

SPECIAL PROCEDURES FOR ELECTRONIC PUBLIC PROCUREMENT

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ABSTRACT

The authors studied the essence of the concept of electronic public procurement as a component of e-government. The current regulatory and legal framework were determined, in accordance with which the regulation of relations in the field of electronic public procurement is carried out both in the European Union and in Ukraine. In particular, special attention was paid to the regulation of public procurement in accordance with the Directives of the European Parliament and the Council 2014/24/EU, 2014/25/EU and 2014/55/EU. The principles on the basis of which electronic public procurement is carried out, as well as the main models of electronic public procurement, common in the European Union were highlighted. The main stages of the procurement cycle were outlined, each of which was characterized. The essence of the functioning of the ProZorro system in Ukraine was disclosed. The attention was paid to the implementation of the Public Procurement Reform Strategy aimed at adapting Ukrainian legislation to the European Union standards during the period of 2015-2022.

Keywords: Electronic Public Procurements, State Procurements, ProZorro.

INTRODUCTION

Acting as one of the forms of state market activity, public procurement contributes to the satisfaction of public needs and reduce government expenditures. The practice of developed countries shows that the use of public procurement is an effective instrument of the state aid system related to ensuring stable economic growth. As an engine of economic growth of the state, efficient and transparent public procurement is intended to create new business opportunities.

With the rapid scientific and technological progress and the use of new technologies to ensure the objectivity of the process of creating a competitive environment in the field of public procurement, the system of electronic public procurement has become important. Such a system should be considered as an instrument through which it increases the accountability and transparency of processes in the field of public administration and management, and reduces the level of corruption in procurement and generally improves the business climate in any country.

Problem Statement

E-procurement today has become a promising field of e-commerce. And it is no longer a novelty that in developed countries it is common in government procurement markets. In turn, in Ukraine, acting as a priority for reforming the economy, the institution of public procurement requires the use of the latest technologies. The introduction of a new system of state procurement through electronic trading was carried out with the aim of transparency of budget spending and significant savings by increasing the number of suppliers, increasing competition between them (Olefir, 2018). An effective functioning of the electronic public procurement system is possible through legislative regulation of many issues in this area. Taking into account the existing European integration processes, for Ukraine, the implementation of the norms of European law in the current national legislation is relevant. Therefore, it is important to carry out a comparative legal analysis of the legislation of the EU and Ukraine in the sphere of regulating relations on the implementation of electronic public procurement.

LITERATURE REVIEW

Studying the characteristic features of the implementation of electronic public procurement, Ksonzhyk et al. (2017) consider the latter as a process of using electronic means for public procurement at all stages. At the same time, scientists focus on the novelty of e-procurement as an “*electronic*” way of doing business, which includes all the steps: determining the list of goods and services required for procurement, approving them, identifying subjects that can be considered potential suppliers, approving contracts.

Ferreira & Amaral (2016) define public e-procurement as an instrument for implementing public policy that promotes social value. Created by policy and management strategy, such an instrument focuses on economic efficiency, but also contributes to the social advancement of socio-economic reality.

As appropriately Neupane et al. (2017), the introduction of public e-procurement has a positive and significant connection with the concepts of utility, ease of use and trust in an environment where democratic governments in developing countries are trying to fight corruption in state procurement.

METHODOLOGY

The methodological basis for the study of the characteristic features of electronic public procurement and the legal regulation of relations in this field were dialectic, comparative legal, formal and legal and system and structural methods. The dialectical method was used to determine the essence of the concept of electronic public procurement as a component of electronic government. The comparative and legal method allowed us to determine the current regulatory framework, namely the documents in accordance with which the regulation of relations in the field of electronic public procurement in the EU and Ukraine is carried out. The interpretation of the provisions of the regulatory acts of the Ukrainian legislation and the provisions of the EU documents on the regulation of electronic public procurement processes was carried out using the formal and legal method. The use of the system and structural method allowed us to identify the fundamental principles and stages of the procurement cycle.

