ПУБЛІЧНІ ЗАКУПІВЛІ НА ВІДНОВЛЕННЯ ІНФРАСТРУКТУРИ УКРАЇНИ: РИЗИКИ ДЕРЖАВНОГО РЕГУЛЮВАННЯ ТА МОЖЛИВОСТІ ДЛЯ ІНОЗЕМНОГО БІЗНЕСУ

Актуальність. Військове вторгнення РФ завдало чималих збитків для економіки України, зокрема через пошкодження та руйнування об’єктів інфраструктури. Серед державних приоритетів їх відновлення за принципом «відбудуємо краще», використовуючи обмежені фінансові ресурси держави чи залучені кошти міжнародних донорів максимально ефективно, прозоро та без елементів корупції, що стає можливим завдяки прозорості та ефективності системи публічних закупівель. Дослідження прозорості та конкретності закупівель в державі в умовах військового стану є особливо актуальним.

Мета та завдання. Здійснити аналіз закупівельної діяльності в Україні та висвітлити особливості здійснення публічних закупівель на відбудову інфраструктури України в умовах військового стану, виявити проблемні аспекти реалізації закупівельних процедур в контексті інструментарію державного регулювання та розробити пропозиції щодо удосконалення закупівельного процесу та створення можливостей участі іноземних підприємств у відбудові українських міст.

Матеріали та методи. Результати порівняльного аналізу, теоретичного узагальнення наукових підходів до здійснення закупівельної діяльності в умовах військового стану. Матеріальну та методичну базу дослідження формують офіційні статистичні дані щодо закупівель в системі Prozorro.

Результати. Наслідком державного регулювання закупівельної діяльності в умовах військового стану є постаблізація низько обмежених закупівель, посилення та створення можливостей закупівлі товарів, робіт, послуг за бюджетні кошти без системи Prozorro. Це створило умови для посилення конкурентного відбуття на закупівельному ринку, зокрема за рахунок залучення іноземних підприємств до відбудови інфраструктури.

Висновки. Результати проведених досліджень формують підґрунтя необхідності посилення стратегічної ролі публічних закупівель в розвитку інфраструктури держави. У контексті відновлення інфраструктури досить інструментом може стати реалізація стратегії публічних закупівель на різних рівнях адміністративно-територіального устрою України, залучення іноземних підприємств до відбудови інфраструктури.

Ключові слова: публічні закупівлі, відновлення, інфраструктура, воєнний стан, замовники, учасники, бізнес-партнери, тендерні процедури.
PUBLIC PROCUREMENT FOR THE RENOVATION OF UKRAINE’S INFRASTRUCTURE: RISKS OF STATE REGULATION AND OPPORTUNITIES FOR FOREIGN BUSINESS

Topicality. The military invasion of the Russian federation caused considerable damage to the Ukraine’s economy, in particular due to the damage and destruction of infrastructure facilities. Among the state priorities is their restoration according to the principle of “we will rebuild better”, using the limited financial resources of the state or the funds raised by international donors as efficiently as possible, transparently and without elements of corruption, which becomes possible due to a transparent and efficient public procurement system. The study of the transparency and specificity of procurement in the state under martial law is particularly relevant.

Aim and tasks. To carry out an analysis of procurement activities in Ukraine and to highlight the peculiarities of public procurement for the reconstruction of Ukraine’s infrastructure under martial law, to identify problematic aspects of the implementation of procurement procedures in the context of the tools of state regulation, and to develop proposals for improving the procurement process and creating opportunities for foreign businesses to participate in the reconstruction of Ukrainian cities.

Materials and Methods. The results of comparative analysis, theoretical generalization of scientific approaches to the implementation of procurement activities in the conditions of martial law. The material and methodical base of the study is formed by official statistical data on purchases in the Prozorro system.

