

УДК 351.72

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**IMPLEMENTATION OF INTERNATIONAL EXPERIENCE
OF COUNTERACTION TO CORRUPTION
TO THE NATIONAL PUBLIC PROCUREMENT PRACTICES**

The place to combat corruption in public procurement, the basic offense customers during order placement, the measures against corruption in public procurement were defined. Some measures to counter corruption in public procurement.

Key words: mechanisms; government procurement; government regulation; system; corruption; orders; trades; functions.

Розкрито місце боротьби з корупцією у сфері державних закупівель. Виявлено основні правопорушення замовників у ході розміщення замовлення. Запропоновано заходи щодо протидії корупції в системі державних закупівель.

Ключові слова: механізми; державні закупівлі; державне регулювання; система; корупція; замовлення; торги; функції.

Problem formulation. General principles of public procurement and their practical implementation can have significant differences. The main reason for these differences is the abuses which determine choice suboptimal of suppliers in public procurement. Public procurement is one of the most corrupt areas of the state. In particular this applies to developing countries and countries with economies in transition, including Ukraine.

Currently, the government embarked on the development of new mechanisms to counteraction corruption. It is advisable to note that Ukraine is undergoing formation of normative legal barrier on the way of corruption. Increased state activity in this area is associated in particular with the knowledge society and the state of the fact that corruption limits economic growth, prevents the development of entrepreneurship and creates a hostile environment for investors [1, 4].

Analysis of recent researches and publications. Significant contributions to the matter under consideration have such authors as: O. Hrybovskiy [2], Yu. Kalnysh [3], S. Kozlov [1], A. Malynovska, M. Kamenev, A. Pokreshchuk [4], N. Tkachenko [5], N. Chepeliuk [6]. Among the foreign experts who examine different aspects of public procurement, it is worth noting of labor of T. Veblen, J. Hobson, E. Domar, J. Clark, R. Toni, A. Williamson.

Purpose of the article. The aim of the article is to outline the theoretical foundations and develop practical recommendations on fighting corruption in public procurement. The study was conducted using historical, systematic and logical-dialectical approach. To achieve this goal used of such methods as historical and chronological, abstract and logical, analytical and monographic, structural-functional and experimental.

Main material. Ukraine has already generated some of the basics of the legal and organizational basis for combating corruption. However, despite the measures corruption as an inevitable consequence of excessive administration of the state is still complicates the normal functioning of all social mechanisms that prevents the social changes and efficiency of the national economy is in Ukrainian society anxiety and distrust of government institutions, creates a negative Ukraine's image in the international arena and rightly regarded as one of the threats to security of Ukraine.

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Because of corruption transactions in public procurement damages are from 10 to 15 % (35–52,5 bln of hryvnias) expenditure part of the budget each year [7].

In this regard, the developments of measures to combat corruption, especially in order to eliminate its root causes, and implement such measures in the context of software development in general are becoming a necessity. In addition, the Government of Ukraine instructed to foresee the development and funding for the creation and use of innovative technology governance and administration, increasing objectivity and ensure transparency of administrative processes, including the implementation of the transition to electronic trading online to procurement for state needs. Thus, the fights against corruption in public procurement are defined as part of anti-corruption policy and require measures to improve the public procurement system, including in the context of normative legal support [8, 48].

Public and private losses from purchases at inflated prices reached the beginning of the third millennium in our country are impressive sizes. At present, corruption is a serious threat, although legislation placing orders made it impossible to use unscrupulous officials corruption schemes. It is advisable to note that the use of different kinds of manipulation when placing an order is the ultimate aim of receiving illegal payments, referred to in the modern media “rollback”. For this purpose the used mechanisms allowing guaranteed to choose from among the applicants those vendors interaction which represents a material of interest to employees [2, 49]. Analysis of placing orders revealed more widespread tool manipulation procedures that allow you to choose “rollback” provider:

1) in the absence of a fixed list of criteria for evaluation of applications for the competition customers were able to establish the requirements that significantly reduce the possibility of a truly competitive selection;

2) the criterion “availability of production facilities”. Many customers did stress that the availability of production capacity is a prerequisite for efficient execution of the contract. It should be emphasized that the supply of, for example, computer equipment does not require specific capacity and the success of this contract are not way does not depend on whether the vendor machines for the production of computers, or he buys equipment in their partners.

