

ADMINISTRATIVE AND LEGAL REGULATION OF PUBLIC PROCUREMENT IN UKRAINE

АДМІНІСТРАТИВНО-ПРАВОВЕ РЕГУЛЮВАННЯ ПУБЛІЧНИХ ЗАКУПІВЕЛЬ В УКРАЇНІ

Dyachuk M.Yu.,

Graduate Student of the Department of Civil, Economic and Environmental Law,

Dnipro University of Technology

It was determined that administrative and legal regulation of public procurement is an important component of public administration, which ensures efficient and transparent use of public funds. It was emphasized that in Ukraine this regulation is carried out on the basis of a number of legal acts and principles aimed at ensuring legality, economy, efficiency and fair competition in the field of public procurement. It has been established that the Law of Ukraine "On Public Procurement" is the main regulatory legal act that regulates public procurement procedures, defines the main principles and requirements for bidders, and also establishes procedures for appealing decisions. The scope of administrative and legal regulation in the field of public procurement includes by-laws, which include resolutions of the Cabinet of Ministers of Ukraine, orders of the Ministry of Economy and other central executive bodies, which detail and specify the norms of the law; international agreements (Ukraine is a member of the World Trade Organization (WTO) and the European Union (EU), therefore it is obliged to fulfill the requirements of international treaties and agreements in the field of public procurement). The principles of administrative and legal regulation of public procurement include: transparency (all procedures must be open and accessible to the public, which is provided through the electronic public procurement system "Prozorro"); competitiveness (all bidders must have equal conditions for participation, which helps reduce prices and increase the quality of goods, works and services); non-discrimination and equality; efficiency and economy; prevention of corruption and conflict of interests. The main public information resource in the field of public procurement is the "Prozorro" electronic system. It was determined that "Prozorro" is the central element of the public procurement system in Ukraine, which is an electronic platform that ensures transparency and openness of procurement procedures, and also enables monitoring and analysis of procurement. It was determined that control over compliance with legislation in the field of public procurement is carried out by a number of state bodies, including the Antimonopoly Committee of Ukraine, the State Audit Service, as well as law enforcement agencies. It was established that despite significant progress in reforming the public procurement system, there are certain challenges, such as insufficient professional training of customers, risks of corruption, and the need for further improvement of the legislation.

Key words: state order, public procurement, administrative procedures, administrative and legal regulation, state financial resources, public finances.

Визначено, що адміністративно-правове регулювання публічних закупівель є важливою складовою державного управління, що забезпечує ефективне та прозоре використання державних коштів. Наголошено, що в Україні це регулювання здійснюється на основі ряду нормативно-правових актів та принципів, що спрямовані на забезпечення законності, економічності, ефективності та добросовісної конкуренції у сфері публічних закупівель. Встановлено, що Закон України «Про публічні закупівлі» є основним нормативно-правовим актом, який регулює процедури проведення публічних закупівель, визначає основні принципи та вимоги до учасників торгів, а також встановлює процедури оскарження рішень. До сфери адміністративно-правового регулювання у сфері публічних закупівель віднесено підзаконні акти, що включає постанови Кабінету Міністрів України, накази Міністерства економіки та інших центральних органів виконавчої влади, які деталізують та конкретизують норми закону; міжнародні угоди (Україна є членом Світової організації торгівлі (СОТ) та Європейського Союзу (ЄС), тому зобов'язана виконувати вимоги міжнародних договорів та угод у сфері публічних закупівель). До принципів адміністративно-правового регулювання публічних закупівель віднесено: прозорість (всі процедури повинні бути відкритими та доступними для громадськості, що забезпечується через електронну систему публічних закупівель "Prozorro"); конкурентність (усі учасники торгів повинні мати рівні умови для участі, що сприяє зниженню цін та підвищенню якості товарів, робіт та послуг); недискримінація та рівність; ефективність та економічність; запобігання корупції та конфлікту інтересів. Основним публічним інформаційним ресурсом у сфері публічних закупівель є електронна система "Prozorro". Визначено, що "Prozorro" є центральним елементом системи публічних закупівель в Україні, що є електронною платформою, яка забезпечує прозорість і відкритість процедур закупівель, а також дає змогу здійснювати моніторинг та аналіз закупівель. Визначено, що контроль за дотриманням законодавства у сфері публічних закупівель здійснюється рядом державних органів, включаючи Антимонопольний комітет України, Державну аудиторську службу, а також правоохоронні органи. Встановлено, що попри значний прогрес у реформуванні системи публічних закупівель, існують певні виклики, такі як недостатня професійна підготовка замовників, ризики корупції, та потреба в подальшому вдосконаленні законодавства.

