

Transparent Public Procurement Rating

Sector Assessment Questionnaire

ROADS SECTOR IN UKRAINE (2018)

Main Part

Quantitative Questions

- Amount of public funds spent in target sector in 2018.

1 283 636 364 USD

- Breakdown of procurement spending in the target sector by source of funding.

865 454 545, 45 USD – state budget,

418 181 818, 55 USD – local budgets subsidized from State Road Fund

- Share of procurement in target sector in the total volume of procurement in 2018.

6,85 %

- Target sector share in GDP of the country.

1,15 %

- Ratio of direct procurement to tender (competitive procedures) in target sector in 2018.

6%

- Share of contracts in the target sector that are won by state-owned enterprises.

44% in terms of value, less than 10 % in terms of number of contracts.

NB! In Ukraine majority state-owned enterprises including those in roads sector are also covered by Public Procurement Law thus being obliged to conduct procurement procedures for own procurements incl. cases when such enterprises are contractors for works.

- Average number of bidders in target sector for 2018.

2,8

- Percentage of failed tenders in the total number of procurements in target sector.

9%

- Top 5 contracting authorities in the target sector and their primary contractors (top 3 for each) – highlight any suspicious trends – for example : recurrent tender participants on same tenders, unusually high share of one or two companies winning most contracts, winners of direct contracts etc.

Top 5 contracting authorities with resoeective TOP 3 best lucky winners

1. State Road Service of Ukraine (including regional branches)

- ✓ **Avtomagistral-Pivden LTD (Ukraine)**
- ✓ **ONUR Construction International (Turkey)**
- ✓ **ROSTDORSTROY LTD (Ukraine)**

***NB!** 2 highlighted companies are very lucky in tenders on roads in central, eastern and southern parts of Ukraine. Turkish company was mostly awarded in tenders for projects financed by EBRD.*

2. Kyiv City Administration (municipality)

- ✓ **Private JSC “Kyivmetrobud” (Ukraine)**

***NB!** This company is largest company in Ukraine existing from 60s of XX century and specializing in construction of metro infrastructure, bridges, tunnels. Kyiv city has been reconstructing few large bridges and similar objects in Kyiv during last 3 years and the company became largest contractor through tender procedures but with week competition (appr. 2 bidders per tender)*

- ✓ **Spetsavtobud LTD**
- ✓ **“Alliance of Constructors of Ukraine” LTD**
- ✓ **Communal enterprise #273904**

***NB!** This enterprise is owned by municipality so tender success in tenders with owner seems suspicious*

3. Zakarpatska oblast state administration

- ✓ **Evrobudindustriya LTD (Ukraine)**
- ✓ **ONUR Construction International (Turkey)**
- ✓ **PBS LTD**

4. Lvivska oblast state administration

- ✓ **Avtomagistral-Pivden LTD (Ukraine)**

***NB!** The most successful contractor of State Road Service and its regional branches.*

- ✓ **“Shlyahovo-remontne Upravlinnya #65” LTD (Ukraine)**

- ✓ DROG-BUD LTD (Poland)

5. Rivnenska oblast state administration

- ✓ Rivneavtoshlyahobud LTD (Ukraine)

NB! This is the local company from same region as contracting authority

- ✓ Budivselno Kompaniya SLUCH LTD (Ukraine)
- ✓ Progres Development Company LTD (Ukraine)

- Top 5 winning economic operators in the target sector and the share (in value) of total contracts won by them.

- ✓ Avtomagistral-Pivden LTD (Ukraine) – 15 %
- ✓ ONUR Construction International (Turkey) – 7,6 %
- ✓ Private Enterprise “PoltavaBudTsent” (Ukraine) – 5,5%
- ✓ PBS LTD – 4,8 %
- ✓ SHBU #57 LTD – 4,76 %
- ✓ ROSTDORSTROY LTD (Ukraine) – 4,55 %

Narrative Questions

- Do any unreasonable legal exemptions apply to the target sector?

No any exemptions but hypothetically there is alternative mechanism to procurement operations in roads sector – concessions. There is specific law in Ukraine on peculiarities of concessions in road sector but in fact this law is outdated and never applied in real life: there were few attempts to conclude concession contract for reconstruction and exploitation of one of the roads (from Lviv to Polish border) but these attempts failed. So all constructions and repair and supplementary maintenance services are procured in accordance to PPL.

- Does access to procurement documentation meet the requirements of the national legislation?

Yes, there is full online free access to the documentation which must be published same day as contract (tender) notice.

- How do the above data points compare to the country's overall results indicated in the TPRR Questionnaire on PP Performance.

It is quite adequate to overall results in the PP system, the notable differences are following (negative and positive):

- 1) larger direct procurement share (6 % for the sector vs 5 % for overall system (excluding utilities services/supplies from natural monopolists i.e. gas, electricity, centralized heat and water supply);

2) higher Average number of bidders in target sector is 2.8 vs 2,7 in overall system.

- Have there been any prominent cases that illustrate existing challenges (inefficiency, corruption or other forms of misspending) in recent years?

