

Reference: CU 2024/132(A)/DTA/CEB/TSS

Subject line: **Fifteenth session of the Working Group on the Prevention of Corruption**

Annex I

Prevention of corruption in procurement at various government levels, including good practices, lessons learned and challenges, and the effective use of technology to prevent, detect, deter and counter corruption in procurement

I - Information requested from States parties and signatories in relation to prevention of corruption in procurement at various government levels and the effective use of technology to prevent, detect, deter and counter corruption in procurement (arts. 9 and Conference resolution 10/9).

1. Please describe (cite and summarize) the measures/steps your country has taken (or is planning to take) to implement this provision of the Convention.

In relation to integrity in public procurement processes, States parties and signatories may wish to cite and describe measures that:

- **Ensure the national procurement system is based on principles of transparency, competition and objective criteria in decision-making;**

According to the Article 5 of the Law of Ukraine “On Public Procurement” (hereinafter – the Law), the principles of public procurement include fair competition among bidders, openness and transparency at all stages of procurement, non-discrimination of bidders and equal treatment of bidders, objective and impartial determination of the winner of the procurement procedure or simplified procurement, and prevention of corruption and abuse.

Bidders (residents and non-residents) of all forms of ownership and organisational and legal forms shall participate in procurement procedures or simplified procurement on equal terms.

Procuring entities shall ensure free access for all bidders to the procurement information provided by the Law.

Procuring entities are not entitled to set any discriminatory requirements for bidders.

- **Establishing in advance the conditions for participation, including selection and award criteria and tendering rules;**

According to the Law, all public procurements are conducted electronically.

The procurement system is publicly available and guarantees non-discrimination, equal rights during registration for all interested persons, and equal access to information for all persons. When conducting public procurements, the customer publishes the procurement announcement and tender documentation for free access to the electronic procurement system “Prozorro” (hereinafter – the System).

Pursuant to Article 21 of the Law, the announcement of an open bidding must contain the following information:

- 1) the name, location, and identification code of the procuring entity in the Unified State Register of Legal Entities, Individual Entrepreneurs, and Public Associations, its category;
- 2) the name of the procurement item with the code according to the Common Procurement Vocabulary (in case of division into lots, such information shall be specified for each lot) and the names of the relevant classifiers of the procurement item and parts of the procurement item (lots) (if any);
- 3) quantity and place of delivery of goods, scope and place of performance of works or provision of services;
- 4) the expected value of the procurement item;
- 5) the term of delivery of goods, performance of works, and provision of services;
- 6) deadline for submission of tender proposals;
- 7) terms of payment;
- 8) language(s) in which tender proposals shall be prepared;
- 9) the amount, type, and conditions for providing tender security (if the procuring entity requires it);
- 10) the date and time of tender proposal disclosure, if the announcement of open bidding is made public in accordance with Part 3 of Article 10 of the Law;
- 11) the size of the minimum price reduction step during the electronic auction within the range of 0.5 per cent to 3 per cent of the expected value of the procurement, or in monetary units;
- 12) the mathematical formula for calculating the reduced price (if applicable).

Article 22 of the Law defines the information that must be specified in the tender documentation. Failure to publish the information provided in Article 22 of the Law violates the Code of Ukraine on Administrative Offences and, accordingly, imposes a fine on the Authorized Person responsible for the Customer's procurement.

Must be specified in the tender documentation, including:

- information on the necessary technical, qualitative, and quantitative characteristics of the subject of purchase;
 - qualification requirements for participants, grounds for refusal to participate, and a way for participants to confirm their compliance with these requirements;
 - the list of evaluation criteria and tender evaluation methodology, with an indication of the specific weight of each criterion;
 - the draft contract and others are posted.
- Provide for sufficient time to potential tenders to prepare and submit their tenders and using by default an open tender procedure;**

Pursuant to Article 20 of the Law, the term for submission of tender proposals may not be less than 15 days from the date of publication of the announcement of open bidding in the electronic procurement system.

If the announcement of an open bidding is published in accordance with Part 3 of Article 10 of the Law, the deadline for submission of tender proposals may not be less than 30 days from the date of its publication.