Ключові слова: державне замовлення, публічні закупівлі, адміністративні процедури, адміністративно-правове регулювання, державні фінансові ресурси, публічні фінанси.

Formulation of the problem. In order to adapt the legislation in the field of public procurement in Ukraine to the standards of the European Union, it is necessary to introduce the concept of life cycle cost into the national legal space, which provides both for ensuring efficiency and for transparent spending of public funds. The concept of life cycle cost was introduced in accordance with separate EU Directives of 2014. The essence of the concept of life cycle cost of a product, service or work includes: consideration of user costs, which include costs associated with the purchase; costs associated with use, such as the use of energy and other resources; maintenance costs; liquidation costs; as well as costs consisting in quantitative measures of the impact of a product, services or works on the environment during its life cycle [1].

The state of scientific development of the problem. Solving the problem of establishing the content of the "public procurement" category was carried out at different times by representatives of domestic jurisprudence. We are talking about the scientific developments of V. P. Minyaila, O. O. Pod-

mohylnyi, R. B. Prylutskyi, Yu. O. Ovrarnets and others. At the same time, it should be emphasized that this legal category is constantly in the stage of transformation, which determines the relevance of this scientific publication.

The purpose of the article is to determine the essence of the concept of public procurement in Ukraine from the point of view of administrative and legal regulation and interpretation.

Presenting main material. The ongoing processes of the European integration of Ukraine into the European Union require the activation of the processes of harmonization of the current national legislation in various areas, and in particular, in matters of public procurement.

On February 17, 2016, the Law of Ukraine "On Public Procurement" [2] was adopted. Public procurement was gradually transferred to information resources and is carried out using online communication and electronic digital signature.

In the mentioned legal act, the category "public procurement" is used, which replaced the term "state procurement",

which is also justified by the lawmaker due to the need to build a service state and build.

It is worth emphasizing that the new Law uses the term "public procurement", which previously existed under the name "state procurement". The authors of the law associate this change with the psychological criterion, since the first term is better perceived by the public. The logic of the legislators is that since purchases are made at the expense of taxpayers, the population has the right to "publicly" and unhindered control of this process. And such actions become a reality thanks to the transfer of the procurement process to an electronic format via the Internet. We note that before the adoption of the Law of Ukraine "On Public Procurement" both at the legislative and doctrinal levels, the term "state procurement" was used, only later it was changed to "public". Therefore, within the framework of our research, we will use these concepts as comparable and synonymous, since the change in wording is solely related to the implementation of the legislative reform in 2016 and is in no way related to a change in the semantic load.

It should be emphasized that usually the categories "state" and "public" are correlated, have common roots and reflect the characteristics of similar phenomena, defined as a public, open phenomenon inherent in society [3, p. 142–143].

Public procurement plays an important socio-economic role in the regulation of administrative and legal relations, where the basis for their development is the construction of society in its complex interaction with authorities [4, p. 3]. Public procurement reflects the content of the socio-economic policy of the state and is a vector of society's development.

Public procurement is considered through the prism of the implementation of social services, which is sufficiently appropriate and justified, because the functioning of private business entities that implement various types of activities (financial services, production works, innovative development services) and is the necessary basis for development society at the expense of state and local budgets, and therefore is a guarantee for the adequacy of social protection and provision of the country's population [5, p. 13].

Through public procurement, the state selects the most optimal system of goods, works and services in terms of quality and price, which allows it to satisfy the needs of the population. Achieving the efficiency of such a task is possible through conducting an unbiased competitive process [6, p. 55–57]. It is quite acceptable for understanding to establish the content as a certain process of purchasing goods, services or paying for socially necessary works at the expense of public funds [7, p. 48].

That is, it is important to focus on ensuring regulatory regulation of the entire process of procurement of goods, works and services with public funds.

In order to ensure the transparency of the public procurement process, it is important to define objective criteria for evaluating such activity, which should functionally pursue the goal of economic and social growth of the region and the state as a whole. Such objective criteria should include compliance with the principles of fair competition among

bidders in order to ensure efficiency and maximum savings for their customer [8, p. 58–59]. That is, the second feature of public procurement is their special purpose of implementation – satisfaction of public interests and needs. However, at the same time, it is obvious that public procurement has a different meaning from the category of government orders. Public procurement is a relevant process of purchasing goods, paying for work and providing services, while public procurement is structurally related to the state's development strategy.