Corruption phenomena permeate public procurement in any country regardless of level of development, capacity or size of the budget. Thus, you can not completely eradicate corruption in public procurement. However, in practice, it is really narrow and reduces corruption capacity of the process through improved legislation. It is assumed that in terms of anti-corruption legislation should be identified barriers that determine the precise procedural steps the customer and suggest different interpretations of legislation. Analysis of the legislative proposals, as well as forecast the impact of these changes revealed areas of anti-corruption, implementation of which will lead to significant development of the public procurement system in general [9].

The analysis of the practice of placing orders and complaints that come to the Antimonopoly Committee of Ukraine, it is appropriate to allocate such basic offense customers during placing an order:

- pre-selection method unlawful order placement;
- the establishment of illegal request to participants placing orders;
- deliberately unlawful refusal of permission for participants placing an order to participate in contests and auctions;
- overestimation of the initial (maximum) contract price public;
- non-placement information from official sources of data on placing orders;
- illegal increasing costs on public contracts.

The above violations are most common in the placement of public orders. However, the following list is not exhaustive and may be supplemented by a substantial number of less

important and widespread violations and abuses. Public procurements, as well as any area of public or corporate activities related to the distribution of wealth and resources, carries significant risks of abuse associated with selfish intentions of certain persons or groups of persons involved in the field. Besides, these risks are not the exclusive feature of Ukrainian public procurement. Of corruption permeate public procurement in any country regardless of their level of development, capacity or size budget. The exception may be only country where installed hard totalitarian regime. However, the totalitarian no mechanism to select suppliers for public use at competitive open market. Thus, it is impossible to completely eradicate corrupt practices in public procurement. However, in practice, it is really narrow and reduce corruption capacity by improving the process of legislation. The presence of some progress in the development of public procurement should be an incentive for further changes and legislative work. It is assumed that in terms of anti-corruption legislation must be outlined barriers that define clear procedural steps of the customer and do not involve dual interpretation of legislation.

Analysis of the proposals for changes in legislation and forecast the impact of these changes revealed areas of anti-corruption, implementation of which will lead to the development of public procurement system as a whole (fig. 1).

One of the most corrupt ways to place your order now a quotation. Price quotations allows the desired responsible official, who is in cahoots with the participant placing your order, easy to influence the outcome of purchase. Currently, many customers set for participation in the request for quotation possibility of submitting bids by fax.

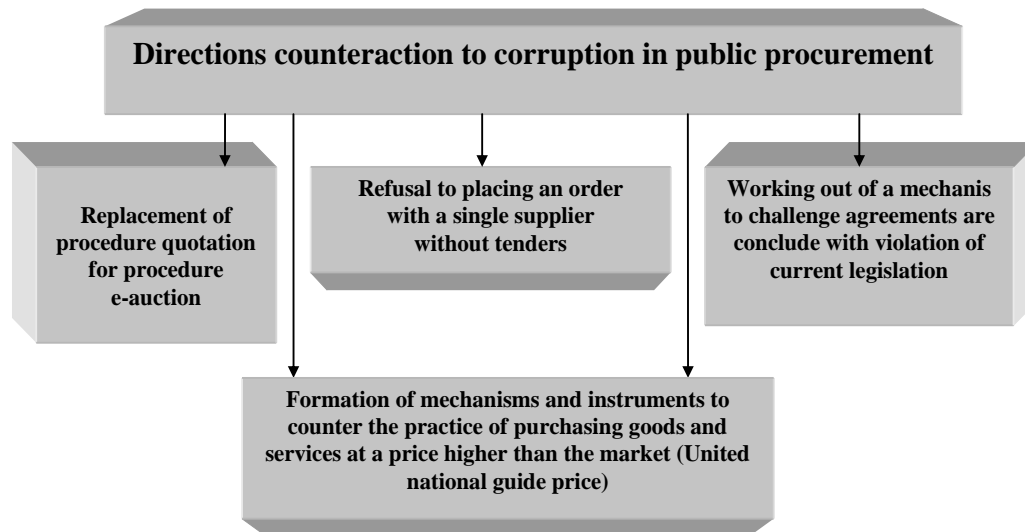


Fig. 1. Directions counteraction to corruption

The only criterion for evaluating proposals during the public bidding or quotation is the price of the contract and therefore abuse occurring at the stage of filing price. That is, if the submitted several applications and price application provider that is in collusion with the customer, other above quotation, unscrupulous client binds to “their” supplier and last names of the proposed lowest prices. Thus, in order the situation when almost half of orders placed through procedures that allow abuse.

