

# Transparent Public Procurement Rating



## Implementation Assessment of the Belarusian Public Procurement Legislation

The Assessment of the Public Procurement Legislation of Belarus was prepared by SYMPA/BIPART (Belarus).

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## List of Acronyms

- **Law** - Law «On Public Procurement of Goods (works, services)» of 13 .07. 2012 № 419-3;
- **PPL** – legislation regulating public procurement;
- **Public procurement** – public procurement, as defined in art. 1 ch. 1 of the Law;
- **MART** - Ministry of Antimonopoly Regulation and Trade of the Republic of Belarus;
- **MFA** – Ministry of Foreign Affairs;
- **NLA**– Law and normative legal acts related to public procurements, including the regulation of procurement procedures from a single source;
- **PPP** – Public-Private Partnership
- **SME** – small and medium sized enterprises
- **PSS** – procurement from single source

## Introduction

The Law “On Public Procurement of Goods (Works, Services)” (hereinafter “the Law”) and the Resolution of the Council of Ministers “On Some Measures for the Implementation of the Law of the Republic of Belarus on Public Procurement of Goods (Works, Services)” (hereinafter “the Law”), which were adopted in 2012 and entered into force on January 1, 2013, are the basis of the current system of normative and legal regulation of public procurement. Both legal acts are aimed at bringing the national legislation in line with the international obligations of the Republic of Belarus, namely the “Agreement on Public (municipal) Procurement” signed in Moscow in December 2010 within the Customs Union of Belarus, Russia and Kazakhstan.

The purpose of this evaluation is to describe the actual practice of the functioning of the national procurement system and to list the observed problems, as well as possible recommendations for solving such problems.

The evaluation methodology includes a desk study of existing works on public procurement in Belarus, an analysis of the legislative framework for public procurement, statistical analysis of procurement data. The evaluation focuses on the Transparent Public Procurement Rating (TPPR) methodology and its main criteria, which include the following:

- Uniformity of the Legislative Framework
- Efficiency
- Transparency
- Accountability and Integrity
- Competitiveness and Impartiality

The document first describes the existing system of public procurement, current events, and then evaluates the effectiveness of the system on the basis of statistical data on public procurement. There will be presented recommendations for improving the system and solving the problems after identifying such problems and issues related to the implementation of the Legislation.

## **“Law on Public Procurement of Goods (Work, Services)” as the core of the national system of public procurement**

It should be noted that prior to the adoption of the current legislation, the scope of public procurement in Belarus had been regulated by the Presidential Decree on "Public Procurement in the Republic of Belarus" and the Resolution of the Council of Ministers of the Republic of Belarus "On Some Issues on Implementation of Public Procurement", adopted back in 2008. Thus, in the case of the Republic of Belarus, one should speak not so much of creating a new regulatory and legal framework, but rather of modernizing the old one.

The main principles of the Law, as before, are:

- effective use of funds;
- publicity and transparency of the public procurement process;
- development of fair competition;
- ensuring fair and impartial treatment of potential suppliers;
- providing support to domestic suppliers to the extent that this does not violate the international treaties of the Republic of Belarus;
- Prevention of corruption in public procurement.

The current Law almost repeats the provisions of the Moscow Agreement, with the exception of an additional procurement procedure - closed tender, which is applied in case if the information on public procurement contains state secrets. All in all, the law provides for six types of public procurement procedures:

- open tender - is a public and competitive way to choose a supplier, is applied in cases where no other types of public procurement procedures are envisaged;
- closed tender - a competitive and private way of choosing a supplier, is applied in the event that the information on public procurement contains state secrets;
- electronic auction - a public and competitive way of choosing a supplier, which is conducted according to the list of goods, works and services determined by the Council of Ministers of the Republic of Belarus;
- The procedure for requesting price proposals is a competitive way to choose a supplier that is used for public procurement of goods, works and services, the threshold value of the estimated cost of which is determined by the Council of Ministers of the Republic of Belarus, as well as in the case of public procurement information containing state secrets;
- Procurement procedure from single source is an private and non-competitive type of public procurement procedure, in which the customer proposes to conclude a contract with only one potential supplier;
- Exchange trading - public procurement of goods using exchange trades, which are carried out on commodity exchanges, in cases defined by the Council of Ministers of the Republic of Belarus.

Scope of the Law shall apply to all cases of procurement, which are implemented fully or partially at the expense of budget funds, and funds of state budget foundations, while the status and the organizational-legal form of the customer do not matter.

At the same time, with the help of additional regulatory acts published for development of the Law, sectoral lobbyists managed to significantly change the rules of the game in the implementation of public procurement in the sectors of their interest, and completely eliminate the construction industry from the scope of the Law.