Research results. The main results of state regulation of procurement activities under martial law are relaxation of a number of restrictions for purchasers and creation of opportunities to purchase goods, works, services for budget funds without the Prozorro system. For its part, it created the basis for irresponsible attitude of customers to the tender process and weakening of competition on the part of participants and led to a number of corruption risks. The opportunities provided to the customer affected the number of procurement procedures in the system, competition among participants in view of the authorization of procurement with an offer from only one participant, instead of a minimum of two, as before, and the efficiency of spending budget funds. Ukraine has many partners who are ready to join the reconstruction of our state. At the same time, a high-quality long-term partnership requires coordinated interaction between authorities at different levels, a high level of professionalism in the implementation of reforms, and transparency in spending funds.

Conclusion. The results of the conducted research form the basis for the need to strengthen the strategic role of public procurement in the restoration of state infrastructure. In the context of infrastructure restoration, the public procurement strategy at various levels of the administrative-territorial system of Ukraine should be an effective tool, one of the priorities of which may be to increase the level of involvement of international business in public procurement for the restoration of the infrastructure of the state and its individual territorial units, taking into account their characteristics.

Keywords: public procurement, reconstruction, infrastructure, martial law, customers, participants, business partners, tender procedures, efficiency.

Problem statement and its connection with important scientific and practical tasks. Since the beginning of the full-scale Russian military invasion, the economy of Ukraine has suffered considerable losses due to damage and destruction of assets. The results of the damage assessment conducted by the National Council for the Reconstruction of Ukraine show that during the year of Russia's military aggression against Ukraine, the total amount of direct documented damages due to the destruction of infrastructure facilities (at replacement cost) amounted to more than $143.8 billion (Kyiv School of Economics, 2022). In the structure of these losses, the largest share falls on the destruction of residential buildings - about 37.3% and infrastructure - about 25.2%. Among other expenses: losses of business assets amount to 7.9%; total annual direct losses of the agricultural sector are 6.1%, and losses from destruction and damage to public sector objects (social objects and institutions, educational, scientific and health care institutions, cultural buildings, sports facilities, administrative buildings, etc.) make up 9.5%. The continuation of the aggression leads to an increase in the amount of damage caused both by missile strikes on the country's infrastructure, especially in the energy sector, and by shelling of cities and towns, active military operations in the south and east of Ukraine.
The destroyed infrastructure will require its restoration. The public sector will have to build new houses, new bridges, new roads, new schools and hospitals. Therefore, reconstruction involves the conclusion of agreements and the spending of funds from state or local budgets or attracted grant funds. Under the conditions of limited financial income and the simultaneous presence of a number of other priorities for a country in a state of war, it is extremely important that the reconstruction takes place in accordance with the principle of "we will rebuild better", using limited financial resources as efficiently, transparently and without elements of corruption. Implementation of this principle becomes possible due to a transparent and efficient public procurement system.

During the war, Ukraine received significant support from the international community, which allowed it to start the reconstruction process. Therefore, the study of the problem of infrastructure restoration due to the economical use of state financial resources, in particular received in the form of international financial support and the creation of opportunities for European business to join this process determines the relevance of this study.

Analysis of recent publications on the problem. The problem of purchasing products for the needs of the state through public procurement attracts the attention of many Ukrainian scientists and practitioners at any stage of the historical development of our country. Scientists study public procurement in various areas: they analyze the effectiveness and transparency of public procurement (Vorovska & Kolesnyk, 2020), touch on the issue of implementing public procurement at the level of territorial communities in view of the reform of power decentralization (Korol'kov et al., 2021). A number of works are devoted to legal aspects in the context of violations, abuses and corruption risks that occur during public procurement. The issue of creating a competitive environment, certain aspects of state regulation in this area, and efforts of the public sector to adapt public procurement to the models of the World Trade Organization and to harmonize state regulation instruments with the requirements of the European Union are not left out of the attention of scientists and mostly practitioners (Malolitneva, 2022; Yurii & Aronets, 2021; etc.).

Allocation of previously unsolved parts of the general problem. The development of a transparent public procurement system began in Ukraine in 2015, when our country joined the World Trade Organization Agreement on Government Procurement (GPA/133) (Ministry of Economy of Ukraine, 2015). So, it became necessary to ensure the fulfillment of international obligations in the field of public procurement and required consistent adaptation of Ukrainian legislation to EU standards. Since 2016, the electronic public procurement system Prozorro has been operating in the state as a platform where representatives of the public sector – managers of budget funds announce the purchase of goods, works, services, and business representatives compete at auctions for the opportunity to supply products to the customer. The public procurement system creates opportunities for transparent spending of funds from international donors, because the legislation of Ukraine allows foreign campaigns to participate in public procurement.