Part three of Article 10 of the Law stipulates that announcements of competitive procurement procedures within the timeframe specified in Part 1 of this Article shall be additionally published in the electronic procurement system in English if the expected value of the procurement exceeds the amount equivalent to:

for goods and services - 133 thousand euros;

for works - 5,150 thousand euros.

The minimum terms for submission of tender proposals by procurement participants, the terms of the clarification period, and the terms of the appeal are determined by the Law; in addition, the System has validations that do not provide the technical possibility for customers to set terms shorter than those defined by regulations.

According to the Law, the main procurement procedure is open tenders. Non-competitive procurements are used if there are grounds for their use and on the condition of providing justification for the existence of such grounds.

- **Provide for transparent publishing of all procurement decisions including publishing the invitations to tender;**

Article 10 of the Law stipulates that the procuring entity shall independently and free of charge publish in the electronic procurement system, in accordance with the procedure established by the Authorized Body and the Law, information on procurement, including announcements of competitive procurement procedures or simplified procurement and notifications of intention to conclude a procurement contract.

In addition, the Law provides that the tender documentation developed and approved by the procuring entity, which contains the terms and conditions of the tender, shall be made publicly available in the electronic procurement system.

The procurement process in the System is open, so any citizen can view information about any procurement on the **prozorro.gov.ua** web portal, including procurement announcements, tender documentation, requests for clarifications regarding tender documentation, complaints on the procurement conditions, the customer's decision or the cancellation of the purchase, as well as the decision of the appeal body, the documents of the participants' proposals, the customer's decision on the participants, the grounds for rejecting the participant (in case of rejection), the concluded contract, etc.

- **Establish procedures, rules and regulations for review of the procurement process, including a system of appeal;**

In the System, participants can challenge the conditions of the tender documentation and the customer's decisions. Pursuant to Article 18 of the Law, the Antimonopoly Committee of Ukraine, as an appeal body, in order to impartially and effectively protect the rights and legitimate interests of persons related to participation in procurement procedures, establishes a Commission (commissions) Review of Complaints on Violation of Legislation in the Field of

Public Procurement and performs other powers specified by this Law and the Law of Ukraine “On the Antimonopoly Committee of Ukraine”. An independent body reviews complaints – the Commission for Review of Complaints on Violation of Legislation in the Field of Public Procurement. Decisions of the Commission for Review of Complaints on Violation of Legislation in the Field of Public Procurement are made on behalf of the Antimonopoly Committee of Ukraine.

The Antimonopoly Committee of Ukraine (the Appeal Authority) has its own electronic office in the electronic procurement system and carries out all its actions regarding complaints through a personal office. The entire appeal process is transparent, so anyone can review the appeal in the System and additional requests to the participant and the customer from the Appeal Authority regarding the terms of the appeal and the Appeal Authority's decision.

A complaint to the appeal body shall be submitted by the subject of the complaint in the form of an electronic document through the electronic procurement system. Suppliers can submit their complaints online through the electronic procurement system and challenge discriminatory procurement conditions and customer decisions, such as rejecting a participant's offer.

A fee is charged for filing a complaint with the appeal body through the electronic procurement system. For submitting a complaint, the participant must pay a fee determined by the Law and calculated as a certain percentage of the expected purchase price. However, if the complaint is satisfied (even partially), all paid funds are returned to the participant. This approach allows participants to protect their rights during procurement.

Within a period not exceeding three working days from the date of entry of the complaint into the register of complaints, the appeal body shall post in the electronic procurement system a decision to accept the complaint for consideration, indicating the date, time and place of consideration of the complaint, or a reasoned decision to leave the complaint without consideration.

Decisions based on the results of consideration of complaints shall be made at a meeting of the Commission for Review of Complaints on Violation of Legislation in the Field of Public Procurement.

Procuring Entity is prohibited from taking any actions and making any decisions regarding the procurement procedure, including decisions to cancel the procurement or declare it as not having taken place, cancel the negotiation procurement procedure, conclude the procurement contract, except for actions aimed at eliminating the violations specified in the complaint.

