, various bots that retrieve information from registries, indexes and ratings of customers and suppliers, risk-indicator systems and supplier reliability assessment systems.

The public now can use the best solutions free of charge:

- Public analytical module [bi.prozorro.org](http://bi.prozorro.org);
- Professional with restricted access [bipro.prozorro.org](http://bipro.prozorro.org);
- The monitoring portal [dozorro.org](http://dozorro.org), which was created as a place of association/collaboration for all those who are not indifferent to procurement control;
- Index of Best Practices of Customers [index.dozorro.org](http://index.dozorro.org);
- Electronic cost control services of the Treasury;
- Many other initiatives and practices of both civil society organizations and individual citizens (i.e. [acm-ua.org](http://acm-ua.org), [youcontrol.com.ua](http://youcontrol.com.ua), [prozorrobot](http://prozorrobot), [opendatabot](http://opendatabot), [z.texty.org.ua](http://z.texty.org.ua)).

#### 4.3 Main Characteristics of the different Tools

**Business Intelligence [bi.prozorro.org](http://bi.prozorro.org):** This is a tool by which society can control the state procurement system and influence its improvement.

This interactive tool provides unlimited access to all ProZorro Procurement data. It allows you to perform analysis in any section, to search and filter, to investigate the history of the supplier, the customer (procuring entity), see which groups of goods were purchased, which complaints were lodged, from whom and why, and many other sections, which are limited only by your imagination. There are 17 lists available that allow you to analyze data from different angles, for example, using the list "Analysis of Requests and Complaints", it is much easier to work with and find procurements that



participants are concerned about. Or you can see who may be a problem or which categories of goods are generating the most procurement complaints. In other lists, you can understand the trends of competition, look at the entire history of a particular participant or customer.

**Bipro.prozorro.org:** This is an expanded and more sophisticated version of the analytics with restricted access by professionals. **bipro.prozorro.org** has a limited number of accounts available to access with an option to export data in .csv .xls format. If available, you can access pivot tables with thousands of lines and dozens of columns, risk indicators, dashboards, associative search, embedded ETLs (extract, transform, load, three database functions that are combined into one tool to pull data out of one database and place it into another database), and programming your own excerpts. You may apply for access using the form at the website.

CSO representatives, investigative journalists, representatives of large customers (such as Kiev City State Administration with 1,500 subordinate organizations, Dnipropetrovsk oblast administration, Ministry of infrastructure, Naftogaz etc.) and control bodies (NABU, DASU, DZE, AMCU) are already active users. Access rights are granted free of charge by Transparency International Ukraine in accordance with the Provisioning Rules for the extended ProZorro Business Analysis module.

#### 4.4. Risk indicators for different stages of procurement, developed by experts of the Kyiv School of Economics and PTF:

Ten (10) indicators were developed within the framework of the project financed by PTF and the European Bank for Reconstruction and Development, specifically for civil society.

These indicators are based on the data of the BIPro, ProZorro professional module described above. Below we give a brief description of these ten (10) indicators, a detailed methodology and examples of how to use them can be found [here](#). For each indicator, a separate Excel file was created.

**Indicator 1.** For procurement of goods and services that do not exceed a threshold of 200 K UAH and for procurement of works up to 1.5 mln. UAH (below threshold procedures) the procuring entity may use one of two procedures: either start an open competitive below threshold procedure or conclude a contract with a specific supplier and report on it afterwards - choose non-competitive procedure of reporting on concluded agreement (limited reporting). Some procuring entities may abuse the procedure for no apparent reason, although the market for the particular good or service purchased in a non-competitive manner is competitive and active in reality (i.e. meaning that if the procuring entity had chosen a competitive procedure, the probability of a successful and efficient tender would be high). This abuse refers to the risk of collusion between procuring entity and supplier to avoid competition through non-competitive procurement procedure use.



**Practical steps.** Most calculations for this indicator are carried out in Excel, in this case BIPro will serve as a database for further calculations.

Procedures:

If:

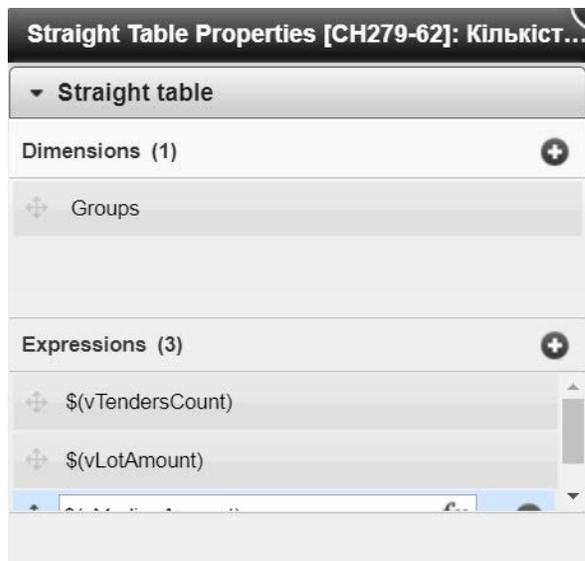
- a) The supplier participated in only one procurement of the procuring entity (number of participations > 1)
- b) The supplier only participates in non-competitive sub-threshold procedures
- c) Most purchases in the relevant market are carried out in a competitive manner

Then: it is considered that there might be a risk of collusion between the supplier and the customer.

Explanations:

To make calculations, according to the procedure, it is necessary to create two Straight Tables:

- 1) In Dimensions – Group; Expressions - \$(vTendersCount), \$(vLotAmount), \$(vMedianAmount)

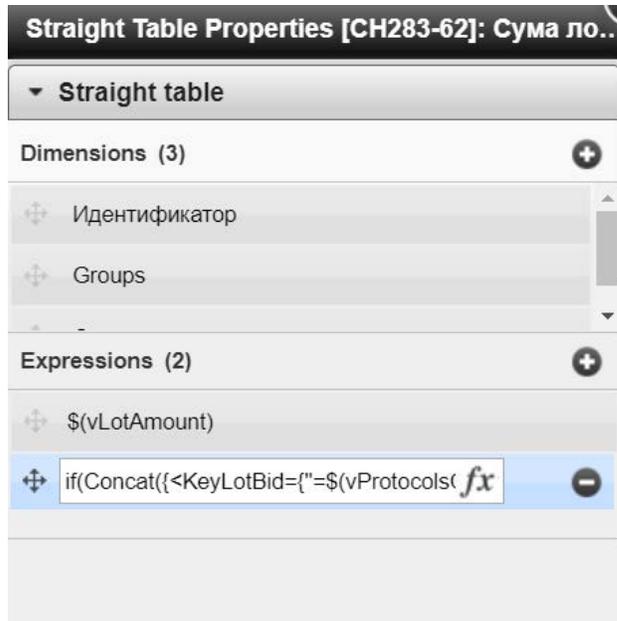


- 2) In Dimensions – Identifier, Group, Organiser; Expressions - \$(vLotAmount),  
 if(Concat({<KeyLotBid={"="=\$(vProtocolsCount(EndAwardStatusFlag={1};\$(AWARDED\_TENDER  
 )))>="1"},EndAwardStatusFlag={1},BidType={1,2},\$(AWARDED\_TENDER)>} {\$(-\$(T(560))}), '  
 ')="',  
 Null(),Concat({<KeyLotBid={"="=\$(vProtocolsCount(EndAwardStatusFlag={1};\$(AWARDED\_TEN



DER)))>=1"},EndAwardStatusFlag={1},BidType={1,2},\$(AWARDED\_TENDER)>} [\$(= \$(T(560))),  
'; '))

The last value expression identifies and displays the winner of the procurement.



Using the appropriate tables, the calculations are to be made in accordance with steps 1-4, which are presented in file 1 v01 objects.xlsx.

**Indicators 2-3.** In order to conduct an easy procedure of limited reporting and possibly collude with a particular supplier (conclude a contract with a specific supplier outside of the Prozorro system and report on it afterwards) the procuring entity can split possible big tenders into smaller ones. Abuse of non-competitive procedures with limited reporting requirements can indicate collusion risk.

**Practical steps.** Was the choice of a procurement method legally valid? Ways to make a comparison:

**Objective:** To find out whether the chosen procedure is legally valid.

**Case Study:** During 2017, the Department for Education, Family, Youth and Sports of the Magdalynivskiy District State Administration was purchasing natural gas using negotiating procedures for urgent needs. Is this choice of procurement method common among other customers?

**Historical case:** <https://prozorro.gov.ua/tender/search/?edrpou=02142454&cpv=09123000-7>



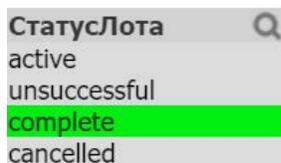
**Solution:** For any assessment, one needs to look at how other customers bought natural gas.

This requires:

- 1) creation of a Straight Table from Dimension: **Type of purchase method**; Expression: **count (IDLot)**



- 2) Filtering all purchases - create a List Box with a **LotStatus (СтатусЛота)** variable - select completed purchases.



- 3) Creation of a List Box with Common Procurement Vocabulary (CPV) Classification variable – select the Natural Gas code



The screenshot shows a search results window for CPV classifications. The first result, '09123000-7 Природний газ', is highlighted in green. To the right, a 'Current Selections Box' shows two items: 'СтатусЛота' with a green square and the text 'complete', and 'CPV Classi...' with a green square and the text '09123000-7 Природний газ'.

As you can see, it is possible to buy gas in a competitive way. Procurement mentioned in the example account for 3% of all purchases - the behavior of the customer is not typical of the market.

**Indicator 4.** According to the provisions for below threshold tenders regulation, the procuring entity has the right to conduct the procedure with one bidder (avoiding the reverse auction) if only one bidder participates in the tender. However bidders can collude to limit competition by agreeing that only one of them will participate in the tender- So called bid rigging.

See Practical steps for Indicators 2-3 above: The same steps would apply here.

**Indicator 5.** According to the Law of Ukraine on public procurement, a procuring entity may choose the negotiation procedure if two previous competitive procedures were unsuccessful (at the end of the period for proposals submission only one participant submitted a bid). But the Law does not define the procedure to verify that the situation justifies the use of the negotiation procedure. Potentially, if there were two unsuccessful earlier competitive procedures, the procuring entity can abuse this situation by choosing the negotiation procedure for the wrong reasons which is against the law.

See Practical steps for Indicators 2-3 above: The same steps would apply here.

**Indicator 6.** According to the Law of Ukraine on public procurement the procuring entity cannot publish a tender without uploading the tender documentation, but the absence of uploaded documents, does not stop or cancel the procurement process (request for tender documents uploading can be submitted to the procuring entity and complaints to a controlling body). For various reasons (from lack of attention/incompetence to intentional restriction of information for purposes of



favoring a certain contractor/supplier the procuring entity may conduct procurements without tender documentation, although it is a direct violation of the law.

**Practical steps.** How to search for Procurement, announced without any tender documentation:

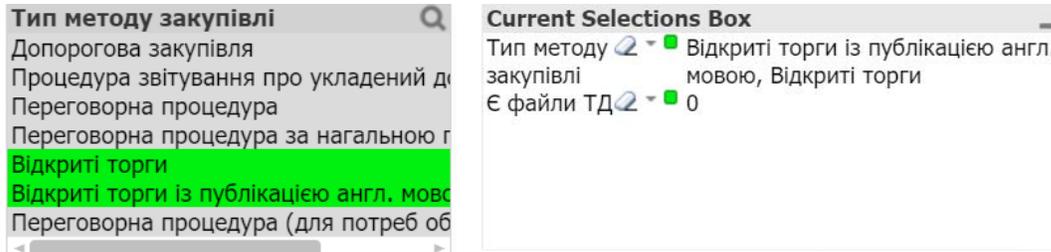
Create a filter (List Box) with a TD files available (Є файли ТД) variable. Select 0 (corresponds to purchases without tender documentation).

The image shows two screenshots from the QlikView software interface. The left screenshot is the 'New Sheet Object' dialog, where the 'List Box' object is selected. The right screenshot is the 'List Box Properties' dialog for the object 'LB1407-62: Є файли ТД'. In this dialog, the 'Field' dropdown is set to 'Є файли ТД'. There are several checkboxes for 'Hide excluded', 'Override locked field', 'Show frequency', and 'In percent', all of which are currently unchecked. At the bottom of the dialog, there is a section for 'Expressions (0)' and a 'More...' button.

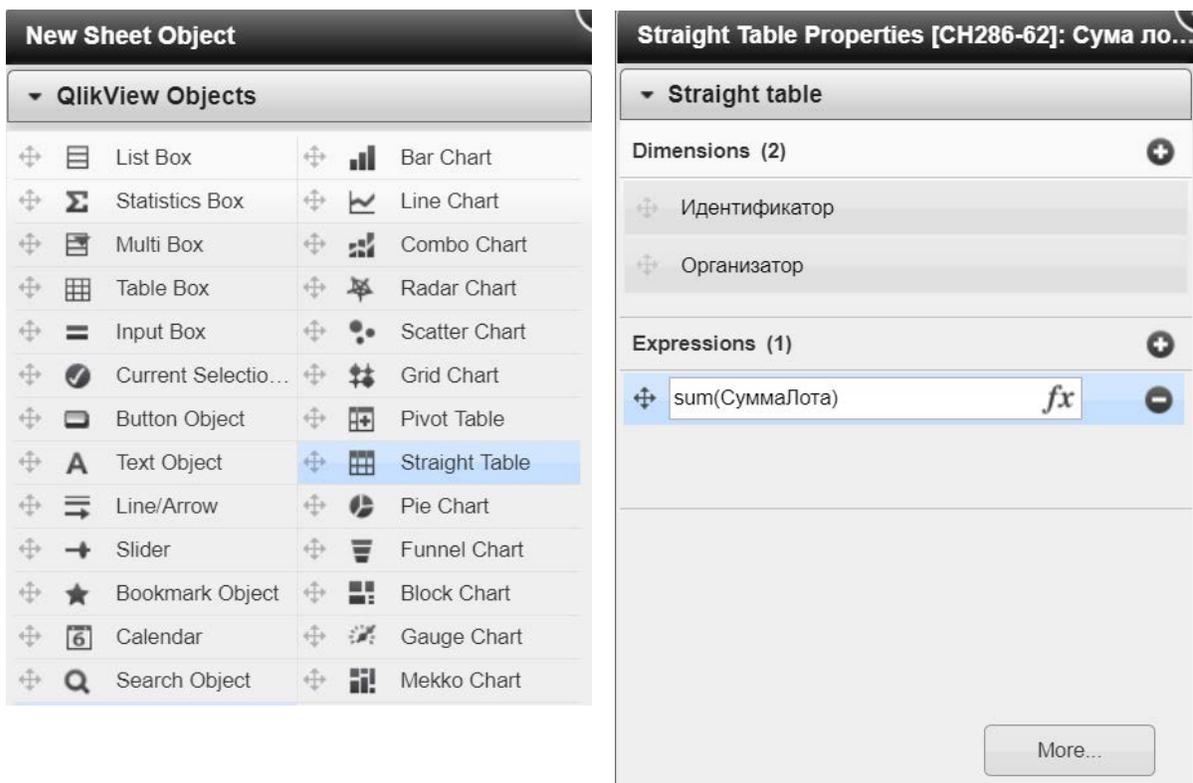
**Results:**

Є файли ТД	Q
0	
1	

Create a filter (List Box) with a specific procurement method as a variable. Select Open Tender, and Open Tender with the publication in English (since the requirement for the TD publication is only for over-threshold procurement).



Create a Straight Table with the required measurements (For example, the identifier, the organiser and the amount of the lot).



Download the data in Excel.

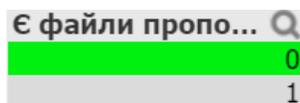


Сума лотів		
Идентиф...	Організатор	Сума лотів
		<b>343929029...</b>
UA-2018-07-...	КП ГІОЦ	2000000
UA-2018-07-...	Головне тер...	231220
UA-2018-07-...	Центр перви...	342000
UA-2018-07-...	Відділ освіти...	239000
UA-2018-07-...	Клішковецьк...	49000
UA-2018-07-...	ГОЛОВНЕ УП...	6000000
UA-2018-07-...	КОМУНАЛЬН...	4861
UA-2018-07-...	КОМУНАЛЬН...	8515
UA-2018-07-...	ІНСТИТУТ ВІ...	1350000
UA-2018-07-...	Навчально-в...	227500
UA-2018-07-	КУРДАНТРСЛК	200000

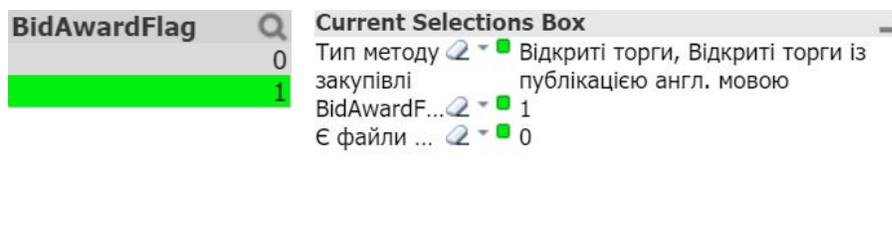
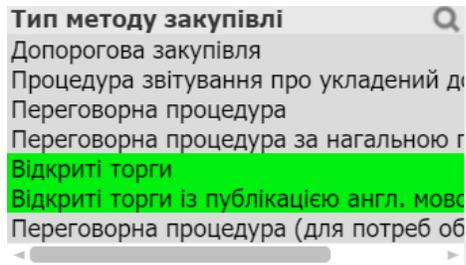
**Indicator 7.** According to the Law of Ukraine on public procurement the winner of the reverse auction process must meet all eligibility criteria required by the tender documentation and submit all documents proving his qualification (including documents specified in Article 17 of the law). Only this complete submission can make him the winner of the tender. So the winner of the reverse auction can not become a winner of the tender if it has not provided any documents (by Law he must be rejected and the next ranked price proposal should be considered). There are cases, however, where the winner of the reverse auction becomes a winner of the tender without having submitted the required documents, although this is a direct violation of the Law.

**Practical steps:** Procedure for searching for the Procurement, where the winner was selected without submitting all the proper documentation.

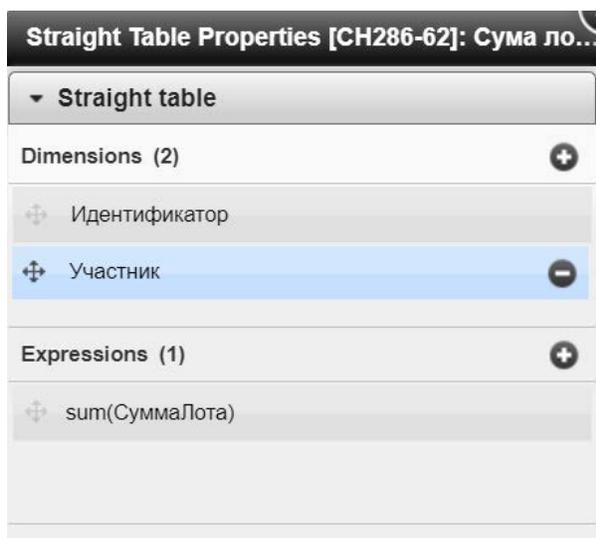
Create a filter (List Box) with a Bid files available (Є файли пропозиції) variable. Select 0 (corresponds to procurement without tender documentation).



Create a filter (List Box) with a Type of procurement method (Тип методу закупівлі) variable. Select Open Tender, and Open Tender with the publication in English (since the requirement for the bid publication is for the over-threshold procurement only).



Create a Straight Table with the required measurements (for example, the identifier, the tenderer and the amount of the lot).



Download the data in Excel.



Сума лотів		
Идентиф...	Учасник	Сума лотів
		<b>10063898,2</b>
UA-2018-05-...	ТОВ "АВГУСТ...	530775
UA-2018-04-...	ТОВ "АВГУСТ...	525000
UA-2017-09-...	ТОВ "АВГУСТ...	326720
UA-2017-08-...	ТОВ Мікропр...	384000
UA-2017-01-...	ФОП Кондра...	448335
UA-2017-03-...	ФІЗИЧНА ОС...	507000
UA-2017-01-...	Димерський ...	840000
UA-2017-01-...	Фізична особ...	350716

**Indicator 8.** Competitive procedures involve the use of reverse auction to intensify competition and reduce prices (increased savings). But there is a possibility of bid rigging under which bidders don't change initial price proposals during all the rounds of the reverse auction. The consequence of these actions is the conversion of competitive procedures into non-competitive (price unchanged). So among the competitive procedures where the value of price proposals remains constant, there is a risk of bid rigging.

**Practical steps:** The **Low Competitive Activity (LCA)**: This is an indicator on the CPM tab (All Indices block) of the BIPro professional analytics module.

**Indicator 9.** Another consequence of bid rigging is lowering the level of competitive engagement, which is reflected in low competitive power of the participants and as a result – low level of savings. Insignificant savings in completed competitive procedures may indicate a risk of bid rigging.

**Practical steps:** The **Procedure Non-transparency (PNT)** indicator on the CPM tab (All Indices block) of the BIPro professional analytics module.

**Indicator 10.** In order to increase the probability of winning, two bidders can collude to prevent other bidders from winning. In such a scheme they can win alternately (if their plan is working out). High frequency of the same two winners can indicate a risk of bid rigging.

**Practical steps:** Search for procurements where the same two tenderers participated.

**Objective:** To find all joint tenders of a given tenderer with other tenderers. To review the tenderers, where the share of "joint tendering" exceeds 90 percent, download all the identifiers of such procurement for the respective pairs.



**Solution:** To complete the task, two tables must be created and a filter with two different values must be used.

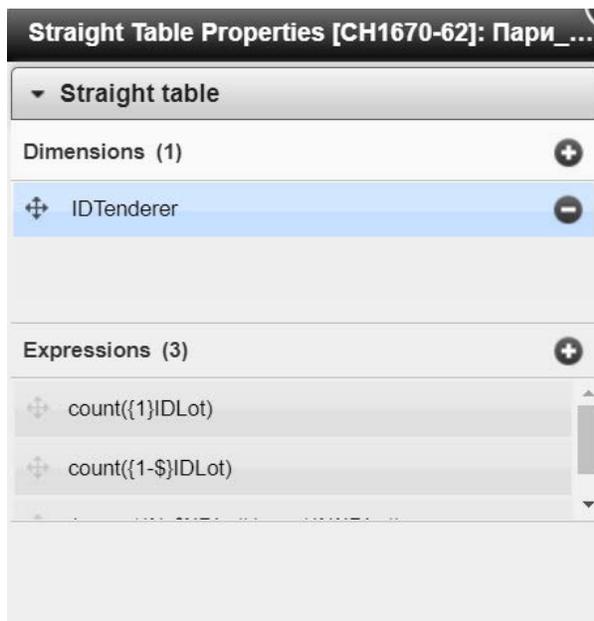
1. **Table 1:** Create a filter (List box) with the tenderer code (IDTenderer variable). In the corresponding filter, choose the tenderer to be compared with the others - in our example, choose the Ukrainskyi Papir LLC.

#### Current Selections

IDTenderer 25394112

Create a Straight Table from Dimension: IDTenderer;  
Expression:

- $\text{count}(\{1\}IDLot)$  – This calculates the number of tenders submission by the tenderer in all procurements in the database (by all procedures and under any status);
- $\text{count}(\{1-\$ \}IDLot)$  – This counts the procurements where a tenderer with Dimension was **NOT** tendering with a filtered tenderer;
- $1 - \text{count}(\{1-\$ \}IDLot) / \text{count}(\{1\}IDLot)$  – This counts the amount of joint tendering



Download the received table in Excel, sort descending joint tendering, remove the entries where the tenderer was tendering less than 5 times (if the tenderer was tendering only a few times, then it is likely that the joint tendering is an accidental coincidence).



Пари_крок1	count({1}I...	count({1-\$...	1-count({1...
IDTende...	2233822	2209692	0,0108021...
	30	25	0,166666666...
03361046	1	1	0
00968664	1	1	0
970138-9	1	1	0
33694710	1	1	0
34910814	1	1	0
36257034	1	1	0
37322271	2	2	0
39595350	1	1	0
39838811	1	1	0
2408415360	1	1	0
2478310617	1	1	0
2844416885	1	1	0
2970401663	1	1	0

IDTende	count({	count({	1-count
38503468	56	1	0.98
221480508	76	4	0.95
40340112	17	1	0.94
171930521	49	3	0.94
31865497	163	10	0.94
193041532	14	1	0.93
34817980	36	3	0.92
32894602	10	1	0.90
35008925	106	11	0.90
37028833	18	2	0.89
38619820	41	5	0.88
34455065	8	1	0.88
41131201	8	1	0.88
33343497	22	3	0.86
33240871	151	21	0.86
24138298	7	1	0.86
36141352	7	1	0.86

Let's take the tenderer highlighted in yellow and download all the procurements where it tendered jointly with Ukrainskyi Papir LLC. In order to do this, we need to create a new table and filter the two participants in the already existing filter.

2. **Table 2:** In the filter, where Ukrainskyi Papir was filtered, we then additionally filter the tenderer with the 31865497 code. There are two ways to do this:

- 1) Click on the search icon (magnifying glass icon) and insert the tenderer code. After that, with the Ctrl pressed select the tenderer in the filter.
- 2) Click on the search icon and enter the expression (without \*\*): "31865497" | "25394112"

The Current Selection Box should display the following:

**Current Selections**  
 IDTenderer 31865497, 25394112

Create a Straight Table with Dimension: Identifier, LotIdentifier;  
 Expression:

- IF(count(IDTenderer)> 1,1,-1) – It is 1 if both tenderers were tendering in the procurement, and -1, if not



Download the table and review the procurement, where the tenderers were tendering jointly.

Идентиф...	IF(count(I...	Идентифи...
	1	
UA-2015-02-...	-1	UA-2015-02-...
UA-2015-03-...	-1	UA-2015-03-...
UA-2015-04-...	-1	UA-2015-04-...

In the Excel file, filter the second column by the value=1 and we get a list of procurements, where the tenderers were tendering jointly.



Идентифик	IF(count(ID	Идентифик	рр
UA-2016-11-14-01		UA-2016-11-14-000764-b	
UA-2016-11-16-01		UA-2016-11-16-000248-a	
UA-2016-11-16-01		UA-2016-11-16-000313-b	
UA-2016-11-16-01		UA-2016-11-16-000365-c	
UA-2016-11-18-01		UA-2016-11-18-000910-a	
UA-2016-11-21-01		UA-2016-11-21-001287-a	
UA-2016-11-22-01		UA-2016-11-22-000921-a	
UA-2016-11-24-01		UA-2016-11-24-000969-b	
UA-2016-11-28-01		UA-2016-11-28-001156-a	
UA-2016-11-28-01		UA-2016-11-28-001171-a	
UA-2016-11-28-01		UA-2016-11-28-001181-a	
UA-2016-11-30-01		UA-2016-11-30-001376-a	
UA-2016-12-05-01		UA-2016-12-05-000366-a	
UA-2016-12-05-01		UA-2016-12-05-000442-a	
UA-2016-12-12-01		UA-2016-12-12-001027-b	
UA-2016-12-13-01		UA-2016-12-13-001139-b	
UA-2016-12-14-01		UA-2016-12-14-001325-b	
UA-2016-12-14-01		UA-2016-12-14-001459-b	

#### 4.5. Peculiarities and risks in procurement in the construction sector.

Different categories of procurement present specific features. Such procurements include the procurement of works and services pertaining to common repairs. CSOs should be familiar with the description of these procurements below so they may recognize anomalies if they arise in the process.

Let's consider some peculiarities that apply, in particular:

- to the planning stage;
- to the tender documentation;
- to the verification and negotiation of the contract price of the winner according to the results;
- to the tender;
- to the application of cases of change of essential terms of the purchase contract in the procurement contract;
- to the application of negotiation procedure, if necessary, for the procurement of additional works.

##### 1. Planning stage:

One of the most important issues in planning is the issue of defining the scope of the works to be performed and the scope of the maintenance services which have different thresholds in the Law of Ukraine On Public Procurement (hereinafter referred to as the Law).



The definition of the terms "services" and "works" is given in the first article of the Law (Part 1, cl.17-22). Current repair is related to services.

The procedure for determining the nature of the procurement is approved by the Order of the Ministry of Economic Development and Trade of Ukraine No. 454 dated March 17, 2016 (hereinafter referred to as the Procedure).

It is key to know what the construction will consist of (i.e. what will be the object of the construction). This will determine the object of the procurement. The objects of construction in accordance with the Law of Ukraine On Regulation of Urban Development are houses, buildings, structures of any purpose, their complexes and parts, engineering and transport infrastructural facilities.

The subject matter of procurement of maintenance services is determined for each individual house, building, structure, engineering and transport infrastructural facility, at the same time the terms "house", "building", "structure", "engineering and transport infrastructure facility" are also related to the terminology of construction standards, which are given in the Procedure.

When determining the subject matter of procurement of works and services for the current repair, it should be noted that the information provided in brackets regarding the indices of the Common Procurement Vocabulary (CPV) is supplementary rather than decisive. Consequently, the same figures for the Common Procurement Vocabulary indices (for example, 45000000-7 Construction work and current repairs) can be applied by the customer in determining the various items of procurement of both works and services for the current repairs.

The issue of the expected value of procurement purchase is also important. The expected value of the procurement of works should be determined as the full cost of works that are expected to be executed in terms of the subject matter of procurement in accordance with the project documentation, which has undergone expert appraisal and approved in accordance with the Law.

In the event of procurement of services for current repairs, the expected cost of the repairs shall be calculated according to the estimates made on the basis of a Defects Certificate or materials of engineering studies or surveys of the house, building, structure, engineering and transport infrastructural facilities (rather than the floors, individual rooms or the types of repairs).

In financing the facilities construction for several years, the expected cost of procurement of works is determined based on their full value, rather than the estimated budget (or the amount planned for construction under the financial plan) for a specific year.



It should not be overlooked that when planning a procurement, the customer cannot split the object of the procurement in order to avoid the open bidding procedure or the application of the Law (art. 2 part 7 of the Law).

Violations at the planning stage may be as follows:

- Breach of the Law due to the incorrect determination of the subject matter of procurement, splitting the subject matter of procurement, determination of the expected value not for the entire subject matter of procurement;
- Improper choice of a negotiation procedure and avoidance of open tendering procedure.

