

UDC 338.2

Zhuk A.
Ph. D. student,
Banking University, Ukraine;
e-mail: azhuk1991@gmail.com; ORCID ID: 0000-0003-0348-1412

A STUDY OF THE EVOLUTION OF THE FORMATION AND DEVELOPMENT OF GOVERNMENT PROCUREMENT IN UKRAINE

Abstract. The paper studies the historical and legal background of the formation and development of government procurement in Ukraine. It analyzes the essence and significance of public procurement for the effective development of budgetary enterprises, institutions and organizations in different historical periods. It has been established that public procurement took various forms long before the independence of Ukraine. State orders are considered in the context of the broader problem of state regulation of the economy, namely one of the most serious and ambiguous economic problems is the rational interaction of the state and the market system in the process of public procurement. It is substantiated that a full-fledged national economy largely depends on how transparent and economically justified public expenditures on the maintenance of institutions financed from the state budget. Detected that one of the most promising ways to implement the concept of rational and efficient use of budget funds is the widespread introduction of a single structured system in the procurement of goods, works and services for public needs, based on competition, transparency, non-discrimination and decentralization. The paper reviews specifics of legislative regulation of public procurement in the relevant periods. The stage of transition of the system of centralized production planning, distribution of material and technical resources, the function of the state order as an absolute state regulator in the production of products and services to the means of meeting the needs of material resources, products, works and services of consumers supported by the state budget. It identifies the main differences in the approaches to understanding the essence of public procurement. The paper provides a detailed description of the influence of factors and circumstances on the development of the legal framework of public procurement. It determines and substantiates government procurement development periods. The paper analyzes the negative effects of omissions and non-finalization of the legal framework of each respective period. It studies the methods of and reasons for changing the terminology in the formation of the conceptual apparatus of the modern legal framework. Conclusions on changes, additions and adjustments to the legal framework of public procurement are provided. The paper assesses the main differences between the adopted public procurement laws.

Keywords: government procurement, public procurement, tender, government contracts.

Formulas: 0; fig.: 0; tabl.: 2; bibl.: 10.

Жук А. О.
аспірант Університету банківської справи, Україна;
e-mail: azhuk1991@gmail.com; ORCID ID: 0000-0003-0348-1412

ДОСЛІДЖЕННЯ ЕВОЛЮЦІЇ СТАНОВЛЕННЯ І РОЗВИТКУ ДЕРЖАВНИХ ЗАКУПІВЕЛЬ В УКРАЇНІ

Анотація. Досліджуються історично-правові основи становлення і розвитку державних закупівель в Україні. Проведено аналіз сутності та значення публічних закупівель для ефективного розвитку підприємств, установ та організацій бюджетної сфери в різні історичні періоди. Установлено, що публічні закупівлі набували різних форм ще до незалежності України. Державні замовлення розглядаються в контексті ширшої проблеми державного регулювання економіки, а саме — однією з найбільш серйозних і неоднозначних економічних проблем є раціональна взаємодія держави і ринкової системи у процесі державних закупівель. Обґрунтовано, що повноцінна національна економіка значною мірою залежить від того, наскільки прозорими та економічно виправданими є державні видатки на

утримання установ, що фінансуються з державного бюджету. Розглянуто особливості законодавчого регулювання сфери публічних закупівель за відповідними періодами. Установлено етап переходу системи централізованого планування виробництва, розподілу матеріально-технічних ресурсів, функції державного замовлення як абсолютного державного регулятора у виробництві продукції та послуг на засіб забезпечення потреб у матеріальних ресурсах, продукції, роботах і послугах споживачів, що утримуються за рахунок державного бюджету. Визначено основні відмінності підходів до розуміння сутності публічних закупівель. Надано детальну характеристику впливу факторів та обставин на побудову законодавчої бази сфери публічних закупівель. Визначено та обґрунтовано періоди розвитку державних закупівель. Проаналізовано негативні наслідки упущень і недоопрацювань нормативно-правового поля кожного періоду. Досліджено методи і причини зміни термінології у формуванні понятійного апарату сучасної законодавчої бази. Надано висновки щодо змін, доповнень і коригувань законодавчої бази сфери публічних закупівель. Оцінено основні відмінності ухваленого законодавства сфери публічних закупівель.

Ключові слова: державні закупівлі, публічні закупівлі, тендер, державні контракти.
Формул: 0; **рис.:** 0; **табл.:** 2; **бібл.:** 10.