FINDINGS AND DISCUSSION

The study of the peculiarities of the legal regulation of electronic public procurement primarily requires an appeal to the norms of the European Union law. Today, among the main documents, the provisions of which regulate the implementation of public procurement are, in particular: (1) Directive 2014/24/EU of February 26, 2014 (new Directive on public procurement in the government sector)¹; (2) Directive 2014/25/EU of February 26, 2014 (new Directive in the sector of public utilities procurement)²; (3) Directive 89/665/EEC of December 21, 1989 (Directive on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts for public funds) as amended by Directive 2007/66/EC; (4) Directive 92/13/EEC of February 25, 1992 (Directive coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the public procurement procedures of entities operating in the water, energy, transport and telecommunications sectors) as amended by Directive 2007/66/EC; (5) Directive 2009/81/EC of July 13, 2009 (on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security); (6) Directive 2014/23/EU of February 26, 2014 (Directive on the award of concession contracts); (7) Directive 2014/55/EU of April 16, 2014 (Directive on electronic invoicing (e-invoicing) in public procurement)³. All of these relevant European Parliament and Council Directives establish common rules for EU Member States, in particular, requirements for publication, different competition procedures (depending on the type of contract), requirements for the types of criteria and specifications to be used when implementing public procurement (Lakhno et al., 2018; Tkachenk et al., 2019).

Directive on public procurement in the government sector and Directive on public procurement in the sector of public utilities procurement were adopted in 2014 with the aim of implementing a reform in the EU public procurement sphere. These Directives have made a significant number of changes in the field of public procurement (the state sector and the sector of public utilities), which is explained by many reasons caused by the introduction of the EU strategy “*Europe 2020*”. In particular, this applies to: (1) introduction in the implementation of public procurement of the mandatory use of instruments and means of electronic communication; (2) establishing responsibilities for customers to take measures to prevent, detect and eliminate cases of conflict of interest; (3) possibility of making changes to contracts after they were signed and during the procurement procedure, etc. (Directive 2014/24/EU, 2014; Directive 2014/25/EU, 2014).

An analysis of the provisions of the European Parliament and Council Directive 2014/24/EU, 2014/25/EU and 2014/55/EU provides an opportunity to conclude that electronic public procurement is an integral part of electronic governance, and should be carried out in accordance with the relevant principles. The latter should include such principles: (1) free movement of goods; (2) freedom of service placement; (3) freedom of service provision; (4) equitable relationship; (5) non-discrimination; (6) mutual recognition; (7) proportionality; (8) transparency (Directive 2014/24/EU, 2014; Directive 2014/25/EU, 2014; Directive 2014/55/EU, 2014).

Today, in the EU it is common to use two models of electronic public procurement, namely: (1) centralized procurement, the implementation of which is carried out by a single body on public procurement issues and has the goal of ensuring common needs (the customers are

responsible for carrying out public procurement on their behalf); (2) decentralized procurement which is carried out by customers independently (the ability of each customer to purchase goods and/or services) (Altsyvanovych & Tsymbalenko, 2018; Kamińska, 2018).

In EU countries, electronic public procurement has a different level of development, the determination of which is influenced by the automation of the procurement process. The latter, in turn, consists of the corresponding stages. Thus, the first stage is an electronic notification, which aims to provide opportunities for both business entities and control authorities and the public in an electronic environment to familiarize themselves with the features of the planned procurement. The second stage of the procurement cycle is called “*electronic access*”, which allows access to tender documentation, which determines the conditions for participation in tenders. The third stage involves the electronic submission of the proposal involves the submission by registered business entities of proposals for relevant tenders. Electronic evaluation is the fourth stage in the procedure of electronic public procurement. The essence of this procedure is in the automatic evaluation of tender proposals and the determination of the winner of the trade based on the verification of the necessary documents. The fifth stage is the electronic order, the content of which is the fulfillment of contractual obligations as a result of the signing of the contract. The final, sixth stage is electronic invoicing, that is, organizing, registering, sending out and receiving confirmation of receipt of invoices.