## 2. Tender documentation:

In the analysis of tender documentation for the procurement of works, particular attention should be paid to the list of documents submitted to confirm the compliance with qualification criteria. It is this part of the tender documentation which is most prone to include risks of discriminatory requirements specified by the procuring entity. Discrimination mostly happens in the requirements for documents to confirm the criteria regarding the availability of equipment and material and technical resources, and satisfactory performance on and experience from similar contracts.

An important part of the tender documentation is the information on the necessary technical, qualitative and quantitative characteristics of the subject matter of procurement. In the case of procurement of works, such information is a bill of quantities and a bill of resources, all in accordance with the design documentation. The lack of complete comprehensive information on the list and scope of work as well as resources makes it impossible for the tenderer to set a net offer price. According to the National Standard of Ukraine "The Rules for Determining the Construction Cost" DSTU B.D.1.1-1:2013 (hereinafter referred to as the DSTU) for calculating the tenderer's bid price, the procuring entity gives the contractor a bill of quantities regarding the works to be procured and, a list of corresponding resources with the relevant estimated itemized prices or without the prices but with the approved design documentation.

## 3. Reviewing and agreeing the contract price of the winner according to the results of the tender:

In accordance with Article 844 of the Civil Code of Ukraine, if the work is carried out in accordance with the estimates drawn up by the contractor, the estimates become effective and a part of the contract at the moment of its confirmation by the procuring entity.

The negotiated price is the estimate, which determines the cost of work, agreed by the parties (the procuring entity and the contractor) and is stipulated in the contract (cl. 3.15 of the DSTU).



The bid price of the winner of the tender is the contract price for the object of construction, which is proposed by the general contractor with the involvement of subcontractors and shall be agreed with the procuring entity (clause 6.2.4. of the DSTU). The contract for the performance of works is concluded after the contract price has been agreed.

Since the tenderer's bid price may decrease during the tender process, the tenderer needs to recalculate the estimate (contract price).

#### **4. The application of cases of amendments to the essential terms of the procurement contract in contractor agreement.**

The most sensitive issues when executing contracts pertain to increases to the cost of material resources and wages during the period of the contract. For the procurement contracts (in the definition of the term "procurement contract" in accordance with the Law), amendments to the essential terms of the contract (including the price) are possible only in cases stipulated in part 4 of art.36 of the Law.

It is worth noting that the price per unit of goods may be increased by up to 10 percent (10%) in the case of fluctuations in the price for such goods on the market as stipulated in part 4 of art.36 of the Law. This rule does not apply to procurement contracts for works or services.

In case of a decrease in the volume of procurement when the performance of a certain scope and types of works is not necessary, as well as in the case of price reduction (without changing the amount (scope) and quality of works and services), the savings cannot be used to purchase additional works. The Law does not provide for the possibility of increasing the scope of procurement under the procurement contract.

#### **5. The application of negotiation procedure, if necessary, for the procurement of additional works.**

In case where it is necessary to perform additional construction works during the performance of the procurement contract, the customer first of all should ensure that the design documentation is properly adjusted, based on the specific circumstances - the re-examination in connection with the adjustment of the design documentation and re-approval of the construction project.

The next step is to determine the expected cost of additional work. The calculation of cost of additional work usually requires the engagement of the contractor under the principal (primary) contract. In order to purchase additional construction works in accordance with the Law, the procuring entity has the right to use the negotiation procedure on the grounds specified in cl. 6, part 2 of art. 35



of the Law. In order to document the use of the negotiated procurement procedure in case of procurement of additional construction works, the procuring entity should have the documents confirming all components and all the conditions justifying the use of this procedure.

Depending on the expected cost of additional works and the scope of application of the Law for the procurement of works, the customer can either include the procurement of additional works in the procuring entity's annual plan and carry out a negotiated procedure in accordance with the Law or include the procurement in the annex to the procuring entity's annual plan and conclude a contract for additional works.

## 5. Communication with Supervisory Authorities

### 5.1. System of control bodies

State regulation and control in the field of procurement are carried out by a number of bodies specified in the Law of Ukraine "On Public Procurement" (hereinafter - the Law). In particular, they include: The Authorized Procurement Authority, the Antimonopoly Committee of Ukraine, the central executive authority, which implements the state policy in the field of state financial control; the central executive body, which implements the state policy in the field of treasury service of budget funds and the Accounting Chamber.

The authorized procurement authority is the Ministry of Economic Development and Trade of Ukraine, which is tasked with regulating and implementing state procurement policy. The Ministry develops and approves the legal acts necessary for the implementation of the Law; analyzes the functioning of the public procurement system; prepares and submits to the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the Accounting Chamber an annual report containing an analysis of the functioning of the public procurement system; promulgating Best Procurement Practice based on world and Ukrainian practice; ensures the functioning of the ProZorro web portal; provides free advice on procurement issues; informs the public about the policy and rules of public procurement, and so on. In other words, the Ministry of Economic Development is at the center of the ProZorro system and is responsible for regulating its activities.

The *Antimonopoly Committee* of Ukraine is a state body with a special status, whose purpose is to ensure competition among enterprises, including in the field of procurement. For the purpose of impartial and effective protection of the rights and legitimate interests of persons and entities involved in procurement, the AMCU has established a permanent administrative board to consider complaints about violations of legislation in the field of public procurement. Complaints may be filed by persons and entities who are directly involved in the procurement. That is, representatives of CSOs or other



observers of a tender are not authorized to file a complaint. However, in the event of the detection of anticompetitive arrangements that may lead to elimination or restriction of competition between tenderers (Article 6 of the Law of Ukraine "On the Protection of Economic Competition") or collusion between the Procurement Entities and Contractors (Article 15 of the Law of Ukraine "On the Protection of Economic Competition"), every citizen may apply to the Antimonopoly Committee of Ukraine in accordance with the Law of Ukraine "On Protection of Economic Competition."

The signs of anticompetitive actions may be the following: the same or similar format of tender offers by participants, joint participation in other tenders, participation in tenders of only one Procurement Entity, etc. If violation is detected and proved, the Antimonopoly Committee of Ukraine may within a period of 3 years impose a fine, include the violator into the "list" of violators (clause 4 of part two of article 6, paragraph 1 of article 50 of the Law of Ukraine "On protection of economic competition") and recommendations to terminate the contract and to demand termination of the contract in court.

The **Central Audit Office** of Ukraine, which implements state policy in the field of state financial control, is the State Audit Service of Ukraine. The state audit service exercises its state financial control powers through the implementation of:

- procurement monitoring;
- public procurement inspections;
- state financial audit;
- Inspection (audit).

The State Audit Service of Ukraine uses the tools of procurement monitoring described in these guidelines and makes inspections (audit).

Procurement monitoring – is the analysis of the procurement entities' compliance with public procurement legislation at all stages of the procurement process through the systematic observation and analysis of information through the electronic procurement system. Unfortunately, the procurement monitoring function of the State Audit Service is not yet established by law. To resolve this issue, it is necessary to amend the Law of Ukraine "On the Basic Principles of the Implementation of the State Financial Control in Ukraine."

Inspection consists in documentary and actual audits of a particular entity/ person or transaction and is conducted in the form of an audit, to detect violations of the law and the identification of individuals liable for these violations. In case of detection of violations and taking into account the nature of the violation, the State Audit Service of Ukraine may:



- Draw up a protocol of an administrative offense (Art. 164-14 of the Code of Ukraine on Administrative Offenses);
- Recommend that the procurement agreement be terminated;
- To sue in order to terminate the procurement contract and report any violations discovered to law enforcement authorities.

It is known from practice that it is the State Audit Service that reacts the most promptly to the facts of violations during the tendering process.

The **State Treasury Service** of Ukraine is the central executive body that implements state policy in the field of treasury service of budget funds, accounting of budget execution. Authorized officials prior to making payment under the purchase agreement verify the ProZorro procurement documents posted in the electronic procurement system, namely: the existence of a procurement contract, an annual procurement plan, and a report on the results of the procurement procedure that confirms the procurement procedure.

At the same time, units of the State Treasury Service of Ukraine take measures to prevent payments from the procurement entity's account in the following cases: absence or non-compliance with the requirements of the required documents specified above; cancelation of the procurement procedure; entry into force of a court decision making the results of the procurement procedure invalid; suspension of the procurement procedure; availability of a relevant decision by the Antimonopoly Committee of Ukraine. Consequently, the State Treasury of Ukraine, if there are grounds, can stop payment to the winner of the tender for budget funds

The **Accounting Chamber of Ukraine**, on behalf of the Verkhovna Rada (Parliament) of Ukraine, controls the receipt of funds to the State Budget of Ukraine and their use. It carries out financial audits of the Verkhovna Rada of Ukraine, executive bodies, the National Bank of Ukraine, the State Property Fund of Ukraine, other bodies accountable to the Verkhovna Rada of Ukraine, as well as in enterprises and organizations regardless of ownership in the part of their activities, which concerns the use of funds of the State Budget of Ukraine. The Accounting Chamber conducts state external financial control (audit) of the implementation of tenders for all stages of procurement which includes verification and analysis of the legality and efficiency of procurement, compliance with the procedures, assessment of the timeliness of receipt of goods, services and works, as well as an analysis of the state of transparency and observance of the established principles for implementation of tenders. According to the results of the audit, the Accounting Chamber prepares an opinion, which is necessarily published on the official web site of the body.



In case a criminal offense is suspected, law enforcement agencies may enter relevant information into the Unified Register of Pre-trial Investigations and initiate criminal proceedings. Depending on the nature of the acts, categories of officials involved and the size of the harm caused, criminal proceedings may be initiated by the prosecutor's offices, national police, security services, the state fiscal services, and the National Anti-Corruption Bureau of Ukraine. Investigative jurisdiction is provided in Article 216 of the Criminal Procedure Code of Ukraine. More often than not, the persons concerned are prosecuted for the appropriation or seizure of property by abuse of office; abuse of power or office; official forgery and official negligence.

## 5.2. The Procedure for Petitioning Control Bodies

Anyone who wants to monitor the tender and monitor the spending of budget funds can independently carry out public control from the moment of budgeting funds for the procurement and until the completion of the procurement contract. Public control is exercised first of all through the free access to information on public procurement and analysis and monitoring of such information contained in the electronic procurement system and elsewhere. By informing/inquiring/petitioning (via electronic system or written requests see annex III) procuring entities and control bodies about possible violations and shortcomings in the work of the electronic procurement system individuals or Civil Society Organizations (CSOs) can contribute to corrective actions being taken.

If it is necessary to have additional documents, clarifications, or in case a procuring entity fails to upload tender documents to the ProZorro system, each person or entity has the right to request such information. The fastest and most effective way is to send a Request for Access to Public Information.

The request is sent in the manner prescribed by the Law of Ukraine "On access to public information". The holder of such information, typically the procurement entity, is obligated to provide the requested information within 5 working days. It should be noted that with reasonable justification, the holder may extend the consideration of the request to 20 business days if the request relates to the provision of a large amount of information or in the case of a need to seek information among a large amount of data. The information holder has no right to restrict access to information about the distribution of budget funds, possession, use or disposal of state and local government property, including copies of relevant documents, conditions for obtaining these funds or property, and information identifying individuals and legal entities who have received these funds or property. Therefore, as a rule, obtaining information in the manner prescribed by the provisions of the Law of Ukraine "On Access to Public Information" is a very effective and fast tool.

At the same time, in the case of suspected violations of the current legislation detected through monitoring, citizens can also use their right to petition the relevant control and law enforcement



bodies. For example, in case of detecting violations of the provisions of the Law of Ukraine "On Public Procurement", in addition to informing and requesting information from the procurement entity, it is recommended to also send a petition to the State Audit Service of Ukraine to look into the case. You can draft the petition in accordance with the procedure established by the Law of Ukraine "On Citizens' Appeals (Requests)".

In order to get a prompt and meaningful response it is necessary to draft a clear and comprehensive written petition with clear and evidence based supporting documentation.

The recommended structure of the petition has 5 parts:

- introductory;
- descriptive;
- reasoning;
- petitioning;
- stating the responsibility of officials reviewing the petition.

In preparing a petition, it is important to correctly identify the authority to whom the request is to be sent which is done in the **introductory part**. The practice is that when the petition is addressed to a central body, even at the highest level, it is redirected to the relevant structural or territorial unit. It is recommended that when addressing a central control body to start with the head of the State Audit Service of Ukraine which has the broadest investigative powers. However, in the case of small and local procurement it is often better to first send the petition directly to the relevant territorial unit.

The **descriptive part** should contain an exhaustive list of facts that need to be checked by the relevant body, that is, it is necessary to specify all detected violations. The most effective way is to indicate the article of the law, which, in the opinion of the applicant, has been violated in each particular case. For example, if the procuring entity requires tender documents and notifications in paper form article 14 of the Law of Ukraine "On Public Procurement" is violated, namely the provision that the submission of information by the participants during the procurement procedure is carried out electronically through the electronic procurement system.

In the **reasoning part** of the request, the provisions of the relevant legal act regulating the activities of the body to which the request is sent, are stated.

On the basis of the authorized powers of the controlling body the **petition is made**. Most often, it is a request to verify or refute the facts and circumstances described. Please note that the petition must be within the authority of the controlling body identified in the reasoning part of the petition.



Finally the petition should normally refer to the **liability for inappropriate treatment of the petition** as stated in the law. For example, for an unlawful refusal to accept and consider a petition, another violation of the Law of Ukraine "On Citizens' Appeals", the Law provides for an administrative penalty in the form of a fine for officials in the amount of from twenty-five to fifty non-taxable minimum incomes of citizens.

It should be emphasized that a well-prepared petition and the correct choice of the appropriate controlling or other public authority to address ensure maximum success.

If during the monitoring of a procurement procedure there is strong evidence:

- that fraud has been committed
- that procurement took place at significantly elevated prices,
- of falsification of tender documents,
- of delivery of goods, provision of services or performance of works not conforming to the specifications in the contract, or that goods have not been delivered and/or, provision of services or performance of work have not taken place, as well as other signs criminal offense, the relevant law enforcement agencies should be informed.

To date, the following bodies can enter information to the Unified Register of Pre-trial Investigations (hereinafter referred to as the URRD):

- the bodies of the National Police of Ukraine,
- the Security Service of Ukraine,
- the investigatory units of the State Fiscal Service of Ukraine,
- the Prosecutor's Office of Ukraine and
- the National Anti-Corruption Bureau of Ukraine.

When submitting a request to a law enforcement agency, you should take into account:

- the constituent elements of the criminal offense (Articles 191, 364, 366, 367 of the Criminal Code of Ukraine);
- investigative jurisdiction in accordance with the authority (Article 216 of the Criminal procedure code of Ukraine);
- which part of the law enforcement agency is best suited to handle the matter.



A notification about a possible crime may be written in any form, however, the guidelines for petitions above could also serve in this case. It is worth noting that law enforcement agencies are usually reluctant to initiate criminal proceedings and often do not submit relevant information to the Unified Register of Pre-trial Investigations. This makes it particularly important to exercise your rights and challenge such actions by law-enforcers.

In order to exercise your right to challenge law enforcement bodies neglecting to submit information to the URRD or otherwise not taking action to deal with your request, it is necessary first of all to clearly check the time period for filing a specific type of complaint. In accordance with the provisions of the Criminal Procedure Code of Ukraine, the inaction of the investigator or prosecutor, which consists in not entering information about a criminal offense to the Uniform Registry of Pre-trial Investigations within 24 hours after receipt of the application or notification of a criminal offense, may be challenged in local court. The complaint may be filed within 10 days from the moment such inaction was committed.

A person who has filed a notification about the possible crime receives a special status - the status of "applicant." In accordance with Article 60 of the CPC of Ukraine, the Applicant has the right to:

- Receive from the authority to which he submitted the notification a document confirming its acceptance and registration;
- Submit the documents and evidences to support his notification;
- Be informed of the results of the pre-trial investigation.

Public activists with ties to members of Verkhovna Rada or local councils may secure their support for submitting a Deputies' Requests.

A Deputy's Request is a formal written request from the deputy addressed to the bodies of state power and local authorities, their officials, heads of enterprises, institutions and organizations, citizens' associations to take certain actions, and/or to give an official explanation and/or to set out a position on the issues that fall within their competence. The procedure for sending a Deputy Request is regulated by the Law of Ukraine "On the Status of People's Deputy of Ukraine" and the Law of Ukraine "On the Status of Deputies of Local Councils".

In this regard, Deputy's Requests have a number of advantages. In particular, a body of state power, local authorities, their officials, heads of enterprises, institutions and organizations, associations of citizens to whom a Deputy's Request is addressed, are obliged to consider it and give a written answer within 10 days from the moment of its receipt.



The response to the request of the People's Deputy must be signed by the head of the relevant state body to which the Deputy submitted the request. The response to citizens' or CSO request, as a rule, is signed by the head of the structural unit (department)

When a Deputy submits a request to officials of state organs, officials must immediately take measures to investigate and eliminate violations if confirmed, and if necessary bring the perpetrators to justice, subsequently providing information about this to the People's Deputy. In the absence of measures to eliminate the violation, officials shall have disciplinary, administrative or criminal responsibility in accordance with the procedure established by law.

A Deputy's Request is different from that of a citizen of a citizen. The narrative part should identify the person who claims that an offence has been committed. This is necessary as the MP cannot not be held responsible for the accuracy of the facts described in the request.

Concerning the responsibility of officials it is worth stressing that a People's Deputy has the right to receive information on issues related to the exercise of parliamentary powers from bodies of state power and local authorities. Their officials are obliged to provide such information in the manner and within the time limits specified by the Law of Ukraine "On the Status of People's Deputy of Ukraine".

Failure to reply or refuse to verify the facts described in the MP's request may be regarded as impeding the Deputy from carrying out her or his responsibility to investigate. For these acts, in accordance with the provisions of Article 351 of the Criminal Code of Ukraine, criminal liability is provided. Therefore, sending a Deputy Request which identifies detected violations in the tender process is a very effective tool.

Templates for communication with the various authorities are included in Annex III.

### 5.3. Using the DoZorro Platform

The launch of the electronic procurement system and its mandatory application, in particular for below-threshold purchases increased the number of purchases that can be subject to monitoring significantly. Without such electronic system small and local procurements were in practice very hard for a CSO to monitor. There is still of course information which is not captured by the electronic system which could be critical to determining malfeasance and corruption which CSOs need to obtain through other channels to complement and verify the conclusions drawn from analyzing data in the electronic system.

The DoZorro platform was created to combine using online monitoring tools to detect possible violations or abuses with providing queries/reports on such violations or abuses to procuring entities,



control bodies and businesses/contractors; DoZorro gives citizens a tool to have more transparency and combat abuses in procurement .

DoZorro is the largest analytical and monitoring subcomponent of the ProZorro system. The DoZorro portal was created by Transparency International Ukraine in November 2016. Today, the portal is integrated with the ProZorro Central Database and platforms participating in the system.

It is a platform where each participant in the system (supplier, procuring entity, controlling authority, citizen) can make queries and have feedback, discuss and evaluate particular procurement cases, analyze the purchases of individual procurement entities, prepare and submit a formal appeal to the controlling bodies, and much more. A user who has submitted a query can also submit an official request to investigate to the regulatory authorities or law enforcement agencies. An electronic record of queries and responses is thus created in DoZorro which can be used by enforcement agencies to pursue cases of malfeasance and corruption.

The portal gives civil society activists and the media a forum and tool to discuss tenders with potential and existing suppliers, to have their opinion on the adequacy and correctness of the tender documentation, to reach out to professional experts for advice, etc.

Public procuring entities can obtain information and assess suppliers, get questions and feedback from suppliers and use this information to improve the procurement process.

Also, DoZorro includes current information relating to the field of procurement monitoring. In particular, new legislation, analysis and control tools, risk assessment methods, etc.

The main function of DoZorro is to facilitate access to and manipulate the ProZorro data base electronically. In the instructions how to query the data base there are relatively simple questions, which for the most part can be answered "yes" or "no". You can add a descriptive part to each question. But the value of the feedback is precisely in the possibility of their computer processing to bring out patterns of possible violations and identify specific cases to be further investigated.

Ideally, when such cases are identified and brought to the attention of procurement entities it should produce a reaction from the entity responsible. If there is no such reaction, the DoZorro-community coordinator monitoring purchases should redirect cases with potential violations to regulatory authorities. Therefore, the regulatory authorities will soon become aware of suspected violations or mistakes by procuring entities and contractors such as discriminatory conditions, inflated expected value, unjustified disqualifications. This simplifies monitoring by regulatory authorities as violations and mistakes have already been identified, and the control authority can start immediate investigation.



Before ProZorro/DoZorro the main source of information was from aggrieved contractors which is not complete and reliable information in many cases.

An advantage of the DoZorro platform is its direct integration with the ProZorro database. Any tender announced in the public procurement system is immediately displayed on the portal and may be queried using feedback forms. In addition, the analytical modules [bi.prozorro.org](http://bi.prozorro.org), [bipro.prozorro.org](http://bipro.prozorro.org) are supplementary analytical tools integrated with DoZorro through which queries to procuring entities can be made. DoZorro is also integrated with an anti-corruption monitor ([acm-ua.org](http://acm-ua.org)).

A key task of the training provided by KSE/PTF was to teach participants how to correctly prepare queries when possible violations or mistakes are identified. However, civil society organizations cannot replace the functions of control authorities, so CSOs must also be prepared to file appeals to such authorities as discussed above in section 5.2. Examples of letters concerning the most frequent violations have been developed and attached in Annex III to be used for the State Audit Office, the Antimonopoly Committee, the Department of Economic Protection of the National Police of Ukraine and other bodies.

An important purpose of the portal is to allow effective communication among the users of DoZorro. Therefore, separate Procurement entity and CSO profiles have been created.

Using these DoZorro profiles, procurement entities are expected to react to objective and reasonable queries from other DoZorro users by correcting mistakes and eliminating violations or shortcomings. If this happens not only does the ProZorro system make procurement more transparent but there is also action taken to correct mistakes and reduce malfeasance in response to queries.

In case of a query from civil society to a procuring entity or controlling body, the query and responses are also stored and in a systematic way. Therefore, just as with a procuring entity, everyone can see which other organizations and in which manner they are involved in dubious purchases, what steps they take to eliminate violations (communication with the authorities and the procuring entities) and what results are achieved. When an activist begins to work with a purchase, he also fills in forms in the DoZorro system where he identifies specific possible violations, attaches supporting files and reports on results.

DoZorro also names, shames and praises by means of a system of ratings and comparisons which identifies violations, mistakes and successes, including queries and responses that are frivolous or misleading.



The DoZorro portal provides the opportunity to deepen knowledge of procurement monitoring, learn more about the functions of control authorities, learn from foreign experience and methodologies, or simply keep up with the latest news in blogs on specific cases.

There are plans to develop tools for unit price analysis, for further development of analytical tools and functions, further integration with other platforms, tools and registers, and much more.

#### 4.4. Practical Cases

##### *Practical Situation 1*

In October 2016, the Kreminna City Council conducted a tender for the reconstruction of the water supply system. The winner (the supplier company with which the contract was concluded) was the company Dominant Trust Service Ltd with the highest price offer - UAH 3.9 million. At the same time, ten other companies participated in the tender, whose offers were rejected for various reasons. The customer demanded that the participants submit a license for the conduct of economic activity in the construction, but the level of complexity of the claimed object did not require such a license. The difference between the supplier's price offer and the cheapest offer is about 1.8 million hryvnias.

Result: NGO "Anticorruption Headquarters" prepared an appeal to the Northeastern office of the State Audit Service with a request to verify the above facts. The State Audit Service confirmed the existence of tender violations. In particular, the Kreminna City Council committed discriminatory action when requiring a copy of the license for the conduct of economic activity in construction. Proposals from other, cheaper participants, were rejected because their value allegedly did not correspond to the performance of works in full, was also recognized as an illegal decision.

##### *Practical Situation 2*

Purchase of balls by the Department of Education of the Dnipro Regional State Administration in Kyiv with an expected value of 199 thousand UAH. - the customer rejected the participants with lower price offers (half the price of the winner); at the same time, the winner of the below-threshold procurement (the agreement was not concluded) provided instead of its own supporting documents, documents of another legal entity. So, at the request to provide contracts for similar supplies to public educational institutions, the winner of a private entrepreneur Limansky, provided contracts that private entrepreneur Doroshenko performed.



Result: Because of the appeal (submission of a complaint to the Antimonopoly Committee), the customer canceled the purchase (the proposal of the FOP Limansky was the only one in the below-threshold procurement)

### *Practical Situation 3*

Purchase of service to install metal-plastic windows for a secondary school by the Department of Housing and Communal Services of Pechersk Regional State Administration - a participant with a lower price offer was rejected for formal reasons (Administration entered into an agreement with another participant). The participant provided all necessary documentation, however, one of the documents was called "commercial offer" instead of "price offer".

Result: during the audit by the Department of Internal Financial Control and Audit of the Kiev City State Administration, the audit confirmed that the participant should not have been rejected.

### *Practical Situation 4*

The supply of electric transformers to Vuglegirskaya thermal power station of the Public Joint-Stock Company Tsentrenergo with the total value of UAH 7.14 million - several participants were not allowed to participate in the procurement on the basis that documents were not provided, which was not true, since the documents were provided in full. Also, the procuring entity requested the submission of information from public state registries.

Result: Based on the appeal to the State Audit Office (DAS) from the public organization "Anticorruption Headquarters", the DAS initiated an audit of the relevant procurement. Submission of information from public registers is contrary to the law on public procurement and clarification of the MEDT.



## ANNEX I: Legislative Regulation of The Procurement Process

### 1. The Procurement Process in Ukraine

The sphere of procurement is one of the most expensive for the society. According to the Ministry of Economic Development and Trade of Ukraine, the value of contracts signed for procurements in 2016 is 192 billion 412 million 922 thousand UAH (7 billion 527 million 296 thousand dollars). And this is more than the GDP of Moldova, which according to the World Bank in 2015 amounted to - 6 billion 551 million dollars.

The reform in the field of public procurement policy has been identified as a priority task of the government for several years. It remains such a task in view of the general government budget deficit and the need for fiscal consolidation, as well as the need to increase public spending efficiency.

#### 1.1 Evolutionary Procurement Process in Ukraine

1994	Ukraine began to create legislation on public procurement during the negotiations on membership of the World Trade Organization (WTO). The basis of the legislation was the provisions of the WTO Agreement on Government Procurement, which was signed by all WTO members.
1997-1998	<p>In order to introduce WTO principles into public procurement procedures, the Cabinet of Ministers of Ukraine has adopted several decisions:</p> <p>Resolution of the Cabinet of Ministers of Ukraine dated June 28, 1997 No. 694 "On the organization and conduct of tenders in the field of public procurement of goods (works, services)";</p> <p>Resolution of the Cabinet of Ministers of Ukraine dated September 24, 1997 No. 1058 "On the organization and conduct of tenders in the field of state procurement of goods (works, services)";</p> <p>Resolution of the Cabinet of Ministers of Ukraine of 01.09.1998 No. 1369 "On Conduct of Tenders in Construction".</p> <p>In particular, the CMU approved the principles of procurement by central government and local authorities, enterprises and organizations if they are financed from the budget or have credit guarantees from the government.</p>



2000	<p>Original Law on Public Procurement - Law of Ukraine "On Government Procurement of Goods, Works and Services" of February 22, 2000, No. 1490-III.</p> <p>This law also made the Tender Chamber of Ukraine (non-governmental organization) a platform for public procurement. This Chamber has become known for its corruption, opaque procedures and expensive services. Small and medium-sized enterprises were in fact deprived of the opportunity to participate in public procurement. There were many delays in organizing and conducting tenders. All these factors led to the abolition of this law in 2008.</p>
2008	Abolition of Law No. 1490-III and the introduction of temporary legal regulation through the resolutions of the Cabinet of Ministers of Ukraine.
2010	<p>New version of the Law on Public Procurement - Law of Ukraine "On State Procurement" of June 1, 2010 No. 2289-VI.</p> <p>In general, within four years, the State Procurement Law was amended 35 times mainly to increase the list of exceptions to the Law, which further distanced it from the EU standards</p>
2012	The Law of Ukraine "On the peculiarities of procurement in certain spheres of economic activity" of 24.05.2012 № 4851-VI was adopted.
2014	In April 2014, Parliament adopted a new Law "On State Procurement" dated April 10, 2014, No. 1197-VII, the main provisions of which were harmonized with the EU norms.
February 2015	<p>MEDT (Ministry of Economic development and Trade) has launched a pilot project for electronic procurement through the ProZorro.139 system. On February 12, 2015, the Ministry of Justice, the Ministry of Defense, the State Department of Affairs and the state-owned company Energoatom conducted pilot electronic purchases through the ProZorro system.</p> <p>The pilot phase of administering ProZorro was carried out by Transparency International, and its creation and operation was funded by international donors and at the expense of users.</p>
November 2015	WTO Committee on Government Procurement decided to invite Ukraine to accede to the WTO Government Procurement Agreement (GPA). In March 2016, the Verkhovna Rada ratified the WTO Agreement on Government Procurement, which means that Ukrainian companies have access to public



	procurement in 48 countries (total purchases of which are estimated at \$1,700 billion).
December 2015	At the end of December 2015, Parliament approved the Law "On Public Procurement", which was drafted by the government. Most of the provisions of the law are in line with the provisions of the Directives 2014/24 / EU and 2014/25 / EU. The standard introduced the mandatory functioning of the electronic system ProZorro. The law was enacted in two steps.
1 April 2016	All central government bodies and natural state monopolies must procure through ProZorro.
1 August 2016	All state structures (customers in the meaning of the Law of Ukraine "On Public Procurement") conduct their purchases in the ProZorro system.

The Ministry has developed a Roadmap for Public Procurement, which was approved by the Cabinet of Ministers of Ukraine in February 2016. This road map corresponds to five stages of the indicative schedule of the chapter of the CEFTA (part of the Association Agreement between the European Union (EU) and Ukraine "Deep and Comprehensive Free Trade Area") on public procurement. It already includes new EU Directives (i.e. 2014/25 / EC and 2014/24 / EU). In addition, the Ministry plans to harmonize the rules for the conclusion of contracts, the use of framework agreements, etc.