Introduction. Until now, the economic theory and practice have not considered government orders in the context of the broader problem of state regulation of the economy. One of the most serious and ambiguous economic problems is the rational interaction of the State and the market system in the process of government procurement. This problem remained urgent throughout the entire history of the development of the State and the entrepreneurship. Thus, a full-fledged national economy largely depends on how transparent and economically justified the state expenditures on the maintenance of institutions financed from the state budget are. One of the most promising ways to implement the concept of rational and efficient use of budgetary funds is the widespread introduction of the unified structured system into the sphere of procurement of goods, works and services for public needs that is based on the principles of competition, transparency, non-discrimination, and decentralization.

Research analysis and problem statement. The scope of research on public procurement broadens, given the growing relevance of public procurement. Thus, the main aspects of public procurement were considered in the papers of S. Kozlov, O. Krytenko, A. Mazaraki, M. Ostapiuk, V. Pashkov, Ya. Petrunenko, V. Smyrychynskyi, I. Smotrytska, O. Taranenko, A. Khrankin, O. Shevchuk, O. Yuditskyi, and other scholars. However, due to constant and dynamic changes in public procurement legislation, this area needs to be constantly researched and improved.

The purpose of this paper is to research the evolution of the formation and development of government procurement in Ukraine, the transformation of the conceptual apparatus.

Methodology and research methods. The methodological basis of the article research is the fundamental provisions of economic theory, the theory of finance, and domestic labor and foreign scientists on public procurement issues. In the process of research the following methods were used: semantic analysis — with refinement basic economic categories of scientific research; comparative and statistical analyzes, analysis and synthesis — in the study economic relations between the state and other subjects as a result of the functioning of the financial and economic mechanism of public procurement; historical and generalization — when studying the foreign experience of the foundations purchase.

Research results. First of all, let us consider the evolution of definitions of government procurement.

The historical origin of public procurement whose modern interpretation has transformed from the concepts of «government procurement» and «government order» dates back to the period before the independence of Ukraine. The concept of «government order» was preceded by the concept of «government plans», which was used until 1993. Thus, the Regulations on the State Planning Committee of the Ukrainian SSR, adopted in 1982, determined that government plans for economic and social development provide the most effective ways to achieve high ultimate national economic results,

solve important national economic problems, ensure the right combination of sectoral and territorial development, and implement targeted comprehensive scientific and technical, economic and social programs, as well as development programs for individual regions and the most important territorial and industrial complexes. At the same time, there must be a combination of centralized planning and economic independence of associations, enterprises and organizations, initiative and creative activity of labor collectives and local Councils of People's Deputies.

Thus, since 1993, namely with the adoption of the Law of Ukraine «On Government Contracts and Government Orders», the concepts of «government contract» and «government order» have been introduced into law. The government contract is defined as a means of satisfying the needs of consumers that are financed from the state budget, replenishing the state reserve, subject to payment by the State of the cost of goods, works and services. The government order was defined as a means of stimulating an increase in the production of scarce products, the development of priority sectors of the national economy, the implementation of interstate agreements, export/import operations, the introduction of cutting-edge technologies, the solving of social problems, the state support of the most important research, given which the state can provide benefits to contractors but does not provide them with financial resources [1, O. Kurochenko et al., 2008].

The concepts of «government order» and «government contract» take on a new meaning and a different subordination with the adoption of the Law of Ukraine «On Government Order to Satisfy Priority State Needs». Thus, the government order is defined as a means of state regulation of the economy by forming, on a contractual basis, the composition and volume of goods, works and services needed to satisfy priority state needs, place government contracts for their supply (procurement) with enterprises, organizations and other Ukrainian business entities of all ownership forms. The government contract is an agreement concluded by a government customer on behalf of the state with a government contractor, which defines the economic and legal obligations of the parties and regulates the relationship between the customer and the contractor, i.e. the government contract is considered to be a legal tool for implementing government orders, whereby it significantly differs from the previous interpretation and, in our opinion, contributes to the further streamlining of the regulatory framework of public procurement [2, O. Krytenko, 2014].

The Law of Ukraine «On Procurement of Goods, Works and Services Using State Funds» of February 22, 2000 totally lacks the concepts of «government procurement» and «government contracts», which are transformed into the respective terms «government procurement» (purchase of goods, works and services by the customer using state funds) and «contract» (written agreement between the client and the successful bidder in the procurement procedure, which provides for the provision of services, performance of works or acquisition of ownership of goods for the respective consideration).

Thus, the Law of Ukraine «On Government Procurement» of June 1, 2010 reintroduced and reused the term «government order» to satisfy priority state needs by directing state funds for government procurement.

The Law of Ukraine «On Government Procurement» adopted in 2014 mentions the government order only for the services of training experts, researchers, scientific and teaching staff and workers, advanced training and retraining (postgraduate education), while its new version, namely the Law of Ukraine «On Public Procurement» of 2016, is supplemented by a government defense order, i.e. the concept of government procurement has been removed from the legal framework since 2010, which we find to be negative because there appears to be a «gap» in the following chain of concepts: «government plan» — «government order» — «government procurement» [3, I. O. Shkol'nyk, 2009].