One of the most corrupt ways of placing an order at this time is to request quotations. The procedure can request quotations responsible official who is in collusion with the participant placing the order to easily influence the outcome of purchase. The only criterion for evaluating proposals quotation is the price of the contract, and therefore abuse occurring at the stage of submission of quotation. That is, if the submitted several applications and price application service provider that is in collusion with the customer, above other quotations, unscrupulous client communicates with “their” supplier and calls the latter the smallest of the proposed price. Thus, in order formed a situation where almost half the orders placed through procedures that allow abuse. In these circumstances, it seems appropriate to limit the possibilities for the queries quotes or abandon this method of placing an order. But so far there is no nomenclature of goods and services for which shall be determined identical place names therefore has any restrictions in terms of similar goods and services, but only relative of one type of goods, works or services, and it provides a priori different abuse among state and municipal customers. Effective mechanism of withdrawal request quotations may be the abolition of the placement of the order and the transition to the auctions, including auctions in electronic form. Since the auction involves direct competition for the contract price, and is one of the most open and transparent ways of placing the order. Moving from requests quotations to auctions should be regulated by law with maximum regard to the interests of state and municipal customers. Choosing request quotations for the purchase, the customer, not least guided convenience of this procedure, its relative short-term maturity. It is very useful is the gradual replacement requests quotations for electronic auctions. Currently formed conditions for a wide dissemination and implementation of electronic auctions, because legally established certain requirements to electronic trading platforms. Electronic auctions are an adequate substitute demands quotations because the statutory terms of the procedure are approximately equal, the opportunity to participate in electronic auctions for suppliers and contractors remains as wide as during request quotations. In addition, the electronic auction is a significant advantage before requesting quotations, as well as other methods of order placement. Thus, a situation that the customer is much more profitable for conducting electronic auctions. However, in the absence of appropriate incentives and developed infrastructure for electronic auctions, not all customers are ready for a new, transparent and high-tech way of placing the order. It is therefore proposed a gradual transition from the queries quotes on electronic auctions [4, 99].

The transition from request for quotation to the auction shall be regulated by law in the best interest of national and regional customers. Choosing quotation as of the purchase, the customer, not least the convenience of this procedure is guided by its relatively short-term maturity. It is helpful to have a gradual replacement of quotations is an electronic procedure auction. Today these circumstances to favor the introduction of electronic auctions, as legally established certain requirements for electronic torhovelyh sites [10].

The first stage should be selected several sites with rights of electronic auctions for public use. The second phase should identify the list of goods and services ordering that there should be made through electronic auctions. It is assumed that this will facilitate the implementation of electronic auctions in the general practice of placing the order. It is very important to note that currently does not provide an electronic auction stage of the application, and thus, the customer, does not have the technical and qualitative characteristics of goods and services has a high risk to buy a “pig in a poke”. In this regard, the electronic auction process to enter its consideration of applications for participation in electronic auctions, which state the customer, will be able to review the proposed terms of the contract, technical and quality features offered goods and services. The need for such a step at the second stage of implementation of the effective use of

electronic auctions due to the fact that the new national sites to be selected in accordance with the procedure approved by the Government of Ukraine should provide a clear and convenient form of an electronic auction for government customers.

The third stage measures to implement elements of e-commerce should be to consolidate monopoly status for selected state electronic trading platforms, which should be enshrined in law. Then should cancel request quotations as a way of placing an order. Experience conducting electronic auctions with a list of goods and services identified in the first phase will enable customers to quickly adapt to the new innovative way of placing an order.

The final fourth stage should consolidate the status of an electronic auction the most common method of placing an order by eliminating simple auctions. Auction in electronic form could replace a conventional auction, since the difference lies only in the form of applications for participation in the auction and price proposals. And the fourth stage should be spent for public electronic contests.

As a second measure against corruption proposed waiver of placing an order with a single source without tendering and quotation requests. In this regard, it is appropriate to apply a different mechanism of small purchases, which will reduce the share of small purchases and increase the number of competitive procedures for placing orders. It is about establishing a constant amount that the customer can spend without any procedures for placing orders. All orders over this amount must be placed on the basis of tenders and requests quotes. Determination of the amount should be based on gross purchases of the contracting authority and the type of ongoing activity [7, 101].