Unlike other infrastructural sectors (especially railways and sea ports with quite loud scandals) road sector in Ukraine during last 3 years is not famous for large procurement scandals. For example, the something similar to scandal took place in 2018 when 3 mln. EURO were awarded to company established 6 months before tender but under pressure of civil society the contract was terminated. There are few reasons may be mentioned here – foreign CEO in road sector (Head of State Road Service is Polish manager), special personal attention of Prime-minister to the sector that probably is explained by political reasons related to coming parliamentary elections in 2019 and good cooperation between Government (esp. Ministry for Infrastructure and State Road Service) with civil society activists-monitors, in particular COST Ukraine team. COST (Construction Sector Transparency Initiative) is voluntary multi-stakeholder initiative with the Secretariat in London (UK) was designed to promote transparency and accountability in publicly financed construction. COST Ukraine very actively collaborates with Government to prevent violations in road sector in particular in procurement operations.

- Is there any indication that suppliers fail to fulfill contractual obligations? Any prominent cases in recent years?

Not really. There are sometimes cases of delays in fulfillment of contractual obligations that have objective reason – taking into account huge increasing volume of works in the sector in 2017-2018 there is natural deficit of some important materials, first of all bitumen – national bitumen industry can not produce enough volumes thus Ukraine in 2018 has started first time ever to import bitumen from Romania, Poland, Slovakia, Belarus.

- What are the major strengths and weaknesses of public procurement in the target sector? (minimum of 2 each; personal deliberation of the author).

Strengths

- 1) Quite good competition higher than in average in the PP system -- huge money in the sector attracts more business incl. foreign companies and thus improving competition;**
- 2) Wide presence of EBRD financing some roads reconstruction brings best international business practice in the sector;**
- 3) Tight collaboration of Government and NGOs incl. COST allowing to prevent or to fix violations. Ukraine is one of 13 countries where COST has operations.**

Weaknesses

- 1) Huge money in the sector has also negative side not only attracting business but also attracting “schemers” (swindlers) with bid rigging, corruption and unjustified direct contracts;
- 2) Still excessive presence of state enterprises in the sector – it is rudimentary legacy of Soviet Union when there are state-owned road repair enterprises in each oblasts (regions) sometimes imitating tenders. Such enterprises must be privatized and then private operators will make additional competitive pressure against negative procurement practices.

Conclusion

- Overview of the main findings of the assessment

During last few years (2017-2018) road sector became one of the main favorite priorities for Government. It is proved by increasing finances (1 283 636 364 USD in 2018 and 1 818 181 818 USD are envisaged for 2019), by modernized legislation (the special law on State Road Fund entered in force in 2018 accumulating finance resources directly from certain custom and excise payments as well as distributing finances between State Road Service for state roads and regional administrations/councils for local roads), by personal attention of Prime-Minister (he loves to visit in person different locations of constructions and repairs (and sometimes even without notifying) and by involvement of international companies and managers in the sector (Turkish, Polish, Belarus, Italian and Romanian companies participate and win in tenders. Even State Road Service is headed by Polish manager).

Such situation may be well motivated by coming elections in 2019 (both Presidential and more important Parliamentary) but people of Ukraine don't really care about reasons for massive reconstruction of many-many Ukrainian roads enjoying the developments (some of them believe that maybe even political and officials elite had been tired of awful roads (and their absence sometimes).

All this explains positive changes – high share of the sector in GDP, small share of direct contracts, quite good competition, comparatively low share of failed tenders, good cooperation between Government and NGOs (strongly based on powerful possibilities for procurement monitoring due to openness of practically all procurement data in e-procurement system PROZORRO). And at last (but not least) unlike other infrastructural sectors (especially railways and sea ports with quite loud

tender scandals) road sector in Ukraine during last 3 years is not famous for large procurement resonance cases.

Despite of these positive developments there are still notable problems observed in the sector – suspicious tenders with hints for bid collisions and corruptive practices, notable level of direct contracting. Such shortcomings may be reasoned as by specific sector reasons (partially modest business structure of the sector with rudimentary state-owned road repair enterprises in each region (so called “oblastodors”) and long-lasting bad practices traditions in the sector (corruption, bad quality of works, delays in contract performances from both parties (on payments and on works implementation), manipulations regarding estimates) – BUT! many of such bad practices are also well-known for many countries because of temptingly huge financial resources in road sectors) as well as general country problems with quality of work of law-enforcement bodies/courts and quality of staff involved related to low salaries, often staff changes, educational problems, technological arrears).

- Recommendations of the author

The following recommendations are proposed to be aimed for more efficient procurement operations in the road sector of Ukraine (and only 1 is directly related to PP):

- 1) **Fast adoption of new PPL drafted by EU experts and Ukrainian Government that will also have positive influence on procurement operations in the roads sector.**

NB! *The Draft new PPL has set out to achieve 2 main objectives:*

- ✓ *Implementation of commitments of Ukraine on public procurement under EU-Ukraine Association Agreement, in particular those that envisaged by Phases II and III of the Public Procurement reform Strategy/Road map;*
 - ✓ *Redrafting or legislative provisions aimed to clarify unclear provisions or increase efficiency of public procurement operations in Ukraine.*
- The Draft new PPL is now considering by Government for soon submission to the Parliament*

- 2) **Privatization of all state-owned road sector enterprises, especially those in each oblasts (regions) to stimulate more effective market competition in the sector;**

- 3) **Promotion of Public-Private Partnership/concessions mechanisms in the roads sector as nice alternative to public procurement operations that may be accelerated due to adoption of New Law on Concessions (was adopted in first reading in 2018).**