We believe that the fact that the legal framework of public procurement has undergone frequent changes, additions and adjustments still causes some inconsistencies in the regulatory documents of various areas (control, monitoring, evaluation, inspections).

Summing up the above, let us display it in the form of a table (*Table 1*) and divide it into phases suggested by us and add certain specific features inherent in each period, which will be described in more detail below.

Table 1

Development of public procurement in Ukraine

Phase	Procurement Planning Form	Historical Stage	Public Procurement Form	Specific Features
Phase 1	Government plans	1982—1993	Government orders	Formation of public procurement
		1993—1995	Government contracts	1. The first tender-related Resolution on Approval of the Regulations on the Procedure for Organizing and Conducting International Tenders was adopted 2. Suppliers were selected by government customers and direct contracts were signed
		1995—2000	Government procurement	1. The use of budgetary funds for the procurement of goods (works, services) of foreign origin was prohibited. 2. Government contractors with whom government contracts would be concluded were selected through competitive bidding.
		2000—2005	Procurement	1. A unified system of procurement of goods (works, services) using the state budget funds and foreign loans was created.
		2005—2010		1. Clients were required to place information on government procurement in the unified private information system (website). 2. The price threshold for the simplified tender procedure was reduced. 3. Requirements were introduced to make payment for obtaining the tender documentation, to provide tender security and security for the performance of a contract.
Phase 2	Annual procurement plan	2010—2016	Government procurement	1. Procurement was made under framework agreements. 2. Complaints were handled through the Antimonopoly Committee of Ukraine.
		2016—present	Public procurement	Requirements were introduced to conduct procurement procedures, create, place and exchange information through a web portal (Central Database) of the authorized procurement body (Prozorro) and commercially licensed electronic platforms.

Source: Developed by the author.

The evolutionary improvement of legislation is an attribute of a civilized development of the government procurement system, similar to what is the case in developed countries, especially in the European Union.

The main reason why government procurement began to evolve was that, since the mid-80's, the USSR State Plan on the scale of the entire national economic complex could not fully balance planned production objectives with available material resources. There was no choice but to take steps to decentralize the system. The inability to implement national economic plans led to the emergence of government procurement, which covered 70—80% of the total national economy and was fully provided with the necessary material resources. The manufacturer was allowed to sell independently the products manufactured in excess of the government order [4, M. Galushhak, 2011].

Such government procurement system existed until 1991, including and covering the first year of Ukraine's independence. However, over time, the functions of government procurement lost

their properties as a lever of state regulation and gradually turned into the form of satisfying the needs for the purchase of goods, works, services of budget-funded consumers. This is why, in 1991, the Regulations on the Ministry of Economy were adopted, which defined the formation of a unified republican government order and its provision with logistical support as one of the main tasks of the Ministry of Economy of Ukraine.

Since 1993, when the system of centralized planning of the production and distribution of logistical resources gradually lost its capacity and adequacy to the economic situation, the functions of government procurement have been transformed, increasingly losing the properties of an absolute state regulator in the production of goods and services and growing into a means of satisfying the needs for material resources, products, works and services of budget-funded consumers. This was reflected in the annual decrees of the President of Ukraine, dated up until 1996, on the government contract and the government order for the respective year, which approved the volume of products ordered by the State and the amount of funding required for this purpose, and contractors were chosen at the discretion of the heads of governmental organizations that placed their orders.

Meanwhile, in 1993, the Cabinet of Ministers of Ukraine adopted the first tender-related Resolution № 871 «On Approval of the Regulations on Organizing and Conducting International Tenders in Ukraine», which initiated international tenders and streamlined the competitive and budget-funded procurement of goods (works, services) exclusively of foreign origin to satisfy the state needs of Ukraine. During the effective period of the mentioned resolution (21/10/93 — 28/06/97), the Ministry of Foreign Economic Relations and Trade of Ukraine registered 66 international tenders.

From 1993 to 1996, the issues concerning the budget-funded procurement procedure were regulated by the Decrees of the Cabinet of Ministers of Ukraine «On the Government Contract and Government Order», which were approved for each current year until 1996. These documents approved the volume of goods (products), works, services ordered by the State as well as the amount of funding, while contractors were chosen solely at the discretion of the administrators of state funds.

In particular, the Decree specified that «government contractors and government order executors shall provide themselves with logistical resources by entering into direct contracts with suppliers, state supply and sales organizations, and other intermediary organizations».

