

Ucraina: Normativa appalti pubblici

L'atto normativo di base che regola la materia in questione è la Legge dell'Ucraina "Sull'acquisto con fondi statali" del 01.06.2010 n. 2289-VI

Si allega la sintesi del documento in lingua inglese, disponibile presso il sito del Parlamento ucraino.

Law of Ukraine
"On Government Procurement"

Date of entry into force:
June 30, 2010

The present Law defines legal and economic principles for procurement of goods, works and services at the expense of budget funds.

Article 1 of the present Law defines the terms used herein. For example, *budget funds* are defined as the funds of the State Budget of Ukraine; the budget of the Autonomous Republic of Crimea and local budgets; funds of the National Bank of Ukraine; state specialized funds; the Pension Fund of Ukraine; funds of mandatory state social insurance; funds of mandatory state social unemployment insurance; funds of mandatory state social insurance against temporary disability and expenses related to birth and funeral; funds provided for in the Law of Ukraine "On Mandatory State Social Insurance Against Industrial Accidents and Occupational Diseases That Caused Disability"; funds of institutions or organizations created according to the procedure as established by bodies of state power, bodies of power of the Autonomous Republic of Crimea, local state administration or bodies of local self-government; funds of state and local funds; funds of the state defense order; funds of deliveries of products for priority government needs, funds of the state material reserve; funds of the Agrarian Fund, funds of the Fund of Social Protection of the Disabled; funds provided to state customers as credits and loans by foreign states, banks, international financial organizations or as part of co-financing together with foreign states, banks, international financial organizations, under guarantees of the Cabinet of Ministers of Ukraine, the Council of Ministers of the Autonomous Republic of Crimea and bodies of local self-government; funds of companies and associations thereof.

According to Article 2 of the present Law, the Law applies to all customers (administrators of state funds that carry out procurement according to the procedure under the present Law) and procurement of goods, works and services at the full or partial expense of budget funds, provided that the value of the procured good (goods) or service (services) equals or exceeds 100 thousand UAH, or 300 thousand UAH for procured works. The present Law does not apply to procurement of:

- goods and services related to design and production of security paper, notes and coins, their storage, transportation and stock-taking;
- services purchased by state banks and banks capitalized with participation of the state exclusively for bank operations according to the Law of Ukraine "On Banks and Banking";

- goods, works and services purchased by customers located outside of Ukraine;
- goods, works and services, the purchase of which constitutes a state secret according to the Law of Ukraine "On State Secret";
- services necessary to carry out state borrowing, servicing and repayment of the state debt;
- goods, works and services purchased for preparation and holding of elections and referendums in Ukraine;
- electric power, its transmission and distribution;
- natural and oil gas and services in the sphere of its transport, distribution and supply;
- centralized supply of heat energy, centralized water supplies, water drainage, and servicing sewer systems;

According to the Article 3, procurement is based upon the following principles:

- maximum cost-efficiency and effectiveness;
- fair competition among bidders;
- openness and transparency at all stages of government procurement procedure;
- non-discrimination of bidders;
- objective and impartial evaluation of bid;
- prevention of corrupt practices and abuse.

According to Article 4, procedure for procurement planning is the following:

1. Procurement is carried out in accordance with the annual procurement plan subject to approval and publication by the procuring entity no later than thirty days after approving the estimated finance plan (plan for funds allocation, plan for budget (public) funds expenditures). The annual procurement plan shall be sent to the Authorized Body compliant with the terms and procedures set forth by said Authorized Body.

2. No procuring entity shall be entitled to split the procurement in parts seeking to avoid the execution of the procurement procedure.

According to Article 5 of the present Law, national and foreign participants take part in the procurement procedure on equal terms. Customers provide for free access of all participants to information about the procurement, pursuant to the Law. The customer cannot set discriminatory conditions for participants.