Transparency and publicity of public procurement is provided by means of placing information on official portals in the public domain on the Internet. The law provides that public information on public procurement includes:

- annual public procurement plans;
- Invitations to participate in public procurement procedures;
- documents submitted to the participant for the preparation of a proposal for participation in an open tender, electronic auction;
- publication of the results of public procurement procedures;
- information on contracts;
- list of suppliers (contractors, executors) temporarily not allowed to participate in public procurement procedures;
- protocols of the commission meetings on opening proposals, rejecting proposals and summarizing the procedure for public procurement in the case of open tenders, electronic auctions;
- information on complaints, their content and decisions taken on the basis of their consideration.

In order to publish public information on public procurement, as well as to create a single point of access to PPL, there was developed an official Internet portal "icetrade.by". There was created a separate specialized Internet portal "goszakupki.by" to conduct the procedures of electronic auctions. In addition, the unified register of legal entities and individual entrepreneurs is in open access.

The Law obliges the customer to create a commission for the organization and conducting of public procurement in all cases, except the procurement procedure from a single source and exchange trades. The commission should include specialists in the field of public procurement and an annual replacement of at least one third of the permanent commission, including its chairman. An individual may be a member of the permanent commission for no more than three consecutive years.

The law also provides the right of the customer to create a separate structural unit or appoint a responsible employee with sufficient professional skills to carry out public procurement. However, the order of implementation of this right is left to the customer's discretion, which on the one hand looks reasonable, since the size of the customer companies and the scope of their purchasing activities may vary, but on the other hand, it questions the professionalism of the employees of small client companies which cannot allocate qualified specialist for public procurement.

Any person whose legal rights and interests are violated has the right to file a complaint with the authorized state body for public procurement. In addition, the law provides the possibility of resolving a dispute directly with the customer or other organizer of the procurement procedure without filing a complaint. In case of receipt of a complaint in the authorized state body for public procurement, the procedure of public procurement is suspended, and the period for suspension of the public procurement procedure cannot exceed thirty calendar days and is not subject to extension.

The most important shortcomings of the national system of public procurements can be:

- Technical imperfection of official portals, which leads to numerous deliberate and unintentional errors and hiding information about public procurement;
- Lack of transparency due to the widespread use of non-competitive and private procurement procedures from a single source;
- Lack of requirements for qualification of persons engaged in public procurement;
- Lack of norms that ensure transparency and accountability to journalists, activists and civil society organizations;
- Lack of regulations for protection of whistleblowers.

Thus, the system of public procurement in Belarus is in the stage of formation and contains the potential for further development.

## Problems in Practice

### Uniformity of the legislative framework

The analysis of the legal framework revealed the following problems related to uniformity of the PPL:

- The construction industry has been excluded from the scope of the law, in some industries the rules of the game have been substantially modified;
- Despite the existence of a single regulator of public procurement, regulatory powers are dispersed among several agencies;
- The law does not oblige the customer to have a separate specialist for public procurement;
- The Law does not provide for provisions giving social activists, representatives of NGOs and journalists the right to appeal;
- Use of a closed and non-competitive procurement procedure from single source in order to reduce competition;
- There are no provisions in the Law that obliges to include a clause "the procedure for resolving disputes" in the public procurement contract.

The cumbersomeness and intricacy of the legislative framework:

- It is very difficult to find out from all the documents of the legislative base of the procuring organization what channels should be used for a particular procurement (public procurement, procurement from own funds, procurement at an electronic auction, etc.);
- The presence of a large number of legislative and regulatory acts, often create a conflict of interest among various regulators of the procurement market: interstate, public, departmental, local.

Scope of application of the Law is defined quite logical: the entities include all persons who carry out all or part of spending budget funds, as well as funds of state off-budget foundations. The status and organizational-legal form of the customer thus do not matter, which is an important feature of the Belarusian PPL and distinguishes it from the legislation of other countries, which usually clearly outlines the circle of regulatory subjects.

At the same time, with the help of additional regulatory acts published for development of the Law, sectoral lobbyists managed to significantly change the rules of the game in the implementation of public procurement in the sectors of their interest, and completely eliminate the construction industry from the scope of the Law.

In particular, the 380th decree of the President completely excluded public procurement of goods, works and services in the construction, building, reconstruction, repair, restoration, improvement and demolition of construction sites from the scope of the Law; the 612th decree seriously changed the rules of the game in the implementation of public procurement in the areas of information, information and communication technologies and telecommunications; The 724th order of the Ministry of Health defines a single organizer of procedures for public procurement of medical equipment and medical products - the enterprise "Belmedtechnika".

