

# Q&A

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## **PUBLIC PROCUREMENT FOR NON-RESIDENTS IN UKRAINE: COMMON QUESTIONS**

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**1. Can a non-resident participate in procurement procedures (tenders) in Ukraine?**

Yes, a non-resident may participate in procurement procedures as a supplier/contractor.

To determine whether a non-resident can participate in a particular tender, it is necessary to review the tender documentation.

**2. How does one get acquainted with the tender documentation for a particular tender?**

Tender documentation is available on the tender page [on the Prozorro website](#) or on a procurement platform.

**3. Does a non-resident need a representative office, material and technical base or a warehouse to participate in a tender?**

In general, non-residents do not need a representative office, material and technical base or a warehouse to participate in a tender. However, sometimes such requirements may be imposed due to the specifics of a particular procurement. To check this, the tender documentation for a particular tender should be examined.

**4. What legislation applies to the procurement procedure and the resulting agreements?**

All issues related to the public procurement procedure in Ukraine and the subsequent agreements are regulated by the laws of Ukraine.

### ***5. What is the Prozorro system?***

Prozorro is an umbrella term for the public procurement system in Ukraine. Participation in bidding conducted in the Prozorro system is carried out through online platforms of various trading sites.

### ***6. Which platform to choose for participation in public procurement in Ukraine via the Prozorro system?***

To participate in public procurement in Ukraine, a potential bidder can choose the most convenient platform on the Prozorro website and, by following the link to the website of the selected platform, get acquainted with the pricing, public agreement, and functionality.

### ***7. Where can I find information about platforms for participation in public procurement?***

The accreditation and main functions of such platforms are published [on the Prozorro website](#). Information about procurement on Prozorro-accredited platforms is identical and synchronised with the Prozorro system. Thus, a procurement selected on the Prozorro website can be found on any accredited platform and a proposal can be submitted through a chosen platform.

### ***8. How can a non-resident selling a certain type of goods (or providing certain services) find a suitable procurement?***

Enter the name of the product (service) in the **Procurement** tab [on the Prozorro website](#) or use search filters. You can also find procurements on the accredited platforms using their search functionality.

### ***9. What parameters can be refined using filters?***

Filters are applied to the following parameters:

- **'Price'**, where the potential participants indicate the minimum price at which they are ready to participate in the auction;
- **'CPV'** ('DK021:2015'). It is better to add the selected CPV code to the 'Price' filter. This is a set of unified codes that classify procured goods, services, and works, harmonised with [the European Common Procurement Vocabulary \(CPV\)](#).
- **'Buyer'**. If the tenderer wishes to participate in the procurement of a specific contracting authority, it is possible to select the filter 'Buyer' and specify the name or code of the contracting authority.

### ***10. What to consider when searching using filters?***

Procured goods do not always match the corresponding 'DK021:2015' (CPV) code, as some goods, services, or works may be very specific. In this case, it is better to use the procurement name as a search term rather than the code filter.

### ***11. What to look for in an announcement?***

To assess the potential value of an announcement, pay attention to the following fields:

- **'Request for clarification'**, which allows you to determine how much time is left to get acquainted with the terms of the tender documentation and ask the buyer questions that have arisen during the review of the tender documentation;
- **'Deadline for submission of tender proposals'**, by which the participant must prepare and submit a proposal with documents for participation in the auction;
- **'Auction start'** – to know when the auction will take place and to join in time.

### ***12. What does the information in these fields mean?***

- **'Request for clarification'** allows the participant to contact the procuring entity for clarification, and the procuring entity is obliged to respond to the requests. During this period, it is also possible to appeal against the terms of the tender documentation;
- **'Deadline for submission of tender proposals'** helps to estimate the time available for document preparation and, if this period is unreasonably short, it is possible to request an extension;
- **'Auction start'** defines when the auction starts. It is not displayed immediately in every procurement; most often, it is displayed when at least one participant has submitted a proposal.

### ***13. What should I pay special attention to when studying tender documentation?***

**Participation conditions for non-residents.** Not all procuring entities set clear conditions for the participation of non-residents. If document submission for non-residents is not clearly defined, one should contact the procuring entity for clarification and suggest changes.

**Terms of supply agreement performance.** Sometimes, procuring entities specify a condition for representatives of the participant (winner/supplier) to be present during the transfer of goods or signing of certain documents.