If the procuring entity eliminates the violations specified in the complaint, the procuring entity shall notify the appeal body within one business day after the violation is eliminated and post the confirmation in the electronic procurement system.

Within one working day after the decision on the results of the complaint consideration is made, the appeal body shall provide information on the resolution part of the decision in the electronic procurement system and, within three working days from the date of its adoption, shall post the decision in the electronic procurement system.

The decision based on the results of the complaint consideration shall be automatically published in the electronic procurement system immediately after its placement in the electronic procurement system and sent to the subject of the complaint and the procuring entity.

Decisions of the appeal body shall come into force from the date of their adoption and shall be binding on procuring entities and persons concerned. Failure to comply with the decision of the appeal body is a violation of procurement legislation and is grounds for bringing the Customer's manager to administrative responsibility.

The decision of the appeal body may be appealed by the subject of the appeal, the procuring entity, to the district administrative court with territorial jurisdiction over Kyiv within 30 days from the date of its publication in the electronic procurement system.

The right to appeal does not limit the right of the subject of the appeal to apply to the court without first applying to the appeal body.

• Provide for a thorough selection of personnel responsible for procurement, including screening procedures; as well as establishing a conflict of interest management system with declarations of interest and methods to resolve conflicts in particular cases;

Paragraph 35 of Part 1 of Article 1 of the Law stipulates that an authorized person is an official or other person who is an employee of the procuring entity and is responsible for organising and conducting procurement or simplified procurement procedures in accordance with the Law on the basis of the procuring entity's own administrative decision or employment agreement (contract).

According to Part 10 of Article 11 of the Law, the authorized person is:

- 1) plans procurement and forms an annual procurement plan in the electronic procurement system;
- 2) selects the procurement procedure;
- 3) conducts procurement procedures or simplified procurement;
- 3¹) publish in the electronic procurement system a report on the procurement contract concluded without the use of the electronic procurement system in case of procurement in accordance with Part 7 of Article 3 of the Law;
- 4) ensure equal conditions for all bidders, objective and fair selection of the winner of the procurement procedure or simplified procurement;
- 5) ensure the preparation, approval and storage of relevant documents on public procurement issues specified by the Law;
- 6) ensure publication in the electronic procurement system of information necessary to fulfil the requirements of the Law;
- 7) perform other actions stipulated by the Law.

In particular, according to Article 11 of the Law, the appointment of an authorized person shall not create a conflict between the interests of the procuring entity and the bidder or between the interests of the participants of the procurement procedure or simplified procurement, which may affect the objectivity and impartiality of decision-making on the selection of the winner of the procurement procedure or simplified procurement. For the purposes of the Law, a conflict of interest is a private interest of an employee of the procuring entity or any person or body acting

on behalf of the procuring entity and participating in the procurement procedure or simplified procurement or that may affect the results of this procurement procedure or simplified procurement, which may affect the objectivity or impartiality of its decision-making or the performance or non-performance of actions during the procurement procedure or simplified procurement, and/or a conflict between the private interest of the employee of the procuring entity and the interests of the participants in the procurement procedure or simplified procurement.

An authorized person must have an university degree, usually in law or economics.

Officials and representatives of participants, members of their families, as well as people's deputies of Ukraine, deputies of the Verkhovna Rada of the Autonomous Republic of Crimea and deputies of city, district, regional councils cannot be appointed as authorized persons.

Also, the website of the Authorized Body for Public Procurement, available at <https://bit.ly/4aFaPij>, there is a letter of the Ministry of Economy of Ukraine on ethical behaviour in public procurement and guidelines on ethical behaviour of participants or potential participants in public procurement.

Additionally, the Strategy for Reforming the Public Procurement System for 2024-2026 and the Operational Plan for its Implementation in 2024-2025, approved by the Cabinet of Ministers of Ukraine on 02.02.2024 No. 76-p, include a measure that provides for the update and regulatory consolidation of the rules of ethical behaviour of public procurement entities.

• Put in place other administrative practices promoting integrity in procurement (such as the rotation of personnel, debarment procedures, etc.).