Such regulatory initiatives blur the integrity of the LAP, create exceptions and special rules for implementation of public procurement for individual industries, which in practice reduces the efficiency and transparency of tenders and thereby increases corruption risks.

The regulators of state policy with regard to the field of public procurement in accordance with the Law are:

- The President and the Council of Ministers, which determine the overall strategy and policy in the field of public procurement;
- The authorized state body for public procurement, which coordinates the activities of state bodies and is the developer of the main NLA in the field of public procurement;
- Other state bodies and institutions that have the right to develop sectoral NLA.

Thus, although MART has defined the authorized state body for public procurement in Belarus, but in practice this ministry does not have complete independence in decision-making, because, firstly, it does not have independent sources of funding, and secondly, its real powers in the vertical are limited by the Council of Ministers, and horizontally by other government bodies and institutions.

These restrictions play into the hands of sectoral lobbyists who, at the level of the President and the Council of Ministers, promote their interests by consolidating them in the NLA, which introduces significant distortions into the initial implementation of the Law. We see the result of such sectoral lobbying on the example of the construction industry, which was completely excluded from the scope of the Law by presidential decree.

Another example of horizontal restrictions can be the distribution of powers and responsibilities of state bodies in the development and support of the IT infrastructure of the public procurement system. In this case, although MART is called upon to coordinate the activities of state bodies in the field of public procurement, it has no real leverage over the quality of the IT infrastructure, since the National Center for Marketing and Price Study, a company under the control of the Foreign Ministry, is responsible for the development and technical support of official trading platforms.

The law provides for the right, but not the duty, of the customer to create a separate structural subdivision or appoint a responsible employee with sufficient professional skills for public procurement. The order of implementation of this right is left to the customer's discretion, which on the one hand looks reasonable, since the size of the customer companies and the scope of their purchasing activities may vary, but on the other hand, it questions the professionalism of the employees of small client companies which cannot allocate qualified specialist for public procurement.

According to our estimates, up to 80% of public procurement procedures take place with some kind of violations. In practice, a significant proportion of these violations are related not so much to the wrongful intent of officials as to their inattention, low qualifications and lack of knowledge of the PPL. The issue of professionalism of employees responsible for the implementation of public procurement in small organizations is so acute that MART initiated the creation of special training courses for employees of these organizations.

According to the Law, a participant or other legal or natural person, including an individual entrepreneur, has the right to file a complaint with the authorized state body for public procurement. However, a person who is not a bidder is entitled to file a complaint with the authorized public procurement authority only before the deadline for the preparation and submission of proposals regarding the invitation or documents submitted to the participant for the preparation of the proposal.

Thus, the PPL excludes appeals of public activists, representatives of NGOs, journalists and just non interested citizens from the process, which in practice makes it difficult to combat violations and corruption in public procurement. Although any citizen or organization retains the right to receive information about the facts of offenses in the monitoring bodies, but in this case they do not have such a warning, but the information the punishment for committing them. An important drawback of the Belarusian PPL is that it does not oblige to include public representatives to the complaints committee.

The PPL provides for a closed and non-competitive procurement procedure from a single source, which is criticized both by independent experts and by law enforcement agencies. Although the procedure is exceptional and does not apply by default, and the list of cases for implementation of this procedure is limited by legislation, according to statistics this procedure is the most popular and is widely used in real practice. Amendments adopted to the procurement procedure from single source from the beginning of 2016 which provide for the coordination of this procedure with the state body for public procurement, practically do not interfere with the previously agreed interests of the customer and the contractor to make a corrupt transaction.

For example, according to the statement of the head of the MART, V.V. Koltovich, made at a press conference in September 2016, the share of contracts concluded as a result of the procurement procedure from single source is more than 90% of their total number. In value terms, this share was 67.64% according to statistics for 2014.

The reason for the popularity of this procedure lies in many respects in the simplification of the mechanism for its harmonization, which was introduced by the 590th presidential decree. The fact is that with the adoption of the decree, the authority to agree on the application of the procurement procedure from a single source in the case if an open tender is recognized as not held, have moved from the MART to the bodies to which the organization-customer is subordinated. And in cases of recognition of an open tender as failed two times in a row, the customer has the right to conduct the procurement procedure from single source at his own discretion. All this opened up wide opportunities for manipulating the rationale for the need to conduct a procurement procedure from a single source, by excluding competing proposals for means of preparing too narrow specifications for the subject of procurement and subsequent recognition of the procedure as failed due to the absence of two or more proposals.

PPL does not contain a mandatory requirement to include provisions on the procedure for resolving disputes in the contract concluded on the basis of the public procurement procedure. At the same time, in practice, the customer practically always includes these provisions in the draft contract.