At the same time, during the martial law, the Resolution of the CMU "On approval of the specifics of public procurement of goods, works and services for customers, provided for by the Law of Ukraine "On Public Procurement", for the period of the legal regime of martial law in Ukraine and within 90 days from the day of its termination or cancellation" #1178 (Cabinet of Ministers of Ukraine, 2022) established the possibility of conducting purchases without using the Prozorro electronic system, namely by concluding direct contracts between the customer (manager, recipient of budget funds) and the supplier. In addition to this possibility, customers can use two other methods of purchasing: conclude a framework agreement or apply the procedure of open tenders or use the electronic catalog.

The above draws attention to the problem of transparency and competitiveness of procurement in the context of state regulation, to take into account the challenges that Ukraine has faced.

Formulation of research objectives (problem statement). The purpose of the study is to highlight the specifics of public procurement for the reconstruction of Ukraine's infrastructure under martial law, to identify problematic aspects of procurement procedures in the context of state regulatory tools, and to develop proposals for improving the procurement process and creating opportunities for foreign businesses to participate in the reconstruction of Ukrainian cities.

Materials and Methods. The war years actualized the need to spend limited budget funds as economically as possible. Analytical tool bi.prozorro.org aggregates information about all purchases that have been made through the Prozorro system since its introduction and allows to analyze the effectiveness of spending budget funds as well as the competitiveness of procurement procedures among participants.
Since the introduction of the Prozorro public procurement system till August 1, 2023 about 57.08 thousand organizers have purchased 18.60 million lots. The procurement procedure was successful for 56.39 thousand customers who carried out 17.19 million procurement procedures. The average number of participants in one purchase is 2.22. The structure of procurement was distributed as follows: 54.46% – procurement of goods, 25.24% – procurement of services, 2.97% – procurement of works and for the rest 17.33% the type of procurement subject was not determined. According to groups of lots customers bought the most office equipment and accessories (3.27%), construction materials and related products (3.20%), food products (2.82%), medical equipment (2.8%). According to the Unified Procurement Dictionary the top of first five procurements looks like this: 10.60% – procurement of constructions and construction materials and auxiliary construction products; 8.30% – food, beverages, tobacco and related products; 6.61% – repair and maintenance services; 6.22% – construction works and current repairs; 6.02% – medical equipment, pharmaceutical products and personal hygiene products.

The need to restore infrastructure draws attention to such lots: 44000000-0 "Structures and construction materials; auxiliary construction products" and 45000000-7 "Construction works and current repairs", which ranked first and third respectively in the overall structure of purchases. During the war in Ukraine (from the beginning of 2022 to August 1, 2023) 4.76 million of the above-mentioned lots were purchased by 31.74 thousand organizers in the amount of UAH 997.37 billion. In the structure of lots for this period as well as for the entire period of existence of the Prozorro public procurement system the first tier of lots is occupied by the purchase of structures and construction materials and auxiliary construction products with a share of 12.74% (606,411 completed procurement procedures). Procurement of construction works and current repairs close the top of the leading lots of public procurement in wartime with a share of 3.63% (172,976 completed procurement procedures).

Official data of the analytical tool bi.prozorro.org show that during the war years purchases for the outlined lots were carried out in the following manner. In 2022 the number of procurement procedures completed by 30.12 customers makes 2.82 million for the amount of UAH 525.18 billion. Lot 440000000-0 with a share of 11.99% takes the first place in the structure of purchases and about 337.98 thousand procurement procedures have been completed. Regarding lot 45000000-7 about 91.63 thousand procurement procedures were completed, which is 3.25% of the total number of procurement procedures. For the first half of 2023, the number of procurement procedures completed by 27.24 thousand customers is 1.94 million for the amount of UAH 472.19 billion. In the procurement structure the lot "Structures and construction materials; auxiliary construction products " occupies the first place with a share of 13.84%, for which 268.43 thousand procurement procedures were completed, in turn this is 1.85 percentage points more than the aggregate figure of 2022. The lot "Construction works and current repairs" in the structure of lots by sections of the subject of procurement has risen several steps with the number of completed procurement procedures of 81384 procedures, which is 4.19%, which is almost 1 percentage point more than the cumulative figure of 2022. The given data indicates increasing budget expenditures for capital construction and restoration works in the state, which of course is due to the need to rebuild the infrastructure that was destroyed during the full-scale invasion of the Russian Federation.