The implementation of public procurement pursues the main goal of ensuring the functioning of the state, solving its development strategy and performing socially important functions [9, p. 25; 10, p. 136]. Making purchases in accordance with the relevant annual plan for spending state funds should be called the fulfillment of a state order, as noted by A. O. Olefir [11, p. 203]. The Institute of Public Procurement, on the other hand, allows establishing a public-private partnership to solve socially important tasks and achieve strategic development goals.

Public procurement is often determined by a certain insufficiency of the state's own resources to meet the needs of society, which requires recourse to such a mechanism.

Thus, public procurement should be considered as an institution capable of guaranteeing the proper functioning of society and the state.

Conclusion. The essence of public procurement as an instrument of the state's economic policy is also manifested in the fact that taxes and population fees, which form the State budget of Ukraine and the budget of customers, are returned to business entities (winners) as a fee for placing a state order for goods (works, services). At the same time, society receives benefits, the implementation of which is entrusted to the state.

The direction of application of the life cycle cost criterion may be its use at the procurement planning stage to compare technologies, as well as during the development of technical specifications. In addition, it is effective when determining the winner to compare the cost of offers, which is associated with the determination of the most economically advantageous offer.

In general, public procurement of goods, works and services is a unique legal mechanism by which the state can choose business entities that will be able to fulfill the state order on the most favorable terms. This is achieved through an unbiased tender process, which includes the procurement itself and the subsequent selection of the winner based on pre-defined criteria. Therefore, the purpose of public procurement is to select a supplier that fully meets the qualification criteria and has offered the lowest price for its goods, works or services.

It should be emphasized here that it is public procurement that gives the state the opportunity to conclude contracts with the private sector that are able to solve the socio-economic problems of the state and society, ensure the conduct of scientific research, create and implement the latest technologies and developments. Therefore, the need for public procurement usually arises when the public sector lacks the resources to fulfill the tasks assigned to it.

BIBLIOGRAPHY

1. Дацюк А.В.Г. Управління закупівлями в установах державного сектору, як напрямок антикорупційної діяльності: сучасний стан та шляхи вдосконалення. URL: <http://surl.li/juynf>
2. Про публічні закупівлі: Закон України від 25.12.2015 № 922-VIII. URL: <https://zakon.rada.gov.ua/laws/show/922-19>
3. Іванов С. О., Сніцар І. В. Правова природа договорів, укладених в межах здійснення державних закупівель. *Науковий вісник Національного університету ДПС України (економіка, право)*. 2014. № 2(65). С. 235-245.
4. Картузова І. О. Адміністративно-процедурне право / ред. І. О. Картузова, А. Ю. Осадчий. Одеса: Юридична література, 2008. 288 с.
5. Лєгеза Ю.О. Характеристика внутрішніх факторів, що впливають на стан оперативної обстановки у сфері державних закупівель. *Науковий вісник ДДУВС*. 2019. № 2. С. 103-108.
6. Оврамець Ю. О. Адміністративно-правові процедури публічних закупівель в Україні. Кваліфікаційна наукова праця на правах рукопису. Дисертація на здобуття ступеня доктора філософії за спеціальністю 081 Право. Національний університет біоресурсів і природокористування України, Київ, 2023. 282 с.
7. Колотій В., Пила В., Шатковський О. та ін. Регулювання правовідносин у сфері державних закупівель в ЄС та в Україні: наук. видання. Київ: Ніка-Прінт, 2005. 768 с.
8. Пінькас Г. І. Система ефективного державного фінансового контролю і координації у сфері державних закупівель. *Актуальні проблеми економіки*. 2009. № 2 (92). С. 57-69.
9. Критенко О. О. Теоретичні підходи до визначення поняття «державні закупівлі». *Вісник Академії митної служби України*. 2014. № 1. С. 19-26.
10. Константинова В.С. Державні закупівлі: правила проведення та участі в них: методичний посібник. Харків: Фактор, 2012. 208 с.
11. Олєфір А.О. Господарсько-правове забезпечення державних закупівель у сфері охорони здоров'я: теоретичні та практичні аспекти: монографія. Харків: Юрайт, 2012. 456 с.