## Efficiency

The following drawbacks are typical for the Belarusian PPL:

- The main type of public procurement procedure is an open tender, not electronic bidding;
- Criteria for received proposals such as "life-cycle costs", "best price-quality ratio", "society's / environment costs" are not mandatory and are not provided for in the PPL.

The Law specifies that the main type of public procurement procedure in Belarus is an open tender. Although the PPL provides for the publication of all the most important documents accompanying the bidding in electronic form, the competition itself is not electronic at the same time. This is due to the fact that the preparation of tender documents, as well as the procedure for opening and reviewing tender proposals within the framework of this competition is conducted internally and by using paper carriers.

Thus, the official website in this case fulfills the function of the electronic bulletin board and the place of publication of official documents, while not being a full-fledged trading platform. This significantly reduces the effectiveness of public procurement, since the customer and tender participants are forced not only to meet face to face, but also to conduct a double document circulation on paper and on the official website.

Also, the real practice shows that due to technical imperfection of the official website, unscrupulous tender participants have the opportunity to hide, publish incomplete or partially unreliable information about public procurement. Typical violations include the use of the brand in the description of the subject of procurement, the use of the letters of the Latin alphabet in the description of the subject of procurement, intentional grammar mistakes, the absence of a report on the result of the procurement, the provision of incomplete information on tender participants, etc. As mentioned above, according to our statistics, up to 80% of public procurement is conducted with one or another type of violation.

It is alarming that controlling bodies almost completely don't care about detection of such violations which they consider insignificant. The point is that the so-called "prevented damage" remains the main indicator of the success of activities for law enforcement officers, and in cases with the publication of incomplete and unreliable information, this indicator cannot be used in any way, and, consequently, law enforcement agencies are not motivated to detect such minor violations.

The combination of technical imperfection of official portals and the lack of attention to such violations by the monitoring bodies created a sense of impunity among public procurement officials. This, in turn, gave rise to an absolutely formal attitude to the process of publishing information that the responsible persons perform just to tick all the boxes.

The law establishes that the criteria for evaluating and comparing proposals in the case of public procurement are:

- goods - the price of the offer, the time of delivery or purchase in another way, payment terms, aesthetic, functional and technical characteristics, quality, opportunity and cost of maintenance and repair, other criteria;
- works and services - the price of the offer, deadline for performing works (rendering services), terms of payment, participant's experience and other criteria.

According to the PGZ, the criteria for evaluating and comparing proposals should be objective and quantifiable, but the determination of the objectivity of any criteria in the Law is not disclosed and left to the discretion of the officials of the customer. By establishing the percentage relationship between the criteria, the specific weight of each of them is determined, while in the final evaluation of proposals the specific weight of the "offer price" criteria should be at least forty percent.

Such criteria for the evaluation of proposals as "life-cycle costs", "best price-quality ratio", "society's / environment costs" are not provided for in legislation and are not mandatory, although they can be used by the customer at their own discretion. However, in practice, researchers have not been able to identify any cases of using such criteria for evaluating proposals.

PPL also does not require that the criteria that cannot be calculated in monetary terms should be assessed by prequalification of proposals on the basis of the offset. A situation in which the evaluation criteria is too vague or cannot be calculated in monetary terms creates the conditions when the tender can be easily adjusted to a predefined winner using a narrow specification or a sample procurement.

## Transparency

Problems related to the transparency of the public procurement system in Belarus can be grouped into four main blocks:

- There is no law on the protection of whistleblowers;
- The official portal is technically imperfect and is not a full-fledged trading platform, while the documents are published in a non-machine-readable form;
- About 90% of purchases are conducted under the procurement procedure from a single source, which does not imply publication of information in the public domain;
- Important information about paid bills and subcontracts is not published.

The lack of a law on the protection of whistleblowers hinders the increase of trust between whistleblowers, journalists, activists and law enforcement agencies, and also does not contribute to disclosing information about impending or occurring offenses. In such a situation, the whistleblower is more inclined to turn a blind eye to committing offenses and remain silent for fear of being disclosed than to spoil relations with colleagues, reporting offenses to journalists, activists or law enforcement agencies. This greatly complicates the already difficult work of investigators to collect information and will not contribute to reducing corruption and uncovering crimes.

The technical imperfection of the official portal was discussed above in the context of the low efficiency of conducting double document circulation on paper and in electronic form. In addition, this problem also affects the issues of transparency and accessibility of information. Since the official portal is not a full-fledged trading platform, but serves as a place for publishing official documents, the customer's officials, on the one hand, are not interested in publishing electronic documents in a machine-readable form, and on the other hand they do not bother with the correctness and completeness of the execution of electronic documents. As a result, it is extremely difficult to work with a huge amount of public information, in real practice.