In the context of observing the principle of saving budget funds attracts attention the expediency of analyzing competition in procurement procedures. According to the bi.prozorro.org analytical tool, the average number of bidders during the analyzed period for the two lots under study was 1.74, which is less than the average for all procurement procedures, which is 1.95 and less than the minimum number of participants for the open bidding procedure. The average number of disqualifications of participants is 1.24. This indicates a complete lack of competition, because managers of budget funds prefer simplified procurement and conclude contracts with the only representative of the business that submitted its tender offer.

The top 10 purchasers of the above mentioned two lots are Kyiv city state administration, Dnipropetrovsk City Council and the Ministry of Internal Affairs of Ukraine (Fig. 1). The largest number of tenders was held for the "Construction materials and related products" lot. The geography of the purchasers was distributed as follows: the largest number of buyers were in the Kyiv region (54,232 tenders), Khmelnitskyi (38,966 tenders), and Lviv regions (37,208 tenders). The lot "Construction works and current repairs" was most bought in Kyiv (35,204 tenders), Lviv (14,745 tenders) and Dnipropetrovsk (11,664 tenders).
regions. It is worth noting that 96.2% of purchases were successfully completed, the share of unsuccessful lots was 2.3%, 0.8% of purchases were canceled, and 0.7% of lots were in the active stage of implementation.

Realizing the huge scale of infrastructure restoration in the country was created the State Agency for Restoration and Development of Infrastructure of Ukraine by merging the State Agency of Highways and the State Agency for Infrastructure Projects. The agency should be responsible for the effective and transparent implementation of reconstruction projects of Ukraine. The Agency has structural divisions in each region, except for the occupied territories (24 regional divisions).

Since the beginning of Agency establishment, it has announced purchases of 22 lots with a total value of UAH 34.1 million. As of August 1, 2023, 22% of lots are at the stage of implementation of the procurement procedure. As for the rest: the majority of the announced procurements were completed successfully (68%), only for 1 lot the procurement was canceled and for 1 lot the procurement procedure turned out to be unsuccessful (Fig. 2).

It is worth noting that 11 lots were purchased using a non-competitive procurement procedure and only for 4 lots, the procurement procedure of which was completed, a competitive procurement procedure was introduced, namely open bidding with features. Among the winners in procurement procedures: 98.31% – medium-sized enterprises and 1.69% – micro-enterprises.

For the period from January 1 to August 1, 2023, the State Agency for Reconstruction and Development of Infrastructure of Ukraine and its regional services published an announcement on the purchase of 2.23 thousand lots in the Prozorro system. In the structure of these lots, 11.75% (262 lots) are procured under section 71000000-8 "Architectural, construction, engineering and inspection services", 6.59% (147 lots) are procured under section 45000000-7 and 2, 38% (53 lots) on procurement under section 44000000-0. As of August 1, 2023, 2.09 thousand announced procurement procedures, namely 93.5% have been completed. In the structure of purchased lots: 58% is the purchase of lot 71000000-8; 29% – lot 45000000-7; 14% – lot 44000000-0 (Fig. 3).
According to the subject of procurement, the above-mentioned customers namely institutions created for the restoration of the state, mainly announced the purchase of services - 1306 lots (62.64%), goods - 645 lots, 30.94%, and works - 134 lots, 6.43%.