Procurement of goods, works and services at the expense of credits and loans granted under Ukraine's international agreements by the International Bank for Reconstruction and Development, the International Financial Corporation, the Multilateral Investment Guarantee Agency, the International Development Association, the European Bank for Reconstruction and Development, the European Investment Bank, the Northern Investment Bank and other international monetary and credit organizations, is done according to the regulations and procedures established by these organizations, and in their absence – according to the present Law.

State regulation and control in the area of government procurement is carried out by the Authorized Body (Ministry of Economy of Ukraine) and other bodies within the scope of their competence. The Authorized Body is the Ministry of Economy of Ukraine. The Authorized Body exercises control, supervision and coordination in the sphere of government procurement within its competence, as set forth by this Law.

Article 8 of the present Law defines the authority of the Authorized Body. It also states that the Antimonopoly Committee of Ukraine, acting as the contestation body, creates a permanent administrative board for reviewing claims of breach of legislation in

the area of government procurement, to ensure unbiased and efficient protection of rights and legal interests of parties in relation to participation in government procurement procedures. The decisions of the permanent administrative board are made on behalf of the Antimonopoly Committee of Ukraine.

Civil control is carried out by means of free access to all information on government procurement subject to promulgation according to the Law. Representatives of mass media have the right to be present during the competition bid disclosure procedure. Customers shall provide for unhindered access of mass media representatives to the competition bid disclosure procedure, at their request (Article 9 of the present Law).

General terms of procurement are defined in Chapter III of the present Law.

The procedure for promulgation of information on procurement is envisaged in Article 10 of the present Law. Such information is published by the customer on the web-portal of the Authorized Body, free of charge. The announcement of the procurement procedure and its results are subject to mandatory additional publication in an international media of the Authorized Body in the issues of public procurement, as well as on the web-portal of the Authorized Body, in English, if the expected price of the procurement object exceeds the following respective equivalent amounts:

- for goods – 200,000 EUR;
- for services – 300,000 EUR;
- for works – 500,000 EUR.

The euro exchange rate is determined according to the official exchange rate of the National Bank of Ukraine established for the day of sending planned procurement or preliminary qualification announcement for publication.

Based on Article 11 of the Law, a Competitive Bidding Committee is formed by the customer (general customer) to organize and carry out the procurement. The competitive bidding committee membership and provision on the competitive bidding committee are approved by decision of the customer (general customer). The competitive bidding committee cannot include officials and representatives of the participants, their family members, people's deputies of Ukraine, deputies of the Verkhovna Rada of the Autonomous Republic of Crimea and deputies of local councils. The competitive bidding committee must include at least five persons. If the staff size of the customer is less than five, the number of members of the competitive bidding committee must equal the staff size of the customer. The decision of the tender committee is documented in minutes signed by all committee members who took part in voting.

According to Article 12 of the present Law, procurement can be carried out by one of the following procedures:

- *open tender* (main procurement procedure; During the open bidding procedure and open bidding with reduction of price all interested persons have the right to submit bid proposals);
- *two-stage tender* (two-stage bidding can be applied under the following conditions: the customer cannot determine the necessary technical and qualitative specifications of the goods (works) or the type of services, and if making an optimal procurement decision requires preliminary negotiations with participants; the subject of procurement is scientific research, experiment or development, design or construction works);

- *requesting price proposals* (the customer carries out procurement by using the procedure of requesting price proposals for goods and services with an existing active market, provided that their value does not exceed 200,000 UAH);
- *preliminary participant qualification* (used in cases when it is necessary to determine the qualification conformance, financial state and technical and organizational capacities of the participant. When the preliminary qualification procedure is used, all members passing the preliminary qualification are approval for further participation in the tender (competitive tender), with the minimum amount of qualified members being two. Preliminary qualification requires a minimum of two participants);
- *procurement from one participant* (a procedure, according to which the customer concludes a procurement agreement with the participant after negotiations. During negotiations, the customer requires that the participant provides documented information that confirms the participant's conformance with the qualification requirements, according to Article 16 of the present Law).