**Agreement terms and conditions.** Procuring entities may include in the agreement terms the provision of additional accompanying services related to the procurement

subject matter, without specifying this in tender documentation. For instance, these may include training of the procuring entity's employees on how to use the goods or provide after-sales service, etc.

### ***14. Can a procuring entity unexpectedly change the tender documentation?***

A procuring entity may amend tender documentation and the agreement only before the deadline for submission of proposals. After the deadline, no changes are allowed, so the winner can be sure that they know the agreement terms and conditions.

### ***15. What is a tender proposal security?***

Procuring entities often require participants to provide a tender security. The security is a guarantee of a participant's obligations under the tender results. In most cases, procuring entities require security in the form of cash-covered guarantees issued by banking institutions. The security is returned to the participant after the tender is completed. If the participant violates the bidding rules (e.g., wins the auction but fails to enter into an agreement), the security is not returned.

It is important to check this requirement, as the procuring entity may stipulate that it accepts guarantees issued only by Ukrainian banking institutions or by institutions that meet certain requirements.

### ***16. What is an agreement performance security?***

Procuring entities may require the winner to provide a performance security. This condition must be specified in the tender documentation.

An agreement performance security is a bank guarantee with a cash cover, which is returned to the participant (winner) after the successful execution of the agreement concluded between the participant and the procuring entity.

### ***17. Is it possible to appeal against the terms of tender documentation?***

Yes, it is possible. An appeal is allowed if the terms of tender documentation restrict competition, lead to discrimination of participants, are unclear or contradictory, allowing for ambiguous interpretation. The complaint is filed with the Antimonopoly Committee of Ukraine (AMCU).

If the AMCU accepts the appeal for consideration, the procurement will be suspended until the decision on the appeal is made.

### ***18. Can I delete my tender proposal if I change my mind about participating in a tender?***

Any participant who has submitted a tender proposal may cancel and delete it without any consequences until the date of the tender submission deadline.

### ***19. What is the localisation requirement?***

For a certain category of goods, a requirement for the degree of production localisation is established. The degree of localisation is an indicator of the local content in the share of the cost of raw materials, materials, nodes, assemblies, parts, elements and product components, works, services and other inputs of Ukrainian origin in the cost of goods. This percentage must not be less than the minimum established by law (respectively, the imported component must not exceed the calculated maximum).

### ***20. When do localisation requirements not apply?***

Localisation requirements do not apply to tenders covered by the Public Procurement Agreement and other international treaties of Ukraine, including free trade agreements. If there is a localisation condition, it should be checked against this.

### ***21. How is the tender winner determined?***

Currently, the winner is determined as follows:

- if only one tender proposal is submitted in the tender (bidding), it is automatically recognised as the most economically advantageous, and is immediately reviewed for compliance with the requirements of the tender documentation;
- if at least 2 proposals are submitted, an auction is held (all actions within the auction are performed through the personal profile on the website). The most economically advantageous proposal is determined based on the results of the auction, and it is the proposal with the lowest price. If it meets the requirements of the tender documentation, the participant wins the auction. Within 1 day, a notice of intention to enter into an agreement with the winner is published in the electronic system;
- if the proposal does not meet the requirements of the tender documentation, it is rejected (the participant is disqualified), and the procuring entity considers the next lowest price proposal based on the auction results;
- if all submitted proposals are rejected (inter alia, if there was 1 proposal that was rejected by the procuring entity), the tender is automatically cancelled.

**22. How are auctions held?**

An auction is carried out by way of price reduction, in 3 rounds, with a minimum price reduction step ranging from 0.5 to 3% of the expected procurement value (the size of the step is set by the procuring entity and is displayed in the system during the announcement of the tender). The participant with the highest price offer is the first to decrease the price, and the participant with the lowest price has the last word; this principle applies in each round, taking into account the results of the previous one.

**23. Is it possible to specify the bid price in dollars or euros?**

Currently, the electronic system does not have the technical capability to indicate the bid price directly in foreign currency. Accordingly, auctions are held in UAH.