In general, the current state policy is consistent with the timetable for the implementation of the reform of the public procurement system, as foreseen by the Association Agreement.

## 1.2 Standards In The Field Of Public Procurement

The field of public procurement has an extensive system of regulatory acts: laws, regulations and non-normative acts.

### I. Laws

a) Law of Ukraine "On Public Procurement" dated 12.25.2015, No. 922-VIII (hereinafter referred to as the Law on Public Procurement). The Law on Public Procurement radically reformed the institution of state procurement in Ukraine. The main changes were the following:

- Introduction of an electronic system mandatory for procurement procedures in the public sector in the sense of the Law on Public Procurement;



- Opening access to procurement information to anyone who is interested online 24/7 (annual plans of purchases and annexes, tender documents, documents and offers of suppliers, contracts concluded between customers and suppliers, as well as additional agreements to these contracts, etc.).
- Implementation of obligatory display of information on procurement with value from UAH 50,000 and up to thresholds set by the Public Procurement Law by conducting a below-threshold procedure or reporting.
- Transfer of the process of filing complaints to the Antimonopoly Committee, requests and questions of suppliers to the customer in online regime on the free access basis.

b) The Law of Ukraine "On peculiarities of procurement of goods, works and services for the guaranteed defense needs" dated May 12, 2016, No. 1356-VIII (hereinafter referred to as the Law on Defense Procurement). This Law determines the peculiarities of procedures for the procurement of goods, works and services for the guaranteed defense needs during a special period, during the period of the anti-terrorist operation, during the period of a state of emergency. Part 1 of Article 2 of the Law on Defense Procurement contains an exhaustive list of customers who are entitled to apply this law. If the procurement does not have the abovementioned nature, these customers carry out procedures in accordance with the Law on Public Procurement.

Special features of this Law:

- The procurement procedure consists from conducting an auction, considering the proposal of the winning participant and moving to the next stage - the negotiation procedure of the purchase, and then the conclusion of the contract.
- The shorter terms of the stages of the procurement procedure than under the Public Procurement Law (the period of proposal submission by suppliers under the Defense Procurement Act is at least 6 business days, while according to the Law on Public Procurement - at least 15 calendar days).
- The customer may provide the suppliers with the opportunity to correct errors in the documents within 24 hours, in accordance with Article 6, paragraph 4, of the Defense Procurement Act.

## II. Resolutions of the Cabinet of Ministers of Ukraine

a) CMU Resolution No. 166 dated February 24, 2016 "On Approval of the Procedure for the Functioning of the Electronic System of Procurement and the Authorization of Electronic Platforms"



This Resolution approved the Procedure, which contains the main terms, defines the requirements for the functioning of the electronic procurement system, the procedure for authorizing electronic platforms, the conditions for connecting / disconnecting electronic platforms to the electronic procurement system "PROZORRO" and the responsibility of operators of automated platforms. In addition, this Resolution regulates the issue of the size of payment by suppliers of the cost of submitting their proposals, the order of registration of suppliers and customers on the sites, and so on.

- b) CMU Resolution No. 291 dated March 23, 2016 "On Determining the Fee for Granting a Complaint"

In accordance with Article 18 of the Law on Public Procurement, a complaint to an appeal body is filed by the subject of the appeal in the form of an electronic document through the electronic procurement system. For filing a complaint to an appeal body a fee is charged. The size of the fee is determined by the Cabinet of Ministers of Ukraine.

CMU Resolution No. 291 dated March 23, 2016 sets the following cost of filing a complaint in accordance with the Law on Public Procurement:

- UAH 5 thousand - in the case of appeal of the procedure for the purchase of goods or services;
- UAH 15 thousand - in case of appeal of the procurement of works.

### III. MEDT Orders

*Registered by Ministry of Justice:*

- a) Order of the MEDT of March 18, 2016 No. 477 "On Approval of the Procedure for Posting Information on Public Procurement." The Order defined the procedure for posting information on public procurement, which is made public on the website of the Authorized Purchasing Authority as part of the electronic procurement system, submission of information, documents, appeals and complaints and receipt of communications through the electronic procurement system.
- b) Order No. 490 dated March 22, 2016 "On Approval of Forms of Documents in the Field of Public Procurement". This standard contains a list of mandatory fields for the customer to fill in the electronic procurement system.
- c) Order number 454 dated March 17, 2016 "On Approval of the Procedure for Determining the Object of Procurement". The subject of procurement - goods, works or services procured by the customer within the framework of a single procurement procedure, in which participants are allowed to submit offers in tenders and negotiations (in the case of a negotiated procurement



procedure). The subject of procurement is determined by the customer in accordance with the procedure established by the Authorized Agency (paragraph 18 part 1 of Article 1 of the Public Procurement Law). This order defines the procedure for determining the procurement subject.

*Not registered by Ministry of Justice:*

- a) Order # 473 dated March 18, 2016 "On determination of the web portal of the Authorized Purchasing Agency in the electronic procurement system and ensuring its functioning." Article 8 of the Law "On Public Procurement" stipulates that one of the main functions of the Authorized Agency is to ensure the functioning of the web-portal of the authorized Agency. This order determined that the web portal of the Authorized Purchasing Agency within the electronic procurement system is information and telecommunication system ProZorro.
- b) Order No. 680 of April 13, 2016 "On Approval of Sample Tender Documentiom." To conduct procurement procedures open tenders, open bidding with publication in English and competitive dialogue, the customer must publish a document with requirements for the participant and the subject of purchase. In accordance with the Law on Public Procurement - this is tender documentation. Order No. 680 dated April 13, 2016 contains sample tender documentation, and therefore the customer may use it partially, fully or develop its own in accordance with the requirements of the current legislation.
- c) Order No. 571 dated March 31, 2016 "On Approval of the Model Agreement on the Grant of Access to the E-auction Module and the Database." Regulates the mechanism of cooperation of the State Enterprise "ProZorro", which administers the system of electronic procurement, and the platforms where suppliers and customers operate.
- d) Order No. 557 dated March 30, 2016 "On Approval of the Model Regulations on the Tender Committee or the authorized person (s)"

This standard recommends that customers, when drafting the provisions on the tender committee or authorized person (s), are guided by the Model Regulations on the Tender Committee or the authorized person (s) approved by this order.

### 1.3. Harmonization of Ukrainian Legislation With The Norms Of The European Union

The Association Agreement consolidates Ukraine's commitment to bring the public procurement system in line with EU standards. The issues of public procurement are set forth in chapter 8 of section IV of the Association Agreement (Articles 148-156 and Annex XXI). In accordance with Article 152 of the Agreement, the Strategy for the reform of the public procurement system (road map) and the Roadmap for the implementation of the roadmap were developed and approved.



The consistent adaptation of Ukrainian legislation to the EU standards period from 2015 to 2022 includes 5 stages of reform according to the schedules set forth in the Association Agreement, namely:

- The **first stage** must be completed within six months from the date of entry into force of the Association Agreement (January 1 - December 31, 2016). Realization of the tasks of reform at this stage should ensure the most significant principles and legal concepts, the basis of the institutional structure in accordance with the EU standards and accordingly the possibility of mutual access of business entities to the market of public contracts for the procurement of goods by the central authorities of the EU and Ukraine;
- The **second stage** should be completed within three years from the date of entry into force of the Association Agreement (January 1, 2017 - December 31, 2018). At this stage, it is necessary to introduce into Ukrainian legislation some changes to the terminology, standard procedures and bring the Ukrainian legislation into conceptual compliance with the requirements of the EU directives in the field of public procurement.
- The **third stage** must be completed within four years from the date of entry into force of the Association Agreement, and its result should be mainly harmonization of the rules of the conclusion of contracts for the procurement of goods, works or services by economic entities that are granted special or exclusive rights to provide services of economic infrastructure, public utilities and which usually have a monopoly position on the market. As a result of the implementation of the reform tasks, at this stage, the opening of mutual access to the markets for state contracts for the supply of goods by the enterprises operating in certain industries (gas, electricity, water supply, postal services and transport) will be ensured;
- The **fourth stage** should be completed within six years from the date of the entry into force of the Association Agreement and as a result of the implementation of its obligations (in particular the introduction of modern institutional mechanisms) at this stage, the centralized procurement model, the widespread use of framework agreements and electronic purchasing will be ensured. This will enable the opening of reciprocal access to the markets for state contracts for the procurement of works and services, as well as provide for the participation of business entities in the concession agreements at all levels of government in the EU and in Ukraine;
- The **fifth stage** is planned to be completed within eight years from the date of entry into force of the Association Agreement. The main result of the reform stage will be the provision of access to markets for goods, works and services that are procured not only for the needs of government customers, but also enterprises that ensure the functioning of the economic infrastructure on the basis of special and exclusive rights in the energy, water, transport, postal services, etc.



## ANNEX II: Public Procurement Process in the Prozorro Electronic System

### 1. History Of Creation Of The Electronic System Prozorro

#### Key milestones for reform

March to April 2014	Formation of a team and understanding of the sphere
May - July 2014	The first concept and first attempts
August - September 2014	First Challenges
October 2014 - February 2015	Programming MVP
March - May 2015	Arrival of volunteers to the state service
June 2015 - March 2016	Scaling the system
January 4, 2016 – January 8, 2016	Switch to ProZorro

#### **March - April 2014. Formation of a team and understanding of the field.**

Pavlo Sheremeta was appointed as Minister of Economic Development and Trade of Ukraine in late February 2014 after the Revolution of Dignity. Pavlo identified the reform of public procurement as one of his priorities.

A group of volunteers, who took a very active part in the Revolution of Dignity on the Maydan, decided to help the new Minister and began to actively explore the issue of procurement.

After learning the world's experience and interviewing several experts, the group of volunteers has come to realize that the transition to the electronic procurement system will significantly simplify business access and increase transparency of procurement. So, it was decided to move towards "electronification".

#### **May - July 2014. First concepts, first attempts.**

In May 2014, at one of the meetings, a group of volunteers met with Georgian experts, Tato Urjumelashvili and David Marghani, who conducted a similar reform in Georgia in 2009-2010. The



working Georgian electronic procurement system was very impressive. And so it was decided to take the Georgian system as the basis.

### August - September 2014. First Challenges.

In early August 2014, the reform was developing at a rapid pace. A single concept for the creation of a monoproformed electronic system (a single state system without commercial platforms) was agreed upon, analogous to Georgian, and a bill on electronic procurement was submitted to Parliament. But in mid-August, Minister Pavlo Sheremeta unexpectedly resigned, protesting against the personnel policy of the then prime minister Arseniy Yatsenyuk. Almost at the same time the planned re-election to the Verkhovna Rada was announced, and the bill already drafted and submitted lost any chance of passing.

Having lost political support and a bill at the same time, the group of volunteers faced a choice: to make a forced pause, to fine-tune the concept and to wait about six months to elect a new parliament and appoint a government or rethink the situation and continue to reform in a different way.

At this time, at one of the round tables, Deputy Chairman of the Presidential Administration, Dmitry Shimkiv, suggested that the reform should start not from all but from the so-called "below-threshold tenders" not covered by the Law "On Public Procurement". To do this, there was no need for legislative changes, only the customer's goodwill. Dmitry was also asked to expand the stakeholder's circle by inviting commercial electronic platforms that worked in the private sector to join the reform. The volunteer team accepted Dmitry's proposal and continued the reform of the development of the electronic system, along with electronic platforms for below-threshold procurement.

Since the end of August, many completely open meetings were organized on which the third Concept of Electronic Procurement System was developed. The concept suggested the existence of commercial platforms. Also, a final decision on the financial model was taken. Unlike the Georgian counterpart, customers should use the IT system to be free of charge, and suppliers would have to pay the platform a small fixed fee for submitting an offer. At the same time, the platforms had to transfer a percentage of the fee received from the suppliers to the state administrator of the system to support and develop the CBD (Central Data Base) and infrastructure.

The system's launch date was scheduled for January 1, 2015 and development was begun.

### October 2014 - February 2015. Programming MVP.

Memorandums were signed on the main agreements between the parties, such as:

- everyone sees everything



- hybrid system: one state central bank and many commercial platforms
- cross-access to the CBD through the platforms
- self-sufficiency
- MVP (minimal viable product) - from simple to complex
- open source and others

Then they found developers and began to develop the CBD. Despite the readiness of the IT company Quinta, which became the developer of the system, to start programming on a volunteer basis, the issue of money and some kind of formalization of work became very acute.

After many discussions, the first money for the development of the CBD in the amount of 35 thousand dollars were provided by the electronic platforms, which agreed to take part in the pilot project. The situation with the organizational design was not easy. The negative history of the role of non-governmental organizations (NGOs) in public procurement complicated the situation. In 2006-2007, the notorious NGO "Tender Chamber" effectively monopolized access to public procurement and, in essence, routinely collected tributes from all participants. The memory and pain of the Tender Chamber did not give rest to all procurement stakeholders.

After many consultations, it was decided not to form a new NGO, but to try to negotiate with existing ones with a good reputation – so this NGO can take the future IT system to its balance. The choice was in favor of Ukrainian office of the international organization Transparency International Ukraine (TI Ukraine) - an NGO that not only had a positive reputation in the fight against corruption in procurement but also actively participated in the ongoing reform initiative. After numerous legal consultations, the decision was made, and TI Ukraine agreed that all future financing of procurement reform would pass through its balance and would be carefully monitored. As a result, the level of confidence in the reform has increased.

### **February - May 2015. The arrival of volunteers to the state service.**

With more than a month's delay with many unresolved issues, the new IT system was officially introduced and launched on February 12, 2015. Just before the launch, the system got its name. According to the results of the crowdsourcing poll and voting in the Facebook network, the name ProZorro won. It was proposed by the deputy head of the National Bank of Ukraine Vladislav Rashkovan.

In the spring of 2015, several significant events took place in the reform. First, the new Minister of Economy Aivaras Abromavichus appointed his new Deputy, responsible for procurement, a



professional investment banker Maxim Nefyodov. Maxim almost instantly appreciated the already traversed path and created the system and actively began to participate in its promotion and support.

Secondly, Maxim invited the volunteer team to join the government, and one of the first coordinators of the reform Oleksandr Starodubtsev agreed to head the profile department of the MEDT. And thirdly, at the regular National Reform Council (a consultative body where all key stakeholders were gathering together) it was decided to recommend all state customers to transfer their below-threshold purchases to ProZorro. So, instead of 5-10 pioneer customers who were previously involved in the reform and were ready to test ProZorro (DAK Energoatom, Administration of the President of Ukraine, the Ministry of Defense, Justice and Infrastructure), all others started to enter the system. But the major challenge was the reformatting of the reform team. Alexander had to release at the same moment half of the employees of his department and start mass recruitment into a team of new people. For this purpose, an open competition through Facebook for which was announced.

As a result, the updated team of the Department of MEDT included some current staff who had a unique expertise and a good reputation (Lilia Lakhtionova, Natalia Shimko, Tetyana Lisovska and many others) and new people from business who brought an entirely new culture, atmosphere, project management models etc. A part of the "old" volunteer team: Andriy Kucherenko, who previously coordinated the entire IT direction, and Kristina Gutsalova, who was responsible for PR, remained in the role of public activists.

### June 2015 - March 2016. Scaling the system.

After reforming the team, there was a struggle to replace the management at the state-owned enterprise (SOE), which administered the state portal for the publication of public procurement announcements. And in early June 2015, part of the new ProZorro team (Alexander Nachod and Nadia Begun) headed the SOE. In the fall, the department moved to the building of SOE, and the team was able to fully focus on the reform.

At the same time, the first donor organizations (WNISEF and GIZ) - financed the further development of the system, believing ambitious new officials and activists.

Now the work has been structured in three directions:

1. Development of IT system and IT infrastructure. The SOE, commercial platforms and the IT office under the leadership of Andrei Kucherenko were in charge of this.
2. Creation of a new regulatory framework. This was the task of the Department. Maxim Nefedov "pushed" all political decisions in the government and parliament almost by himself.



3. Total training of the entire country on below-threshold purchases and preparation for the transition to a fully electronic procurement system. This was taken care of by Kristina Gutsalova with the platforms.

In less than a year of the preparatory process two laws were drafted and passed through parliament, the IT system was almost completely redone and its rights were transferred to the state, and more than two hundred educational events took place throughout the country with the participation of the ProZorro team.

On April 1, 2016, central executive authorities and entities engaged in certain areas began to procure through the electronic procurement system, and from 1 August all other customers joined them.

## 2. The Mechanism Of The Electronic System Prozorro ‡

The electronic public procurement system in Ukraine is based on the open source software package Open Procurement and currently consists of a central database of procurement and reverse auction. Various web technologies were used to implement this solution, including Python, Pyramid, Angular.js, Bootstrap, Flask, CouchDB, PouchDB. Thanks to them, this powerful system covers the following stages of procurement: preparation and start of procurement, customer's questions and answers, auction (bidding), evaluation of proposals and determination of the winner, consideration and resolution of complaints.

Using documentation in multiple languages, system users will be able to easily participate in the appropriate stages of electronic procurement:

1. Preparation includes user registration, creation / editing of credentials of users or organizations (carried out on the platform).
2. Initiation of purchase. The organization-customer announces the "Procurement", the participants familiarize themselves with the requirements and have the opportunity to ask customer questions.
3. Auction. Participants are registered to participate in the auction. After the auction ends, the system automatically scores the participants according to the declared price offers.
4. Evaluation. The proposal of the candidate is being considered and his qualification is being checked. The customer, the participants, the observer can get acquainted with the proposal of the candidate and his qualification documents.

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‡ <http://quintagroup.com.ua/solutions/openprocurement>

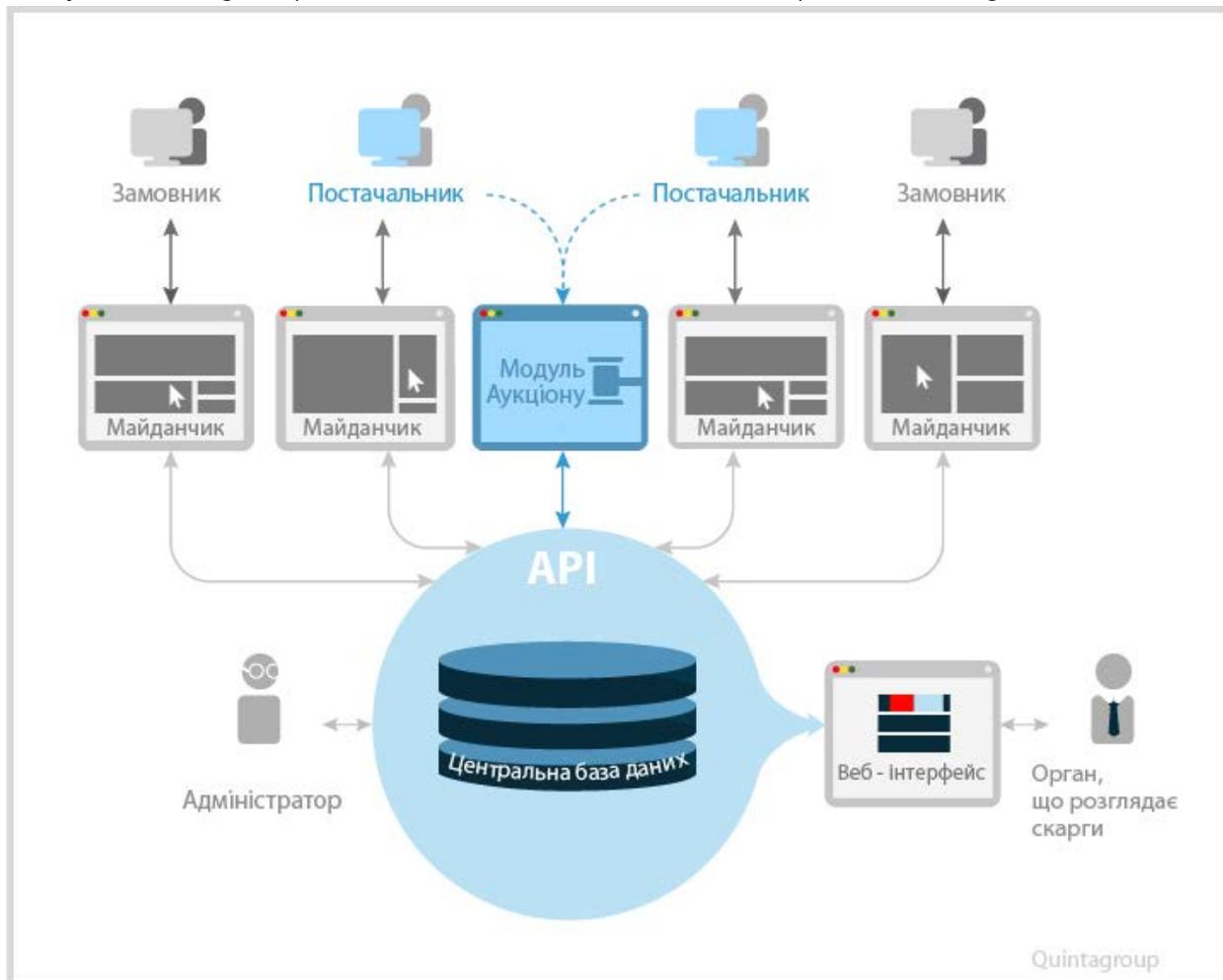


5. Completion. If at the evaluation stage the winner has been selected, the customer registers the decision in the system, prints an extract from the system about the auction and its results, publishes a contract for the supply in the system.

### 2.3 Architecture

The system consists of two main components: Platforms and the server part, which include the Central Database (CBD) and the Application Program Interface (API). The platform is a hardware-software component that interacts with the CBD with the help of the API and provides users with temporary direct access to the Auction module interface for bidding.

End users can access the system only through services of a platform. The administrator has direct access to the CBD and the services provided by the server part. The body in charge of complaints uses the system through a specialized web-based interface for complaints handling and settlement.





The interaction between the platforms and the CBD is executed through the API - the web interface based on the JSON notation. Business logic is implemented in Python. The non-relational CouchDB database is used to store records of auctions, sentences, etc. Attachments (subdocuments), for example, binary files, such as PDF, XLS, are stored on an S3-compliant file server.

### 3. Open Data Standards and Access to the API

The Open Procurement complex is based on the Open Contracting 1.0RC (OCDS) standards with some extensions necessary for the practical implementation of the ProZorro Procurement process. OCDS is an open standard for the publication of structured information at all stages of the contracting process: from planning to implementation.

The publication of OCDS data can provide greater transparency in government contracts and may support an accessible and in-depth analysis of the efficiency, fairness and integrity of public procurement systems.

OCDS has been developed taking into account state purchases of goods, works and services, but can be expanded for use in other conditions.

OCDS is a text schema that stores purchases during the procurement process. The data format that uses OCDS is the json text format, so the Ukrainian procurement system supports the appropriate type of data storage. Access to the CBD is only available to the CBD Administrator. For monitoring purposes, participants and other interested parties have been given public access to the Application Program Interface (API). Today, these are three blocks with information on the change of all elements of the procurement process - for the planning stage, the tender process and the stage of conclusion of the contract. All services and modules of analytics that exist for the Ukrainian procurement system, have the appropriate application programming interface as the source of non-aggregated information. Examples of data views in each API module:

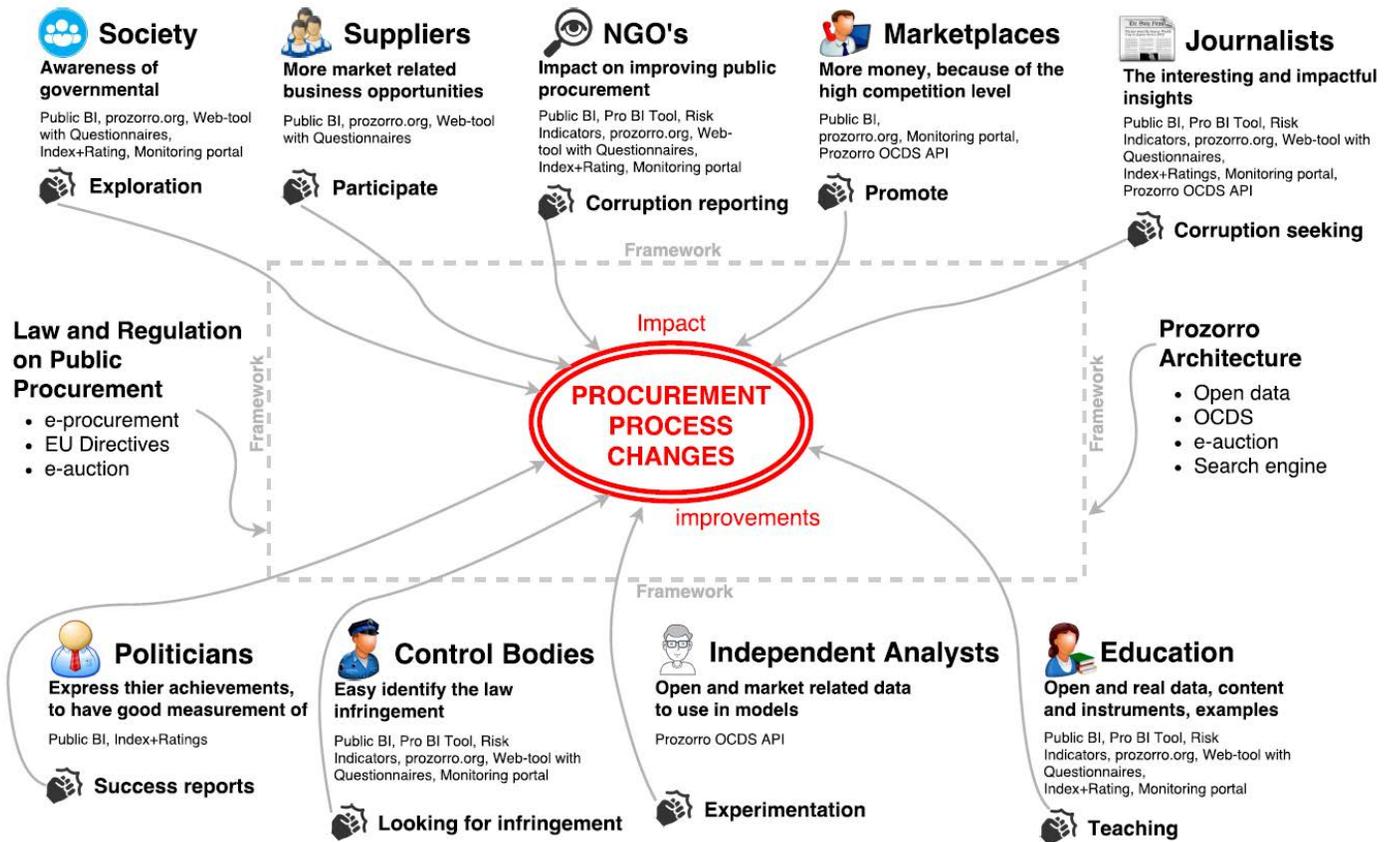
1. Planning - JSON and from the site of Prozorro
2. Tender process - JSON and from the site ProZorro
3. Conclusion of the agreement - - JSON and from the site of ProZorro

### 4. Description of The Procurement Process In The Electronic System

Before proceeding to the procurement process in the electronic system, we suggest that you familiarize yourself with all parties to this process.



**How the key players in monitoring of Public Procurement have impact on the procurement process through their interest, using tools and through their actions**



In accordance with the Law on Public Procurement, the Customer conducts purchases in accordance with the established thresholds.

**Part 1 of Art. 2 of the Law on Public Procurement**

This Law applies to:
To customers, provided that the cost of the subject of the purchase of good (goods), service (services) is equal to or exceeds 200 thousand hryvnias, and works - 1.5 million hryvnia;
To customers who carry out activities in certain spheres of economic activity, provided that the value of the subject of the purchase of good (goods), service (services) is equal to or exceeds 1 million hryvnias, and works - 5 million hryvnias.
In the course of the procurement of goods, works and services the value of which is less than the cost specified in the paragraphs 2 and 3 of this part, the customers shall adhere to the principles of the



implementation of public procurement established by this Law and may use the electronic procurement system to select the supplier of the product (Goods), the provider of service (services) and the performer of work for the conclusion of the contract.

In the case of procurement of goods, works and services without the use of the electronic procurement system, provided that the value of the subject of procurement is equal to or exceeds 50 thousand hryvnias and is less than the cost established in paragraphs 2 and 3 of this section, customers must publish a report on concluded contracts in the system of electronic purchases in accordance with Article 10 of this Law.

In accordance with this norm, we can distinguish the following thresholds and options for the procurement:



Договір про закупівлю

(The web version will be more clearly visible)



We will consider in detail each purchase option.

#### 4.1 Below-Threshold Purchases

##### *I. Report on the concluded contract.*

According to Part 1 of Art. 2 of the Law on Public Procurement, when expected value of procurement amounts to more than 50 thousand UAH and less than established thresholds, the customer must either publish a report on the relevant procurement or conduct a competitive below-threshold procedure. Purchases with an expected value of less than UAH 50,000 can be made using below-threshold competition procedures, or without publication of information on procurement (besides displaying information in the annex to the annual plan).

If the customer chose a report on the concluded contract, it is guided by paragraph 11 of Part 1 of Art. 10 of the Law on Public Procurement "The Customer independently and free of charge through authorized electronic platforms publishes on the website of the Authorized Agency, in accordance with the procedure established by the Authorized Agency and this Law, information on the purchase, namely: the report on the concluded contracts - within one day from the day of conclusion of the contract."