The problem is also the popularity of a closed procurement procedure from a single source, information about which is not required to be published. The ease of justifying the necessity of applying this procedure, together with simplifying the mechanism for its harmonization, led to an increase in the number of such procurement. Statements by officials show that the proportion of contracts concluded on the basis of the procurement procedure from single source is more than 90% of the total number of contracts in this field. Thus, it can be said that in real practice, in more than 90% of cases, information on the procedure for public procurement is not published. In addition, information on payments under public procurement contracts is not published, which makes it impossible to track the conscientiousness of the performance of the terms of the contract by the parties.

At the same time, in recent years, there has been a positive process, which is that the MART, the authorized state body for public procurement, is moving along the path of improving legislation to expand the list of open data. For example, there have been changes in the legislation on public

procurement, which involve the publication of invitations and reports on the results of the request for price proposals, changes and additions to the tender documents, information on contracts concluded on the basis of public procurement procedures, as well as procurement procedures from a single source, on the receipt of complaints, their content and decisions taken following the consideration of such complaints.

At the same time, the efforts of MART in this direction are still not sufficiently effective. An example of this can be a series of corruption scandals regarding procurement in late 2016 and early 2017, when some companies were able to win tenders under the clearly worst terms of contracts. So, [ACJSC "BelAVM" provided the dominant position in the state purchases market](#) mainly due to corruption ties. This was indicated in the complaints of other tender participants, including heads of state-owned companies. For many years this information passed by the controlling and law enforcement agencies. Representatives of the customer, being in criminal conspiracy, developed the "necessary" technical task, which allowed the ACJSC "BelAVM" to win in the auction. For assistance in organizing and conducting a "collusive" tender for the supply of equipment in BelAUM's interests, the customer's representatives received remuneration in the form of "kickbacks".

Another example is related to the facts of [conducting customized exchange trades by the Sarmat Thermo Engineering Group](#). Initially, the parties privately agreed on the terms of the future agreement, and then the officials helped the businessmen to form a proposal in full accordance with the procurement application located on the Belarusian Universal Commodity Exchange. Brokers who worked in the interests of Sarmat Thermo Engineering OJSC, who received illegal awards - 2-3% of the transaction price, and officials of enterprises who received up to 7.5%, made the registration of the "ordered" tenders and their conduct through the stock exchange. All procedures of public procurement in theory should provide for the selection of the optimal supplier, but in the case of collusion between an unscrupulous supplier and a government customer, there is always the possibility of winning of a pre-determined organization. There are cases when, where frontline participants are often used when carrying out public procurement, which offer knowingly worse conditions than the already "elected" participant. It is also known that the requirements for a product or service are formed taking into account the "appointed" winner.

In the prevailing conditions for the existence of corrupt fields in the public procurement system, the role of detecting even minor offenses should be realized due to an increase in the amount of open data associated with the publication of dirty, incomplete or unreliable information on public procurement. This function could be taken over by civil society organizations and activists aimed at combating corruption and violations in this field. Law enforcers, in turn, would purposefully and accurately punish unscrupulous organizers and customers of trades on violations identified by activists. Also, a reasonable measure would be the technical improvement of official trading platforms, so as to exclude the possibility of publishing incomplete or inaccurate information.

However, for this purpose it is necessary to establish effective cooperation between NGOs and activists on the one hand, law enforcement officers on the other hand, and the National Center for Marketing and Price Study, controlled by the Ministry of Foreign Affairs and responsible for the development and

technical support of official trading platforms, on the third hand. The coordinator of such cooperation could be MART, as an authorized state body for public procurement. The question of why MART has not yet made such an obvious initiative is still open.

## Accountability and Integrity

The analysis identified the following issues regarding the accountability and integrity of the PPL:

- There is no obligation in the legislation for the MART to consult with civil society on the functioning of the public procurement system, the business community's opportunities are extremely limited;
- The PPL does not provide for the public justification of the procurement procedure from a single source. In case if the public procurement procedure is declared invalid and the customer has decided to switch to procurement from single source, then this procedure is carried out only upon agreement with the authorized public procurement body, without public justification;
- The PPL does not provide for a ban on public servants to participate in public procurement procedures for a certain period after they leave service;
- The PPL does not provide for a ban on the procurement procedure until sources of funding are identified;
- The PPL does not provide for specific provisions defining corruption and fraud, as well as establishing additional responsibility for officials in identifying such cases;
- There is no obligatory internal and external audit of public procurements in PPL.

