



Kyiv
International
Economic
Forum



Kyiv
International
Economic
Forum

Ukraine's recent anti-corruption efforts in public procurement – first steps in the right direction?

Kyiv, October 6-7, 2016

What are the issues?

- Ukraine's public procurement system is an area of great concern for foreign investors
- Various companies report bribes, gifts and facilitation payments as a condition to win public contracts
- Innovative companies are not participating in public tenders
- Various contract opportunities are not tendered in an transparent, non-discriminatory and competitive manner
- Studies suggest that more than US\$ 2 billion are lost due to corruption in public procurement in Ukraine every year
- Urgent need for reform to fight a notoriously corrupt public procurement system

Impact of corruption in public procurement

Financial impact

- Up to 20-25% of the contract's value may be lost to corruption
- Giver of bribe in a public procurement process sees bribe as cost of business
- Waste of money for repairs / purchases not needed / disadvantage to society

Impact on health & safety

- Purchase/delivery of sub-standard products
- Dangerous accidents due to sub-standard construction (bridges, buildings)
- No funds available for healthcare because of wasted money for bribes

Impact on trust in government

- Corruption serves as “role model” for other public officials and companies
- Trust in government and political “elite” is diminished in general
- Questionable usefulness, cost overruns, delays in implementation, etc

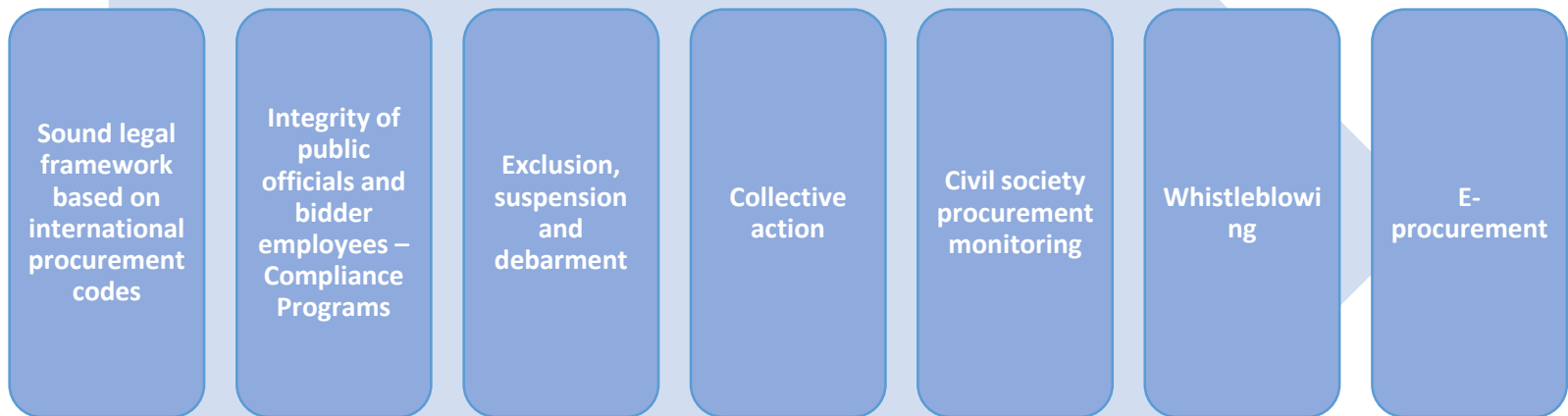
Impact on innovation

- Not best but most corrupt company wins public contract
- Innovative companies are discouraged from participating in public tenders

Environmental impact

- Environmental impact of unnecessary infrastructure projects (tunnels, etc)
- Environmental minimum standards are not observed to maximize profit

Tools to prevent corruption



Recent success stories

- Ukraine's has joined the WTO Government Procurement Agreement in 2016
 - Ukraine agreed to open the majority of public contract opportunities to international competition
 - This includes the procurement of various state-owned enterprises including the energy sector
 - Accession to the GPA required the proof that Ukrainian public procurement legislation is in line with international best legal procurement practice
 - «Stamp of approval» likely to attracted foreign investment in the Ukrainian public procurement market
- Ukraine developed and implemented an (internationally recognized) electronic procurement system (ProZorro)
 - Majority of bidders believe that ProZorro reduces corruption in public procurement
 - Application already shows first positive results

Recommendations (examples)

- Increase the number of bidders per tender to maximize competition
- Ensure that ProZorro is obligatory for as many contract opportunities as possible
- Ensure non-discriminatory tender specifications based on international practice
- Take further measures to fight bid rigging
- Invest in training of procurement personnel
- Promote integrity, honesty and responsibility among public officials responsible for public procurement

Recommendations (examples)

- Pay public officials adequately responsible for public procurement
- Encourage collaborative and sustained cooperation of like minded-shareholders like private companies, governments, international organizations, civil society, academia, etc to reduce corruption
- Consider the application of civil society measures in public procurement like so-called „Integrity Pacts“ for selected tender procedures
- Encourage whistle-blowing by individuals directly involved in the procurement process

Recommendations (examples)

- Endeavour codes or standards of conduct for the correct, honorable and proper performance
- Exclude corrupt companies from public tender procedures
 - Grant them the possibility to re-enter the procurement market by undergoing «self-cleaning» measures
- Keep in mind that the fight against corruption in public procurement requires a holistic approach
- Don't forget that curing a culture of corruption is a long term process
 - Post-Euromaidan successes are already visible

Contact

Johannes S. Schnitzer, Dr., LL.M.

SCHNITZER Rechtsanwalts GmbH

T: +43 (1) 361 9 550

E: schnitzer@schnitzer-law.com

W: www.schnitzer-law.com