Article 17 of the Law defines the cases when the procuring entity decides to deny a bidder participation in the procurement procedure and is obliged to reject the bidder's tender proposal or deny participation in the negotiation procedure, in particular, if: the procuring entity has conclusive evidence that the bidder, proposes, gives or agrees to give, either directly or indirectly, any officer (official) of the procuring entity, any other public authority a reward of any form (a job offer, something of value, a service etc.) in order to influence the decision on the winner of procurement procedure or consideration of the documents submitted by the bidder, or application of the specific procurement method prescribed by this Law by the procuring entity; an official (officer) of the bidder authorised by the bidder to represent its interests during the procurement procedure, an individual who is a bidder, has been brought to justice in accordance with the law for committing a corruption offence or an offence related to corruption.

The System displays information about participants excluded from participation in public procurement by the decision of the Antimonopoly Committee of Ukraine. Such a decision may be taken about participants who, in the past, committed anti-competitive concerted actions that led to the distortion of the results of the auctions.

2. Please describe (cite and summarize) the measures/steps your country has taken, if any (or is planning to take, together with the related appropriate time frame) to promote the effective use of technology to prevent, detect, deter and counter corruption in procurement.

States parties and signatories may wish to provide information on measures that:

- **Utilize technology, such as online platforms for the distribution of information relating to public procurement and tenders as a way to prevent corruption, enhance transparency and ensure competition and objective criteria in procurement decision-making.**

On 1 August 2016, the electronic procurement system became mandatory for all public procuring entities conducting public procurement in Ukraine. The introduction of the electronic procurement system was a real breakthrough in the reform of public procurement. The e-procurement system has made the procurement process fully open and transparent at all stages.

In Ukraine, following the Law all public procurements are conducted in the System. The customer must make information about the procurement and the terms of participation in it public for public access. Participants also submit their proposals electronically by filling in electronic fields and uploading files. Information about the entire procurement process, including participant offers, is available for viewing by any user.

The procurement system is publicly available and guarantees the absence of any discrimination, equal rights during registration for all interested parties, and equal access to information for all persons. The electronic procurement system consists of a central database and authorized electronic platforms; customers and participants register and work in the System through the electronic platform they choose. Information about purchases on the web portal of the Authorized Body prozorro.gov.ua and all marketplaces is identical.

One of the main principles of the System is "everyone sees everything". The entire procurement process is displayed on the prozorro.gov.ua web portal and on all electronic platforms that are part of the unified information and telecommunications system: from the announcement of the procurement to the determination of the winner, the conclusion of the contract, additional agreements, the execution of the contract and the payment thereof.

Information sought may, in particular, include the following:

- Description of any electronic system of public procurement, including, for example:

- **The means by which tender invitations are published;**

According to Article 10 of the Law, the procuring entity shall independently and free of charge through authorized electronic platforms publish in the electronic procurement system in accordance with the procedure established by the Authorized Body and this Law, information on procurement, including announcements of competitive procurement procedures, tender documentation, amendments, protocols and draft procurement contract.

- **The inclusion of all pertinent information on the award of contracts;**

The Law stipulates that, based on the results of consideration and evaluation of the tender proposal/bid, the procuring entity determines the winner of the procurement procedure or simplified procurement, decides on the intention to conclude a procurement contract, and draws up and publishes a protocol for consideration of all tender proposals in the electronic procurement system. The protocol of consideration of tender proposals shall contain information on:

- 1) the name, location and identification code of the procuring entity in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations, its category;
- 2) a unique number of the announcement of a competitive procurement procedure assigned by the electronic procurement system;
- 3) list of tender proposals;
- 4) name (for a legal entity) or surname, name, patronymic (if any) (for an individual) of the tenderers;
- 5) the result of consideration of each tender proposal (rejection of the tender proposal/admission to the auction);
- 6) grounds for rejection of the tender proposal (in case of rejection) in accordance with Article 31 of the Law.

The decision on the intention to conclude a procurement contract shall be made by the procuring entity on the day of determining the bidder as the winner of the procurement procedure/simplified procurement.