At the same time, the year 1993 saw the adoption of one of the basic documents on public procurement, namely the Regulations on the Procedure for Organizing and Conducting International Tenders in Ukraine, which defined the procedure for organizing and conducting international tenders in Ukraine for foreign and Ukrainian enterprises, institutions, and organizations.

An important but rather controversial measure in regulating the procurement market at that time was the adoption of Resolution № 611 of the Cabinet of Ministers of Ukraine «On Prohibition of the Use of Budgetary Funds for the Purchase of Goods (Works, Services) of Foreign Origin» of June 4, 1996. In particular, it stipulated that funds of the State Budget of Ukraine, which are allocated for the procurement of goods (works, services) for state needs, shall be used to purchase these goods (works, services) only from domestic producers, and the use of funds for the procurement of goods (works, services) of foreign origin for state needs shall only be allowed based on a decision of the Prime Minister of Ukraine, which shall be made on the submission of the Inter-Agency Commission for Regulation of the Procurement of Goods (Works, Services) for State Needs for the amount of UAH 10 thousand and shall also be made on the basis of the conclusions saying that certain products are not produced in Ukraine, and it allowed to procure the products of foreign origin [5, O. Shatkovs'kyj, 2015].

So the paradox is that one regulatory document provides for conducting tenders in various forms (in respect of various items) and allowing the participation of foreign and Ukrainian enterprises, institutions and organizations, regardless of their ownership form, while another regulatory document restricts and prohibits the participation of foreign bidders. Additionally, the State adhered to the common practice in international trade of placing government contracts on

a competitive basis only in relation to foreign suppliers/contractors, with the government contracts placed without any competitive tendering process in relation to domestic suppliers/contractors.

Fundamentally new changes in the regulation of government orders were introduced with the adoption of Law of Ukraine № 493/95-VR «On Government Orders for Satisfying Priority State Needs» of December 22, 1995. This Law stipulated for the first time that government contractors with whom government contracts would be concluded shall be selected through competitive bidding. The Law also defined the concepts of state needs, government order, clients from the government and government contractors, government ordering, placement of supplies for state needs, control over their implementation, as well as the liability for failure to perform government contracts for product supply for state needs.

The next step considering Ukraine's intentions to join the World Trade Organization (the «WTO») was to align and approximate government procurement legislation to the WTO Agreement on Government Procurement adopted in April 1994 by adopting:

- Resolution № 694 of the Cabinet of Ministers of Ukraine «On Organizing and Conducting Tenders for Government Procurement of Goods (Works, Services)» of June 28, 1997 to establish the general procedures for government procurement from suppliers regardless of their status and nationality (the document used for the first time the concept of «procurement»);

- Resolution № 1058 of the Cabinet of Ministers of Ukraine «On Creating the Unified System of Procurement of Goods (Works, Services) Using the State Budget Funds and Foreign Loans Raised against Guarantees of the Cabinet of Ministers of Ukraine» of September 24, 1997 to streamline the procurement of goods, works and services worth UAH 10,000 and more by establishing a unified procurement procedure;

- Resolution № 1369 of the Cabinet of Ministers of Ukraine «On Construction Tenders» of September 1, 1998 to take into account the peculiarities that arise during tenders for construction contracts for contracted works and services [4, M. Galushhak, 2011].

Government procurement rules defined in the aforementioned regulations generally met international requirements, but were insufficient for the proper regulation of government procurement, which is why it became reasonably necessary to enshrine this regulation in the legislation. It should be noted that, following the adoption of the above resolutions, compliance with the requirements set out therein remained low.

Furthermore, some government entities and regional state administrations developed and adopted «their own» regulations on holding tenders, which had a common feature, namely the consolidation of control over tenders held within the respective agency in the hands of the agency management. As a result, such regulations had numerous procedural errors, which often completely negated the tender principles.

Given the urgency of resolving the issue of Ukraine's accession to the WTO and EU integration and improving the efficiency of the use of funds spent on government procurement, the Ministry of Economy with the participation of other ministries and agencies prepared a draft law in 1999 and adopted the Law of Ukraine «On Procurement of Goods, Works and Services for State Funds» of February 22, 2000, which is aimed at regulating procurement procedures by creating a broad competitive environment in the government procurement market, ensuring the transparency and fairness of tender procedures.

The adverse consequences, loss of state funds and significant violations in public procurement accompanied the activities of the Tender Chamber of Ukraine as a public control body, whose activities were regulated by amendments to the Law of Ukraine «On Procurement of Goods, Works and Services for State Funds» of August 22, 2005.