Legislation does not provide for official consultation procedures with representatives of civil society and business community on the functioning of the public procurement system. At the same time, representatives of the business community have the opportunity to consult with the MART in the framework of the work of the public consultative councils, and the developed solutions are not binding but are of an advisory nature.

It should be noted that the MART endorsed the draft of the new Law for public discussion in 2015 on its own initiative. However, the procedure itself could hardly be called a public discussion, since it implied only the possibility of sending proposals to the ministry's e-mail without receiving feedback or holding a personal meeting with the developers of the Law. Thus, on the one hand, we note the desire of the MART for greater openness, on the other - the lack of a full-fledged dialogue with civil society and business community.

There is no obligation in PPL to publicly justify the use of the procurement procedure from a single source. Moreover, before the introduction of the next changes to the resolution "On some measures for the implementation of the Law of the Republic of Belarus on Public Procurement of Goods (Works, Services)" in January 2015, which provide for the duty of customers to publish information on contracts concluded on the results of procurement procedures from a single source, information on the conduct

of this type of procurement on official websites was not complete. Taking into account that the share of this type of public procurement in the total volume is more than 90%, we have to state that in practice the information on public procurement is almost completely closed.

An important drawback of the Belarusian PPL is the absence of provisions prohibiting the participation in public procurements of public servants who have left the service for a certain time. There are a number of factors contributing to the creation of a conflict of interest situation and increasing corruption risks in this field.

Firstly, since the salaries of young public servants in Belarus are extremely low, some of the newly recruited employees are motivated not so much by the opportunity to serve the society and making a career, as by the desire to work out contacts and connections within the service with a view to further monetizing these ties in business after being fired.

Secondly, the state apparatus in Belarus has been reduced over the past five years, which is the reason for the outflow of a large number of former public servants in business. Representatives of business, understanding the dubious professional qualifications of former public servants, first of all hire those who have extensive personal connections in public structures and are capable of "solving issues".

Finally, there is a constant process of luring public servants who have the most valuable ties to private business. Another common practice is to reward highly paid work in the private business to those who made decisions in favor of this business while working in the public service.

Thus, the introduction of an article that prohibits public servants to work in the field of public procurement for a reasonable period of time after leaving the service would play a positive role and reduce corruption risks.

PPL does not provide for any prohibitions on the procurement procedure in case if the sources of its financing have not yet been determined. However, an indication of the source of financing for public procurement is mandatory in the rules for drawing up and placing an invitation to participate in the procurement procedure. In addition, since according to the definition public procurement is the purchase of goods or services for the budgetary funds, as well as the funds of state off-budget foundations, it can be stated that the sources of financing of public procurement are always defined. Thus, despite the absence of a legislative ban, in real practice, the sources of public procurement financing are always determined before it begins.

There are no procedures for mandatory internal and external audit of public procurement in Belarus PPL. At the same time, it should be noted that in practice, there is strict control over the effective use of budget funds by the State Control Committee, and also there has been set up a special unit within the Department for Combating Economic Crimes of the Ministry of Internal Affairs aimed at combating corruption in public procurement.

## Competitiveness, Impartiality, Ability to Adapt to New Business Conditions

The following problems are inherent for the Belarusian system of public procurement in the development of competition and ensuring impartiality for the Belarusian system of public procurement:

- PPL should not establish preferences for domestic goods, works, services and their suppliers;
- PPL does not provide for mandatory inclusion in the invitation to participate in public procurement of the timing of the supply of goods or services, the duration of the public procurement contract, payment terms and information on payments for multi-year contracts;
- Difficulties in quickly adapting to changing business conditions

The law establishes a national admission regime for goods, works and services of foreign origin, as well as their suppliers, in case if a similar regime of admission is established by a foreign state or group of foreign states with respect to Belarusian goods and their suppliers. For suppliers that fall under the national treatment, the law provides for a preferential amendment, and the 778th resolution of the Council of Ministers, this preferential amendment is set at 15%. In addition, the 206th resolution of the Council of Ministers establishes additional restrictions on a separate list of goods, if less than two proposals are submitted within the procedure of public procurement.

Unfortunately, in real practice, the use of preferential amendment is often associated with fraudulent and corrupt schemes, where non-clean suppliers offer goods of foreign origin under the guise of domestic goods. Also, the application of a preferential amendment and restriction of competition regarding the separate list of goods discriminates against foreign suppliers and leads to inefficient use of taxpayers' funds, which contradicts the principle of effective spending of funds established by the Law.