The essential and important for the anti-corruption mechanism is challenging transactions committed in violation of the law. Currently, the legislation includes two options for protecting the interests of suppliers whose interests were affected – a court or administrative order. However, the legislation establishes a specific period during which the provider has the opportunity to appeal the results of the procedure in administrative proceedings. By the end of the participant placing an order whose rights have been violated is unable to contact the controlling body and it is exclusively judicial procedure for reviewing disputes. The same was true for most supervisory bodies, as if the deadline has passed and public contracting State entered into a contract – appeal against the decision of the contracting authority, and view the results of the procedures controlling authority may exclusively in the courts [6, 112].

At present, the judicial system is operating efficiently enough to promptly respond to the serious violations committed by customers during the procedures of order placement. In this regard, widespread is a situation when the public customer in violation of the provisions of the legislation conclude a contract before deadlines and manages to carry the bulk of the payment under the state contract or to pay performer for goods, works, services, and close the contract to the court's decision to suspend contract. In case of delivery of goods by the court enough to make retroactive effect, namely, when the supplier receives the goods back and will transfer the money paid to the customer [11]. Far more complex and hard to realize it is possible to cancel the contract for the work, and the more services because almost always provided services or works can not be canceled or refunded to the person making them. In this connection it is necessary to use measures of surgical cancellation of state contracts entered into in violation of the law. Such measures may include the extension of control functions relevant authorities. It is assumed that the stage of administrative interference in the activities of the contracting authority should move through the line into state contract. The functions of supervising the execution of public contracts, as well as the appropriateness of making appropriate transfer authority authorized to exercise control in placing orders. In addition, in our opinion, should give supervisory authorities the power to determine public contracts concluded with violations, invalid.

The functions of the enforcement of contracts we offer include the following:

- the question of compliance with the terms of the enforcement of government contracts;
- the question of compliance in terms of changes in the delivered goods, works and services provided;
- the question of the legality of awarding public contracts.

Corruption in the allocation of public order, regardless of the level of disposable order usually is the result of criminal intent civil servants receives part of the funds for the purchase of necessary goods and services. This problem is a consequence of the presence of multiple solutions of the contracting authority during the procurement planning and implementation under the state contract. If the procedure is regulated by placing an order clearly and consistency of customer defined by notification to the contract, then everything that happens before and after is under regulation of civil law and no more. In this regard, should pay attention to the first link in the chain formation and allocation of public order – planning and initial contract price [5, 125]. It is at the stage of contract price defaulting officer has the ability to set a price that is far above the market, with a view to getting some of these funds in the form of bribes.

Conclusions and further researches directions. In order to prevent excessive budget spending and stop corruption schemes placing an order by the state should be formed tools against the practice of public procurement at a price above the market. It is advisable to form single national price information for the purposes of placement of orders for the entire range of products for state needs in fixed intervals acceptable prices. Thus, taking into account our country, the number of actors in Ukraine, should be formed for each subject of Ukraine, and possibly for certain areas of Ukraine special code in respect of each group of products included in the nomenclature. This index is used to set the minimum and maximum unit price by multiplying the value of the index for the Single nationwide directory.

We believe that implementation of the proposal should be put to the State Statistics Committee of Ukraine, which has sufficient information base, formed the practice of making up information resources and has an extensive network of regional offices and subordinate organizations. In our view, the implementation of this proposal should be carried out in stages, taking into account market characteristics of each product and its local characteristics. To establish the threshold of corruption in this field should be set right supervisory bodies make unscheduled inspections of those customers who have installed the original contract price set out only nationwide directory boundaries. In the course of this inspection oversight body should vested right to seek justification for overpriced original contract price. If the customer is not present justification or rationale is presented that does not meet the average market price indices in the region, the controlling authority shall decide on the cancellation or amendment to its terms. Once the mechanism will be tested in several regions of the country expedient to form a single automated system on the Internet, that will allow customers and regulatory agencies to easily obtain information about product markets of the region of Ukraine. We believe that the formation of such an information resource will have additional indirect benefits to the organization of inter-regional cooperation and economic integration businesses.

Thus the fight against corruption in Ukraine, in our opinion, is not intense. Corruption in the order placement is one of the urgent problems of governance. Currently, the government embarked on the development of new mechanisms to combat corruption.

Based on the forecast impact of these changes we have identified areas of anti-corruption, implementation of which will lead to significant development of the public procurement system as a whole, namely the procedure request quotes, the refusal of placing an order with a single source without tenders and requests quotes; mechanism contesting agreements committed in violation of the law.

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