An interesting experience of that period was that it became possible to provide benefits to domestic producers in procurement, which possibility was enshrined in legislation. The conditions of protection were then regulated in more detail by Resolution № 347 of the Cabinet of Ministers of Ukraine «On Approval of the Procedure for Protecting the Domestic Market in Case of the Procurement of Goods, Works and Services for State Funds» of April 11, 2001, which, in particular, approved the list of goods, works and services, for whose procurement tenders are held

with the involvement of domestic producers only. When procuring other goods, works and services not included in the specified list, the client applied a preferential markup of ten percent to the price of a tender bid submitted by the domestic producer [6, G. Pin'kas, 2009].

In order to implement the mechanism of interdepartmental coordination to increase the efficiency of procurement and its overall economic effect, Resolution № 1312 of the Cabinet of Ministers of Ukraine of October 10, 2001 approved the Procedure for Interdepartmental Coordination of Government Procurement. Unfortunately, such mechanism was not applied in Ukraine until 2013.

In January 2003, the Parliament supported the government's version of amendments to the Law, which were developed as a result of analyzing the practice of its application. What is noteworthy first of all is the establishment of a lower price threshold (which was not the case before), the exclusion of a provision limiting bidders to domestic producers only, and the establishment of the rules for determining a procurement item.

On December 21, 2004, Ukrainian MPs adopted the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine» at the third attempt by overcoming the next veto of the President of Ukraine. The very general title of this Law concealed quite interesting and significant changes to the Law of Ukraine «On Procurement of Goods, Works and Services for State Funds».

Furthermore, even the history of the adoption of this Law was quite interesting. Initially, Draft Law № 4147 submitted by the government contained only proposals to amend the Law of Ukraine «On Value Added Tax» and the Customs Code of Ukraine and concerned the specifics of customs and tax transactions with cultural values, i.e. it had nothing to do with government procurement. Naturally, such kind of law was drafted by the relevant parliamentary committee, namely the Finance and Banking Committee. However, in June 2004, a few days before the consideration of the draft law in the second reading, the Committee approved amendments to the Law of Ukraine «On Procurement of Goods, Works and Services for State Funds» and to the Code of Administrative Offenses (regarding the liability for violations in government procurement). It is actually the contents of these amendments to the Law of Ukraine «On Procurement of Goods, Works and Services for State Funds» that was the reason for the President of Ukraine to veto this draft law three times.

However, in the heat of the Orange Revolution, the President's well-reasoned veto was overcome, which marked the beginning of the era of the Tender Chamber of Ukraine. The beginning of this era, i.e. early 2005, surprised everyone with unexpected unpleasant legislative novelties, which included:

- mandatory placement by clients of information on government procurement on the unified private information system (website) only, which subsequently led to a commercial monopoly on the placement of information owned by the state;
- reduction in the price threshold for applying a simplified tender procedure – request for quotations;
- introduction of mandatory payment for tender documentation, tender security and security for the performance of a contract, which subsequently led to repeated tender disruptions due to the reluctance of business entities to pay money to third parties simply for participating in a tender without any guarantees of tender fairness, and sometimes to a significant increase in the price of tender offers, which normally includes all costs incurred by business entities. The same was the case with making the successful bidder responsible for paying the costs associated with the conclusion of a contract [7, A. Hramkin, 2008].

Immediately after these amendments to the Law of Ukraine «On Procurement of Goods, Works and Services for State Funds» (with effect from January 11, 2005) had become effective, the Cabinet of Ministers of Ukraine and the Ministry of Economy started receiving many appeals from concerned clients and bidders, causing the newly elected government to announce the remediation of the situation in government procurement as one of its priorities.

The government's work in this regard continued in two directions:

- limiting the conduct of tenders until amendments are made to the Law of Ukraine «On Procurement of Goods, Works and Services for State Funds» through the mechanism of having them approved by the Prime Minister of Ukraine;

- developing a new version of the Law of Ukraine «On Procurement of Goods, Works and Services for State Funds», which should meet state interests (creating a competitive environment in this area, achieving optimal and rational use of state funds and ensuring the transparency of government procurement procedures) and international law, particularly the laws of the World Trade Organization and the European Union [7, A. Hramkin, 2008].

On March 26, 2005, the Cabinet of Ministers of Ukraine adopted and, on April 4, 2005, submitted to the Verkhovna Rada of Ukraine the Draft Law «On Amendments to the Law of Ukraine “On Procurement of Goods, Works and Services for State Funds”» to be urgently passed (registration № 3519-1).

