

Local content of production in Ukrainian machine building

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On 16 December 2021 the Law of Ukraine "On Amendments to the Law of Ukraine "On Public Procurement", aimed at creating the prerequisites for the sustainable development and modernization of the Ukrainian industry" (hereinafter the "Law") was adopted. The Law came into force on 14 July 2022.

The Law provides for the improvement of public procurement procedures in order to boost the development of Ukrainian industry and entrepreneurship, preserve the existing jobs and create new ones, and attract investments.

On 2 August 2022, in pursuance of the Law, the Cabinet of Ministers of Ukraine approved the following:

- the procedure for verifying the local content of production of goods, which establishes a verification mechanism, and;
- the procedure for monitoring compliance with the requirements for the local content of production of procurement items included in the list of goods that are the subject to procurement with a verified local content of production.

On 3 August 2022, the website of the Ministry of Economy of Ukraine officially announced the launch of a program to support Ukrainian machine builders through the concept of local content by guaranteeing their participation in electronic bidding in the Prozorro system.

1. Local content of production

In Ukraine, starting from 2022 and for the term of 10 years, apart from the consideration of price and/or product lifecycle, the procurement object is subject to local content requirements in accordance with the relevant local content level, if the value of the procurement object exceeds or equals UAH 200,000 (approx. USD 5,445).

The Law defines the notion of the "local content of production" as the share of local content in the cost of raw materials, supplies, nodes, units, pieces, spare parts and components, works, services and other elements of Ukrainian production in the cost of goods that are subject to procurement. The customer shall procure the goods specified in the Law only if the level of local content of production is not less than:

- 10% – in 2022,
- 15% – in 2023,
- 20% – in 2024,
- 25% – in 2025,
- 30% – in 2026,
- 35% – in 2027,
- 40% – from 2028 until the end of the 10-year period.

2. Goods subject to local content requirements

The local content requirements for public procurement shall apply to more than 100 goods in the field of mechanical engineering according to the approved list, in particular:

- ambulances;
- fire fighting vehicles;
- motor vehicles for transportation of 10 or more persons;
- city and tourist buses;
- public buses;
- dump trucks;
- vans;
- heavy-duty motor vehicles;
- cranes and dump vehicles;
- trucks with lifting platforms, etc.

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If a customer procures works or services, the performance (provision) of which requires the customer to acquire ownership of the aforementioned goods, the procurement procedure for such works or services shall also take into account the specific requirements established by the Law.

Note the caveat contained in the Law: if the name of the object of procurement as indicated in the Unified Procurement Dictionary does not match the goods, works or services actually procured by the customer, the procurement contract is deemed null and void.

3. Deviation from the approved local content level and the list of services

The Government of Ukraine upon coordination with the respective committee of the Parliament of Ukraine may:

- approve an additional list of goods, belonging exclusively to the processing industry, and set the local content requirements for their production not exceeding the local content of production established for the relevant year. In such a case, the customer shall procure goods included in the additional list of goods only if the local content of their production is greater than or equal to the local content level set forth in the additional list of goods;
- reduce the local content of production for the next calendar year by up to 5% or increase it by up to 10% for each individual item of goods subject to procurement not later than on 31 October each year;
- reduce the local content of production for an individual procurement procedure.

4. Functions of the Authorized Body

As the Authorized Body, the Ministry of Economy of Ukraine performs the following functions in the context of local content requirements for production:

- in accordance with the procedure established by the Ukrainian Government and based on the formula specified in the Law, confirms the local content level, which, according to the Law, is calculated by the manufacturer of the goods that are the subject of procurement;
- forms and maintains a list of goods being the object of procurement with the confirmed level of local content, which is made publicly available on the official website;
- monitors the compliance with the requirements for the level of production local content of the procurement objects.

5. International obligations of Ukraine in procurement

It should be noted that international treaties ratified by the Parliament of Ukraine will continue to have priority over the national legislation of Ukraine.

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In particular, the Law determines that local content requirements do not apply to purchases which fall under the provisions of the Law of Ukraine "On Ukraine's Accession to the Agreement on Government Procurement" on the conditions of the Resolution of the Committee on Government Procurement of the World Trade Organization, as well as provisions on government procurement of other international treaties of Ukraine, ratified by the Parliament of Ukraine.

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Also, the law does not apply to the procurement of goods, works, and services by means of credits, loans, grants provided in accordance with the international treaties of Ukraine by international monetary and credit organizations such as:

- The International Bank for Reconstruction and Development,
- The International Finance Corporation,
- The Multilateral Investment Guarantee Agency,
- The International Development Association,
- The European Bank for Reconstruction and Development,
- The European Investment Bank,
- Nordic Investment Bank, etc.,

or on the terms of co-financing with the participation of these organizations, which is further carried out according to the rules and procedures established by these organizations, taking into account the principles established by the Law of Ukraine "On Public Procurement".

Only if such rules and procedures are not established, the purchase will be made in accordance with the Law of Ukraine "On Public Procurement", as well as taking into account the established requirements for the local content level.

At the same time, the Government of Ukraine was tasked to ensure that the requirements for the local content of production under the Law are incorporated when drafting international treaties and/or agreements providing for the procurement with the use of loans, credits, grants provided in accordance with the international agreements of Ukraine with monetary and credit organizations.