Fig. 3. Structure of completed procurement procedures of the State Agency for Reconstruction and Development of Infrastructure of Ukraine and its regional divisions as of August 1, 2023
Source: constructed by the authors according to the data bi.prozorro.org

The regional structure of completed procurement procedures was distributed as follows: the top three - the Rivne Oblast Infrastructure Reconstruction and Development Service (9.98% or 288 completed procurement procedures); Service for restoration and development of infrastructure of Dnipropetrovsk region (9.26% or 193 lots); Service for restoration and development of infrastructure of Kirovohrad region (6.86% or 143 lots).

In general, during the studied period, a positive trend of increasing the number of procurement procedures for lots which are directly related to infrastructure reconstruction is observed in the state. Thus, the dynamics of indicators from June 2023 to the previous quarter indicate an increase in the number of lots for which the procurement procedure was announced by 85% (from 109 to 202), as well as a significant decrease in value by 1733% (from UAH 14.73 million to UAH 269.90 million) which indicates economical spending of budget funds. Instead, it is worth noting the decrease in the number of competitive procurement procedures by 9.17%. The number of lots for which the competitive procurement procedure was applied decreased by 5%. At the same time, all procurements for lot 44000000-0 were carried out using an exclusively non-competitive procurement procedure.

The average number of participants in the tender procedures for the three studied lots is 2.31, which is definitely higher than the similar indicator for the aggregated number of customers (1.74) and testifies to the effectiveness of the institutions whose functional responsibilities are directly related to the restoration infrastructure. Instead, this indicator is average and gained its value due to the small number of competitive procurement procedures, because the majority of tenders are those that are completed with only 1 participant (38 procedures).

The distribution of the number of tender procedures by the number of participants is presented in fig. 4.

![Fig. 4. Distribution of the number of tenders by the number of participants in procurement procedures in the procurement of the State Agency for Reconstruction and Development of Infrastructure of Ukraine and its regional divisions as of August 1, 2023. Source: constructed by the authors according to the data bi.prozorro.org](image-url)
The analytical results obtained above are a consequence of the state regulation of procurement activities under martial law conditions, namely: the relaxation of a number of restrictions for purchasers and the creation of opportunities to purchase goods, works, and services for budget funds without the Prozorro system. For its part, this created the basis for the irresponsible attitude of the customers to the tender process and the weakening of competition on the part of the participants, and led to a number of corruption risks, which forced the Ministry of Economy to think about the issue of reducing the previously regulated exceptions as early as June 2023.

An outline of the main results and their justification. The adoption of a number of normative legal acts in the field of public procurement during martial law, in particular Resolution of the CMU No. 1178, gave rise to a number of corruption risks, which were identified by the National Agency for the Prevention of Corruption (Ukrinform, 2023). Among the main risks of purchasing activity, which are caused by the use of state regulatory tools, the following attract the most attention: abuse of purchases through the electronic catalog, given the elimination of restrictions on the maximum amount of purchases in catalogs; corruption abuses by concluding direct contracts; the possibility of submitting tender offers at a price higher than the expected cost.

The legislator made it possible for the customer to enter into a “direct” contract:
- for the purchase of goods, works and services for construction, reconstruction, capital repair and arrangement of residences of internally displaced and evacuated persons;
- for construction, reconstruction, capital or ongoing repair, arrangement of protective structures of civil protection, among other things, dual purpose, the simplest structures, shelters;
- for the purchase of goods, works and services in order to ensure the functioning of critical infrastructure facilities.

The customer-provided opportunities that were implemented to speed up procurement procedures in Prozorro, in our opinion, affected the number of procurement procedures in the system, competition among participants in view of the authorization of procurement with an offer from only one participant, instead of a minimum of two, as before, and the efficiency of spending budget funds.

Some innovations in procurement activities related to localization, as a kind of prerequisite for supporting Ukrainian industry, in our opinion, affected the participation of foreign businesses in public procurement. According to the Law of Ukraine "On Public Procurement", the degree of localization of production is an indicator of the local component in the specific weight of the cost of raw materials, materials, units, aggregates, details, component parts and components of products, works, services and other components of domestic production in the cost price of goods, which is the subject of purchase. Among the goods to which localization must be applied is construction equipment, which in a certain way limits the ability of foreign businesses to participate in public procurement related to the reconstruction of infrastructure.