Aside from eliminating the significant challenges in the practical application of certain provisions of the Law of Ukraine «On Procurement of Goods, Works and Services for State Funds» as amended by the Law of Ukraine adopted on December 21, 2004, and harmonizing the draft law with international procurement rules in connection with the completion of the accession to the World Trade Organization and intensification of cooperation with the EU, the draft law provided for applying tender principles to procurements made by state-owned and budget-funded enterprises to increase the efficiency of their operations and focusing on the price parameter in choosing the best tender bid, including through exchange markets [8, V. Smyrychyns'kyj, 2005].

However, on June 16, 2005, the Verkhovna Rada of Ukraine adopted a completely different version of the amendments to the Law of Ukraine «On Procurement of Goods, Works and Services for State Funds» based on Draft Law No. 3519 submitted by a Ukrainian MP, which included some clauses developed by the Ministry of Economy, the Ministry of Finance, the Ministry of Justice and the SBU, in particular concerning:

- disclosure of information on government procurement in private information systems, which must meet special requirements and at the same time independently determine the conditions of placement of such information by clients, and non-compliance with such conditions by clients constitutes the ground for canceling the tender, which ultimately could increase the government procurement-related costs of clients and bidders and make it more difficult or even impossible to hold the tender;

- certain aspects of the powers, status, activities of the Tender Chamber of Ukraine as a set of public organizations in terms of taking over the functions of state administration in the absence of the real public and state control over its activities;

- inexpediency of mandatory professional development of all members of the tender committee every two years;

- imposition of all possible costs of participation in the tender and notarization of the contract on the successful bidder. Furthermore, any costs incurred by the bidder in the course of the procurement procedure and the conclusion of a procurement contract, pursuant to amendments to the second part of Article 36, are not subject to appeal.

These latest amendments to the Law of Ukraine «On Procurement of Goods, Works and Services for State Funds» came into effect in August 2005. [9, O. Minjajlo, 2009; 10, N. Tkachenko, 2009].

The period of 2005 to March 2008 was characterized by monopolization of the mandatory publication of procurement information on a private website instead of the state information resource; an absolute regulatory role of the Tender Chamber and a concentration of dubious schemes around it (mandatory consulting services through certain companies and payment of royalties, appeals against tenders, blacklist of bidders, mandatory subscription to the Tender Chamber's bulletin to participate in tenders, notarization of procurement contracts) [3, I. O. Shkol'nyk, 2009].

Of course, this tangle of problems, which killed clients' and bidders' desire to hold tenders and participate in them, led to an unprecedented solution — the total repeal of the then effective Procurement Law, which took place in March 2008.

Given that, from the end of March 2008 to May 2010, the sphere of government procurement was regulated by interim provisions, on June 1, 2010, Law of Ukraine № 2289-VI «On Government Procurement» was adopted following the lengthy work.

In 2010, following the lengthy work, a new version of the Law on Government Procurement was adopted, which was generally based on the 2003—2004 version, except for two provisions — a new, detailed complaint handling mechanism described in the Law itself and providing for the handling of complaints through the Antimonopoly Committee of Ukraine as a complaint handling body (previously, complaints were handled mainly by the Ministry of Economy) and a rather limited list of exceptions. In the context of the consistent development of legislative regulation of government procurement, it is worth noting the adoption, in 2011, of the Law of Ukraine «On Peculiarities of Procurement in Certain Spheres of Economic Activity», which, similarly to the legal approach of the EU (Directive 17, 2004), established more flexible procurement rules for monopoly enterprises operating in socially important areas (energy, water, heat supply, municipal transport, etc.), as well as government amendments to the Law, which introduced legislative opportunities for procurement using the mechanism of framework agreements that was successfully tested in the EU [4, M. Galushhak, 2011].

The period of 2010 to 2014 was characterized by the active development of government procurement legislation, as evidenced by 30 amendments, changes and supplements to Law № 2289-VI, which had the following features:

- rather frequent amendments to the Procurement Law [35 amendments in less than four years (mostly parliamentary draft laws, with only a few submitted by the government)];
- the amendments were made by laws that did not relate to the sphere in question and concerned mainly new exceptions to the Law («works associated with demolition of illegal buildings...», «standard setting and standardization services in construction»);
- the draft laws were significantly adjusted between the first and second readings — which was dubious from the point of view of the established rules, and conclusions of the expert examination were not taken into account;
- an excessive number of exceptions in the Law «On Government Procurement» — 43 exceptions as of March 2014;
- ambiguity as to whether the Law needs to be applied by state-owned and municipal enterprises;
- a new section on reverse e-auction was not in effect [5, O. Shatkovs'kyj, 2015].

Eventually, this Law ceased to be effective on the basis of the new version of Law of Ukraine № 1197-VII «On Government Procurement» adopted on April 10, 2014, which, in particular, provided for the introduction of an e-government procurement system in accordance with Ukraine's obligations under the EU-Ukraine Association Agreement, as well as the procedure for state regulation and control in the field of public procurement.