PPL does not provide for mandatory publication of the proposed transaction in the invitation to participate in public procurement of a number of important terms, namely: the delivery time of goods or services; Term of the contract of state procurement; Terms of payment and payment information for multi-year contracts. At the same time, in actual practice, data on the delivery date and terms of payment are most often indicated in the tender documents attached to the invitation, and the contract duration is contained in the register of information on contracts concluded on the basis of the public procurement procedure.

We have to state that at present the PPL is not yet set up for quick adaptation to new business conditions in the country. The projects of public-private partnership (PPP) that have recently been developed in Belarus are still in the "captivity" of old procurement structures. One should be aware of the fact that procurement of PPP enterprises is not based on one-time procurement, but involves procurement on the basis of a long-term contract. There are big fears that [the authorities will not want to change the usual scheme of public procurement for an unfamiliar PPP](#). The first is implemented easier and faster, albeit more expensive. The public side of PPPs should already have designed the tender procedure, after which the partners should be able to form a PPP using a single contract, rather than a

number of contracts, one for land use, another - for providing services, and the third for managing state-owned assets.

## Conclusions and Recommendations

The main problems of the national system of public procurement, revealed during the analysis of the NLA and real practice:

- The scope of the law does not include the construction industry, and there are special rules for some industries;
- Despite the existence of a single regulator of public procurement, regulatory powers are dispersed among several agencies;
- The law does not oblige the customer to have a separate specialist, who has the necessary qualifications in the field public procurement;
- The widespread use of a closed and non-competitive procurement procedure from a single source reduces the efficiency and transparency of public procurements, creates corruption risks;
- Criteria for received proposals such as "life-cycle costs", "best price-quality ratio", "society's / environment costs" are not mandatory and are not provided for in the PPL;
- Technical imperfection of official portals, allowing to admit numerous deliberate and unintentional mistakes, to hide information about public procurement;
- Publication of public procurement information in a non-machine-readable form;
- There is no obligation in the legislation for the MART to consult with civil society on the functioning of the public procurement system, the business community's opportunities are extremely limited;
- The PPL does not provide for specific provisions defining corruption and fraud, as well as establishing additional responsibility for officials in identifying such cases;
- The PPL does not provide for a ban on public servants to participate in public procurement procedures for a certain period after they leave service;
- PPL establishes preferences for domestic goods, works, services and their suppliers;
- PPL does not provide rapid adaptation to new alliances of business and power, such as PPPs and private partnerships.

Thus, most of the problems related to the effectiveness and openness of public procurement in Belarus are a consequence of the poor IT infrastructure and the wide application of the procurement procedure from a single source. The picture will be complete if we add to these problems the low qualification of the majority of officials responsible for the organization and conduct of public procurements, sectoral lobbyism and the absence of norms that prevent conflict of interests, corruption and fraud.

Recommendations for improving the national system of public procurement:

- Return to the scope of the law public procurement, carried out during construction. Do not allow industry lobbyists to establish special rules for public procurements;
- Transfer the powers of the regulator of public procurement to a public agency independent of the government;
- Introduce the institute of attestation and certification for the right to hold the position of the head and secretary of the competitive commission to confirm the necessary qualifications and knowledge in the field of public procurement and anti-corruption legislation. Develop a mechanism for revoking a certificate for the right to hold the office of the head and secretary of the competitive commission in case of violation of the norms of the Law and (or) professional ethics;
- Provide that the criteria for the evaluation and comparison of proposals in the case of public procurement can be only indicators expressed in monetary terms. Indicators that can not be expressed in monetary terms should be evaluated only on the basis of the principle "corresponds / does not correspond";
- Improve IT infrastructure and create a single public procurement portal capable of performing the functions of an interactive trading platform;
- Prohibit paperwork and face-to-face meetings between the customer and tender participants, ensure the publication of documents in electronic machine-readable form;
- Establish a public consultative council on public procurement issues with the participation of representatives of civil society organizations and business unions. Provide for participation of individuals, journalists, representatives of civil organizations in competitive commissions as observers without the right to vote. To give the right to observers to publish information on the contents of proposals, except for information containing commercial secrets, about their evaluation and comparison only after the official publication on the results of the procedure for public procurement of goods (services). The decision on the participation of observers should be made on the basis of a declarative principle;
- Introduce special anti-corruption provisions in the Law that would provide for additional duties and sanctions for public servants, private firms and individuals found guilty of fraud or corruption in public procurement;
- Incorporate into the law provisions prohibiting former civil servants from participating in public procurement procedures or influencing their results for 5 years after being dismissed from the public service, and imposing special sanctions in case of such participation or influence;
- Eliminate preferences and separate lists of goods that create discriminatory conditions for foreign suppliers;
- To provide for the publication by the customer (organizer) of the full text of the concluded contract and all annexes and additional agreements to it, except the information containing commercial secrets, as well as a complete list of indicators of the evaluation criteria of proposals in a machine-readable form;