In our opinion, a peculiar risk of state regulation of procurement activities is the limitation of the list of permitted tender procedures. It became necessary for the customer not to immediately announce a tender for the reconstruction of the object using the competitive dialogue procedure, but forced to divide the procurement into separate components: a tender for the development of technical documentation and a separate tender for construction works. The peculiarity of public procurements for the restoration of infrastructure is that they require, in our opinion, the application of a certain procedure, namely the procedure of competitive dialogue. It is due to the need to conduct market consultations for the construction or repair of residential buildings before forming the tender documentation.

At the same time, the above restrictions do not deter foreigners from investing in the economy of Ukraine. Currently, we can talk about different models of investing in the restoration of infrastructure: investments, the infusion of which becomes possible due to the agreements of the government in the international arena; grants within the framework of partner agreements at the local level of twin countries or cities; direct assistance with equipment purchased through tender procedures by the donor country.

Thus, the opportunities for attracting foreign businesses to fully participate in the reconstruction of the infrastructure of Ukraine are opening due to the signing of a number of Memoranda. In particular, during the British-Ukrainian infrastructure summit in London, a Memorandum on the restoration of Ukraine's infrastructure was signed.

The world joins the reconstruction of Ukraine by bypassing its participation in Ukrainian tender procedures, choosing the path of direct supplies of equipment for the restoration of water supply systems, electricity supply, heating, building...
materials, etc. Countries that have volunteered to participate in the reconstruction of the infrastructure independently conduct tenders, select contractors for works and carry out procurement to eliminate any corruption risks of procurement activities. Such a model of assistance is implemented within the framework of cooperation between Mykolaiv and Denmark.

Ukraine has many partners who are ready to join the reconstruction of our state. At the same time, a high-quality long-term partnership requires coordinated interaction between authorities at different levels, a high level of professionalism in the implementation of reforms, and transparency in the spending of funds.

With such an approach, the experience of the European Union countries in developing public procurement strategies at different levels is useful: at the national (country), local (level of individual communities) and at the level of individual customers. The course of post-war reconstruction of the state requires the development of a public procurement strategy for the restoration of infrastructure. It will allow, on the one hand, to determine the list of objects that can be offered for development to potential participants in the field of public procurement, and on the other hand, to determine the strategic role of public procurement to achieve broader results for the community, taking into account the specifics of the development of the relevant territories and the priority directions of economic and social development of the country, which are declared in the relevant macro-level forecasting and planning documents.

Conclusions and perspectives of further research. The results of the conducted research form the basis for the need to strengthen the strategic role of public procurement in the restoration of state infrastructure. The low level of competitiveness of public procurement procedures and the corresponding increase in corruption risks in this area leads to a decrease in the effectiveness of this instrument of state regulation, in particular, from the point of view of the efficiency of spending taxpayers' money. Limitation of procurement procedures for the restoration of infrastructure is a prerequisite for reducing the quality of restoration works. Thus, the primary task of the state, even during martial law, is to reduce corruption risks in the field of public procurement by implementing the basic principles provided for in Article 5 of the Law of Ukraine "On Public Procurement". It is appropriate to return the possibility of using the full range of procurement procedures. In the context of infrastructure restoration, the strategy of public procurement at various levels of the administrative and territorial structure of Ukraine should be an effective tool, one of the priorities of which may be to increase the level of involvement of international business in public procurement for the restoration of the infrastructure of the state and its individual territorial units, taking into account their characteristics. Determination of goals, strategic directions, tasks and tools for ensuring their implementation in the context of the development of a public procurement strategy in Ukraine is a perspective for further research in this area to ensure the maximum effectiveness of the use of this instrument of state regulation.

REFERENCES


Cabinet of Ministers of Ukraine. (2022). On the approval of the specifics of public procurement of goods, works and services for customers provided for by the Law of Ukraine "On Public Procurement" for the period of the legal regime of martial law in Ukraine and within 90 days from the date of its termination or cancellation. https://zakon.rada.gov.ua/laws/show/1178-2022-%D0%BF#Text.