In pursuance of the Decree of the President of Ukraine «On Sustainable Development Strategy “Ukraine – 2020”» of January 12, 2015, which, as part of the implementation of the European living standards in Ukraine and four vectors enabling to bring Ukraine to leading global positions, provided for a reform in government procurement, the Ukrainian Parliament adopted Law of Ukraine № 922-VIII «On Public Procurement» of December 25, 2015. This Law establishes the legal and economic framework for procurement of goods, works and services to meet the needs of the State and the local community in compliance with the principles of efficiency, transparency, competitive environment, prevention of corruption, and fair competition.

It is practically impossible to distinguish between the concepts of «government procurement» and «public procurement» in relation to the new law and the repealed one, as both the Law of Ukraine «On Public Procurement» and the Law of Ukraine «On Government Procurement» contain the same definition of procurement, namely the purchase of goods, works and services by the client in the prescribed manner.

In view of the mandatory introduction of electronic systems, the principles of openness and transparency of procurement at all stages are gaining new importance. The new Law provides that

free access shall be provided by analyzing and monitoring the information placed in the electronic procurement system, as well as by informing the competent controlling authorities through the electronic procurement system or in writing about the signs of violation(s) of public procurement legislation.

Having studied the specifics of procurement in Ukraine, we can identify the main periods corresponding to the phases, namely the periods of procurement from 1982 to 2000, from 2000 to 2016, and from 2016 to date. Since, in the first phase, all procurements were made using direct contracts, it would be expedient to consider the main differences between the second and the third phases. The entry into effect of the Law of Ukraine «On Public Procurement» provides for a number of significant differences between this process and that which took place under the Law of Ukraine «On Government Procurement», which differences are associated with the need to ensure the transparency of the procurement process at all of its stages (*Table 2*).

Table 2

Key differences in Procurement before and after 2016

Feature	Procurement before 2016 (Phase 2)	Procurement after 2016 (Phase 3)
Basic terms	«Government procurement», «tender», «competitive tender documentation», «competitive tender offer», «competitive tender committee»	«Public procurement», «tender», «tender documentation», «tender offer», «tender committee».
Procurement procedures	1) Public tender; 2) two-stage tender; 3) request for quotations; 4) prequalification of bidders; 5) negotiated procurement procedure.	1) Public tender; 2) competitive dialogue; 3) negotiated procurement procedure.
Use of electronic systems	<i>Right</i> The client has the right to carry out procurement procedures using electronic means.	<i>Obligation</i> The client carries out procurement procedures by using an electronic procurement system.
Submission of information	<i>Right</i> During the procurement procedure, information is submitted in writing, and in case provided in para. 2 of Article 12 (2) of the Law – in the form of an electronic document.	<i>Obligation</i> During the procurement procedure, information is submitted electronically through the electronic procurement system.
Appeals against decisions	During the procurement procedure, information is submitted in writing, and in case provided in para. 2 of Article 12 (2) of the Law – in the form of an electronic document.	A complaint to an appeal body is submitted by a complainant in the form of an electronic document through the e-procurement system.
Requirements for framework agreements	<i>Right</i> Competitive selection may be made by the client by conducting an auction electronically.	<i>Obligation</i> Selection and competitive selection are made by the client using an e-auction.

Source: Developed by the author.

Conclusion. Thus, analyzing the historical path of the development and formation of the public procurement market, we note the active changes in forms, methods, procedures, and terminology. We should also add that frequent changes in the legislation on organizing and conducting public procurement suggest that there is a need for continuous improvement of the mechanism of managing public procurement for the development of all areas in Ukraine.

Література

1. Куроченко О. та ін. Економіка від А до Я : понятійно-термінологічний словник. Київ : Вид. дім «Персонал», 2008. С. 357.
2. Курченко О. Теоретичні підходи до визначення поняття «державні закупівлі». *Вісник Академії митної служби України. Державне управління*. 2014. № 1. С. 19—26.
3. Школьник І. О. Проблеми організації системи державних закупівель в Україні. *Українська академія банківської справи. Проблеми і перспективи розвитку банківської системи України*. 2009. № 27. С. 21—29.
4. Галушак М. Державні закупівлі в Україні: теоретичні аспекти та практичні проблеми. *Галицький економічний вісник. Економіка та управління національним господарством*. 2011. № 1. С. 43—53.