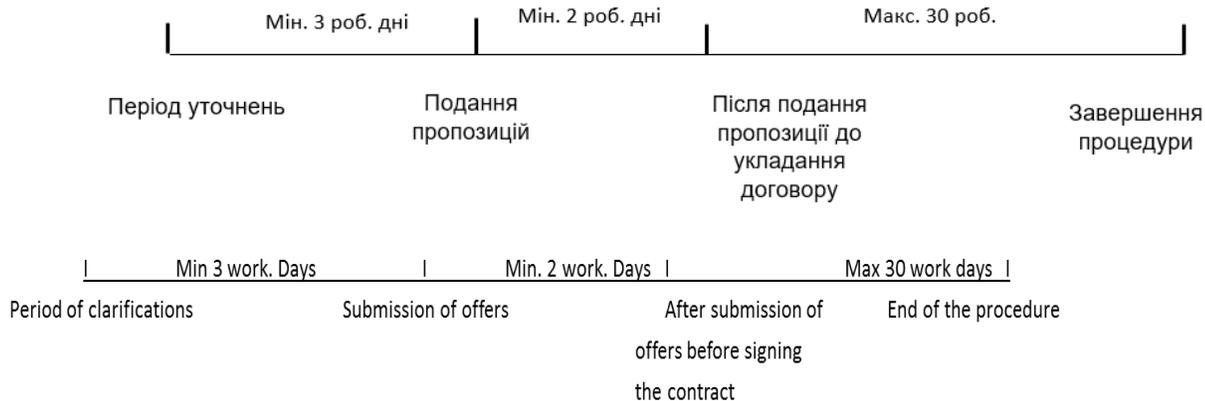
##### *II. Competitive below-threshold procurement procedure.*

A competitive below-threshold procedure can be conducted from 3000 UAH to the thresholds set by the law, and in particular part 1 of Art. 2 of the Law on Public Procurement.

The procedure for conducting the procurement procedure is described in the Order of the State Enterprise "Zovnishtorgvydav Ukraine" dated April 13, 2016 No. 35" On Approval of the Procedure for the conduct of below-threshold procurement."



### Scheme of competitive below-threshold procedure

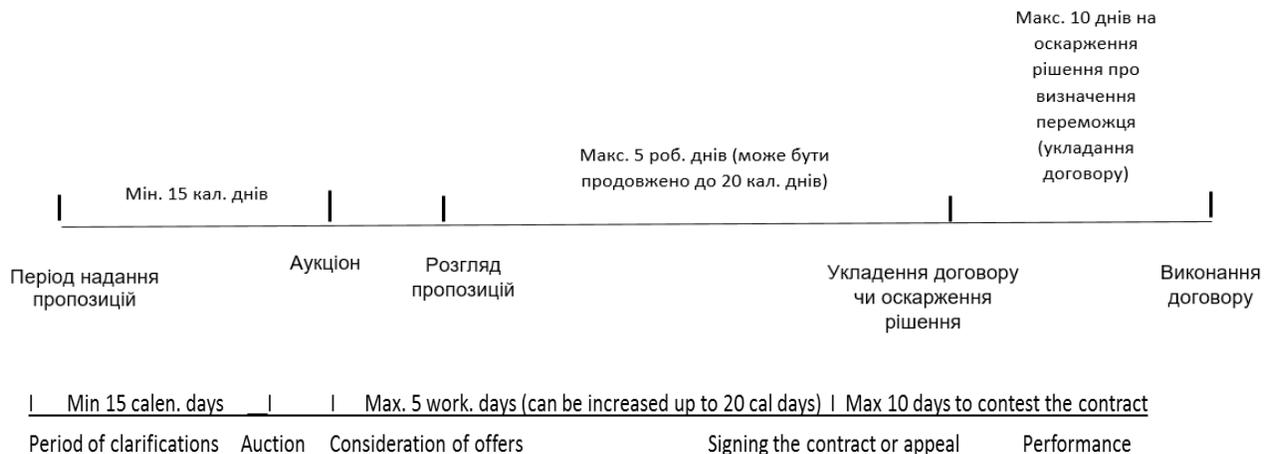


## 4.2 Above-Threshold Purchases

### I. Open bidding.

Open bids are conducted by the customer if the expected purchase price is equal to or exceeds the thresholds specified in Part 1 of the article. 2 of the Law on Public Procurement.

#### The scheme of open bidding



### II. Open bidding with publication in English

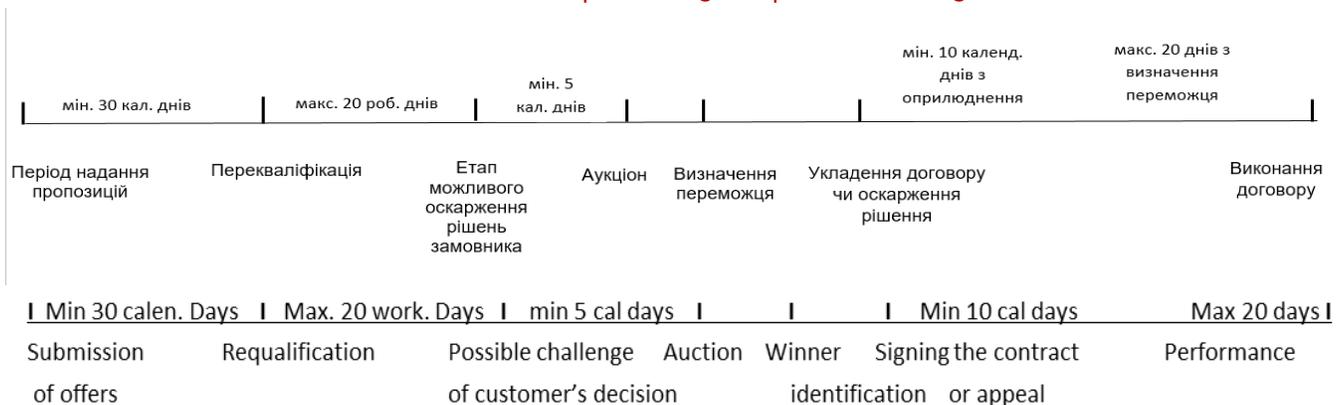
Open bids with publication in English are conducted by the customer in case if the expected purchase price is equal to or exceeds the thresholds specified in Part 4 of Art. 10 of the Law on Public Procurement: "Announcement of conducting the procurement procedure within the terms established



in part one of this article is necessarily additionally made public on the website of the Authorized Agency in English if the expected purchase value exceeds the amount equivalent to:

<i>For goods and services - 133 thousand euros;</i>
<i>For works - 5150 thousand euros.</i>
<i>The exchange rate of the euro is determined according to the official rate of the National Bank of Ukraine, established on the day of the announcement of the procurement procedure for publication on the website of the Authorized Agency. "</i>

### The scheme of open bidding with publication in English



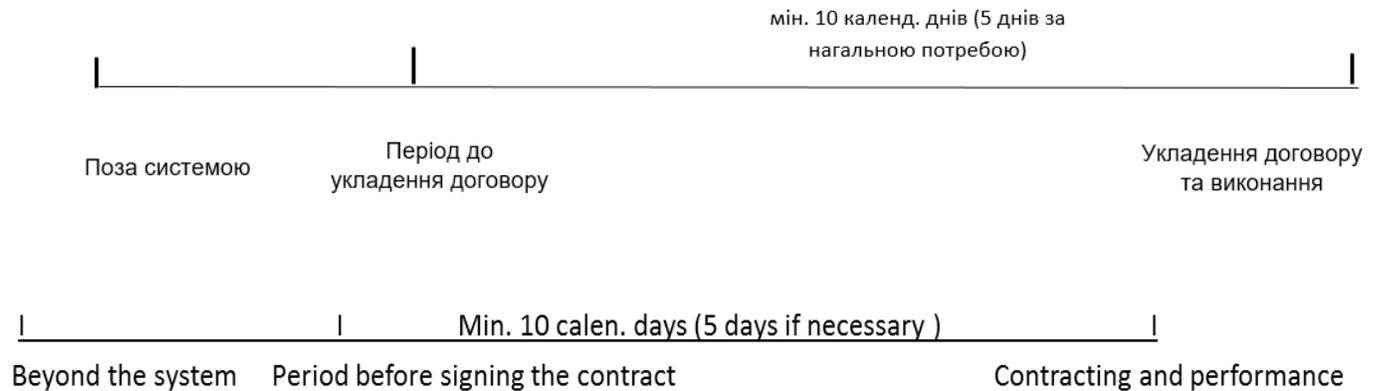
### III. Negotiated Procurement Procedure.

In accordance with Part 1 of Art. 35 of the Public Procurement Law, the negotiated procurement procedure is a procedure used by the customer as an exception and according to which the customer concludes a contract of purchase with the participant after conducting negotiations with one or more participants.

This procedure is much faster and without the use of the auction. Part 2 of the Art. 35 of the Public Procurement Law describes an exhaustive list of situations where a customer can use this procedure (no competition, if the customer twice canceled tender due to lack of sufficient number of participants).



### Scheme of negotiated procedure



For a detailed description of each of the above procurement procedures and actions of the parties to the procurement procedure, you can read the link - <http://cep.kse.org.ua/scheme/index.html>.

## 5. Plans for The Future Within The Framework of The Reform

The public procurement reform is designed for eight years and is implemented in the following areas:

- ensuring predictability and stability of the regulatory framework, considering requirements for harmonization of Ukrainian legislation in the field of public procurement with the relevant EU norms;
- development of the institutional structure, improvement and optimization of the functions of the controlling bodies;
- creation and development of electronic procurement system taking into account requirements and standards of the EU, best international practice;
- development of the system of professional training of specialists in public procurement and professionalization in the field of public procurement;
- international cooperation in the field of public procurement.

Within the framework of the first area, the Ministry of Economic Development developed:

- Bill "On Amendments to the Law of Ukraine " On Public Procurement "regarding procurement by customers engaged in certain areas of economic activity", which provides for:
  - eliminate existing differences between the requirements of the Law and the technical implementation;
  - Improve appeals procedures;



- to extend the application of the provisions of the Law to subjects in certain spheres
- To strengthen the liability of a legal entity for violation of the Law "On Public Procurement".
- Bill "On Amendments to the Law of Ukraine" On Public Procurement" regarding the implementation by customers of simplified procurement through the electronic procurement system", to:
  - provide regulation in the Law for conduct of below-threshold procurement;
  - provide that below-threshold procurement may be carried out in the manner established for procurement through electronic catalogs.
- Bill "On Determining the Peculiarities of the Procurement of Complex Specialized Equipment", which intends to determine the peculiarities of the procurement of complex specialized equipment with a production cycle of more than 12 months.

Within the framework of the second area, a bill "On Amendments to the Law of Ukraine" On Public Procurement " and some Laws of Ukraine on Procurement Monitoring was prepared.

This bill provides that:

1) the grounds for monitoring are the following:

- data of automatic risk indicators;
- information from state authorities, local authorities;
- messages in the media containing information about signs of violations;
- signs of violations of the law in the field of public procurement detected by DASU (State Audit Service) in the information published in the electronic procurement system;

2) for the analysis of the data can be used the following information:

- information from the electronic procurement system;
- Information from unified state registers;
- Information in databases with open access;
- data of state authorities, enterprises, institutions, organizations that can be obtained in accordance with the procedure established by law.

3) the exchange of information is carried out electronically through the system of electronic purchases;

4) as a result, a conclusion is drawn up which contains proposals for elimination of detected violations. It should be made public in the electronic procurement system;

5) the introduction in electronic form of tender documentation in the form of an electronic document;

6) elaboration of a new approach to charging the appeal fee (two-part payment);

7) introduction of electronic catalogs.



## ANNEX III: Templates for Forms

### Sample statement of crime

No. 48/05 dated May 16, 2017  
 General Prosecutor of Ukraine  
 Lutsenko Yuri Vitaliyovych  
 01011, Kyiv, ul. Distinguished 13/15

*From the Head of the public organization "Anticorruption Headquarters"*  
 Yanchenko Galina Igorivna  
 01015, Kyiv, street. Moscow, 41/8, sq. M. 102  
 tel. (050) -500-50-22

#### NOTIFICATION ABOUT THE CRIME (pursuant to Article 214 of the CPC of Ukraine)

The public organization "Anticorruption Headquarters" has identified circumstances that may indicate an attempt to commit a crime stipulated in Part 1 of Article 191 of the Criminal Code of Ukraine by officials of the communal enterprise "Saltovsky tram depot" of the Kharkiv City Council.

In 2016, for the purpose of committing a crime, officials of the communal enterprise "Saltovsky tram depot" (hereinafter referred to as the Customer) made a decision to tender for the supply of 5 new tram carriages with partially low floor and an electronic transistor-pulse control system for traction electric tram carriages (hereinafter referred to as the Wagon) with an expected value of UAH 42.5 million, or 8.5 million per one.

According to the web-portal of the Authorized Purchasing Authority [1], the Saltovsky Tramway Depot Public Utility Company (hereinafter referred to as the Customer) entered into an agreement with "Technology of Electrotransport" LLC on February 20, 2017 to supply 5 new Cars with a total value of UAH 41.99 million .

According to the concluded agreement, the cost of one truck amounted to 8.3 million hryvnia.

The specifications of the tender documentation indicate that the new tram cars were reconstructed (restored) on the basis of the old T-3 type tram car manufactured by ČKD "TATRA" (Czechoslovakia) (Annex 1).

The specification of the cars completely coincides with the technical characteristics of the T-3 type cars, purchased by Zaporizhzhya Municipal Electric Transport Enterprise Zaporizheelectrotrans [2].



So, on March 20, 2017, Zaporizhzhya Municipal Electric Transport Enterprise ZaporizheelectroTrans entered into an agreement with Polytechnoservice Ltd. for the supply of 4 cars (new tram carriages with partially low floor with partial complete set, including electronic transistor-pulse control systems for traction electric drive tram cars, intended to replace the body during major repairs of tramcar T-3) for UAH 3.62 million excluding VAT per unit.

It should be noted that Odes'mskoelectrotrans communal enterprise of the Odessa City Council also conducts a tender for the supply of similar tram cars with the expected value of 4.3 million hryvnias with VAT per unit [3], which is twice less than the price set by the tender committee of the municipal enterprise "Saltovsky tram depot »

**Thus, taking into account the number of procured cars, public servants of the communal enterprise "Saltovske Tramway Depot" could have been committed embezzlement for the amount of more than 15 million hryvnias.**

There is sufficient reason to assume the existence of preliminary agreements between the employees of the Communal Enterprise "Saltovsky tramway depot" and the officials of the winner of the "Technologies of Electrotechnology" Ltd, which led to the embezzlement of budget funds.

In particular, in accordance with clause 5.2 of the Procurement Agreement, the term of delivery of the Goods shall be 5 (five) calendar days from the date of receipt of the order for a specific lot (quantity) of the Goods. The first batch of Goods shall be transmitted by the Supplier within 5 (five) calendar days from the moment of signing the agreement.

Consequently, the delivery within 5 days from the date of the order may indicate the impossibility of manufacturing such wagons for such a short period, which, in turn, may lead to a narrowing of the potential stake of the participants.

Also, the Customer in the tender with the expected value of UAH 42.5 million does not establish the requirement (in accordance with Part 2 Article 16 of the Law of Ukraine "On Public Procurement") regarding the availability of appropriately qualified personnel with the necessary knowledge and experience.

According to the Uniform State Register of Judicial Decisions [4], during the pre-trial investigation in criminal proceedings №1201622000000517 dated 05.11.2016, it was established that LLC "Technologies of Electric Transport" does not have the necessary number of employees of the relevant qualification and experience in conducting similar works.

At the same time, in Appendix No. 2 of the tender documentation it is determined that the participants must provide information in an any form about the availability of equipment and material and technical base to confirm the qualification criteria.

The winner of the "Technologies of Electric Transport" LLC provided the relevant certificate stating that the company has been operating since February 2016, has a use of 97.35 square meters. m non-residential



premises sufficient for the supply of cars, which may indicate the lack of proper equipment for the production (re-equipment) of cars.

At the same time, based on the information "Nashi Groshi" [5], LLC "Technologies of Electric Transport" during the execution of the contract for the repair of tramcar T-3 concluded with the utility company "Tramway" of Kamyanka City Council [6] engaged the Communal Enterprise "Saltovsky tramway depot" as a subcontractor.

The above circumstances, in their totality, can testify to the existence of preliminary agreements between the officials of the Communal Enterprise "Saltovsky tramway depot" and the officials of the winner of "Electrotechnology Technologies Ltd." LLC, which are aimed at implementing a common intent to steal budget funds.

In accordance with Part 1 of Art. 214 of the Criminal Procedural Code of Ukraine, the investigator, the prosecutor immediately, but not later than 24 hours after the submission of the application, notification of a criminal offense committed, or after having independently identified from any source of circumstances that may indicate the commission of a criminal offense, is obliged to enter relevant information to the Unified Register of Pre-trial Investigations and to initiate an investigation.

Taking into account the above, guided by Articles 25, 60, 214 of the CPC of Ukraine, I ask:

1. To submit information to the Uniform Register of Pre-trial Investigations and to initiate a pre-trial investigation.
2. To provide me with a copy of the extract from the Unified Register of Pre-trial Investigations on the basis of paragraph 1 part 2 of Art. 60 CPC of Ukraine.
3. In the course of the pre-trial investigation, appoint a forensic economic examination in order to confirm / refute the losses on the results of the tender.

Attachments to \_\_\_ arcs.

Regards,

Head of public organization

"Anticorruption headquarters" G.I. Yanchenko

[1] <https://prozorro.gov.ua/tender/UA-2016-12-09-002449-b>

[2] <https://prozorro.gov.ua/tender/UA-2017-01-17-000419-c>

[3] <https://prozorro.gov.ua/tender/UA-2017-02-17-000736-a>

[4] <http://www.reyestr.court.gov.ua/Review/63020200>

[5] <http://nashigroshi.org/2016/11/03/prokladka-otrymaje-6-miljoniv-za-remont-tramvajiv-dniprodzerzhynska-rukamy-komunalnykiv-kernesa/>

[6] <https://prozorro.gov.ua/tender/UA-2016-09-02-000610-c>



## An Example Of A Deputy's Request

THE PEOPLE'S DEPUTY OF UKRAINE

01008, Kyiv, ul. Hrushevsky, 5

No. \_\_\_\_\_ of \_\_\_\_\_ 2017

To Kharkiv city mayor Kernes G.A.

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61003, m. Kharkiv, pl. of the Constitution, 7

### DEPUTY REQUEST

Dear Gennady Adolphovich!

CSO "Anticorruption Headquarters" contacted me with a letter informing about possible ineffective use of the funds of the communal enterprise "Saltovsky tram depot" during the tender.

According to the web-portal of the Authorized Purchasing Authority [1], the Saltovsky Tramway Depot Municipal Enterprise (hereinafter referred to as the Customer) entered into an agreement with LLC "Electrotechnology Technologies" on February 20, 2017 to supply 5 new tramway carriages with a partially low floor area and electronic transistor-pulse control system of the traction electric drive of a tram car (hereinafter - the Car) with the total value of UAH 41.99 million.

According to the signed agreement, the cost of one truck amounted to 8.3 million hryvnas with VAT.

The specifications of the tender documentation indicate that the new tram cars were reconstructed (restored) on the basis of the old T-3 type tram car manufactured by ČKD "TATRA" (Czechoslovakia) (Annex 1).

The specification of the cars completely coincides with the technical characteristics of the T-3 type cars, purchased by Zaporizhzhya Municipal Electric Transport Enterprise Zaporizheelectrotrans [2].

So, on March 20, 2017, Zaporizhzhya Municipal Electric Transport Enterprise ZaporizheelectroTrans entered into an agreement with Polytechnoservice Ltd. for the supply of 4 cars (new tram carriages with partially low floor with partial complete set, including electronic transistor-pulse control systems for traction electric drive tram cars, intended to replace the body during major repairs of tramcar T-3) to 4.34 million UAH with VAT per unit.

It should be noted that Odes'mskoelectrotrans communal enterprise of the Odessa City Council also conducts a tender for the supply of similar tram cars with the expected value of 4.3 million hryvnias with VAT



per unit [3], which is twice less than the price set by the tender committee of the municipal enterprise "Saltovsky tram depot »

**Thus, taking into account the number of carriages purchased by officials of the public utility enterprise "Saltovsky tramway depot", the funds of the company in the amount of more than UAH 15 million could be inefficiently used.**

There is sufficient reason to assume the existence of preliminary agreements between the employees of the Communal Enterprise "Saltovsky tramway depot" and the officials of the winner of the "Technologies of Electrotechnology" Ltd, which led to the squandering of budget funds.

In particular, in accordance with clause 5.2 of the Procurement Agreement, the term of delivery of the Goods shall be 5 (five) calendar days from the date of receipt of the order for a specific lot (quantity) of the Goods. The first batch of Goods shall be transmitted by the Supplier within 5 (five) calendar days from the moment of signing the agreement.

Consequently, the delivery within 5 days from the date of the order may indicate the impossibility of manufacturing such wagons for such a short period, which, in turn, may lead to a narrowing of the potential stake of the participants.

Also, the Customer in the tender with the expected value of UAH 42.5 million does not establish the requirement (in accordance with Part 2 Article 16 of the Law of Ukraine "On Public Procurement") regarding the availability of appropriately qualified personnel with the necessary knowledge and experience.

According to the Unified State Register of Judgments (<http://www.reyestr.court.gov.ua/Review/63020200>), during the pre-trial investigation in criminal proceedings №12016220000000517 dated 05.11.2016, it was established that "Electrotechnical Technologies" Ltd. has the necessary number of workers with the appropriate qualifications and experience in conducting similar work.

At the same time, in Appendix No. 2 of the tender documentation it is determined that the participants must provide information in an arbitrary form about the availability of equipment and material and technical base to confirm the qualification criteria.

The winner of the "Technologies of Electric Transport" LLC provided the relevant certificate stating that the company has been operating since February 2016, has a use of 97.35 square meters. m non-residential premises sufficient for the supply of cars, which may indicate the lack of proper equipment for the production (re-equipment) of cars.

At the same time, based on the information "Nashi Groshi" [4], LLC "Technologies of Electric Transport" during the execution of the contract for the repair of T-3 tram cars signed with the communal enterprise "Tramway" of the Kamyanka City Council [5] engaged the Communal enterprise "Saltovsky tramway depot" as a subcontractor.

The above circumstances, in their totality, can testify to the existence of preliminary agreements between the officials of the Communal Enterprise "Saltovsky tramway depot" and the officials of the winner of "Technologies of Electrotechnology" Ltd, which led to ineffective use of budget funds.



According to paragraph 3 of part one of Article 28 of the Law of Ukraine "On Local Self-Government", the executive bodies of village, settlement and city councils have authority to establish the procedure for the use of funds and other property owned by the territorial communities in accordance with the agreed decisions of the respective councils.

In view of the above, as well as in accordance with Parts 1 and 2 of Art. 16 of the Law of Ukraine "On the Status of People's Deputy of Ukraine",

PLEASE:

1. Organize the verification of facts and circumstances specified in the deputy's appeal.
2. If there are grounds, take measures stipulated by the current legislation.

In accordance with Part 9 of Art. The Law of Ukraine "On the Status of a People's Deputy of Ukraine", the MP has the right to receive information on issues related to the exercise of parliamentary powers from bodies of state power and bodies of local self-government, their officials who are obliged to provide such information to him. the procedure and terms defined by this Law.

It should be noted separately that for failure to comply with the lawful demands of the people's deputy of Ukraine, the creation of artificial obstacles in his work and the provision of knowingly false information, criminal liability is provided in accordance with Part One of Art. 351 of the Criminal Code of Ukraine.

In turn, according to part two of Art. 16 of the Law of Ukraine "On the Status of People's Deputies of Ukraine", persons to whom a Deputy Request is addressed, are obliged to consider it and give a written answer within 10 days from the moment of its receipt.

Attachment to \_\_\_ arc.

**Regards,**

People's Deputy of Ukraine  
(073)-500-50-22

S. Leshchenko

[1] <https://prozorro.gov.ua/tender/UA-2016-12-09-002449-b>

[2] <https://prozorro.gov.ua/tender/UA-2017-01-17-000419-c>

[3] <https://prozorro.gov.ua/tender/UA-2017-02-17-000736-a>

[4] <http://nashigroshi.org/2016/11/03/prokladka-otrymaje-6-miljoniv-za-remont-tramvajiv-dniprodzerzhynska-rukamy-komunalnykiv-kernesa/>

[5] <https://prozorro.gov.ua/tender/UA-2016-09-02-000610-c>



## A Sample of Citizens' Request

No. 71/07 dated 31.07.2017

To Head of the State Audit Service of Ukraine  
Gavrilova Lydia Vladimirovna  
04070, Kyiv, ul. Sagaidachnogo, 4

From Executive Director of the Anti-Corruption Headquarters Public Organization  
Mikkalyk Sergey Ivanovich  
01015, Kyiv, street. Moscow, 41/8, sq. M. 102  
tel. (073) -500-50-22

Dear Lidiya Vladimirovna,

The civil organization "Anticorruption Headquarters", as part of its statutory activities, found the following.

According to the web-portal of the Authorized Purchasing Authority [1], the Outdoor Lighting Utility of the Slavic City Council (hereinafter referred to as the Customer), on the basis of the open tender, on July 3, 2017, entered into an agreement with PP "Proton" for the supply of the tractor of the brand " Belarus-892 "with a total value of 690 thousand hryvnias.

In accordance with Annex 4 of the tender documentation, participants must submit a list of documents established in accordance with Article 17 of the Law of Ukraine "On Public Procurement" (hereinafter referred to as the Law). In particular, in Annex 4 of the Tender documentation it is determined that the winner of the bids within five days from the date of the announcement on the website of the Authorizing Agency of the intention to conclude a contract must provide the customer with the following documents with the cover letter:

- 1) a document that according to the current legislation of Ukraine confirms that information about the legal entity-participant is not included in the Unified State Register of persons who committed corruption or corruption-related offenses;
- 2) original or notarized copy of a document issued by a public authority valid on the date of filing a proposal for the absence of a criminal record of:
  - the individual who is a participant;
  - the official of the participant that was authorized by the participant to represent its interests during the procurement procedure;



- the official of the participant who signed the tender offer.

- 3) original or notarized copy of the Certificate from the state body on the absence of arrears of taxes, fees, payments that are being controlled by the revenue authorities, effective at the time of submission of the procurement procedure by the participant-winner.

According to part one of Article 14 of the Law, the submission of information during the procurement procedure is carried out electronically through the electronic procurement system.

The first part of Article 25 of the Law provides that the tender shall be submitted electronically through the electronic procurement system. The document with the tender offer is submitted electronically by filling in the electronic forms with separate fields, which contain information about the price, other criteria for evaluation (in case of their establishment by the customer), information from the participant on its compliance with the qualification criteria, the requirements specified in the article 17 of this Law and in the tender documentation, and download the necessary documents required by the customer in the tender documentation.

Consequently, the submission by the winner of the documents with the cover letter specified in Annex 4 of the Tender Document is in conflict with the requirements of the Law of Ukraine "On Public Procurement".

Two participants, Technotorg LLC and Proton Private Enterprise, took part in the tender.

In accordance with the tender disclosure protocol dated May 29, 2017, Technotorg LLC became the winner of the auction because it offered the cheapest price offer - UAH 592,700.

05/21/2017, the customer made a decision on the recognition of Technotorg LLC as the winner of the purchase.

At the same time, the protocol of consideration of tender offers from 16.06.2017, the Customer cancels its decision of 31.05.2017 on the recognition of the winner Technotorg LLC because the winner did not provide the customer within five days from the announcement on the website of the Authorized Agency of the notice of intention to conclude an agreement, together with the cover letter, documents in accordance with Article 17 of the Law of Ukraine "On Public Procurement" (in accordance with Annex 4 of the Tender Documentation), and, therefore, in accordance with Article 30 of the Law, a decision on disqualification is being made.

As a result, the Customer concludes a contract with PP "Proton", which has a higher price offer.

At the same time, the winner of Technotorg LLC on 31.05.2017 uploaded to the Authorized Agency web portal all necessary documents that should be submitted by the winner of the tender specified in Appendix 4 of the tender documentation in accordance with Article 25 of the Law.

The above circumstances may indicate that the decision to disqualify Technotorg Ltd is unlawful.



Thus, the aforementioned tender for the public enterprise "Outdoor Lighting" of the Slavic City Council may violate current legislation in the field of procurement.

Subparagraph 3 of clause 4 of the Regulation on the State Audit Office of Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine dated 03.02.2016 No. 43 (hereinafter - the Regulation) stipulates that the State Audit Service, in accordance with the tasks entrusted to it, implements state financial control through: implementation of the state financial audit; public procurement checking; inspection (audit); monitoring of purchases; control over the state of internal audit.

In accordance with clause 6 of the Regulation, the State Audit Service, for the purpose of performance of tasks assigned to it, has the right, in particular, to verify during the state financial control the monetary and accounting documents, reports, and other documents confirming receipt and spending of funds and property, documents on conducting state procurement, electronic data, to verify the actual availability of values (funds, securities, raw materials, finished products, equipment, etc.); to raise the issue of prosecution of persons guilty of perpetrated violations before the heads of relevant bodies of state power, bodies of local self-government, enterprises, institutions and organizations.

Taking into account the above, as well as in accordance with the provisions of Articles 5, 20 of the Law of Ukraine "On Citizens' Requests"

PLEASE:

1. Conduct a procurement audit, in which investigate the facts and circumstances given in this request.
2. If there are grounds to take measures provided for by the current legislation, eliminate the revealed violations.

In turn, in accordance with part seven of Article 212-7 of the Code of Ukraine on Administrative Offenses for an unlawful refusal to accept and consider a request, another violation of the Law of Ukraine "On Citizens' Requests", an administrative penalty is provided.

**Regards**

CEO

NGO "Anticorruption Headquarters"

Mitkalik SI

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1 <https://prozorro.gov.ua/tender/UA-2017-05-10-001603-b>

## Annex 8: Report on the CSO pilot monitoring component

### I. OBJECTIVE AND METHODOLOGY

**Objective:** To determine how CSOs have used the knowledge and skills acquired in the training on procurement monitoring to provide an independent assessment of the procurement process of goods and services by local governments and municipalities in Ukraine.

The objective includes ascertaining the extent to which the CSOs utilized the e-platform, ProZorro and its related e-tools. The TOR agreed between EBRD and PTF includes carrying out a pilot on procurement monitoring in selected regions ( "the Pilot project"):

*Agreed TOR for the component:*

- Assist 2-3 CSOs in implementing public procurement monitoring at the local and
- municipal level for the first six months after the completion of the training sessions.
- To ensure long-term sustainability of the training sessions and the public procurement
- process in general, the Consultant will assist the selected CSOs to implement monitoring
- on the local and municipal level and offer email advice to them during the first six
- months following the training sessions.

**Methodology:** To share experiences and compare outcomes a unified methodology developed and implemented by three selected CSOs (see below). This methodology was developed in a number of consultative sessions between PTF and these CSOs. The methodology is set out in Annex 8d.