Within one day from the date of such decision, the procuring entity publishes in the electronic procurement system a notice of intention to conclude a procurement contract.

➤ Ways in which applications may be submitted (including the use of electronic procurement platforms); and

Procuring entities publish procurement announcements in the electronic procurement system, and suppliers submit their commercial proposals. The announcement is published and bids are submitted through electronic platforms that are authorised by the electronic procurement system (the list of platforms is available at <https://bit.ly/4aX20AN>).

➤ Ways in which the criteria to be used for selection and award are publicized.

Article 10 stipulates that the procuring entity shall independently and free of charge publish procurement information, including tender documentation, in the electronic procurement system in accordance with the procedure established by the Authorized Body and the Law.

In accordance with Article 22 of the Law, the tender documentation shall contain information on qualification criteria, required technical, qualitative and quantitative characteristics of the procurement item, including the relevant technical specifications, a list of evaluation criteria and a methodology for evaluating tender proposals, indicating the proportion of each criterion.

In addition, if the participant made a mistake in his tender offer, then according to the Law, the customer is obliged to allow the participant to correct the inconsistencies in his offer. This prevents the possibility of rejecting the participant's proposal due to minor inconsistencies.

➤ Any other ways, in which technology is used in the procurement process

An auction is one of the stages of a procurement conducted using the electronic public procurement system. The system activates the Auction module if several suppliers (i.e. more

than one) have come to the auction. The date and time of the auction are determined by the system automatically, without human intervention. The link to the auction will be publicly available on the **prozorro.gov.ua** web portal. The number of submitted bids is not visible to the bidders before the auction starts. The auction has 3 stages (rounds). Upon completion of the auction, information about all suppliers and all documents submitted by them for qualification is made public.

It is also worth noting that, according to Article 18 of the Law, a complaint to the appeal body shall be submitted by the subject of the appeal in the form of an electronic document through the electronic procurement system.

In addition, we are currently working on technical solutions that will help reduce the potential risks of possible abuses and increase the transparency of the procurement and contract execution processes.

We are currently working on developing electronic contracting for the system. It provides for the possibility of forming an electronic contract in the System using the contract template, which is in the process of being developed. After the contract is formed, it can be signed electronically. This will avoid manipulation of the contract terms, both on the part of the customer and the participant (this development is carried out thanks to UKaid and USAID).

We continue to expand the list of electronic fields in tender documentation. We are currently working on the qualification criteria, terms of delivery, and electronic technical specification. This will avoid hidden requirements for participants in the tender documentation and will help improve the analysis of procurement conditions (this development is carried out thanks to UKaid and USAID).

A system of automatic risk indicators has been created, automatically marking procurement procedures containing signs of certain violations. Information about marked purchases is transferred within the electronic procurement system to the office of the controlling body - the State Audit Service of Ukraine. Based on the activation of the automatic risk indicator, the State Audit Service of Ukraine has the technical ability to start online monitoring of purchases that contain signs of violations. The conclusion of the State Audit Service of Ukraine based on the monitoring results is published in the electronic procurement system and is publicly available.

We are expanding the list of automatic risk indicators that will help the State Audit Service to more quickly and effectively identify purchases that have signs of potential abuse by the customer (this development is carried out thanks to the World Bank).

Procurement appeal process at the Antimonopoly Committee of Ukraine by transferring published claims, complaints, and complaint decisions into electronic fields, which will allow better analysis of the complainant's claims and the Antimonopoly Committee of Ukraine's decision on complaints (this development is carried out thanks to the EBRD).

➤ **Any other ways, in which technology is used to detect corruption or identify irregularities.**

Article 5 of the Law provides for monitoring procurement procedures carried out by the central body of executive power that implements state policy in the field of state financial control - the State Audit Service.

The State Audit Service of Ukraine has its own cabinet in the electronic procurement system, through which it monitors public procurement. All auditors' activities are published in the system. This tool helps the SASU to control public procurement and reduce corruption. Automatic checking of a number of factors helps to identify corrupt procurement. In total, there are 35 indicators, but their number may vary. The Cabinet contains the most popular risk factors and is able to analyse the most corrupt procurements and contracting authorities.