The procedure and peculiarities of the above procedures are envisaged in Sections IV – VII of the Law.

During the procurement procedure, all documents prepared by the customer are drafted in Ukrainian. At the customer's discretion, all documents may have an authentic translation into a different language. The Ukrainian text takes precedence (Article 15 of the present Law).

Article 16 of the present Law states that the customer demands that the participants or the preliminary qualification participants submit documentary information that confirms their conformance to the qualification criteria. To participate in the procurement procedure, the participants must have qualification data as to the following criteria:

- availability of equipment and material and technical base;
- availability of suitably qualified staff with the necessary knowledge and experience;
- documented experience of performing on similar agreements;
- financial capacity (balance sheet, income statement, statement of cash flows, a certificate from the servicing bank confirming lack (presence) of overdue amounts on loans).

Article 17 of the present Law envisages grounds for denying participation in the procurement procedure.

Article 18 of the present Law establishes the procedure for contesting the procurement procedure.

Article 19 of the present Law establishes the procedure for the report on procurement procedure results.

The procurement agreement concluded in writing, according to the provisions of the Civil Code of Ukraine and the Commercial Code of Ukraine, taking into consideration the peculiarities determined by the present Law. A typical procurement agreement is approved by the Authorized Body. In case of procurement at the expense of the State Budget of Ukraine, the budget of the Autonomous Republic of Crimea and the local budgets, the customer has the right to include a provisions on prepayment into the procurement

agreements, according to the requirements of the budget legislation. At conclusion of the agreement, the winning participant of the procurement procedure must provide the permit or license for the appropriate type of economic activity, if such type of economic activity requires a permit or license according to the legislation. Agreements that entail expending budget funds before/without the procurement procedure are forbidden, except for cases provided for by the Law. The procurement agreement terms must not differ from the winning competitive tender offer or price offer (including price per unit of product), and must not be changed after the conclusion of the procurement agreement, until the obligations have been fully fulfilled by the parties, except for cases of decreasing the procured amounts based on the real financing of expenses and decrease of the procurement agreement price agreed upon by the parties.

According to Article 41 of the Law, the following are essential terms of the procurement agreement:

- subject of agreement (name, list, assortment);
- amount of goods, works and services and requirements as to their quality;
- payment procedure;
- agreement price;
- time and place for delivery of goods, rendering of services or performance of works;
- term of agreement validity;
- rights and obligations of the parties;
- provision on possible decrease of the procured amounts based on the real financing of expenses;
- liability of the parties.

The final provisions of the present Law require introduction of amendments to the Code on Administrative Offences of Ukraine, the Commercial and Procedural Code of Ukraine, the Commercial Code of Ukraine, the Civil Code of Ukraine, the Civil Procedural Code of Ukraine, The Code of Administrative Proceedings of Ukraine, the Fundamentals of the legislation of Ukraine on mandatory state social insurance, Laws of Ukraine "On State Statistics", " On State Control Auditing Service in Ukraine", "On the Antimonopoly Committee of Ukraine", "On Deliveries of Products for Government Needs", "On Education", "On Accounting Chamber", "On State Material Reserve", "On National Program on Informatization", "On State Defense Order", "On Mandatory State Social Insurance Against Industrial Accidents and Occupational Diseases That Caused Disability", "On Mandatory State Social Unemployment Insurance", "On Natural Monopolies", "On Licensing of Certain Types of Economic Activity", "On Banks and Banking", " On Mandatory State Social Insurance against Temporary Disability and Expenses Related to Birth and Funeral", "On State Support for Book Publishing in Ukraine", "On the State Service for Special Communications and Information Protection of Ukraine", "On Chemical Sources of Current", "On State Regulation of Activity in the Sphere of Transfer of Technologies", "On Standardization", "On Metrology and Metrological Activity", "On Insurance", " On Rest and Recreation of Children", "On the Fundamentals of Social Security of the Disabled in Ukraine".