**24. How is the issue of determining the proposal in hryvnias resolved?**

Procuring entities may:

- include formulas for converting the price into UAH in the tender documentation (to indicate the price in the relevant fields and for the auction);
- set requirements for adjusting the price as of a certain date;
- establish formulas for converting the price into a foreign currency based on the results of the auction (to be fixed in the procurement agreement), etc.

Often, such formulas and approaches have flaws, so they need to be carefully studied and, if necessary, clarified by the procuring entity or challenged as discriminatory or ambiguous (inaccurate).

**25. When is the procurement agreement concluded with the winner?**

A procurement agreement may be concluded no earlier than 5 days after the date of publication of the notice on the intention to conclude a procurement agreement in the electronic system.

The agreement shall be concluded no later than 15 days after the date of the notice's publication, though this period may be extended up to 60 days.

If an appeal is filed, the time limit for concluding the agreement is suspended.

If the agreement is concluded out of time, it will be deemed null and void.

### ***26. What to do if certain terms of tender documentation are unclear or contradictory?***

You can ask the procuring entity to clarify, specify, coordinate, delete or change specific terms of the tender documentation ([see question 12](#)).

### ***27. Is it possible to appeal against an open bidding?***

Yes, it is possible. Open bidding can be challenged by filing a lawsuit in court or a complaint with the AMCU, which has a Commission for reviewing complaints about violations of public procurement legislation.

The only way to challenge a procurement agreement concluded as a result of a bidding process, including its validity due to non-compliance with the requirements of public procurement legislation, is through court proceedings.

### ***28. Why is it worth appealing open tenders to the AMCU Commission?***

Appealing against open tenders to the Commission is a more efficient and faster mechanism for protecting rights.

The complaint is filed electronically through a personal profile. The Commission makes a decision to accept the complaint for consideration (or a well-grounded decision to leave the complaint without consideration) within a period not exceeding 2 working days from the date of filing the complaint. The term of consideration shall be 7 working days from the date of acceptance of the complaint for consideration, which may be extended by the Commission up to 12 working days.

### ***29. What can be subject to a complaint to the AMCU Commission?***

A complaint may be filed against:

- unlawful and unreasonable conditions of tender documentation (discriminatory requirements; unreasonably complicated and excessive technical requirements; unreasonable qualification criteria that go beyond the necessary ones);
- inaccurate, ambiguous, contradictory terms of tender documentation that allow the procuring entity to choose the grounds for rejecting (disqualifying) tender proposals at its own discretion;
- unlawful rejection of a tender proposal (disqualification);
- unlawful recognition of another participant as the tender winner (when it should have been disqualified);
- unlawful cancellation of a tender.

**30. Can a non-resident who did not participate in the tender file a complaint?**

Yes, it can. For instance, discriminatory conditions in the tender documentation that deprive a non-resident of the opportunity to participate in the tender may be a violation of its rights and interests.

**31. How much does it cost to file a complaint with the Commission?**

The fee for filing a complaint with the Commission is as follows:

- 0.3% of the expected value of the procurement item (or its part (a lot) in case of appealing against such part), but not less than UAH 2,000 (under USD 50) and not more than UAH 85,000 (approximately USD 2,050) in case of appealing against the tender documentation or any decisions, actions or inaction of the procuring entity that occurred before the deadline for submission of tender proposals;
- 0.6% of the expected value of the procurement item (or its part (a lot) in case of appealing against such part), but not less than UAH 3,000 (approximately USD 70) and not more than UAH 170,000 (approximately USD 4,100) – in case of appealing against decisions, actions or inaction of the procuring entity that took place after the evaluation/review of tender proposals.

**32. Is the fee for filing a complaint refundable?**

The fee for filing a complaint shall be refunded to the complainant in case of:

- full or partial satisfaction of the complaint;
- leaving the complaint without consideration if the procuring entity eliminates the violation before the complaint is accepted for consideration;
- termination of the complaint consideration if the procuring entity eliminated the violation after the complaint was accepted for consideration.

**33. How can a complaint be resolved?**

If the complaint is upheld, the Commission may:

- oblige the procuring entity to cancel its decisions (e.g., a decision to disqualify the complainant or to select another participant as the winner);
- oblige the procuring entity to provide the necessary documents, explanations, eliminate any discriminatory conditions, bring the tender documentation in line with the requirements of the law, etc.;
- cancel the procurement procedure if it is impossible to remedy the violation.

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