The methodology was ambitious considering the state of procurement practices at the local level in Ukraine and the spotty use of ProZorro in the education sector at that level. It was agreed that setting a high standard from the beginning was the best approach. Failure to reach that standard could be analyzed and remedies identified, flagged to authorities and, if not considered by the authorities, public campaigns could be initiated to draw attention to problems and remedies identified.

### II. SELECTION PROCESS OF CSOS

Based on demonstrated capability and interest in monitoring, a number of the CSOs which participated in the advanced training were invited to submit an expression of interest (EOI) to participate in the Pilot project.

As we started the selection process it became clear that CSOs would not commit to procurement monitoring unless they were funded to do so. PTF also realized that communicating and offering

advice via email was unworkable due to language and other problems. With EBRD's agreement, PTF therefore decided to offer \$4,000 USD from its own resources to each CSO to undertake procurement monitoring for six months. Transparency International Ukraine (TI) has come to the same conclusion and has provided financing for trained CSOs agreeing to do procurement monitoring using the ProZorro system. PTF also decided that, to provide meaningful guidance and advice. PTF's representative in Ukraine, Donald Bowser, would have to play a major role in executing this component making a number of visits to the selected CSOs.

The CSOs finally selected by the PTF team were three regional CSOs; "Philosophy of the Heart", "Development of Public Procurement" and "Women's Anti-Corruption Movement" based in the Vinnytsia oblast (Central Ukraine), Kharkiv oblast (Eastern Ukraine) and Khmelnytsky oblast (Western Ukraine). The three were selected because they demonstrated interest and ability during the training and made credible proposals to the request for EOI issued by PTF. The three CSOs were interviewed by PTF's representative, Donald Bowser, before finalizing the selection. The grant agreements signed with the three CSOs are attached in Annex 1.

The three selected CSOs were also selected to have a better geographic representation across the country outside the capital. This is in the spirit of the TOR agreed between EBRD and PTF to bring new players into the area of procurement monitoring. All three have established a functional relationship with local authorities, which is not always the case in Ukraine.

Two of the CSOs, ZHAR and Philosophy of the Heart, are experienced in the anti-corruption field and are cooperating with other regional NGOs working on the issue. The CSO "Development of Public Procurement" has the required legal expertise on local government procurement but less experience than the others in anti-corruption work. All three CSOs were judged to have the capacity to conduct the proposed projects which resulted from negotiations with PTF, based on the original proposals in the EOIs received from the CSOs.

A group session was held with the three CSOs during which it was determined that the best approach was for each to work on one sector and compare procurement processes across the three regions (oblasts) centered on Kharkiv, Khmelnytsky and Vinnitysa. The education sector was identified as most suitable for monitoring by all three CSOs. EBRD was informed about these decisions in periodic reports. The advantage of all three CSOs monitoring similar types of procurement in the education sector is that we can better compare approaches and outcomes, and that the CSOs can learn from each other as they go along. While education is not a current hotspot in terms of volumes of procurement or corruption cases it may prove easier to tackle for exactly those reasons and it is currently underserved by other CSOs that are engaged in monitoring.

The selection process and agreement on a methodology took about six months starting July 2018 which reflects the complexity of finding suitable CSO partners at the local level and reaching agreement.

### III. IMPLEMENTATION ARRANGEMENTS AND TIMETABLE

A number of practical problems such as establishing accounts to which the grants could be disbursed delayed the formal initiation of monitoring until February 2019. However, the three CSOs started data collection and other preparatory work on their own several months earlier. The report writing by the three CSOs including translation into English took additional two months. The three reports were discussed in three separate video conferences in the week starting November 25, 2019. The clarifications obtained in these discussions are reflected in this report. During these discussions all three CSOs confirmed that the participatory process of developing the Methodology and the application of the Methodology in the monitoring had been useful. Conclusions and recommendations will be elaborated and included in the final report on the Pilot project to Strengthen Ukrainian Civil Society's Role in Monitoring Public Procurement.

### IV. MAIN FINDINGS

To understand and judge the findings from the Pilot project the following should be kept in mind:

- In a period of about 9 months, between November 2018 and July 2019, the three local CSOs monitored and analyzed procurement practices of 131 entities procuring construction, equipment and services for schools in the amount of UAH 1 280 000 000 (USD 51 200 000) under 7 089 separate purchases in the three regions: Kharkivska oblast, Vinnytska oblast, Khmelnytska oblast.
- The three reports from the CSOs are not easy to interpret particularly in the English translation. Sabine Engelhard, the most experienced procurement person on the PTF team, has made a thorough review and analysis (see Annex 8e) of the three reports. We base many of our comments and recommendations on this analysis as well as on the final discussions with the three CSOs.
- Procurement monitoring is a complex activity, requiring technical skills, experience and financial resources to sustain the monitoring over long periods. Training under the Project and of the DoZorro community has enhanced CSO technical skills, including better understanding and use of ProZorro and DoZorro tools, but CSO procurement monitoring is still very challenging. The DoZorro community is a select group of CSOs which have shown particular interest in and ability to conduct procurement monitoring using the ProZorro system and its monitoring tools. The selected DoZorro community members are supported with training and technical support to use the ProZorro system by the Open Contracting Partnership (OCP) and Transparency International Ukraine (TI-Ukraine). Some also receive financial support. The three CSOs participating in the pilot project are also members of the DoZorro community but do not get financial support.
- CSOs have generally very little or no funding for actual monitoring. This is also true for the 80 or so CSOs trained under the Project. The limited funding provided to three CSOs in the pilot monitoring, and for some CSOs trained under DoZorro programs, is not sufficient to undertake sustained and high quality monitoring.

- CSO procurement monitoring in Ukraine at local levels, and specifically the pilot monitoring supported under the Project, face at least five challenges:
  - 1) ProZorro is now widely used by procurement managers at local levels in the three pilot regions and elsewhere in the country, including for procurements below the 200,000 UAH threshold for competitive bidding. Even so, the data input is often incomplete and in many cases inaccurate, sometimes intentionally. Reports from the pilot project demonstrate that it is possible, even with incomplete data from ProZorro, to draw meaningful conclusions about data availability and reliability and procurement practices. This is particularly true when ProZorro data is combined with data from other sources, such as city councils. Another source (<https://clarity-project.info/about>) which uses ProZorro and other data for analytical purposes was considered more useful than the tools developed within the ProZorro system.
  - 2) Many of the most useful tools for analyzing procurement, identifying risks, irregularities and poor management are part of the so called BiPro tool in ProZorro. Licenses to use this tool are only given out selectively by the administrators of the ProZorro system and only to those CSOs using BiPro frequently. This puts local CSOs at a disadvantage when it comes to using the ProZorro system to monitor procurement, even though training in BiPro was included in the Project and TI-Ukraine/OCP training programs. Only one of the three CSOs conducting monitoring under the project pilot had access to BiPro.
  - 3) There are, in practice, few penalties for violations of the Law on Procurement or departures from best procurement practices. The process for determining that such violations have occurred is very long with the final stage in courts which rarely convicts anyone. This means that even if CSOs identify and report on a violation and the responsible agency and courts take action to investigate, it is not clear that the responsible persons will face any consequences. More likely consequences are that responsible persons are “named and shamed” and removed but even that does not seem to happen very often. However, the lack of penalties has not prevented corrective actions being taken as a result of CSO reporting of irregularities to procurement managers and control agencies. The DoZorro program has reported that almost half of the 5000 cases reported have been “resolved” (see <https://www.open-contracting.org/2018/01/12/learning-insights-latest-impacts-emerging-ukraines-prozorro-reforms>). This contrasts sharply with the monitoring done under the pilot program where so far no cases reported have been resolved (see below in Conclusions).
  - 4) In order to effectively monitor procurement it has to be done over a long time covering the whole project cycle which varies in length depending on the type and size of the procurement. In the case of procurement of goods and services in the education sector, the cycle is usually relatively short except when construction is involved.
  - 5) To ensure that effective action can be taken when problems are detected, procurement monitoring should be in real time, that is, following the procurement process as it happens. The short monitoring time-slice funded under the pilot project has not, for the most part, allowed for such real time monitoring. The three CSOs have mostly looked at procurement

actions after they have occurred. CSOs can still detect irregularities and report them to procurement managers concerned and to authorities empowered to take corrective action but the likelihood that such action leads to better procurement practices are less than if CSOs are able to point out such irregularities while the procurement is ongoing. We hope that the three CSOs will continue monitoring after the funding ceases but experience suggests this is unlikely.

The findings of the three CSOs fall into in three main categories:

- Data availability/transparency,
- Observed irregularities in the procurement process.
- Obstacles to remedial measures to correct irregularities in public procurement which have been identified by CSOs

The three categories overlap in several cases.

### ***DATA AVAILIBILTY/TRANSPARENCY***

Spotty and inaccurate data entry to ProZorro and/or data published in other ways by procuring entities. Procurement managers often do not enter/publish data on time or on occasion not at all.

- Procurement plans are often entered/published after the procurement is completed or not at all. Data entered/published are often incomplete or inaccurate and are not updated.
- Concluded contracts are sometimes not entered into the ProZorro system or otherwise published. Key annex material necessary for monitoring is frequently not included.
- The Object of the contracts is often not clearly spelled out, sometimes when contracts are based on unit prices, these are not specified.

It has not been possible to determine to what extent failure to enter accurate and complete required data is a result of lack of understanding/incompetence/inertia or is deliberate to allow corrupt practices. However, several of the cases flagged in the attached PTF specialist analysis are likely to be indications of corrupt activity.

### ***OBSERVED IRREGULARITIES IN THE PROCUREMENT PROCESS***

As shown in the attached PTF specialist analysis, the CSOs have uncovered many departures from best procurement practices and sometimes violations of Ukrainian law such as:

- To avoid the use of competitive procurement methods, contracts are often divided/split. The monitoring by the three CSOs clearly and consistently shows that when desks and chairs are procured through competitive bidding with contracts about 200,000 UAH the price is lower sometimes by as much as 30%.

- Even above applicable thresholds for competitive bidding electronic means are sometimes deliberately not used for the execution of the procurement processes
- The characteristics of the procured goods/equipment are often not sufficiently specified in ProZorro to allow meaningful monitoring.
- Negotiated procedure is often used in a situation where it is not warranted.
- Direct contracts, which are frequently used, are not adequately justified.
- Procurement notices sometimes advertised for shorter periods than required by the law.
- Technical specifications are too narrow resulting in little or no competition and in many cases a specific brand/tradename forms part of the specifications.
- Contracts are sometimes concluded ahead of their incorporation in the Procurement Plan.
- Tender committees often do not have the necessary competence.
- Extensive variations in prices possibly indicating lack of competition/corruption in many cases.
- Not sufficient attempts to group needs so as to purchase in bulk. This is because procurement is often done by individual schools which do not procure enough to allow for efficient procurement using competitive procedures.

The Pilot project confirms that the above problems are common in the procurement of goods and services and in the education sector in the three pilot regions. However, with few exceptions, it does not confirm that the irregularities are the result of corruption as opposed to poor management or incompetence.

### **OBSTACLES TO CORRECTIVE MEASURES**

The three CSOs report that they have conveyed findings about irregularities in the procurement process to the entity managing the procurement in the first place but also to government entities overseeing procurement such as the State Audit Service. One CSO reports that it has done so in 147 cases. The other two in 16 cases.

CSOs have hardly any feedback and no or little evidence from ProZorro and other sources that investigative or corrective actions have been taken. The ProZorro system should include information on identified and confirmed violations and corrective actions taken by procuring entities as well as investigations by the State Audit Service in case procurement entities do not take action. As only a few months have gone by since the three CSOs filed the reports, more evidence may be coming, but there is clearly a problem how to turn CSO findings into corrective action. Giving CSOs access to information, training them and giving them tools for monitoring are important steps but they do not guarantee that corrective measures are taken in response to CSO findings.

The EBRD funded project “Development of online data-driven monitoring methodologies and piloting analytical and monitoring tools by the State Audit Service of Ukraine” is very timely and should be very helpful to the State Audit Service to identify violations to be investigated, conduct the investigations in an efficient way and to reduce the backlog of cases to be investigated.

On the whole the three CSOs have demonstrated that they are competent in monitoring procurement which we ascribe at least partly to the training they received in the Project training. Nevertheless, in examining the three reports, PTF has found gaps in the CSOs’ knowledge, understanding, and experience with procurement monitoring, which could reduce the impact of monitoring, demonstrated by sometimes drawing the wrong conclusion from evidence collected. It also raises the question how training can be improved or how CSO capacity can otherwise be enhanced.

Some examples:

- CSOs highlight some requirements and characterize them as unusual and discriminatory. Contrary to what is being stated by the CSOs, requiring past experience from a bidder can always be done in a procurement process (i.e. similar contracts with similar requirements for similar amounts over a certain time period); when dealing with food products, describing a smell or a shape can very well form part of the technical characteristics, specifications for the products being procured. This requirement might be justified (or not).
- Another example of requirement characterized by the CSOs as discriminatory practice is the use of bid securities/guarantee letters. Depending on the practice in a particular industry or sector, this can be an acceptable requirement for the submission of a bid (bid security) or for the signature of a contract (performance security). To characterize this as a discriminatory practice does not seem to be warranted.
- Third-party monitoring is a demanding task because such monitoring is often not appreciated by those being monitored. Therefore, the monitoring CSO needs to have done its homework in collecting and analyzing information and drawing the right conclusions from this work. One or two mistakes can undermine the credibility of an otherwise well conducted monitoring exercise, in particular if those mistakes can be used to demonstrate that the CSO has a political or other bias.

To achieve such high level of competence is a challenge, particularly for a small local CSO. It is not only a matter of training. It requires funding, competent, dedicated and hardworking staff and volunteers with a high level of integrity.

## V. CONCLUSIONS

A number of conclusions can be drawn from the reports with a focus on understanding how the training has contributed to help the CSOs carry out effective monitoring and what should be done in the future to prepare CSOs better.

*Has the training helped the three CSOs monitor procurement?* We think so, but an impartial evaluation is needed for confirmation. Discussions with the three CSOs confirmed that without the training and the funding, the kind of monitoring that was done would not have taken place.

The fact that the monitoring was completed is not necessarily proof of the training usefulness. However, there is a correlation between those that were trained and those that picked up monitoring.

*What is the impact of the monitoring done by the three CSOs?* Even though the CSOs have identified many possible irregularities and reported them to procurement entities and authorities empowered to take action, the time span of the monitoring is too short to know what actions will be taken and what effect they will have.

OCP and TI-Ukraine have reported impressive use of and savings as a result of the use of ProZorro/DoZorro (see for instance: <https://www.open-contracting.org/2018/01/12/learning-insights-latest-impacts-emerging-ukraines-prozorro-reforms>). It is however not clear to what extent savings result from the monitoring by CSOs. The savings could have been achieved simply by the introduction and expanded use of the ProZorro system.

Nevertheless, the number of cases involving possible irregularities identified and reported by 22 members of the DoZorro community (5,000) and by the three CSOs in the pilot program (163) is significant. Even if only a small portion of these, after investigation, turn out to be violations and remedial actions are taken, CSO monitoring has already contributed and will contribute in future to improved procurement practices. It is also likely that just the knowledge that CSOs are monitoring procurement has a salutary effect on procurement practices.

However, before drawing firm conclusions about the impact of CSO monitoring the discrepancy between the “resolve rate” of the irregularities reported by 22 members of the DoZorro community and by the three CSOs in the Project’s pilot monitoring needs to be investigated. A possible explanation is that the three CSOs were monitoring and reporting on much smaller procurement transactions done by local procurement managers which are not responsive to questions by CSOs and to which control agencies, such as the State Audit Service, pay less attention.

## VI. RECOMMENDATIONS

**Funding.** Experience in Ukraine and elsewhere suggests that external funding for an extended period is a necessary condition for CSO procurement monitoring to begin and be sustained. Training of CSOs is not meaningful without some certainty that such funding will be forthcoming. Procurement monitoring is complex and therefore expensive. CSOs, particularly local ones, do not have the human resources to do such monitoring. Staff and consultants need to be recruited and properly paid for which most of the funding will be used.

**Training.** CSOs. All three CSOs felt procurement training need to be both expanded to more CSOs and deepened to address gaps in CSOs' understanding of the procurement process some of which were identified by the Project's pilot monitoring. However, the CSOs cautioned that training in itself will not lead to monitoring and even less to actions to stem abuses.

Public sector and local administration procurement managers. The training should in particular address how to ensure complete and accurate data entry into the ProZorro system, such as procurement plans, specifications of what is being procured.

EU, USAID and many others have supported and made massive investments in training of public officials managing procurement but the training does not seem to have covered enough local officials and/or was not responsive to their needs. The findings of the three CSOs suggest that there are widespread irregularities in the way procurement is conducted at the local level, some related to corruption but for the most part likely due to poor management and incompetence. An independent review of all procurement training of local officials done so far is warranted to determine how this training could become more effective.

**Private sector.** some of the irregularities identified in the Pilot project are likely related to unethical or unlawful actions such as collusion by private sector suppliers and contractors. A private sector initiative to establish a code of conduct for procurement is underway under the umbrella of the Ukrainian Network of Integrity and Compliance (UNIC). The initiative deserves international support in particular to broaden its reach to cover small local suppliers and contractors.

**Other measures to increase CSO monitoring capacity.** The three CSOs expressed a need for coaching by more experienced peers and by organizations like PTF during monitoring. Peer coaching is not easy to organize in a competitive CSO environment such as Ukraine. It may be easier to do with peers from neighboring countries. There are many examples of such coaching in Ukraine.

Recommandations on procurement polices/institutional arrangements :

- Provide access to BiPro to a broader range of CSOs and without a fee.
- Consolidate procurement above the level of individual schools in cases where such consolidation is likely to lead to larger contracts which could be subject to competitive bidding
- Review current complex and partly overlapping structures for oversight and control of public procurement with the purpose of establishing a more streamlined and effective system.
- Establish a one-stop access point where CSOs could bring their findings from procurement monitoring for further investigation and action.
- Review functioning and competence of local tender committees and ensure that as many members of local tender committees as possible are included in training programs.

## Annex 8a: Grant Agreement Between The Partnership for Transparency Fund Inc. And “Philosophy of the Heart”



### Grant Agreement Between The Partnership for Transparency Fund Inc. And “Philosophy of the Heart”

1. *Philosophy of the Heart* has requested financial support of The Partnership for Transparency Fund, Inc. (PTF) to implement a program for Monitoring of Public Procurement. The program will be called “*Monitoring of Education Sector Procurement in Vinnitsya Region*” and will commence from *December 1<sup>st</sup> 2018* and end on *May 30<sup>th</sup> 2019*.
2. *Philosophy of the Heart* has submitted the attached Project Proposal dated *July 16, 2018*, which includes background information on *Philosophy of the Heart* an operational plan for the project and a detailed budget.
3. On the basis of this information, PTF has approved a grant of USD \$4,000 to be disbursed in two tranches, each for the purposes spelled out in the attached documents. The tranches will be disbursed as follows:
  - a) First tranche of \$2000 USD to be disbursed on signature of this Grant Agreement and the provision of the methodology for monitoring of public procurement
  - b) Second tranche of \$2000 USD to be disbursed on receipt from *Philosophy of the Heart* of a satisfactory project completion report that describes and assesses the project achievements, including an assessment of the project’s impact and a final certified statement of project expenditures.
4. The PTF grant will be made available to *Philosophy of the Heart* on the following conditions:
  - a) The grant will be used only for the purposes described in the attached Project Proposal. Any material changes in the use of project funds or project design shall be made only with the prior agreement of the PTF.
  - b) If PTF finds that the its grant was not used/is not being used for the purposes or in the manner described in the Project Proposal or the conditions have changed such that the project is not likely to achieve its objectives, PTF has the right to cancel the remaining tranches of its grant. In case PTF finds that its grant funds were willfully misused by *Philosophy of the Heart*, PTF reserves the right to require the full refund of its grant.
  - c) Any funds disbursed by PTF remaining unutilized at the end of the project shall be returned by *Philosophy of the Heart* to the PTF.
  - d) *Philosophy of the Heart* shall keep a record of all expenditures incurred under the project and will provide PTF a full certified accounting of these expenditures, with relevant documentation, [1] following expenditure of the first tranche funds, and [2] on completion of the project, but in any event no later than *June 15<sup>th</sup> 2019*. These expenditures will also be subject to the regular auditing requirements of *Philosophy of the Heart*, and *Philosophy of the Heart* will furnish PTF with a copy of the relevant audit if so requested.
  - e) *Philosophy of the Heart* will make brief monthly reports on the implementation of the project accompanied by a statement of expenditure showing the use of PTF funds and, on project completion, a full detailed final report summarizing the implementation of



the project and its outcome and assessing the impact of the project on reducing corruption, its likely sustainability and the lessons learned, together with a certified final itemized statement of expenditure. The latter report will be sent within two months of the completion of the project, together with a copy of any other reports prepared under the project.

- f) Following project completion, the PTF may make its own independent ex post evaluation of the implementation, outcome and impact of the project. *Philosophy of the Heart* will furnish the person appointed to undertake this task all possible assistance and access to all relevant documents and personnel.
- g) PTF shall have the right to post on its website such documents and any other reports received from *Philosophy of the Heart* or from its independent evaluation of the project.

5. *Philosophy of the Heart* will be responsible for securing all necessary government approvals of the grant, if any, and any necessary government filings and will be responsible for paying any tax liability arising from the grant. *Philosophy of the Heart* shall compensate PTF in the event that PTF suffers any liability or expense as a result of *Philosophy of the Heart*'s failure to obtain any such required approvals or to pay any such tax liability

6. The signed copy of this Grant Agreement and the request for the subsequent tranche releases may be sent by email to the PTF Secretary at: [rsullivan@ptfund.org](mailto:rsullivan@ptfund.org) The two original copies of the Grant Agreement should be mailed to Roger Sullivan, Secretary, PTF, at 1875 Connecticut Avenue, N.W., Suite 1210, Washington, D.C. 20009.

7. The responsible PTF Project Advisor in respect of this project is [dbowser@ptfund.org](mailto:dbowser@ptfund.org) or such other Project Advisor as PTF may subsequently notify to *Philosophy of the Heart*. Such Project Advisor shall be *Philosophy of the Heart*'s principal point of contact in respect of the project.

9. The responsible *Philosophy of the Heart* project director in respect of this project is *Yulia Griga* (e-mail: [philofh@meta.ua](mailto:philofh@meta.ua)) or such other project director as *Philosophy of the Heart* may subsequently notify to PTF. Such project director shall be PTF's principal point of contact in respect of the project.

10. Each of PTF and *Philosophy of the Heart* represents and warrants, for the benefit of the other party, that:

- a. it is a legal entity recognized under the laws of the jurisdiction of its formation or in which its principal activities are conducted; and
- b. this Grant Agreement constitutes its legal, valid and binding obligation, enforceable in accordance with its terms.

In addition, *Philosophy of the Heart* represents and warrants, for the benefit of PTF, that the information set forth in the Project Proposal does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.



11. This Grant Agreement shall be governed by the laws of the District of Columbia in the United States of America, the jurisdiction in which PTF is organized as a not-for-profit corporation and in which its principal executive offices are located. In the event of any dispute between the parties in respect of the Grant Agreement, the parties shall act in good faith to resolve such dispute through discussions and negotiation, and they may seek the assistance of a third party mediator to assist them in the resolution of such dispute. In the absence of a mutually acceptable resolution, such dispute shall be resolved by arbitration in accordance with the UNCITRAL Arbitration Rules in effect on the date of this Agreement. Any such arbitration shall be conducted in the English language before an impartial single arbitrator sitting in Washington, D.C., appointed by the American Arbitration Association as appointing authority.

Dated:

For  
The Partnership for Transparency Fund, Inc.

Roger Sullivan  
Secretary

For  
Philosophy of the Heart

1.   
\_\_\_\_\_  
\_\_\_\_\_  
2. \_\_\_\_\_  
\_\_\_\_\_

Dated:

Address for Notices:  
*Philosophy of the Heart*  
Attention: Yulia Griga  
Email: philofh@meta.ua

Attachments:

1. Project Proposal dated July 16,2018
2. Terms of Reference
3. Methodology

## Annex 8b: Grant Agreement Between The Partnership for Transparency Fund Inc. And “Public Procurement Development”



### Grant Agreement Between The Partnership for Transparency Fund Inc. And “Public Procurement Development”

1. *Public Procurement Development* has requested financial support of The Partnership for Transparency Fund, Inc. (PTF) to implement a program for Monitoring of Public Procurement. The program will be called “*Monitoring of Education Sector Procurement in Kharkov Region*” and will commence from *December 1<sup>st</sup> 2018* and end on *May 30<sup>th</sup> 2019*.
2. *Public Procurement Development* has submitted the attached Project Proposal dated *July 16, 2018*, which includes background information on *Public Procurement Development* an operational plan for the project and a detailed budget.
3. On the basis of this information, PTF has approved a grant of USD \$4,000 to be disbursed in two tranches, each for the purposes spelled out in the attached documents. The tranches will be disbursed as follows:
  - a) First tranche of \$2000 USD to be disbursed on signature of this Grant Agreement and the provision of the methodology for monitoring of public procurement
  - b) Second tranche of \$2000 USD to be disbursed on receipt from *Public Procurement Development* of a satisfactory project completion report that describes and assesses the project achievements, including an assessment of the project’s impact and a final certified statement of project expenditures.
4. The PTF grant will be made available to *Public Procurement Development* on the following conditions:
  - a) The grant will be used only for the purposes described in the attached Project Proposal. Any material changes in the use of project funds or project design shall be made only with the prior agreement of the PTF.
  - b) If PTF finds that the its grant was not used/is not being used for the purposes or in the manner described in the Project Proposal or the conditions have changed such that the project is not likely to achieve its objectives, PTF has the right to cancel the remaining tranches of its grant. In case PTF finds that its grant funds were willfully misused by *Public Procurement Development*, PTF reserves the right to require the full refund of its grant.
  - c) Any funds disbursed by PTF remaining unutilized at the end of the project shall be returned by *Public Procurement Development* to the PTF.
  - d) *Public Procurement Development* shall keep a record of all expenditures incurred under the project and will provide PTF a full certified accounting of these expenditures, with relevant documentation, [1] following expenditure of the first tranche funds, and [2] on completion of the project, but in any event no later than *June 15<sup>th</sup> 2019*. These expenditures will also be subject to the regular auditing requirements of *Public Procurement Development*, and *Public Procurement Development* will furnish PTF with a copy of the relevant audit if so requested.
  - e) *Public Procurement Development* will make brief monthly reports on the implementation of the project accompanied by a statement of expenditure showing the use of PTF funds



- and, on project completion, a full detailed final report summarizing the implementation of the project and its outcome and assessing the impact of the project on reducing corruption, its likely sustainability and the lessons learned, together with a certified final itemized statement of expenditure. The latter report will be sent within two months of the completion of the project, together with a copy of any other reports prepared under the project.
- f) Following project completion, the PTF may make its own independent ex post evaluation of the implementation, outcome and impact of the project. *Public Procurement Development* will furnish the person appointed to undertake this task all possible assistance and access to all relevant documents and personnel.
  - g) PTF shall have the right to post on its website such documents and any other reports received from *Public Procurement Development* or from its independent evaluation of the project.
5. *Public Procurement Development* will be responsible for securing all necessary government approvals of the grant, if any, and any necessary government filings and will be responsible for paying any tax liability arising from the grant. *Public Procurement Development* shall compensate PTF in the event that PTF suffers any liability or expense as a result of *Public Procurement Development*'s failure to obtain any such required approvals or to pay any such tax liability
6. The signed copy of this Grant Agreement and the request for the subsequent tranche releases may be sent by email to the PTF Secretary at: [rsullivan@ptfund.org](mailto:rsullivan@ptfund.org) The two original copies of the Grant Agreement should be mailed to Roger Sullivan, Secretary, PTF, at 1875 Connecticut Avenue, N.W., Suite 1210, Washington, D.C. 20009.
7. The responsible PTF Project Advisor in respect of this project is [dbowser@ptfund.org](mailto:dbowser@ptfund.org) or such other Project Advisor as PTF may subsequently notify to *Public Procurement Development*. Such Project Advisor shall be *Public Procurement Development*'s principal point of contact in respect of the project.
9. The responsible *Public Procurement Development* project director in respect of this project is *Andrii Babtenko* (e-mail: [babtenko1@gmail.com](mailto:babtenko1@gmail.com)) or such other project director as *Public Procurement Development* may subsequently notify to PTF. Such project director shall be PTF's principal point of contact in respect of the project.
10. Each of PTF and *Public Procurement Development* represents and warrants, for the benefit of the other party, that:
- a. it is a legal entity recognized under the laws of the jurisdiction of its formation or in which its principal activities are conducted; and
  - b. this Grant Agreement constitutes its legal, valid and binding obligation, enforceable in accordance with its terms.



In addition, *Public Procurement Development* represents and warrants, for the benefit of PTF, that the information set forth in the Project Proposal does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

11. This Grant Agreement shall be governed by the laws of the District of Columbia in the United States of America, the jurisdiction in which PTF is organized as a not-for-profit corporation and in which its principal executive offices are located. In the event of any dispute between the parties in respect of the Grant Agreement, the parties shall act in good faith to resolve such dispute through discussions and negotiation, and they may seek the assistance of a third party mediator to assist them in the resolution of such dispute. In the absence of a mutually acceptable resolution, such dispute shall be resolved by arbitration in accordance with the UNCITRAL Arbitration Rules in effect on the date of this Agreement. Any such arbitration shall be conducted in the English language before an impartial single arbitrator sitting in Washington, D.C., appointed by the American Arbitration Association as appointing authority.

Dated:

For  
The Partnership for Transparency Fund, Inc.