5. Шатковський О. Розвиток законодавства України щодо державних закупівель: від еволюції до революції. *Радник у сфері державних закупівель*. 2015. № 5 (44). С. 44—48.
6. Пінкас Г. Система ефективного державного фінансового контролю і координації у сфері державних закупівель. *Актуальні проблеми економіки*. 2009. № 2. С. 57—69.
7. Храмкін А. Теоретичні й методологічні основи сучасної системи державних закупівель. *Державні закупівлі України*. 2008. № 2. С. 12—16.
8. Смирчинський В. Державні закупівлі як фактор формування соціальної політики та якості життя в Україні / Тернопільська академія народного господарства. *Регіональні аспекти розвитку і розміщення продуктивних сил України*. 2005. № 10. С. 177—182.
9. Міняйло О. Організаційно-економічні засади здійснення державних закупівель. *Вісник Київського національного торговельно-економічного університету*. 2009. № 8. С. 46—54.
10. Ткаченко Н. Макроекономічні аспекти державних закупівель. *Фінанси України*. 2009. № 8. С. 82—88.

Статтю рекомендовано до друку 07.10.2020

© Жук А. О.

References

1. Kurochenko, O. (et al.). (2008). *Ekonomika vid A do Ya: poniatiino-terminologichniy slovnyk [Economics from A to Z: conceptual and terminological dictionary]*. Kyiv: Vyd. dim «Personal» [in Ukrainian].
2. Krutenko, O. (2014). Teoretychni pidkhody do vyznachennia poniattia «derzhavni zakupivli» [Theoretical approaches to the definition of «public procurement»]. *Visnyk Akademii mytnoi sluzhby Ukrainy. Derzhavne upravlinnia — Bulletin of the Academy of Customs Service of Ukraine. Governance, 1*, 19—26 [in Ukrainian].
3. Shkolnyk, I. O. (2009). Problemy orhanizatsii systemy derzhavnykh zakupivel v Ukraini [Problems of organization of the public procurement system in Ukraine]. *Ukrainska akademiia bankivskoi spravy [Ukrainian Academy of Banking]. Problemy i perspektivy rozvytku bankivskoi systemy Ukrainy — Problems and prospects of development of the banking system of Ukraine, 27*, 21—29 [in Ukrainian].
4. Halushchak, M. (2011). Derzhavni zakupivli v Ukraini: teoretychni aspekty ta praktychni problem [Public procurement in Ukraine: theoretical aspects and practical problems]. *Halyskyi ekonomichnyi visnyk. Ekonomika ta upravlinnia natsionalnym hospodarstvom — Galician Economic Bulletin. Economics and management of the national economy, 1*, 43—53 [in Ukrainian].
5. Shatkovskiy, O. (2015). Rozvytok zakonodavstva Ukrainy shchodo derzhavnykh zakupivel: vid evoliutsii do revoliutsii [Development of Ukrainian legislation on public procurement: from evolution to revolution]. *Radnyk u sferi derzhavnykh zakupivel — Adviser in the field of public procurement, 5* (44), 44—48 [in Ukrainian].
6. Pinkas, H. (2009). Systema efektyvnoho derzhavnoho finansovoho kontroliu i koordynatsii u sferi derzhavnykh zakupivel [The system of effective public financial control and coordination in the field of public procurement]. *Aktualni problemy ekonomiky — Current economic problems, 2*, 57—69 [in Ukrainian].
7. Khramkin, A. (2008). Teoretychni y metodolohichni osnovy suchasnoi systemy derzhavnykh zakupivel [Theoretical and methodological foundations of the modern system of public procurement]. *Derzhavni zakupivli Ukrainy — Public procurement of Ukraine, 2*, 12—16 [in Ukrainian].
8. Smyrychynskiy, V. (2005). Derzhavni zakupivli yak faktor ormuvannya sotsialnoi polityky ta yakosti zhyttia v Ukraini [Public procurement as a factor in shaping social policy and quality of life in Ukraine]. *Ternopilska akademiia narodnoho hospodarstva [Ternopil Academy of National Economy]. Rehionalni aspekty rozvytku i rozmishchennia produktyvnykh syl Ukrainy — Regional aspects of development and location of productive forces of Ukraine, 10*, 177—182 [in Ukrainian].
9. Miniailo, O. (2009). Orhanizatsiino-ekonomichni zasady zdiisnennia derzhavnykh zakupivel [Organizational and economic principles of public procurement]. *Visnyk Kyivskoho natsionalnoho torhovelno-ekonomichnoho universytetu — Bulletin of Kyiv National University of Trade and Economics, 8*, 46—54 [in Ukrainian].
10. Tkachenko, N. (2009). Makroekonomichni aspekty derzhavnykh zakupivel [Macroeconomic aspects of public procurement]. *Finansy Ukrainy — Finance of Ukraine, 8*, 82—88 [in Ukrainian].

The article is recommended for printing 07.10.2020

© Zhuk A.