- Eliminate referential norms and establish in the Law threshold values of the estimated cost and other conditions for the selection and application of each type of the procedures for public procurement of goods (services);
- To oblige the customer (organizer) to publish a protocol on the outcome of the public procurement procedure on the official website when carrying out all types of public procurement procedures, except those where the information on public procurement is state secrets;
- To oblige the customer (organizer) to specify not only the proposal price of the winning participant, but also the proposal price of all participants, as well as price for good (service) of the participants and the winner participant in the protocol on the selection of the winning participant;
- To provide for the modernization of the national public procurement system, taking into account the specifics of the implementation of new business management models, such as PPPs, private partnerships.

## Main Statistical Data on Procurement

*Data on public procurement of goods (works, services) at the expense of budgetary funds and (or) funds of public extra-budgetary foundations in the Republic of Belarus for 2014 (in units)*

**Table 1**

The name of indicators	Total Procedures Of procurement (Sum graph From 2 to 7)	Including by types of procurement procedures					
		competition		electronic auction	procedure of requesting the price proposals	exchange trading	public procurement procedure from single source
		Open	Closed				
Total procurement procedures carried out	444279	2427	89	14837	14929	804	411193
Number of procurement procedures recognized as invalid	13507	708	16	7847	4276	12	648
Number of contracts concluded	462320	2642	79	11731	13285	785	433798
Those which are:							
With participants from the Russian Federation	645	10		132	14		489
With participants from the Republic of Kazakhstan	3						3
With participants from other foreign states	1156	105		465	26		560
With subjects of small and medium-sized enterprises	115859	576	11	1812	3532	172	109756

The name of indicators	Total Procedures Of procurement (Sum graph From 2 to 7)	Including by types of procurement procedures					
		competition		electronic auction	procedure of requesting the price proposals	exchange trading	public procurement procedure from single source
		Open	Closed				
Where the procedure is conducted by the organizers	13380	194	34	732	301	384	11735
Number of terminated contracts	1427	19	3	99	102	3	1201
Those which are:							
With participants from the Russian Federation							
With participants from other foreign states	10	2					8
With subjects of small and medium-sized enterprises	502	10	3	11	57		421
Total number of participants who submitted proposals for participation in procurement procedures	663314	1285	201	55349	48984	1452	544474
Those which are:							
from the Russian Federation	965	58		209	42		656
from the Republic of Kazakhstan	12			6	3		3
from other foreign states	4235	317		731	356		2831

The name of indicators	Total Procedures Of procurement (Sum graph From 2 to 7)	Including by types of procurement procedures					
		competition		electronic auction	procedure of requesting the price proposals	exchange trading	public procurement procedure from single source
		Open	Closed				
Number of participants-winners of procurement procedures	462053	2559	76	13026	13205	785	432402
Those which are:							
from the Russian Federation	670	10		143	14		503
from the Republic of Kazakhstan	3						3
from other foreign states	1613	114		524	21		954
Number of complaints received from participants	399	29		271	68	2	29
Including those:							
Found justified	183	12		134	32		5
Found unjustified	198	17		119	36	2	24

*Cost characteristics of procedures for public procurement of goods (works, services), million rubles*

**Table 2**

The name of indicators	Share of SMEs (in the corresponding amount of Total)	Total Number of Procurement Procedures	Including by the types of procurement procedures (the procedure of the PSS)	Share of PSS in total (%)

<b>The name of indicators</b>	<b>Share of SMEs (in the corresponding amount of Total)</b>	<b>Total Number of Procurement Procedures</b>	<b>Including by the types of procurement procedures (the procedure of the PSS)</b>	<b>Share of PSS in total (%)</b>
Total amount of funds provided by the customer for procurement		46 269 574,90		
Total value of concluded contracts		43 923 892,90	29 709 905,90	67,64%
Those which are:				
With participants from the Russian Federation	3,73%	1 636 676,90	1 387 782,40	
With participants from the Republic of Kazakhstan	0,00%	880,3	880,3	
With participants from other foreign states	8,74%	3 840 951,70	1 434 975,00	
With subjects of small and medium-sized enterprises	13,21%	5 802 455,60	4 188 004,90	14,10%
On procurements implemented by the organizer	6,55%	2 879 072,30	1 053 550,80	
Expenditures of the customer (organizer) for organization of procurement procedures		25 861,90	3 150,50	
% of the expenditures of procurement procedures in the amount of funds for procurement		0,06%	0,01%	