Roger Sullivan  
Secretary

For  
Public Procurement Development

Andrii Babtenko  
project director

Dated:

Address for Notices:  
*Public Procurement Development*  
Kharkov  
Attention: Andrii Babtenko  
Email: babtenko1@gmail.com

Attachments:

1. Project Proposal dated July 16,2018
2. Terms of Reference
3. Methodology

## Annex 8c: Grant Agreement Between The Partnership for Transparency Fund Inc. And “Womens Anticorruption Movement”



### Grant Agreement Between The Partnership for Transparency Fund Inc. And “Women’s Anticorruption Movement” WAM (ZhAR)

1. *Women’s Anticorruption Movement* has requested financial support of The Partnership for Transparency Fund, Inc. (PTF) to implement a program for Monitoring of Public Procurement. The program will be called “*Monitoring of Education Sector Procurement in Khmelniyskiy Region*” and will commence from *December 1<sup>st</sup> 2018* and end on *May 30<sup>th</sup> 2019*.
2. *Women’s Anticorruption Movement* has submitted the attached Project Proposal dated *July 16, 2018*, which includes background information on *Women’s Anticorruption Movement* an operational plan for the project and a detailed budget.
3. On the basis of this information, PTF has approved a grant of USD \$4,000 to be disbursed in two tranches, each for the purposes spelled out in the attached documents. The tranches will be disbursed as follows:
  - a) First tranche of \$2000 USD to be disbursed on signature of this Grant Agreement and the provision of the methodology for monitoring of public procurement
  - b) Second tranche of \$2000 USD to be disbursed on receipt from *Women’s Anticorruption Movement* of a satisfactory project completion report that describes and assesses the project achievements, including an assessment of the project’s impact and a final certified statement of project expenditures.
4. The PTF grant will be made available to *Women’s Anticorruption Movement* on the following conditions:
  - a) The grant will be used only for the purposes described in the attached Project Proposal. Any material changes in the use of project funds or project design shall be made only with the prior agreement of the PTF.
  - b) If PTF finds that the its grant was not used/is not being used for the purposes or in the manner described in the Project Proposal or the conditions have changed such that the project is not likely to achieve its objectives, PTF has the right to cancel the remaining tranches of its grant. In case PTF finds that its grant funds were willfully misused by *Women’s Anticorruption Movement* , PTF reserves the right to require the full refund of its grant.
  - c) Any funds disbursed by PTF remaining unutilized at the end of the project shall be returned by *Women’s Anticorruption Movement* to the PTF.
  - d) *Women’s Anticorruption Movement* shall keep a record of all expenditures incurred under the project and will provide PTF a full certified accounting of these expenditures, with relevant documentation, [1] following expenditure of the first tranche funds, and [2] on completion of the project, but in any event no later than *June 15<sup>th</sup> 2019*. These expenditures will also be subject to the regular auditing requirements of *Women’s Anticorruption Movement* , and *Women’s Anticorruption Movement* will furnish PTF with a copy of the relevant audit if so requested.



- e) *Women's Anticorruption Movement* will make brief monthly reports on the implementation of the project accompanied by a statement of expenditure showing the use of PTF funds and, on project completion, a full detailed final report summarizing the implementation of the project and its outcome and assessing the impact of the project on reducing corruption, its likely sustainability and the lessons learned, together with a certified final itemized statement of expenditure. The latter report will be sent within two months of the completion of the project, together with a copy of any other reports prepared under the project.
  - f) Following project completion, the PTF may make its own independent ex post evaluation of the implementation, outcome and impact of the project. *Women's Anticorruption Movement* will furnish the person appointed to undertake this task all possible assistance and access to all relevant documents and personnel.
  - g) PTF shall have the right to post on its website such documents and any other reports received from *Women's Anticorruption Movement* or from its independent evaluation of the project.
5. *Women's Anticorruption Movement* will be responsible for securing all necessary government approvals of the grant, if any, and any necessary government filings and will be responsible for paying any tax liability arising from the grant. *Women's Anticorruption Movement* shall compensate PTF in the event that PTF suffers any liability or expense as a result of *Women's Anticorruption Movement*'s failure to obtain any such required approvals or to pay any such tax liability
6. The signed copy of this Grant Agreement and the request for the subsequent tranche releases may be sent by email to the PTF Secretary at: [rsullivan@ptfund.org](mailto:rsullivan@ptfund.org) The two original copies of the Grant Agreement should be mailed to Roger Sullivan, Secretary, PTF, at 1875 Connecticut Avenue, N.W., Suite 1210, Washington, D.C. 20009.
7. The responsible PTF Project Advisor in respect of this project is [dbowser@ptfund.org](mailto:dbowser@ptfund.org) or such other Project Advisor as PTF may subsequently notify to *Women's Anticorruption Movement*. Such Project Advisor shall be *Women's Anticorruption Movement*'s principal point of contact in respect of the project.
9. The responsible *Women's Anticorruption Movement* project director in respect of this project is *Alona Bereza* (e-mail: [ngo.jar.ukraine@gmail.com](mailto:ngo.jar.ukraine@gmail.com)) or such other project director as *Women's Anticorruption Movement* may subsequently notify to PTF. Such project director shall be PTF's principal point of contact in respect of the project.
10. Each of PTF and *Women's Anticorruption Movement* represents and warrants, for the benefit of the other party, that:
- a. it is a legal entity recognized under the laws of the jurisdiction of its formation or in which its principal activities are conducted; and



- b. this Grant Agreement constitutes its legal, valid and binding obligation, enforceable in accordance with its terms.

In addition, *Women's Anticorruption Movement* represents and warrants, for the benefit of PTF, that the information set forth in the Project Proposal does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

11. This Grant Agreement shall be governed by the laws of the District of Columbia in the United States of America, the jurisdiction in which PTF is organized as a not-for-profit corporation and in which its principal executive offices are located. In the event of any dispute between the parties in respect of the Grant Agreement, the parties shall act in good faith to resolve such dispute through discussions and negotiation, and they may seek the assistance of a third party mediator to assist them in the resolution of such dispute. In the absence of a mutually acceptable resolution, such dispute shall be resolved by arbitration in accordance with the UNCITRAL Arbitration Rules in effect on the date of this Agreement. Any such arbitration shall be conducted in the English language before an impartial single arbitrator sitting in Washington, D.C., appointed by the American Arbitration Association as appointing authority.

Dated:

For  
The Partnership for Transparency Fund, Inc.

Roger Sullivan  
Secretary

For  
Women's Anticorruption Movement

For  
Women's Anticorruption Movement

1.   
\_\_\_\_\_  
2. \_\_\_\_\_  
\_\_\_\_\_

Dated:

Address for Notices:  
*Women's Anticorruption Movement*  
prospekt Myru, 61/3, room 145  
29015, Khmelnytsky city  
Attention: Alona Bereza  
Email: ngo.jar.ukraine@gmail.com



Attachments:

1. Project Proposal dated July 16,2018
2. Terms of Reference
3. Methodology

## Annex 8d: Methodology for assessing the procurement of education in the Vinnytsia, Kharkiv and Khmelnytsky regions

Annex 2 Methodology for assessing the procurement of education in the Vinnytsia, Kharkiv and Khmelnytsky regions

### ANNEX 8 D

The Partnership for Transparency (PTF) and Civil Society Organisations "Philosophy of the Heart", "ZHAR" and "Development of Public Procurement"

#### Objective:

The goal of the project is to monitor procurement in the education sector in the 10 amalgamated territorial communities (ATCs) in the Vinnytsia, Kharkiv, Khmelnytsky oblasts and oblast centers of these regions (including key administrative units and educational institutions).

The focus of monitoring is the fulfillment by procuring entities of compliance of the requirements of the Law of Ukraine "On Public Procurement". Another objective of the monitoring is to conduct an objective and independent assessment of the state of implementation of legislation in the field of public procurement in the Vinnytsia, Kharkiv and Khmelnytsky regions in terms of potential malfeasance in the process.

#### Principle Tasks of the Monitoring:

1. Identify gaps and inconsistencies in purchasing legislation for procurement in the education sector.
2. Identify violations by procuring entities handling public tenders in the field of education.
3. Identify typical violations by vendors when participating in tenders in education.
4. To highlight procuring agencies biases in awarding contracts and to identify collusion during the public procurement in the field of education including collusion procurer/vendor and vendor/vendor.

#### Principles of monitoring

- 1) The principle of objectivity – the monitoring should reflect the real state of compliance with the law, regardless of the subjective relationship of monitors to the objects of the monitoring.
- 2) Principle of legality – the monitoring should be based on the requirements stipulated by the current legislation on the implementation of public procurement.

#### Data Collection Methods:

- 1) Analysis of information in the system of electronic procurement Prozorro using the tools taught in the EBRD/PTF/ KSE training completed in June 2018.
- 2) Analysis of publicly available information on the finances of public entities.
- 3) Analysis of information from other sources including open-data platforms (Youcontrol, Opendatabot, etc.)

#### Analytical Methods:

- 1) content analysis of procurement documents;
- 2) Content analysis of documents of official financial transactions related to procurement;

## Annex 2 Methodology for assessing the procurement of education in the Vinnytsia, Kharkiv and Khmelnytsky regions

3) comparative analysis with other tenders.

### **Analysis of Regulatory Compliance based on:**

- 1) The Law of Ukraine "On Public Procurement"
- 2) The Law of Ukraine "On the Transparency of the Use of Public Funds"
- 3) Normative acts of ministries concerned with procurement.

### **Scope of Analysis**

1. Verify systematic and correct input of procurement information in the Prozorro system;
2. Verify systematic and correct input of information on public finances on the portal "E-Data";
3. The geographic scope of the activities will cover ten of the recently amalgamated territorial communities (municipalities up to 1000) the regional center (Vinnitsa, Kharkiv and Khmelnytsky) and other local authorities if needed.

### **Analysis of Procedures**

1. Analyze the annual procurement plans and the related annexes and the formal procedure for their development, and verify compliance with those plans
2. Analyze the use of and compliance by procuring entities with the identification codes for items to be tendered. This will be in accordance with the national classification of Ukraine DK 021: 2015 "Single Procurement Glossary" as well as with the Order of the Ministry of Economic Development and Trade of Ukraine "On Approval of the Procedure for Determining the Object of Procurement" No. 454 dated January 17, 2017 which states:
  - The subject of procurement according to the general rule is determined by the 4-digit CPV indicator;
  - The subject of procurement of medicinal products is determined by the 3-digit CPV indicator;
  - The subject of procurement of works is determined by the 2-digit CPV indicator [
3. Analyze and verify compliance with the procedures for publicizing tender documents in the Prozorro system as defined in Article 10 of the Public Procurement Law. Tender documentation must be made public not later than 15 calendar days before the deadline for submission of proposals (30 calendar days for open bidding with publication in English).

### **Examination of tender documentation**

CSOs will analyze and verify the tender documentation to have a basis for the subsequent monitoring of the tender. For example, CSOs will be looking for any unnecessary/illegal specifications. This is prohibited by law and requires special attention during monitoring. In such cases, it is imperative for CSOs point this out to procuring entities and inform entities supervising procurement with the expectation that the tender documentation be in compliance with the law. This should be done while there is still enough time to make changes to the documentation.

Red Flags:

- \* Discriminatory requirements of the tender documents to favour or discriminate against vendors.

## Annex 2 Methodology for assessing the procurement of education in the Vinnytsia, Kharkiv and Khmelnytsky regions

- \* Non-disclosure or improper disclosure of the technical specifications for the tender.

CSOs should examine the impartiality of the procuring entity and practices which may indicate biases. For instance CSOs will verify the date of loading documents in the system to comply with the law and that all the documents required are in fact included in the tender documentation. In Ukrainian procurement practice, tender documents which attempts to favor vendors and discriminate against others are common. Such practices are illegal and CSOs should inform entities supervising procurement,

Risks:

- \* unfounded selection of the winner
- \* Unjustified disqualification

### **Verification of the procurement contract:**

Part 4 of Article 36 of the Law of Ukraine "On Public Procurement" stipulates that the terms of the procurement contract shall not differ from the content of the tender offer coming from the winner in an auction (including unit price) or the negotiated price in the case of a negotiated contract In this connection CSOs should verify that :

- a) The amount of the auctioning price the same as in the contract
- b) Is there a deadline agreement for delivery of goods and services?
- c) Is there an agreement with the winner of the auction with the terms and conditions if different than the original tender?

### **Identification of collusion among the tender authority and the participants or collusion between competitors.**

There are cases where competitors are trying to help each other win in violation of anti-monopoly legislation of Ukraine. To prove collusion is difficult given the nature of the offense involving secret agreements among the perpetrators. To identify and prove collusion requires a careful study of the process and is time-consuming, In accordance with Article 41 of the Law "On the Protection of Economic Competition", evidence in the case may be any factual data that makes it possible to determine whether or not this violation has been established.

To investigate collusion CSOs should carry out an analysis of the detailed information indicated by the participants in their proposals and compare it with the information of open data bases. When there is sufficient evidence, CSOS should notify the Anti-monopoly Committee of Ukraine. Red flags that are indicative of collusion will be used, such as:

- Repeated patterns of award with same bidders or rotation of bidders.
- Winning bids awarded following withdraw of the other competitors.

### **Reporting on the concluded contract**

- a) Verify that the contract does not exceed the thresholds specified in Article 2 of the Law.
- b) Verify that that the final contract has been published on time in the Prozorro system (in accordance with Article 10 within one calendar day from signing the contract).

## Annex 2 Methodology for assessing the procurement of education in the Vinnytsia, Kharkiv and Khmelnytsky regions

The law does not provide for the vendor winning the award to publish the contract. This is the obligation of the procuring entity. Therefore, CSOS should verify that this has been done to ensure full transparency. At the same time, CSOs should check that the procuring entity has completed all fields of the report on concluded contracts, the form of which was approved by the Order of the Ministry of Economic Development and Trade of Ukraine dated March 22, 2016, No. 490.

If procuring entities after being reminded by CSOs do not comply with reporting requirements under a) and b) above CSOs should notify supervisory bodies

### **Project reporting requirements**

The report on the project by each CSO is due July 15 2019. To facilitate the production of the final report each CSO should do interim reports at the end of each of the preceding 6 months.

## Annex 8e: Summary analysis of the reports by the three CSOs participating in the Pilot project

*By Sabine Engelhard*

### Philosophy of the Heart

The report by Philosophy of the Heart is fairly detailed and contains price comparisons across different areas for the same items. There are a lot of examples of potential violations of the Procurement Law and/or regulations. They also highlight many procurement practices which at best can be characterized as poor, and at worst, might indicate potential fraudulent, corrupt or collusive practices.

In our analysis, below we have tried to flag the most common findings and what they could indicate. In most cases, violations of the law and poor practices could potentially be the reflection of a low procurement capacity in the procuring entity and only further investigation could clearly determine what really happened.

It seems that for the region covered by this report, in 2018 procurements took place in lots encompassing furniture, didactic materials and computer equipment. In 2019, this was changed to lots of "separate objects" (i.e. chairs, desks, tables...). We don't know the reason for that and/or the impact it had.

In several cases, the report states that the "client" (i.e. the Procuring Entity) did not get the opportunity to "see the equivalent equipment". This could potentially mean either (i) that the specifications were so narrow that they only corresponded to a certain type/brand of equipment; or (ii) that the specifications included mentions of particular brands (which is not considered good practice, except if there is a need to standardize with existing equipment). If there is no such need in public procurement it is unacceptable as it is clearly against fair competition. Essentially, however, we don't know what exactly happened.

It seems that for one of the monitored procurements a criminal case was opened for misappropriation of funds. Although the report does not specify the outcome of the case, it mentions that a contract was signed with a contractor for the execution of the renovation works. The renovation works were paid in full by secondary School Nr. 4 although the contractor did not complete them. If this is a case of overpayment this could potentially indicate fraud, corruption or collusion. Nevertheless, the report goes on mentioning that Vinnytsia Education Department indicated that the renovation works were actually completed by the contractor and the technical supervisors certified its completion. We don't know if the technical supervisors certified work actually performed or if they were certifying work only

partially performed or not performed. We cannot know what actually happened without further investigation.

In this case, it appears that the Procuring Entity actually stated the brand of computers it wanted to procure instead of requesting certain functionalities and characteristics without specifying the brand. As mentioned above this is not considered good practice and in public procurement it is unacceptable except if there is a need to standardize with existing equipment. If there is no such need it is unacceptable as it goes against the principles of transparency and competition. Throughout the report, this case repeats itself for different types of procurement (computers, laptops, didactic materials, projectors, etc.). In some cases, these limitations of competition could result from a need to standardize, a low procurement capacity, or in other cases it could indicate corrupt, fraudulent or collusive practices. Unless further investigations take place on a case by case basis, it is difficult to draw a conclusion.

There seems to be cases of missing or incomplete invoices which could simply indicate poor record keeping or could be intentional and indicate fraudulent practices.

For the procurement of food services, the report mentions that there were excessive requirements from the bidders, but we don't know what these are. Collusion was alleged between the winner of the bid and a private company, and an appeal was sent to one of the control bodies. We don't know what the outcome of this appeal was.

This is another case of incomplete information on the invoices. We don't know if this is intentional in order to benefit from it or if this is simply poor contract administration and management. This would probably warrant further investigation.

This is a case of contract amendments which are missing in the electronic system. This is a clear violation of the law. It could indicate potential fraudulent practices but again, we don't know whether this is intentional or whether this is just poor contract administration and management. This would also probably warrant further investigation.

There are cases of contract splitting which are highlighted in the report. This might be intentional to avoid competition, representing fraudulent practices, or it might be poor planning and poor procurement capacity in general. We don't know for sure.

There seems to be discrepancies between procurements carried out and amounts indicated in the E-Data system. Again, is it an error or is it intentional under-invoicing? If it is the latter, it could indicate fraudulent or collusive practices. We don't know and this may need further investigation. Changes to contracts are not always in the system as required. This could again represent poor practices of contract management and administration or it could indicate fraudulent practices,

particularly if such amendments are introduced shortly after contract signature and they relate to major scope and timing variations. From the information available, we can only speculate.

Another irregularity noted was 180 desks purchased but only 90 chairs. This is an observation made by the CSO but we don't know if there was a valid justification for this difference in number between desks and chairs. In another case, there was a purchase of 61 desks but no chairs. Again, we don't know if there was a valid reason for that.

Requirements judged "excessive" for the procurement of catering services. This could also be a means to reduce competition or to stir the award to someone indicating fraudulent or collusive practices. It could also be lack of familiarity with the preparation of technical requirements, indicative of low procurement capacity. From the information available we don't know, and only further investigation could help draw a valid conclusion.

Potential Inflation of quantity in the offer of the winning bidder. The requirement was for 6 sets of didactic materials and the winning bid offered 28 items. There are several similar cases flagged in the report. It could indicate fraudulent or collusive practices, but it could also be an error. Again, from the information available we don't know, and only further investigation could help draw a valid conclusion. Items not included in annual Procurement Plans were purchased. Is this intentional or poor planning? Again, it is hard to know.

Potential collusion identified among the bidders for the provision of special transportation services. This occurrence was addressed to the local branch of the Anti-Monopoly Commission for further investigation.

Identification of considerably higher prices when desks and chairs were bought separately rather than in kits. Detailed analysis of prices showing considerable variations in prices. These could indicate fraudulent or collusive prices or poor planning and poor procurement practices. We don't know and can only formulate the same observation as the CSO that price fluctuations are considerable. Significant price variations were identified between 2018 and 2019. In one case over 35% price difference.

It seems that some procuring entities cannot be contacted to request information/clarifications through emails as they don't have email addresses or a website. This limits the transparency and efficiency of the system.

The report flags the lack of participation in many procurement processes for school furniture and other items. The CSO mentions that it could be because the price was intentionally set too low by the customer. The lack of participation could then allow for negotiations by the customer. This could also be the sign of fraudulent or collusive practices, but we don't know.

Avoidance of open bidding processes, using negotiated procedures instead is a common occurrence it seems. In one case, it was for the purchase of natural gas when apparently this was not justified. The resulting price is the highest among the monitored institutions and it also exceeds the price list of Naftogaz Ukraine in October 2018.

Late release of contract performance report for the procurement of wood.

In the bidding documents, no qualitative or quantitative indicators could be identified in a case of repairs to floors in two classrooms. The resulting contract did not contain this information either. This could indicate that it is a fictitious contract as suggested by the CSO (i.e. potential fraud and corruption) or simply poor procurement capacity. We don't know. The CSO requested a verification by the State Audit Northern office.

A contract for the overhaul of school lockers was signed by the City Council, the school and the contractor. This is a violation of the Law and General Conditions for the conclusion of contracts for capital projects which require that the "customer" and the "payer" be the same party. Additionally, this contract did not have a price. A similar situation was identified in a contract for the overhaul of buildings and structures with the inclusion of roof replacement. The latter contract indicates an unrealistic timeline for the replacement of the roof and the CSO suspects it might be fictitious. Again, we don't know for sure, this could also be poor procurement practices/low capacity or it could be done with fraudulent intention. Only further investigation by the control bodies could help shed more light on these cases.

Choice of wrong procurement procedure (no competitive process) for the purchase of food. In the report, the CSO flags the impossibility to review contracts which are outside of PROZORRO. The CSO seems to be highlighting the fact that it is difficult to trace certain procurements to the actual procuring entity. It also highlights the lack of standardization in identifying the object of a procurement. As a consequence, this makes it difficult to compare prices.

## Development of Public Procurement

The Kharkiv report is well-organized by categories of procurements. It contains fairly detailed price comparisons across different areas for the same items. When price comparisons were not possible because of lack of information, this is clearly identified. The CSO used the following tools to monitor: Data of ProZorro, E-Data from the Ministry of Finance's portal, ProZorro Analytics Module, clarity Project and OpenDataBot analytics modules. At the outset of the report, the CSO specifies the methods used to monitor: content analysis of procurement documents, content analysis of financial transaction documents, and comparative approach. It also identifies the applicable legal framework.

The findings contained in the report provide a lot of examples of potential violations of the Procurement Law and/or regulations. They also highlight many procurement practices which, like in the case of Philosophy of the Heart, at best can be qualified of poor and at worst might indicate potential fraudulent, corrupt or collusive practices. The CSO has organized the report in sections where it identifies violations and makes specific recommendations which is very useful. In our analysis, below we have tried to flag the most common findings and what they could indicate. In most cases, violations of the law and poor practices could potentially be the reflection of a low procurement capacity in the procuring entity. Only further investigation could shed light on what really happened.

Detailed price comparison by categories of procurement (i.e. laptops, computers, printers, projectors, desks, chairs) identifying which procuring entity bought at the highest price and who obtained the cheapest price. When there are wide discrepancies in prices in one category, this is also identified (i.e. computers).

In several procurements the procurement was conducted for a “set” of objects, but it does not always seem to be clear what the “set” entails which does not make for a very transparent way of procuring. For instance, in several cases, what should be included in the set of furniture for biology classes was not specified, neither was the number of components nor the price.

Also, in the procurement of furniture sets for physics classes the procuring entity did not specify the cost of individual components which made it impossible to carry out a price analysis as stated by the CSO. In the same case, what is included in the set is not specified as well as the quantity and cost of the components. All these examples make price comparisons impossible and do not meet the criteria of transparency expected from good procurement practices. We don't know however if this was intentional on the part of the procuring entity indicating potential fraud or if this indicative of a low procurement capacity.

In addition to having the same issues as identified above, the CSO identified two instances where the ensuing contracts were not published, making it impossible to determine the economy and effectiveness of the procurement. In both cases, the contracts were awarded to the same company. We don't know if there is any intentional wrongdoing, all we can infer is a pattern of not publishing awarded contracts which is against the law.

In the procurement of school buses, the CSO is highlighting potential collusive practices between two suppliers. We do not have the facts to understand what drove the CSO to conclude that there was potential collusion.

In the category of food procurement, particularly beef meat, the CSO has identified a procurement which did not contain specifications in the contract. It concluded rightly that this lack of information makes it difficult to compare prices.

In one case of procurement of fish “fresh frozen hake”, the same issue of lack of specification in the contract was encountered. Additionally, there was no quantity and unit price and the subject of procurement was not defined. This of course make any analysis impossible. It could indicate like in the previous case potential fraudulent or collusive practices, but we do not have enough information to make this determination.

It seems that some procurements are identified under a specific procurement code (i.e. aquatic products) while the name of the procurement refer to a different product (i.e. butter). Of course, this makes any price analysis impossible. Again, this could be intentional or reflective of poor capacity.

As identified by the CSO, lack of publication of specifications with the agreement (contract) makes it impossible to compare prices. This lack of information could reflect poor procurement capacity, or it could be intentional to prevent any comparison of prices. Based on the information we have we don't know. In the end, the lack of information makes it difficult to estimate whether the budget was spent effectively and timely which is essential in procurement.

To improve the availability of information in the specifications, in the contract, the CSO formulated specific recommendations to the procuring entity. Some of the recommendations aim at making the entire procurement process more transparent.

The CSO makes specific comments concerning the use of less competitive or non-competitive procedures by procuring entities in situations where it was not justified. Identification also of instances of contract splitting. In each case, the CSO identified specific violations to articles of the Law. The CSO recommends regulations to establish liability (not clear if it is personal or for the entity?), use of authorized persons (for oversight of procurement processes?) instead of tender committees, and strengthening of public control over compliance with the Law.

Unrealistic implementation timeframes in contracts is identified multiple times in the report (timeframe too short, weather too cold to carry out repair works...). All these contracts represent a significant performance risk and, in some cases, may even violate a building code as identified by the CSO. This could be intentional or not.

The CSO is identifying potential causes of these “impractical time frames” in contracts: improper procurement planning, tender committee negligence, deficiencies in the budgetary cycle of the procuring entity, or corrupt practices. With the available information, it is impossible to conclude what is happening here.

Formulation of a specific set of recommendations by the CSOs (same as above).

For public control over procurement, the CSO is recommending increased monitoring activities by civil society. To achieve a “critical mass”, thus increasing public influence in procurement, and further development of open data system and the creation of tools for their processing.

For price analysis, avoidance of competitive procedures and procurement with unrealistic timeframes, the CSO is suggesting the introduction of penalties in the Law through amendments and corresponding sanctions, training, strengthening of the public control through analytics tools.

## Women’s Anti-corruption Movement

The report is fairly detailed. The report lists the tools used for monitoring: public and professional modules bi and bi.pro, the website “007.org”; the system Youcontrol and Clarity Project, the site Zakypivli 2.0, and OpenData bot. Below, we have highlighted some of the report’s findings and what these findings could potentially indicate.

It seems that to avoid the use of competitive procurement methods, contracts are divided/split. For some evaluation, it seems that a point system is used, this is not always a very transparent way of doing things.

It also seems that for many purchases there is no attempt to group needs so as to purchase in bulk. This could indicate a poor planning capacity.

Also, it does not seem that framework contracts are being used. For commonly procured items, this procurement method could yield good results in terms of competition and prices. This could also be indicative of a low planning capacity.

Contrary to what is being stated by the CSO, when dealing with food products, describing a smell or a shape can very well form part of the technical characteristics, specifications for the products being procured. This requirement might be justified (or not). We do not have enough information to make a determination.

As indicated in the report, it seems that even above applicable thresholds electronic means are deliberately not used for the execution of the procurement processes. This could reflect a deliberate intention to circumvent the law or poor knowledge of applicable rules.

The specifications should be public as part of the procurement notice and the requirements should also be public as part of the Procurement Plan. From the report, it appears that this is often not done. This could reflect a deliberate intention to circumvent the law or poor knowledge of applicable rules.

The CSO in several occasions highlights some requirements and characterizes them as unusual and discriminatory. Requiring past experience can always be done in a procurement process (i.e. similar contracts with similar requirements for similar amounts over a certain time period). There is nothing unusual about that. It can serve to demonstrate that a specific company/supplier has the technical and financial capacity to perform satisfactorily. How do we know that it is a discriminatory requirement to require previous similar experience from a bidder? It could be an erroneous interpretation on the part of the CSO.

In several parts of the report, the requirement to use a bidding consultant and having the winning bidder pay the consultant is flagged. The report also stresses the fact that this requirement is considered illegal by the Anti-Monopoly Commission. Such a requirement could be indicative of unethical practices.

In many instances the report mentions the use of negotiated procedures in a situation where it is not warranted. (i.e. negotiated procedure is supposed to be used only for urgent needs). This could represent poor planning, poor capacity, and/or collusive practices.

Based on reports which are available in the system, it seems that the object of the procurements is not always clear. This is clearly a lack of transparency and could also indicate potential collusive practices. We don't know from the report whether direct contracts which are frequently used, are adequately justified?

The report mentions that because the object of different procurement processes is not clearly described it makes it difficult to estimate whether the prices paid were reasonable and in line with market prices. This is a clear violation of applicable rules. This could also indicate collusive practices.

In one case, the report identifies that the number of procurement processes was drastically lower than planned in the Procurement Plan. 921 purchases took place against 194 planned for 2018 and 129 for 2019. This could be poor planning or slow execution, we don't know.

Specifications of contracts are often missing also making the identification of the object of the contract difficult. This could also indicate collusive practices.

The negotiated procedure seems to be used often alleging urgency. Is it really urgency or poor planning? Alternatively, is it an indication of collusive practices?

In one part of the report, it seems that the CSO is referring to the use of bid securities or performance securities as a discriminatory practice. We would like to clarify that depending on the practice in a particular industry or sector, this can be an acceptable requirement for the submission of a bid (bid security) or for the signature of a contract (performance security). To characterize this as a discriminatory practice does not seem to be warranted.

In many cases advertised bidding seems to be the exception with negotiated procedures being more the rule. Again, one can only wonder whether this is the result of collusive practices.

Procurement notices seem to be advertised for shorter periods than required by the Law and the object of the procurement is not specified in the bid evaluation report. This is certainly a lack of transparency and it could also indicate a high degree of collusion.

Concluded contracts are not published which is also a violation of the Law. This is a lack of transparency.

Direct contracts are concluded for larger amounts than estimated in Procurement Plans. This could indicate poor planning with a poor estimate of needs and/or poor knowledge of the market resulting in a bad estimate of the prices. It could also be the result of fraudulent, corrupt or collusive practices.

Rejection of the cheaper offer by the procuring entity is identified in the report. Maybe it was justified because the offer was non-compliant? We don't know and hence it is difficult to conclude what could potentially be going on.

The report indicates that often the characteristics of the procured goods/equipment are not specified in the reports which constitutes a violation of applicable rules.

Again, requiring letters of guarantee from the manufacturer is not a discriminatory requirement. It is often used to ensure that the supplier will be able to execute the contract and also to pass on all the manufacturer's warranties to the supplier.

If required from all bidders ISO certifications and bid or performance securities are not necessarily discriminatory requirements. They can aim at ensuring appropriate quality and proper execution of the contract by the selected supplier. The question is, in this particular instance, is it warranted? Or is it an overkill meant to disqualify potential bidders?