The introduction of electronic public procurement creates significant savings. The digital transformation of government procurement facilitates enterprises access to procurement markets and contributes to the modernization of government administrations. Directive on electronic invoicing (e-invoicing) in public procurement (2014/55/EU) makes it easier to pay payments in EU countries. According to data posted on the official website of the European Commission, government procurement (the purchase of works, goods or services by government authorities) accounts for more than 14% of EU GDP. The law establishes requirements for the government sector to obtain the best value for money, as well as compliance with three key principles: equal treatment, non-discrimination and transparency. Today, the provisions of Directives of the European Parliament and of the Council 2014 have been implemented in the legislation of 26 EU member states-Public Procurement, official website of the European Commission⁵.

Studying the peculiarities of electronic public procurement, it is also important to note that a single electronic contract management system was introduced in the EU countries-www.ted.europa.eu. TED eTendering is an e-procurement platform for EU institutions based on EU Directives on government procurement. The operation of such a platform provides free electronic access for submission of tender documents, such as contractual documentation, technical specifications, applications, questions and answers, and the like (TED eTendering: Calls for tenders from the European institutions)⁶.

The main purpose of the ProZorro system is to prevent corruption⁴. Today, corruption itself is one of those negative social phenomena that actually subverts the foundations of a democratic, legal and social state (Kulish et al., 2018; Karpenko et al., 2018).

The ProZorro system has several advantages, including: (1) providing the opportunity to virtually attend the procurement auction to anyone interested in this person (for example, a media representative, regulatory bodies), which simplifies their participation in such procurement; (2) saving the historical cycle of changes for a public procurement, providing full access even to such documents that have been deleted; (3) providing full access to the

commercial proposals of all participants and the bidding process, as well as obtaining full information about the product, service or work of the winner, including the contract.

In the framework of the European integration processes in 2016, the Cabinet of Ministers of Ukraine by a decree adopted a strategy for reforming the public procurement system. The purpose of the Strategy is to create a modern and efficient public procurement system aimed at creating a competitive environment and further developing fair competition in procurement in Ukraine, as well as ensuring compliance with the international obligations of Ukraine in the field of public procurement by consistently adapting the legislation of Ukraine to EU standards during 2015-2022 (The Cabinet of Ministers of Ukraine Intended, 2016; Kwilinski et al., 2019).

CONCLUSION

Taking into account the conducted study of some provisions of the Directives 2014 of the European Parliament and Council, it can be concluded that the legal regulation of electronic public procurement in EU member states is not the main goal of solving problems of corruption, but is aimed at simple management of the procurement process through automation, reducing customers' and suppliers' costs of procurement operations, and most importantly-at the transparency of public procurement. In turn, in Ukraine, the introduction of an electronic public procurement system is caused by the urgent need to solve the problems of corruption.

It should be noted that the introduction of a system of public e-procurement has obvious positive points for business, because participation in such procurement becomes more accessible, and the publicity of the process of its implementation allows increasing its competitiveness and transparency.

RECOMMENDATIONS

The introduction of the electronic public procurement system as a new method made it possible for budget organizations and business entities to manage the electronic environment at all stages of this cycle. Ensuring legality and promoting openness (transparency) of electronic public procurement procedures for participants/customers in Ukraine is possible by harmonizing the current Ukrainian legislation regulating relations in this field to the standards of European law, in particular, the provisions of European Directives 2014/23/EU, 2014/24/EU, 2014/25/EU and 2014/55/EU.

ENDNOTE

1. Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0024>
2. Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC Text with EEA relevance. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0025>
3. Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement Text with EEA relevance. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0055>
4. ProZorro: publichni zakupivli. ULR: <https://prozorro.gov.ua/>

5. Public Procurement: official website of the European Commission. URL: http://ec.europa.eu/internal_market/scoreboard/performance_per_policy_area/public_procurement/index_en.htm
6. TED eTendering: Calls for tenders from the European institutions. URL: <https://etendering.ted.europa.eu/general/page.html?name=home&locale=en>

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