The decision to start monitoring is made in the presence of one or more of the following grounds:

- data of automatic risk indicators;
- information received from state authorities, people's deputies of Ukraine, and local self-government bodies about the presence of signs of violation (violations) of legislation in the field of public procurement;
- messages in the mass media containing information about the presence of signs of a violation (violations) of legislation in the field of public procurement;
- signs of violation(s) of the public procurement legislation in the information published in the electronic procurement system identified by the state financial control body;
- information received from public associations about the presence of signs of violation (violations) of legislation in the field of public procurement, revealed as a result of public control in the field of public procurement.

Monitoring can begin at any stage of procurement. The state audit service analyzes the procurement, makes its conclusion regarding the presence or absence of a violation, and publishes it in the electronic procurement system. Anyone can see that the monitoring has started. The System also shows requests for clarifications from the State Audit Service to the customer and the customer's responses to these requests.

Public control is ensured through free access to all information on public procurement that is subject to disclosure in accordance with the Law, in particular by analysing and monitoring information posted in the electronic procurement system, as well as by informing the authorities authorized to carry out control through the electronic procurement system or in writing about the detected signs of violation(s) of the legislation in the field of public procurement.

Also, a free analytics module is now available BI Prozorro (<https://bi.prozorro.org/hub>) from Transparency International Ukraine. It is a free and accessible tool that allows analysing all information on public procurement in Ukraine. BI is owned, supported, and developed by Transparency International Ukraine.

3. Please outline actions required to strengthen or improve the measures described above and any specific challenges you might be facing in this respect.

Ukraine has now been granted candidate status for accession to the European Union. In view of this, the Government continues to work on approximating its legislation to the EU acquis.

Examples of the types of challenges States parties and signatories may have faced include:

- **Other implementation challenges; and**

There is a problem of differences in the interpretation and enforcement of the same legislative norms by different bodies: the Ministry of Economy of Ukraine, the Antimonopoly Committee of Ukraine, the State Audit Service of Ukraine, etc. Also, the vision of these bodies regarding the specifics and details of the implementation of legislative changes in the electronic procurement system may differ.

4. Do you require technical assistance in relation to the measures described above? If so, please specify the forms of technical assistance that would be required. In case you have received or are receiving technical assistance to implement these measures, please indicate so in your response.

Currently, the Ministry of Economy of Ukraine receives technical assistance both in terms of regulatory improvements (EU4PFM Procurement Component Project) and in terms of improving the electronic procurement system (TAPAS, Support for Digital Transformation), and implements other projects aimed at improving public procurement in cooperation with international financial institutions (World Bank, EBRD, EIB, etc.).

In addition to the above, we would like to note that regularly there is interaction between SE “Prozorro” and state bodies and bodies responsible for integrity in the field of procurement, namely:

- SE “Prozorro” together with the Department of Prevention of Corruption Activities of the Ministry of Economy of Ukraine, measures are being developed and implemented to improve the anti-corruption system of SE “Prozorro”;
- SE “Prozorro” quarterly, reporting is submitted to the Ministry of Economy of Ukraine regarding the organization of work on the prevention and detection of corruption;
- An assessment of SE “Prozorro”'s corruption risks is carried out annually and submitted to the National Agency on Corruption Prevention.

The interaction of the State Enterprise “Prozorro” with the National Agency on Corruption Prevention in terms of regular clarifications of anti-corruption legislation and the organization of training to improve the effectiveness of the corruption prevention system takes place through the Ministry of Economy, under whose management the State Enterprise “Prozorro” belongs.

The specified measures are sufficient and ensure an appropriate level of communication between state bodies responsible for integrity in the field of procurement.

The company implements measures to improve the efficiency of the internal management system of anti-corruption measures. It is implementing measures to bring its activities to the provisions of the international standard ISO 37001:2016 Anti-bribery management systems – Requirements with guidance for use, which establishes best practices for creating, implementing, maintaining, revising, and continuously improving the anti-corruption management system.