The report identifies a requirement of registration to establish the capacity of market operators which is warranted for businesses whose activity is connected to the production and/or storage of food products of animal origin, but not for the supply of bread. Was this an attempt at limiting the number of bidders?

In a contract for the provision of furniture, there seems to be inconsistencies between requirements in the technical specifications and contractual requirements which carries the risk of non-compliance with the warranty period. This is probably reflective of a low procurement capacity and difficulties to prepare consistent procurement documentation.

It seems that in some cases, contracts are concluded ahead of their incorporation in the Procurement Plan. Again, this could indicate collusion.

The report identifies the following as unreasonable requirement: use of a bidding consultant, minimum number of skilled workers in the bidding company/entity. While the use of a bidding consultant and its payment by the winning bidder is considered illegal by the Anti-Monopoly Commission, it is difficult to know whether requiring the availability in the bidding company/entity of a minimum number of skilled workers is justified as we do not know what the object of the procurement is.

Again, the report identifies the late publication of the Procurement Plan, at the same time as the publication of the contracts. This begs the question; how do potential bidders/suppliers know about upcoming procurement opportunities? Are we dealing with collusion with asymmetrical information being made available to certain parties?

The report highlights extensive variations in prices for the same set of desks and chairs. Is this indicative of potential collusion or do different situations warrant different prices?

## Annex 9: Report on the final survey of participants in training programs

### ACTIVITY CONTEXT

Increasing transparency and reducing corruption in public procurement was a top priority for the government, which adopted a new procurement law in early 2016. The public procurement reform in Ukraine resulted in the normalization of the public procurement field and the launch of the ProZorro e-procurement platform, which made it possible to increase the visibility of the procurement process and improve its efficiency.

Public procurement is one of the most important aspects of good governance in Ukraine, where civil society involvement can add real value in terms of increasing transparency and combating corruption.

Even before the introduction of ProZorro, several NGOs in Ukraine monitored procurement on a case-by-case basis and had significant success in areas such as medical supplies, medicines and rail equipment. The new system and publicity of information, its accessibility, has made it easier for NGOs operating in Kyiv and at the regional / municipal level to monitor procurement at all stages.

At the same time, the new tools and open data contained in ProZorro require special skills to use it consciously and responsibly. In addition, procurement monitoring requires technical knowledge of the procurement process as well as a sound understanding of the legal and institutional environment in which procurement decisions are made.

In order to improve the procurement monitoring skills of CSOs, KSE cooperated with PTF to launch a training program - **Improving Transparency and Effectiveness of Public Procurement in Ukraine through Cooperation with Civil Society**. The purpose of the program was to enhance the capacity of NGOs and journalists to identify irregularities and/or violations in public procurement and to report them to the responsible authorities. Therefore, in 2017 and 2018, more than 100 NGOs participated in a series of trainings aimed at assisting with public procurement monitoring.

### WHO ANSWERED

As part of summarizing the results and learning outcomes of the program, KSE interviewed the program participants in December 2019, sending all 114 listeners electronic questionnaires, designed by PTF and KSE, in Google form, and each CSO received a phone call asking them to complete the questionnaire.

From November 25 to December 5, responses were received from **24** respondents. Further analysis and conclusions are made based on the processing of these responses. All the results can be found at this link. [https://docs.google.com/forms/d/1k1KVuKVGbSagXPSbmV8jSVBUg\\_1PSFapqL46r2D6xDM/edit#responses](https://docs.google.com/forms/d/1k1KVuKVGbSagXPSbmV8jSVBUg_1PSFapqL46r2D6xDM/edit#responses) or as questionnaires

[https://docs.google.com/spreadsheets/d/1gikSYbrV9fEgJ715eijozX1aEa6QQo6Exks5U\\_LHUUw/edit#gid=1653157320](https://docs.google.com/spreadsheets/d/1gikSYbrV9fEgJ715eijozX1aEa6QQo6Exks5U_LHUUw/edit#gid=1653157320)

ГО "СХІДНА ВАРТА"	PO EASTERN GUARD
ГО "Жіночий Антикорупційний Рух"	NON-GOVERNMENTAL ORGANIZATION WOMEN'S ANTICORRUPTION MOVEMENT
ГО "Рівненський центр "Соціальне партнерство" (ГІ "За чесний тендер")	NGO "Rivne center "Social partnership"
Інститут Аналітики та адвокації	NGO "Institute of Analytics and Advocacy"
ГО "Центр "Антикорупційна платформа"	NGO Center Anti-corruption Platform
ГО "Розвиток публічних закупівель"	NGO PUBLIC PROCUREMENT DEVELOPMENT
Твори добро	MNAU
ГО Філософія Серця	NGO Philosophy of Heart
FeeUa	NGO FeeUa
ГО "Центр громадської активності "Результат"	Center of Public Activity «Result»
ГО "Спільнота Активної Молоді"	COMMUNITY ACTIVE YOUNG-CAY (CAY)
ГО "РАЦ"	NGO RAC
ГС "Вільна громада - комфортне місто"	GS "Free community - a comfortable city"
ГО "ПРАВО"	NGO PRAVO
Кременчуцька газета	Kremenchug newspaper
МГО ТАК	NGO CREATIVELY ACTIVE, CREATIVE (TAC)
Громадське спостереження за	NGO Public court surveillance

судами	
ГО "Нові активні українці"	NGO NAU
ВГО "Автомайдан" Житомирський осередок	NGO AutoMaidan
КО "Інститут розвитку міста" Полтавської міської ради	CE "City Development Institute" of Poltava City Council
Антикорупційна рада	NGO "Anti-corruption Council"
Асоціація "Правозахист"	NGO Pravozakhyst
газета "2000"	Newspaper "2000"
Благодійна організація «Благодійне товариство «Всеукраїнська мережа людей, які живуть з ВІЛ/СНІД» м. Кривий Ріг»	CO CS NETWORK OF KRYVY RIH CITY

## RESULTS

Most of those who responded participated in the basic training. There were two types of programs ("advanced" in Kyiv, basic training program - in the regions). The advanced program included the work with a professional analytics module (<http://bipro.prozorro.org/>), not just the basic public version (<http://bi.prozorro.org/>), the participants studied how the official API works, and so on.

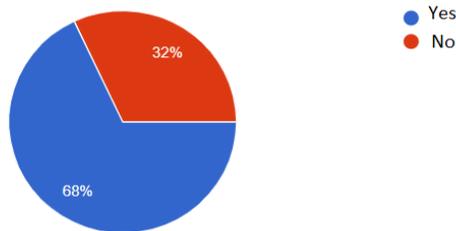
### Distribution of respondents by raining program

24 responses



### Did you train for other NGOs?

24 responses



Source: Kyiv School of Economics

In addition, most of the respondents, after being trained by KSE, conducted their own seminars, training other NGOs and community activists, and, less expected, local government representatives (third place in popularity).

In total, the responders provided 129 trainings in the last two years.

Although most of them continue to monitor public procurement, some have stopped doing so. The latter, responding to the reasons for terminating procurement monitoring, explain this not because of "disappointment" with this activity, but due to the fact that it was not a profile activity of these NGOs from the very beginning, or that the monitoring was carried out for a certain period in accordance with the organization's grant plan (which also indicates that this activity is not a profile). To another straightforward question, is "Procurement monitoring the core competence of your organization's anti-corruption focus? Are there other government areas where your attention is focused?", almost all respondents said that procurement is only a fraction of their NGOs' competence, and sometimes not the core one.

The following is a brief description of the tools and modalities used by NGOs for monitoring (in particular, training was focused on the use of open data and analytics for procurement monitoring).

As expected, the most popular information systems used for procurement tracking and analytics is the prozorro.gov.ua website itself, <http://dozorro.org/>, (Ukrainian representation of Transparency International launched the DoZorro monitoring portal in 2016). DoZorro popularity is driven by system configurations. DoZorro creates a feedback database on procurement procedures that take place in the ProZorro electronic procurement system. Information about specific purchases at DoZorro is automatically obtained from the ProZorro database. Any authorized network user can leave a response on the purchase page. The **inquiry/comment** contains a qualitative evaluation of a particular tender (problem descriptions, complaints, thank-yous, etc.) and a quantitative evaluation - the author evaluates the tender from one to five on the following characteristics:

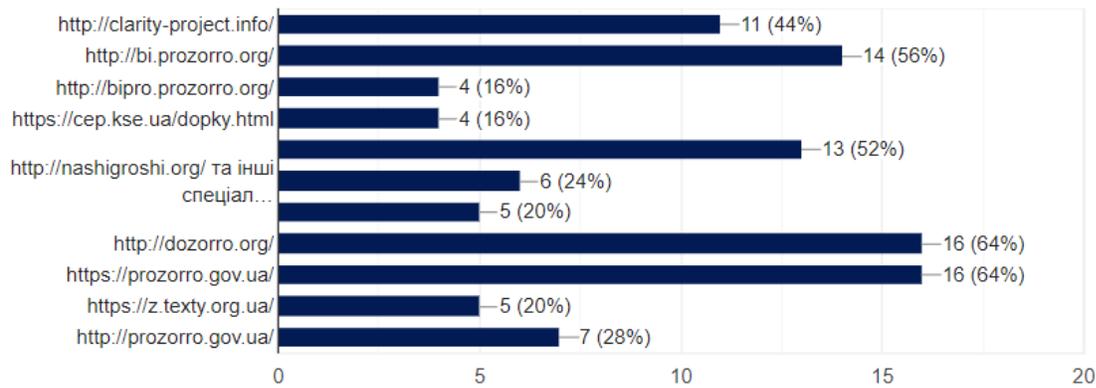
- procurement conditions evaluation;
- evaluation of customer interaction with participants;
- qualification process evaluation;
- evaluation of the contract's fulfillment by the procuring entity

Feedback information is a signal for research on the situation by NGOs that are members of the DoZorro community [13]. If violations or irregularities are found, public monitors direct appeals to the contracting authorities (tenderers), their governing bodies, control bodies (State Audit Service, Accounting Chamber), law enforcement agencies (Department of Economic Protection of the National Police of Ukraine, National Anti-Corruption Bureau of Ukraine (NABU) or Anti-Monopoly Committee of Ukraine (AMCU). Through legal and media pressure, NGOs are trying to address the violations of the Law “On Public Procurement” in a specific tender and hold those responsible to administrative action or criminal liability. A description of the dozens of cases found and released by NGOs, including those studied in the PTF/KSE program, can be found here <https://dozorro.org/community/ngo>

The information channel - <http://bi.prozorro.org/> - is in third place. This is the official and publicly available ProZorro analytics module that provides all of ProZorro's open source data with user-friendly interface, data visualization, easy sampling and uploading of data in various formats for further analytics and processing, such as in Excel.

## Popular procurement monitoring tools

24 responses



Source: Kyiv School of Economics

The violations or irregularities detected during the NGOs' monitoring form the basis of the cases, which are then made public in the media or / and become statements to the relevant law enforcement / regulatory authorities or to the procuring entities themselves.

All interviewed NGOs use the full range of response available:

- Publication on social networks and / or media;
- Appeal to the police and / or prosecutor's office;
- Letters to SASU and / or AMCU;
- Requests to procuring entities and local authorities (if they are subordinate to them).

Most of the responding NGOs believe that the most effective mechanism is to publicize the violations in the media. Particular emphasis is placed on publications on the DoZorro portal. One respondent cites an example that a number of contracts were terminated and procurement was canceled, as a result of its appeals to SASU. Also, last year they conducted a procurement analysis of the outpatient clinics' construction works, and covered problems in more than a dozen tenders in the media, in which one firm tried to get all the contracts. As a result, some of the tenders were canceled, more entrepreneurs came for subsequent purchases, and after-auction savings increased.

Most of the responding NGOs tend to refer to local authorities as well as special institutions (such as SASU or AMCU). For example, one of the respondents replied that, following appeals and investigations, the AMCU made several positive decisions on anti-competitive concerted actions, several criminal proceedings were opened, and monitoring was started by SASU. Another organization replied that as a result of its appeals to SASU, a number of contracts were terminated, and procurement was canceled.

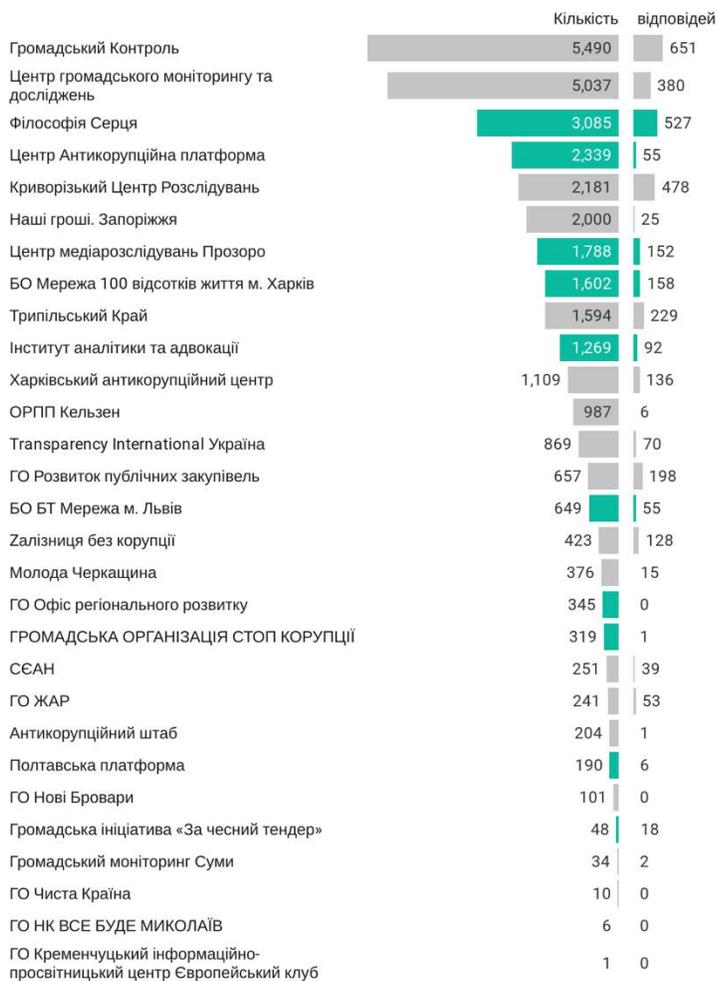
At the same time, there is a total lack of trust and dissatisfaction with law enforcement agencies among NGOs.

In order to capture the magnitude of involvement by NGOs in procurement monitoring across the country, and of PTF/KSE training participants in particular, we analyzed statistics and reports from the DoZorro website (this is the main public information source for violations detected by NGOs during procurement, but not the only one).

Thus, in general, about three dozen NGOs were actively involved in procurement violations' detection due to the information published on the DoZorro website. Since the beginning of the portal (i.e. 2017, 2018, 2019), 33205 requests / inquiries have been sent to different authorities (both executive and law enforcement agencies), 3475 responses have been received (about 10%). **Of these, 10 NGOs (in green) were trained under the PTF/ KSE program (they sent 11634 requests, received 1064 responses).**

### The activity of NGOs in 2017-2019 to monitor violations in public procurement

The green color is indicated by NGOs that have studied at KSE



Дані <https://dozorro.org/community/ngo>

## RECOMMENDATIONS

### *Recommendations by responding CSOs for future training programs/monitoring instruments in public procurement*

- Either break up the training into several modules or increase the number of training days, because there is a very large amount of information and a large number of practical exercises.
- The second part of the training was useful because of relation to analytical tools. The topic of the new Public Procurement Law is now relevant for future training. With the amended law, I'm sure there will be new nuances in monitoring.
- Divide them into the procurement areas (most NGOs, as representatives from the regions, monitor the procurement of local authorities, which are tenderers and road builders who need specific skills, both in terms of knowledge of the relevant legislation, and the detection of corruption specific to this area).

### *Recommendations for improving procurement information availability*

- In general, all respondents surveyed are satisfied with the tools available for monitoring and analyzing public procurement and do not complain about the complexity of using these tools (which can often be explained by the fact that there are NGOs' representatives among the respondents, who passed - some more than once - training profile programs at KSE). However, respondents complained about the lack of information quality from ProZorro in some cases. Any system has its drawbacks, and ProZorro is no exception, so for the sake of objectivity, here are some basic points:
  - Cases of incomplete disclosure or non-disclosure of ProZorro purchasing information by customers (this is, first and foremost, procurement item information), which complicates the corruption risk detection.
  - No Acts of acceptance.
- For the sake of completeness, let us add the following problems:
  - lack of price per unit of goods, which makes it impossible to automatically compare the prices of purchased goods;
  - absence of additional agreements, which often unreasonably raise prices after signing the main contract;
  - generally not machine format regarding key points of the tender documentation, which can often be of a discriminatory nature aimed at artificially narrowing competition (for example, the State United Mining and Chemical Company states deferment of payment for between 180-365 days for almost all tenders, which deters independent suppliers). On the other hand, since 2019, the "ProZorro" SE, which is the administrator of the ProZorro system from the state, have been making sufficient efforts to "electrify" the TD main items. In particular, the electronic Payment Day fields have been entered, currently the work is underway to add the Delivery Term or Service Performance field, integration with the

Unified Treasury, which will allow users to view the Specifications in signed contracts electronically (according to unit prices), etc.

### *APPENDICES (INDIVIDUAL CASES SUBMITTED BY RESPONDING PARTICIPANTS)*

#### **After the NGO's request, the AMCU fined the participants 18 million UAH**

CASE1: <https://4vlada.com/yak-karaiut-na-rivnenshchyni-za-zlovzhvannia-na-zakupivliah>

NGO: NGO "Rivne center " Social Partnership " (NGI "For Honest Tender")

18.5 million UAH - such is the total amount of the fine to be paid by four Rivne enterprises: "Fialka", "Ukrbudremmontazh Engineering" LLC, "Style Décor" LLC and "Elikon" LLC. The Anti-Monopoly Committee of Ukraine released the information on its website on July 22, 2019, as the result of a two-year investigation. The reason was a violation of the law on the protection of economic competition, provided for in paragraph 1 of Article 50 and paragraph 4 of the second Article 6 of the Law of Ukraine "On Protection of Economic Competition", in the form of anti-competitive concerted actions related to the distortion of the auction results. The investigation was launched following a complaint made by activists from the Non-Government Initiative "For Honest Tender" (NGO "Rivne Center" Social Partnership) and investigation of "The Fourth Power" by journalists.

#### **The couple "competed" in the open tender of the National Police headquarters in the Ivano-Frankivsk region.**

CASE2: <https://dozorro.org/blog/podruzhni-tenderni-sabavi-na-frankivshini>

NGO: Center Anti-corruption Platform

The purchase for the network equipment acquisition was announced in August 2019. Seven bidders took part in the tender. Among them were "IP Ukraine" LLC and private entrepreneur Simonova Tatiana Volodymyrivna. PE Simonova Tatiana Volodymyrivna won the tender. After the analysts of the NGO Center "Anti-Corruption Platform" had analyzed the procurement in detail, it became known that the two bidders are not only united in a joint tender.

According to information from the Unified State Register of Legal Entities, Private Entrepreneurs and Public Formations, one of the founders of IP Ukraine LLC is Simonov Igor Arsenovich.

Having analyzed the tender documentation of the winner, Simonova Tatiana Volodymyrivna, we can see that she is married to Simonov Igor Arsenovich.

The joint registration of PE Simonova and co-founder of LLC Simonov at the same address in the city of Chernihiv confirms the fact that the bidder's husband and co-founder of the above LLC is not just a namesake.

On the basis of these facts, the Anti-Corruption Platform sent an appeal to the Anti-Monopoly Committee of Ukraine. Pursuant to Part 1 of Article 17 of the Law, the Customer is obliged to reject the Bidder's bid if it is related to other bidders. As the customer did not reject the tender bid of Simonova Tatiana

Volodymyrivna on this basis, the Anti-Corruption Platform also appealed to the SASU. As a result of this appeal, the State Audit Service began procurement monitoring and found that the customer wrongly recognized PE Simonova as the winner.

By the way, the couple also "competed" for the victory, for example, in the purchase of information system equipment for the Foreign Intelligence Service of Ukraine.

In total, during 2017-2019 PE Simonova Tatiana Volodymyrivna took part in 44 procurements in the "Prozorro" system. The estimated value of the lots amounted to more than UAH 9.5 million. At the same time, the current amount of contracts with the entrepreneur is only UAH 2 million. Instead, IP Ukraine LLC participated in more than 200 procurements with an estimated value of more than UAH 96 million. And the amount of current contracts concluded with the LLC is over UAH 6 million.

# Annex 10: Analysis of Ukraine Procurement Law for CSO guidance

## Annex 10

### Analysis of Ukraine Procurement Law

**Article 1-Definitions:** this Article contains a number of definitions below is a summary of some of them:

**Authorized electronic platform (See paragraph 1):** Authorized Agency (ministry of Economic Development and Trade) information and telecommunication system which is part of the e-procurement system and offer following functions: user registration, automatic posting, receipt and transfer of information and documents during the procurement process and services with automatic exchange of information accessed via the internet. The procedure of e-platform authorization of platforms by the Cabinet of Ministers of Ukraine.

**Web portal for Authorized Agency's Public Procurement Web Portal (hereinafter referred to as the Authorized agency's Web Portal") (See paragraph 3):** Information and telecommunications system, comprising an electronic auction and database and that is part of the e-procurement system and being a part of the e-procurement system, which offers the following functions: generation, storage and publication of all procurement information, holding e-auctions, automatic exchange of information and documents, use of services with automatic exchange of information, access to which is carried out through the Internet...authorized online access to electronic auction module and database. **This also includes the procedure for granting access and the fees set by the Cabinet of Ministers of Ukraine.**

**Activities encompassed under the law and activities excluded (See paragraph 4):** The description in English is not very clear.

**e-procurement system (See paragraph 6):** means information and telecommunications system that allows the procurement procedures, creation, placement, publication and exchange of information and documents in electronic form, which includes the Authorized Agency Web Portal, authorized electronic platforms, between which secured automatic exchange of information and documents takes place.

**Contracting authorities: (See paragraph 9):** Lists entities carrying out public procurement activities.

**Monitoring procurement (See paragraph 11):** Means the analysis of a contracting authority's compliance with public procurement laws at all stages of the procurement process through systemic observation and analysis of information using the e-procurement system.

**Most economically advantageous offer (See paragraph 12 and Article 28).**

**Announcement of procurement procedure (See paragraph 13):** Means announcement of open procedure or announcement of competitive dialogue.

**Complaint Review Authority (See paragraph 14):** Means Antimonopoly Committee of Ukraine.

**A related person (See paragraph 16):** Describes controlling party and controlling interests.

**Complainant to the Complaint Review Authority (See paragraph 27):** Natural or legal person who requested the appeal body to protect their rights and legal interests from a decision, act, or omission by the contracting authority, in violation of the Procurement Law.

**Authorized body (See paragraph 34):** The central executive body that implements the state policy in the field of public procurement.

**Article 2: Scope of Law:** The Law applies to:

(i) Contracting authorities engaging in the procurement of goods amounting to at least

UAH 200, 000 and services amounting to at least UAH 1.5 million; and

(ii) contracting authorities operating in specific areas of management, provided that the purchase price amounts to at least UAH1 million, for goods and UAH5 million for works.

Within the limits set forth above, use of the e-procurement system is mandatory.

Below these limits, procurement entities do not have to use the e-procurement system but they can if the procurement amounts to at least UAH50, 000. In all cases whether they use the e-procurement system or not, contracting authorities must adhere to the principles of public procurement established by the law.

The procurement procedures set forth in the law can only be amended by law. Payments must follow the procedures provided in the law. Dividing contracts in smaller purchases to avoid open competition is specifically prohibited by the law.

The areas excluded from the scope of the law are specified under paragraphs 3 to 5.

**Article 3: Principles of Procurement:**

Competition, economy, efficiency, openness, transparency, non-discrimination, objective and impartial evaluation of tenders, prevention of corruption and abuse.

**Article 4: Procurement Planning and other prerequisites for the implementation of Procurement Procedures:** Procurement is subject to an annual plan published on the Authorized Agency's web portal (with its amendments and annexes within 5 days of their approval). The annual plan with its annex and changes is freely accessible on the Authorized Agency's website.

**Article 5: Non-Discrimination:**

Principles explained in this Article. The Article also mentions that rules set forth by international treaties and/or international Financing Institutions prevail, in the absence of such rules, the law applies.

**Chapter II: State Regulation and Control in Procurement:**

**Article 7: State Regulation and Control in Procurement:**

The Authorized Agency regulates and implements state policy in the field of procurement and also in the field of treasury services, budget and payment. Procurements to be eligible for payments need to be included in the procurement plan. Payments must correspond to existing legal obligations of contracting authorities.

In addition this Article refers to controlling the following:

Non-compliance with legal requirements

Cancellation of procurements

Enforcement of courts' decisions invalidating procurement processes

Period of suspension of the procurement procedure (standstill period?)

The Article mentions the Accounting Chamber, Antimonopoly Committee of Ukraine as exercising controls in the field of procurement and financial management, in accordance with the laws of Ukraine and the Constitution.

#### **Article 8: The Authorized Agency and Appeal Process:**

This Article summarizes the functions of the Authorized Agency:

- Development and adoption of regulations for the implementation of the Act;
- Analysis of the public procurement system;
- Preparation of an annual report on the country's public procurement system for the Rada, the Cabinet of Ministers and the Accounting Chamber;
- Synthesis of procurement practices, including international practices;
- Study and dissemination of experiences in procurement;
- Functioning of the web portal and information system;
- Filling out the information resource;
- Interaction with the public on improvements of the public procurement system;
- Organization of seminars and meetings on procurement;
- International cooperation in the field of procurement;
- Development and approval of: tender documentation, regulation on tender committee or authorized person(s), definition of purchase order, the placing of information on public procurement, procurement forms, the annual procurement plan, advertisement of public procurement, registry of received tenders, bid evaluation reports, notice of intention to conclude a contract, report on procurement process, report on the implementation of the procurement contract, notification on contract amendments, reports on signed contracts.
- Provision of advice and guidance on application of the legislation on public procurement;
- Provision of free consultations on procurement information resource of the Authorized Agency;
- Developing sample curricula on organization and procurement;
- Cooperation with state bodies and public organizations to prevent corruption in procurement;
- Informing the public about public procurement policies;
- Authorization of electronic platforms.

This Article refers to the Antimonopoly Committee of Ukraine as an appeal body for the protection of the rights of legitimate interests of participants in the procurement process. It specifies that the Board of the Antimonopoly Committee of Ukraine reviews complaints pertaining to legislation violations. The Board has a three state commissioners. The Article also states that members of the administrative board of the Antimonopoly Commission should recuse themselves from the consideration of cases in which they have a conflict of interest.

#### **Article 9: Civil society Control in the field of Public Procurement:**

This Article stipulates that “civil society control is provided through free access to all information on public procurement which is subject to disclosure under the Law, to the analysis and monitoring of the information contained in the electronic procurement system, as well as through information via e-procurement system, or through agencies authorized to perform controls pertaining to violations of the legislation...”

This Article specifically mentions that participants in the procurement process, contracting authorities, and the Authorized Agency shall facilitate the involvement of the public in monitoring procurement in accordance with the laws of Ukraine on “Civil Society Association”, “on public appeals”, and “on information”

The last paragraph (paragraph 3) in this Article goes on to specify that: “Citizens and civil society organizations and their unions have no right to interfere in the procurement process.”

#### **Chapter III: Article 10: General Conditions of the Procurement Process:**

This Article specifies timeframes for a number of procurement-related decisions such as:

Advertising of procurement opportunities in electronic platforms (based on the estimated value of such procurements);

Bid evaluation reports;

Notification of intention to award;

Rejection of tenders;

Signing of procurement contracts;

Notifications of amendments to procurement contracts;

Reports on contracts performance.

The responsibility for the completeness and accuracy of the information rests with the procuring entity with the chairman and secretary of the tender committee of the procuring entity or authorized person(s). Publication in additional web sites is also authorized (such as local government).

#### **Article 11: Tender Committee and authorized persons of the contracting authority (requirements for the e-procurement system):**

This Article states that tender committees operate on the principles of collegiality and impartiality. Members of the tender committees or authorized persons should not have a conflict of interest. It also defines specific conflict of interests (Paragraph 2 of such Article). It specifically prohibits the participation of deputies of Ukraine in tender committees...

It provides for tender committees’ members to receive training. It also describes the role of tender committees and describes how decisions are made within tender committees, how evaluation

reports are signed and the necessity for a member of the tender committee to justify a refusal to sign an evaluation report (paragraph 4 of the Article). Members of the tender committee or authorized persons are personally responsible for their decisions in accordance with the laws of Ukraine.

**Article 12: Procurement procedures:**

The methods are:

Open tender, competitive dialogue negotiated purchase.

Using these methods the procuring entities within the specified limits must use the e-procurement system.

This Article guarantees non-discrimination and equal rights in the registration process for e-procurement. It also guarantees safe keeping of information. This Article refers to the law of Ukraine on electronic documents.

This Article contains the requirements that the e-procurement system must fulfil (including accreditation of the system) (See paragraph 6 of this Article).

**Article 13: Procurement under Framework Agreements:**

The Authorized Agency is responsible for the features and execution of Framework Agreements. They may not exceed 4 years. Framework agreements may be concluded with one or several parties. In the latter case, at least 3 parties must have submitted offers. When Framework Agreements are concluded with several parties, “call offs” may result in only one party being supplying the goods or performing the services.

**Article 14: Submission during the procurement process:**

This Article provides for submission through the e-procurement system.

**Article 15: Language:**

This Article requires submissions to be made in Ukrainian but accepts authentic translations from another language. It also specifies that the Ukrainian text prevails.

**Article 16: Qualification criteria:**

This is verified by the procuring entity. It applies to equipment, material and technical resources, availability of suitably qualified staff with necessary knowledge and experience, demonstrated experience in similar contracts. Qualifications criteria set by the procuring entity and the list of documents confirming the information submitted by tenderers to prove their compliance with such criteria shall be indicated in the tender documents and requested in the course of negotiations with a tenderer (in the case of a negotiated procedure). For the types of procurement not covered by this Law (such as telecommunication services, procurement of crude oil products, electric power, services of centralized water supply...Lack of documents that are not required by law for submission by tenderers shall not constitute grounds for rejection.

**Article 17: Rejecting a Tenderer:**

Indisputable evidence that the tenderer offers, **gives or agreed to give a reward directly or indirectly** to any officer of the contracting authority, or another public authority in any form.

Tenderer is included in the Unified State Register of Perpetrators of Corruption or Corruption-related Offences.

Officer of the tenderer authorized to represent its interests during a procurement process or individual who is a tenderer has been held liable by law for the commitment of a corruption offence in the field of procurement.

During the last 3 years, tenderer has been held liable for infringing Article 6, paragraph 2, subparagraph 4, Article 50, point 1 of the Law of Ukraine “on Protection of Economic Competition” in the form of anticompetitive concerted actions related to bid rigging.

Individual tenderer convicted of an acquisitive crime.

Officer of tenderer convicted of an acquisitive crime;

Tenderer is related to another tenderer, a person on tender committee, an authorized person of the contracting authority.

Tenderer declared bankrupt, liquidation procedures underway.

The Unified State Register of Legal Entities and Sole Traders contains no information provided for by Article 9, paragraph 2, point 9 of the law of Ukraine “On state Registration of Legal Entities, sole Traders and Public Associations”.

For procurement equal to or exceeding UAH 20 million, the legal entity that is the tenderer has no anti-corruption program in place or no authorized officer in charge of the implementation of the anti-corruption program.

Tenderer has outstanding taxes and duties (rejection not mandatory).

The same Article specifies the conditions under which tenderers can dispute the grounds on which their tender was rejected.

The contracting authority shall not request submission of documentation available in free unified state registers. The Authorized Agency must publish the list of open free unified state registers on its web Portal by January 20<sup>th</sup> each year.

**Article 18: Rules for Filing Complaints:**

The submission is made electronically to the Complaint Review Authority. It is automatically included in the register of complaints and a corresponding registration card is generated. The complaint and the card are automatically published in published on the Authorized Agency’s Web Portal the same day.

The information to be included in the complaint is specified in this Article.

The complaint is automatically sent to the Complaint Review Authority and the contracting authority.

**The amount of the filing fee is determined by the Cabinet of Ministers of Ukraine.**

Depending on the nature of the complaint, the same Article specifies the delay within which the complaint must be filed.

Complaints submitted outside the determined timeframe are rejected automatically by the e-system.

The timing for the Complaint Review Authority to determine whether a complaint is admissible, the timing for such Authority to make a decision on the complaint (15 business days from the start of the complaint review proceeding) are also specified in this Article.

The complaint review procedures is open, the process can be followed electronically (using real time telecommunications system). The decision taken by the Complaint review Authority is announced publicly.

The admission of a complaint results in the suspension by the e-procurement system of the start of the e-auction and, the contract and the evaluation report shall not be published (paragraph 7).

Award of the contract during the complaint review proceedings is prohibited.

Decisions of the Complaint Review Authority may be appealed in court by the Complainant or the contracting authority within 30 days of the date of publication of the decision in the e-procurement system.

This Article specifies in details the content of evaluation reports, including if such is the case the fact that no contract was awarded. Evaluation reports are published in the e-procurement system within one day of the publication of the contract by the contracting authority.

#### **Section IV: Open Procedures:**

##### **Article 20: Conditions for Applying an Open procedure:**

Open procedure is the main procurement procedure, at least 2 tenders shall be received.

##### **Article 21: Announcement of Open Procedure:**

To be published free of charge on the authorized Agency's Web Portal. The content of the announcement and the timing for submission are regulated by this Article.

##### **Article 22: Tender Documents:**

Published free of charge on Authorized Agency's Web Portal for public access. The content of the tender documents is regulated by this Article (i.e. list of evaluation criteria and their respective weight must be published...). Tender documents may contain information of what constitutes a substantial deviation which may result in rejection or a minor deviation...

##### **Article 23: clarifications to Tender documents and Changes:**

Requests for clarifications and clarifications all occur within the e-procurement system. Timing, content and conditions are regulated by this Article.

##### **Article 24: Tender Security:**

If a tender security is required by the contracting agency its terms and conditions shall be stipulated in the tender documents. (type, amount, validity period, and reservations regarding the non-repayment of the security to the tenderer). This Article also provides maximum ranges for tender securities).

**Article 25: Tender Submission Procedure:**

Electronically. The e-procurement system generates a notice of receipt. E-system provides for a possibility for everyone to submit tender on equal conditions. Each tenderer may only submit one tender. Received tenders are automatically registered in the register.

Tenders submitted late are rejected by the system and sent back to tenderer. Contracting authority may require the extension of tenders' validity period and tenderers may accept or refuse such extension.

Tenderers have the right to amend or withdraw a tender before the expiration date.

**Article 26: Procurement Contract Performance Security:**

Conditions for performance securities, including a maximum value of 5% of the contract value are specified in this Article.

**Article 28: Consideration and Evaluation of Tenders:**

This Article provides for: (i) Automatic evaluation by the e-procurement system based on the criteria and methods of evaluation specified by the contracting authority in the tender documents; and (ii) by way of applying an e-auction.

**Tender opening:**

Tenders opened automatically by e-procurement system immediately upon completion of e-auction. Information about prices/discounted prices shall be opened automatically before the start of the auction.

Information contained in the tenders made available in the system, except reasonably classified confidential information. List of tenderers also made available in the system.

This Article specifies how for complex or specialized items (scientific research, consulting services, research and development works...) price along with other criteria such as terms and conditions of payment, completion period, warranty, maintenance costs, transfer of technology and training of managerial, scientific and production staff...must be taken into consideration in the evaluation.

**If additional criteria apply (not only price), the price shall have a minimum weight of 70%.**

**The e-system on this basis s determines the most economically advantageous tender. Thereafter the contracting authority has 5 business days to consider the tenders. This can be extended to up to 20 business days in the system.**

**If the contracts were estimated to cost more than Euros 133,000 for supplies and services contract and Euros 5,150,000 for works contracts, the contracting authority shall consider tenders in terms of their compliance with technical requirements and shall decide whether tenderers comply with the technical criteria before the automatic evaluation of tender takes place within the 20 business days period.**

**If following the results of the tenderers consideration less than 2 tenderers have been admitted for consideration, the procurement procedure is cancelled.**

**Article 29: Electronic Auction:**

Repeated process of lowering prices or adjusted prices taking account of the indicators of other evaluation criteria and based on the formula prescribed by the evaluation method that has 3 stages and runs online in real time. To run the auction prices of all tenders are sorted in the e-procurement system from minimum to maximum. The highest price/adjusted price is the starting price.

This Article defines the conditions for lowering prices...

**Article 30: Rejection of Tenders:**

This Articles specifies the conditions under which a contracting authority can reject a tender. It also specifies that information about rejection of a tender shall be published in the e-procurement system within 1 day of the relevant decision.

Tenderer may require information from contracting authority regarding its non-compliance with the requirements of the tender.

**Article 31: Cancelling a Procurement Procedure by a Contracting Authority or Declaring a Procurement Process Null and Void:**

This Article sets forth the conditions under which a contracting authority can cancel a procurement process. This is all done through a notification in the system.

**Article 32: Making Decisions on Intent to Award the Procurement Contract:**

This decision shall be made by the contracting authority within 1 day of the date of such decision. The contracting authority shall publish the notice on the Authorized Agency's Web Portal and send it to the successful tenderer. The others tenderers shall also be notified automatically by the e-procurement system.

Any unsuccessful tenderer may request information through the e-system regarding the advantages of the tender submitted by the successful tenderer. The contracting authority has 5 days to respond.

To allow for potential procurement complaints to be submitted, the contract may not occur sooner than 10 days after the publication of the notice of intent to award.

**Section V: Competitive Dialogue:**

**Article 33: Conditions for Applying a Competitive Dialogue:**

Competitive dialogue can be applied if:

This Article specifically states that competitive dialogue may be applied if the procurement item is consulting services, legal services, development of information systems, software, scientific research, experiments or technical development, research and design construction works, for which the requirements may only be developed through negotiations.

**Article 34: Competitive Dialogue Procedure:**

Information about the procedure must be published on the Authorized Agency's Web Portal. Tender documents must include information necessary for tenderers to take part in the procedure.

Competitive dialogue is held in 2 stages:

**Stage 1:** All can submit qualifications and information about requirements required by the contracting authority and description of proposed solution, without mentioning a price.

This Article sets forth all the conditions for the disclosure of information during the first stage and the consideration of the tenders by the contracting authority to establish their compliance with the requirements. **All tenderers that are not rejected at the first stage are invited for negotiations. There must be at least 3 tenderers for the negotiations to proceed.**

**The contracting authority holds a dialogue with all tenderers whose tender was not rejected.. All aspects of procurement can be discussed for the purposes of identifying means and solutions in respect of the work or services to be procured.**

**In the course of negotiations the contracting authority shall not apply a discriminatory approach nor disclosed the proposed solution.**

**Following the dialogue, the contracting authority shall modify the technical documents in terms of technical requirements or shall set out new characteristics and invite all tenderers who participated in the dialogue to participate in the second stage.**

**Stage 2:** Tenderers are required to submit their final tenders and propose their price. Timing and consideration and evaluation of such tenders are stipulated in the Law.

**At the end of the second stage, the procurement contract is awarded to the successful tenderer.**

**Section VI: Negotiated Procedure:**

**Article 35: Conditions for Applying a negotiated Procedure:**

**This is an exceptional procedure where the contracting authority awards a contract after holding negotiations with one or several tenderers.**

**The conditions under which this can be done are fairly detailed in this Article (i.e. lack of competition in the relevant market...). In some cases, however, it is going to be difficult to question whether the contracting agency has acted correctly. For instance, if in a case of force majeure there is a need to perform additional construction works not included in the original contract, to complete a project...**

**At the end of the process, the contracting authority must publish a notice stating its intention to award and other parties have a right to complain. The contract cannot be awarded earlier than 10 days following the date of publication.**

**Except in the cases of award of contracts for the procurement of: crude oil and oil products, electric power transmission and distribution, district heat supply, district hot water supply, district heating, postal services, stamps and stamped envelopes, telecommunication services, including transmission of radio and television signals, district water supply, and/or sewerage, public rail transportation; where the award of the contract can take place within 5 days of publication of the notice of intention to award.**

**The conditions for the cancellation of the negotiated procedures by the contracting authority are also specified in this Article.**

**Section VII:**

**Procurement contract:**

**Article 36: Main Requirements**

**Contracts must be concluded in accordance with the provisions of the civil Code of Ukraine and the commercial Code, subject to specific rules established by the Procurement law.**

**This Article states the principles that: (i) the terms and conditions of the contract shall not deviate from the tender submitted as a result of the auction by the tenderer or the price offered by the tenderer in case of a negotiated procedure; and (ii) the essential terms and conditions of a contract may not be modified after signing the contract and until the parties have fulfilled their obligations under the contract in full.**

**Exceptions to these principles are specifically enumerated in this Article and they either prohibit, or limit strictly any change in the contract's price.**

**Article 37: Invalid procurement contract:**

**This Article stipulates the conditions under which a contract is null and void.**

**These provisions are meant to prevent the award of a contract under certain circumstances: (i) during the review of a complaint by the Complaint Review Authority; or (ii) during the review of a complaint in court against a procurement process; or (iii) before the expiration of the delay for the publication of notices of intent to award.**

**Section VIII: Liability in the Field of Public Procurement:**

**Liability for the Violation of Requirements of this Law:**

This Article states that members of the contracting authority's tender committee, authorized person(s) members of the Complaint Review Authority, officers of the Authorized Agency, and officers of the treasury services (servicing banks) **shall be liable in accordance with the laws of Ukraine for the violation of requirements of this Law and regulations developed pursuant to this Law.**

Members of tender committees or authorized persons **shall bear personal responsibility** for their decisions, selection and application of procurement procedures.

**Section IX: Final and Transitional Provisions:**

This Section specifies that the Law will enter into force on April 1, 2016, for central executive bodies and contracting authorities operating in certain areas of economic activity and on August 1, 2016, for the rest of contracting authorities.

**It specifies that the following laws are repealed:**

Law of Ukraine: "On Peculiarities of Procurement in Specific Areas of Economic Activity" (from 2014);

Law of Ukraine: "On Public Procurement" (from 2014).

It also introduces amendments into a number of legislative acts such as: Code of Administrative Offences, Economic Code of Ukraine, Civil Procedure Code of Ukraine, Law of Ukraine on the principles of social welfare of people with disabilities, Law of Ukraine on the Antimonopoly Committee of Ukraine...

In the code of Administrative Offences, it introduces the imposition of fines on authorized officials for violation of the Procurement Law. In case of repeated offence within 1 year, by persons already charged with an administrative fine is punishable by an additional fine.

**Within 1 month of the law entering into effect, it also requires the Cabinet of Ministers to:**

- (i) bring its regulation into compliance with the Law;**
- (ii) cause ministries and other central executive bodies to bring their regulatory framework into compliance with this Law; and**
- (iii) cause the adoption of regulation necessary for the implementation of this Law.**

**October 5, 2016**

## Questions and Comments on Ukraine Public Procurement Law

1. The Law on Public Procurement, Law No. 992-VIII (The Law), was adopted by the Parliament on December 25, 2015, and it entered into effect on February 19, 2016. It entered into force on April 1, 2016, for central executive bodies and contracting authorities operating in certain areas of economic activity and, on August 1, 2016, for the rest of the contracting authorities.
2. This document highlights some salient points in the Law and contains some questions to help us understand better the environment. The questions are in blue boxes and they are organized by topic.
3. The Law in its Section IX on Transitional Provisions specifically repeals the following laws: (i) The Law of Ukraine: "On Peculiarities of Procurement in Specific Areas of Economic Activity" (Vidomosti of the Verkhovna Rada of Ukraine, 2013, issue no.17, p.148, No.41, p. 551,2014, No.22,p.781, No.24, p.883; 2015, No. 46. P.414); and (ii) the Law of Ukraine: "On Public Procurement" ( Vidomosti of the Verkhovna Rada of Ukraine, 2014, No.24, p.883, as amended)).
4. The procurement system is a decentralized system with a large number of contracting authorities (about 15,000). Below is a summary of the main functions exercised by key central entities/bodies under the Law:

Entities	Functions
Authorized Agency: Ministry of Economy Development and Trade (MEDT)	Executive body in charge of the national public procurement policy
Anti-Monopoly Committee	Complaint review authority
State Financial Inspection	Control functions
Accounting Chamber	Control functions

Anti-Monopoly Committee	Control functions
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**5. The Law sets up the entire e-procurement system and defines the functions of the Authorized Agency electronic platform.** The procurement methods encompassed in the Law are: Open tender, competitive dialogue, and negotiated purchase. Framework Agreements can be used and cannot exceed four years. The Authorized Agency is responsible for their implementation. **Although the Law is clear on the right to have access to information and facilitating the involvement of the public in monitoring procurement, it is not clear as to the specific role of CSOs in monitoring.** Additionally, it also stipulates that “citizens and civil society organizations and their unions have no right to interfere in the procurement process.”

**6. The e-procurement system** covers the procurement process from planning and publication of the procurement plan, up to award of the contract. Additionally, it also includes the evaluation of tenders and the submission and tracking of complaints, the publication of contract amendments, and of contract performance reports. Concerning contract administration and management, there does not seem to be a module covering these activities.

**Questions:**

The Law does not mention the State-Owned Enterprise (SOE). What is its role and what are its functions?

In terms of functionality of the E-procurement system, it will be essential for us to ascertain which features of the system have already been rolled out?

Whether any features/functionality have not been implemented yet?

Is the E-procurement system integrated with the country’s financial management system (Treasury, budget, payments)?

7. The Law provides for a number of essential definitions in a modern and competitive public procurement system, **it is fairly focused on compliance and would be enhanced by the adoption of specific regulations in a number of areas such as CSOs monitoring and fraud and corruption prevention and detection.**

8. The Law defines **the E-procurement system** as an information and telecommunications system that allows the procurement procedures, creation, placement, publication and exchange of information and documents in electronic form, which includes the Authorized Agency Web Portal, authorized electronic platforms, between which secured automatic exchange of information and documents takes place.

9. It defines **procurement monitoring** as the analysis of a contracting authority’s compliance with public procurement laws at all stages of the procurement process through systemic observation and analysis of information using the e-procurement system.

**Scope of Law:** The Law applies to the following procurement values (estimated contract value):

Goods	Works	Services	Use of E-procurement System

UAH 200, 000	UAH 1.5 million	UAH 200, 000	Mandatory
Contracting authorities operating in certain areas of economic activity: UAH 1 million	Contracting authorities operating in certain areas of economic activity: UAH 5 million	Contracting authorities operating in certain areas of economic activity: UAH 1 million	Mandatory

10. Below these limits, procurement entities do not have to use the e-procurement system but they can if the procurement amounts to at least UAH50, 000. In all cases whether they use the e-procurement system or not, contracting authorities must adhere to the principles of public procurement established by the law.

**11. Principles of Procurement:** The Law mentions the following principles: Competition, economy, efficiency, openness, transparency, non-discrimination, objective and impartial evaluation of tenders. The right combination of these principles and the use the concept of “the most economically advantageous proposal” as defined by the Law, result in Value for Money (VfM). The Law also refers to the **prevention of corruption and abuse**.

**Questions:**

As a combination of factors, VfM is not an easy concept to apply, is staff in contracting authorities receiving any training to that effect?

There does not seem to be a definition of corrupt practices and abuse in the Law and we will have to ask where they can be found.

**12. State Regulation and Control in Procurement:** The Authorized Agency (the Ministry of Economy Development and Trade) regulates and implements state policy in the field of procurement and also in the field of treasury services, budget and payment. Procurements, to be eligible for payments need to be included in the procurement plan. Payments must correspond to existing legal obligations of contracting authorities.

The Authorized Agency also controls the following:

- Non-compliance with legal requirements
- Cancellation of procurements
- Enforcement of courts’ decisions invalidating procurement processes
- Period of suspension of the procurement procedure (standstill period?)

The Authorized Agency is specifically in charge of the following activities:

- Development and adoption of regulations for the implementation of the Act;
- Analysis of the public procurement system;
- Preparation of an annual report on the country’s public procurement system for the Rada, the Cabinet of Ministers and the Accounting Chamber;
- Synthesis of procurement practices, including international practices;
- Study and dissemination of experiences in procurement;
- Functioning of the web portal and information system;
- Filling out the information resource;
- Interaction with the public on improvements of the public procurement system;
- Organization of seminars and meetings on procurement;
- International cooperation in the field of procurement;

- Development and approval of: tender documentation, regulation on tender committee or authorized person(s), definition of purchase order, the placing of information on public procurement, procurement forms, the annual procurement plan, advertisement of public procurement, registry of received tenders, bid evaluation reports, notice of intention to conclude a contract, report on procurement process, report on the implementation of the procurement contract, notification on contract amendments, reports on signed contracts.
- Provision of advice and guidance on application of the legislation on public procurement;
- Provision of free consultations on procurement information resource of the Authorized Agency;
- Developing sample curricula on organization and procurement;
- Cooperation with state bodies and public organizations to prevent corruption in procurement;
- Informing the public about public procurement policies;
- Authorization of electronic platforms.

**Questions:**

This is a vast task that is entrusted to the Authorized Agency. What is the status of all these activities? Which capacity does the Authorized Agency have (staffing, technical, and budgetary) to exercise these multiple functions?

How about training (development of curricula)?

The Law does not encompass a systematic training framework, it nor does it mention any professionalization of the procurement function or require Authorized Agency staff and contracting agencies staff to receive appropriate training. It only mentions the “development of training curricula” by the Authorized Agency.

Concerning members of tender committees, although the Law mentions that they should receive training, the issue is the same, there is no systematic training provided for.

Is the issue of systematic training and professionalization being addressed in some new regulation?

13. The same Article in the Law mentions the Accounting Chamber and the Antimonopoly Committee of Ukraine as exercising controls in the field of procurement and financial management, in accordance with the laws of Ukraine and the Constitution.

**Question:**

We should get clarification as to the respective roles of, the Accounting Chamber, the State Financial Inspection and the Antimonopoly Committee in controls.

**14. The Anti-monopoly Committee of Ukraine:** It is described as an appeal body for the protection of the rights of legitimate interests of participants in the procurement process. The Board of the Antimonopoly Committee of Ukraine reviews complaints pertaining to legislation violations. The members of the administrative board of the Antimonopoly Commission should recuse themselves from the consideration of cases in which they have a conflict of interest.

**15. Civil society Control in the field of Public Procurement:** The Law stipulates that “civil society control is provided through free access to all information on public procurement which is subject to disclosure under the Law, to the analysis and monitoring of the information contained in the electronic procurement system, as well as through information via the e-procurement system, or through agencies authorized to perform controls pertaining to violations of the legislation...”

16. The Law specifically mentions that participants in the procurement process, contracting authorities, and the Authorized Agency shall facilitate the involvement of the public in monitoring procurement in accordance with the laws of Ukraine on “Civil Society Association”, on “public appeals”, and on “Information”

**Questions:**

Although the Law is clear on the right to have access to information and facilitating the involvement of the public in monitoring procurement, it is not clear as to the role of CSOs in monitoring.

Additionally, it also stipulates that “citizens and civil society organizations and their unions have no right to interfere in the procurement process.”

Since the adopting of the Law was any regulation was passed to specify what the role of CSOs?

What is meant by “interfering”? What is the difference between monitoring and interfering?

Monitoring is free of charge as indicated in the law. The lodging of a complaint, however, requires the payment of a filing fee the amount of which is determined by the Cabinet of Ministers.

Also in some cases, it is going to be difficult for CSOs to do an effective monitoring if they do not have reliable information on past prices for similar contracts.

Is the database mentioned as part of the E-procurement system readily available?

Has the systematic entry of data into such database and its availability been regulated?

Based on the law, it does not seem that there is a dedicated procedure for CSOs to lodge a complaint in front of the Anti-Monopoly Committee, it seems to be the same procedure as for any other party to the procurement process with specific requirements (in terms of time and content of the complaint), depending on the action/omission challenged.

We need to check the laws on public information disclosure, and civil association disclosure to determine what they mention about procurement monitoring.

It would be interesting to find out how many complaints were lodged by CSOs since the implementation of the Law?

In terms of corruption prevention and detection, we should find out if the Anti-Monopoly Committee can act on its own volition?

Are decisions rendered by the Anti-Monopoly Commission in connection with fraud and corruption published and accessible by CSOs? (They could provide a good source of

**17. Tender Committee and authorized persons of the contracting authority:** Tender committees operate on the principles of collegiality and impartiality. Members of the tender committees or authorized persons should not have a conflict of interest. The Law defines specific conflict of interests and specifically prohibits the participation of deputies of Ukraine in tender committees... it specifies that members of the tender committee or authorized persons are held personally responsible for their decisions in accordance with the laws of Ukraine. It also describes the role of tender committees and describes how decisions are made within tender committees, how evaluation reports are signed and the necessity for a member of the tender committee to justify a refusal to sign an evaluation report.

**Question:**

The Code of Administrative Offences of Ukraine refers to the imposition of fines in cases of violation of the Procurement Legislation. Is there other sanctions?

Is this being addressed under new regulation?

**18. Rejecting a Tenderer:** The Law provides for specific conditions under which a tenderer should be rejected, for instance, corruption, bid rigging, inclusion of a tenderer in the Unified Register of Perpetrators of Corruption or Corruption-related Offences, lack of anti-corruption program in the tenderer's entity when the contemplated contract is estimated to exceed UAH 20 million...

**Questions:**

For this provision to be enforceable by the contracting authorities, they need to have access to all the relevant information such as the Unified Register of Perpetrators of Corruption or Corruption-related Offences. Is this information made public?

Conversely, for the CSOs to be able to question the admission of a particular tenderer to a procurement process, they also need to have access to the relevant information?

Is any new regulation going to make this possible?

To prevent undue requirements by contracting authorities, the Law further stipulates that contracting authorities shall not request submission of documentation available in free unified state registers. The Authorized Agency must publish the list of open free unified state registers on its web Portal by January 20<sup>th</sup> each year.

Are these registers readily available?

**19. Rules for Filing Complaints:** The submission is made electronically to the Complaint Review Authority. It is automatically included in the register of complaints and a corresponding registration card is generated. The complaint and the card are automatically published on the Authorized Agency's Web Portal the same day. The complaint is automatically sent to the Complaint Review Authority and the contracting authority. **The amount of the filing fee is determined by the Cabinet of Ministers of Ukraine.** Depending on the nature of the complaint, the same Article specifies the delay within which the complaint must be filed. Complaints submitted outside the determined timeframe are rejected automatically by the e-system. The timing for the Complaint Review Authority to determine whether a complaint is admissible, the timing for such Authority to make a decision on the complaint are also specified in this Article. The complaint review procedures is open, the process can be followed electronically (using real time telecommunications system). The decision taken by the Complaint review Authority is announced publicly. The admission of a complaint results in the suspension by the e-procurement system and of the start of the e-auction and, the contract and the evaluation report shall not be published. Award of the contract during the complaint review proceedings is prohibited.

**20. Decisions of the Complaint Review Authority may be appealed in court by the Complainant or the contracting authority within 30 days** of the date of publication of the decision in the e-procurement system. This Article specifies in details the content of evaluation reports, including if such is the case the fact that no contract was awarded. Evaluation reports are published in the e-procurement system within one day of the publication of the contract by the contracting authority.

**Questions:**

How much is the filing fee for a complaint?

Is the register of complaints already available? Is the Complaint Review Authority already functioning?

Is this feature allowing the attendance in real time to the complaint review process already available in the E-procurement system?

Is there any particular regulation that needs to be adopted to that effect?

Is the feature allowing the publication of evaluation reports in the E-procurement system already available?

Is there any particular regulation that needs to be adopted to that effect?

**21. Consideration and Evaluation of Tenders:** The E-procurement system provides for: (i) Automatic evaluation by the e-procurement system based on the criteria and methods of evaluation specified by the contracting authority in the tender documents; and (ii) by way of applying an e-auction.

22. For complex or specialized items (scientific research, consulting services, research and development works...) price along with other criteria such as terms and conditions of payment, completion period, warranty, maintenance costs, transfer of technology and training of managerial, scientific and production staff...must be taken into consideration in the evaluation.

23. If additional criteria apply (not only price), the price shall have a minimum weight of 70%. The e-system on this basis determines the most economically advantageous tender. Thereafter the contracting authority has 5 business days to consider the tenders. This can be extended to up to 20 business days in the system.

24. If the contracts were estimated to cost more than Euros 133,000 for goods and services contracts, and Euros 5,150,000 for works contracts, the contracting authority shall consider tenders in terms of their compliance with technical requirements and shall decide whether tenderers comply with the technical criteria before the automatic evaluation of tender takes place within the 20 business day period.

**Questions:**

How can an evaluation be done purely by an electronic system?

How can tenders be evaluated on the basis of an e-auction? Usually this is either a tendering processes taking into consideration technical and financial aspects of the tender, or; an e-auction processes purely based on price and used for common goods but not both.

Additionally this is opened for any type of procurement even non-common goods, civil works or consulting services?

Is this feature combining the characteristics of a tender process and an e-auction readily available in the system?

How is it working out?

Have there been repeated issues of contract execution (breach of contracts)?

**25. Electronic Auction:** This is a repeated process of lowering prices or adjusting prices taking account the indicators of other evaluation criteria and based on the formula prescribed by the evaluation method that has 3 stages and runs online in real time. To run the auction, prices of all tenders are sorted in the e-procurement system from minimum to maximum. The highest price/adjusted price is the starting price.

**26. Rejection of Tenders:** The conditions under which a contracting authority can reject a tender are specified in the Law. The information concerning the rejection of a tender shall be published in the e-procurement system within 1 day of the relevant decision. A tenderer may require information from the contracting authority regarding its non-compliance with the requirements of the tender.

**Questions:**

Is the e-auction fully available in the E-procurement system?  
What have been the results?  
Percentage of complaints in connection with e-auction?  
What is the percentage of complaints with regard to tender rejections?

**27. Competitive Dialogue Procedure:** This is a fairly sophisticated procedure which requires proper training, particularly the dialogue part.

**Questions:**

As this part does not take place online, it is difficult to verify that when holding a dialogue with the tenderers there is no discriminatory treatment of one tenderer by the contracting authority? Or that no information is provided concerning the proposed solution?

**28. Conditions for Applying a Negotiated Procedure:** This is an exceptional procedure where the contracting authority awards a contract after holding negotiations with one or several tenderers.

The conditions under which this can be done are fairly detailed in this Law (i.e. lack of competition in the relevant market...).

**Questions:**

In some cases, however, it is going to be difficult to question whether the contracting agency has acted correctly as it is going to require a fairly good knowledge of a particular market.

**29. Main Requirements for Contracts:** Contracts must be concluded in accordance with the provisions of the civil Code of Ukraine and the Commercial Code, subject to specific rules established by the Procurement law. The terms and conditions of the contract shall not deviate from the tender submitted as a result of the auction by the tenderer or the price offered by the tenderer in case of a negotiated procedure. Also, the essential terms and conditions of a contract may not be modified after signing the contract and until the parties have fulfilled their obligations under the contract in full. **Exceptions to these principles are specifically enumerated and they either prohibit, or limit strictly any change in the contract's price.**

**Questions:**

In some cases, however, it might be difficult to prove that the contracting authority acted inappropriately. For instance, if a contract is extended at the end of the year, to allow for sufficient time for the procurement process to take place the following year, provided the procurement does not exceed 20% of the amount specified in the original contract.

In such cases, it could be easy for contracting authorities to delay procurement planning for that particular process or the start of a procurement process. How do you question that?

**30. Liability in the Field of Public Procurement for the Violation of Requirements under the Law:**

Members of the contracting authority's tender committee, authorized person(s) members of the Complaint Review Authority, officers of the Authorized Agency, and officers of the treasury services (servicing banks) **shall be liable in accordance with the laws of Ukraine for the violation of requirements of this Law and regulations developed pursuant to this Law.**

31. Members of tender committees or authorized persons **shall bear personal responsibility** for their decisions, selection and application of procurement procedures.

**Questions:**

What does it take to establish a violation of the requirements of the Law by the persons designated above?

Who can do it?

What is the procedure?

In front of which body can this procedure be brought?

What are the sanctions that can be applied and by whom?

Which regulation apply to these issues?