

# Public procurement procedures in Ukraine during the COVID-19 crisis

*Information applicable as of 6 April 2020*

Public procurement procedures in Ukraine have not been significantly affected by the measures aimed at overcoming the coronavirus (COVID-19) epidemic. Up to now, only an exemption from procurement procedures for pharmaceuticals, medical products and medical equipment used for combatting the coronavirus (“**Specific Medical Goods**”) has been introduced by the Law of Ukraine “On the Amendment of Certain Legislative Acts of Ukraine Aimed at the Prevention and Limiting Spread of the Coronavirus Disease (COVID-19)” (“**Anti-Coronavirus Law**”), adopted by the Ukrainian parliament on 17 March 2020. Contracting authorities must procure these goods under the specific regulation of the Cabinet of Ministers of Ukraine (“**CMU**”) until 18 April 2020.

## 1. Ongoing procurement procedures are not automatically suspended.

Since there is no specific regulation related to general public procurement, the ongoing procurement procedures are not automatically suspended. The grounds for suspension of procurement procedures have not been amended by the Anti-Coronavirus Law and are not affected by any legal changes introduced due to the coronavirus (COVID-19) epidemic.

Currently there are no indications that procurement procedures are being suspended on the initiative of contracting authorities or upon the request of bidders. At the same time, as the CMU has already submitted a draft law to parliament aimed at cutting the state budget, one may expect that the contracting authorities will be cancelling procurement procedures due to a shortfall in their budgets, once this draft law is adopted.

## 2. The current situation allows for use of simplified procurement procedure only in relation to Specific Medical Goods.

Specific Medical Goods are exempted from procurement procedures set forth by the Law of Ukraine “On Public Procurement” (“**Public Procurement Law**”) and are now subject to a specific procedure introduced by the CMU.

In order to procure Specific Medical Goods a contracting authority should:

- i. **immediately** introduce changes to the annual procurement plan;
- ii. define technical, quality and other characteristics of the Specific Medical Goods;
- iii. publish the procurement notice through the electronic procurement system “Prozorro”;
- iv. organize and carry out procurement procedures **not earlier than 48 hours** after the notice is published;
- v. enter into the agreement after conducting negotiations with several bidders on the matter of price and other terms of cooperation; and
- vi. report about procurement through electronic system “Prozorro”.

In addition, a bidder must declare that the company complies with the requirements prescribed by the CMU's regulation. If it doesn't, a contracting authority may refuse to consider the bidder's proposition.

**3. There are no special measures, including shortening of deadlines.**

None of the measures introduced by the government or by the parliament provides for or establishes any special measure that would relate to procurement procedures except as mentioned above.

**4. No specific amendment provides for exceptional use of electronic means.**

The procurement system in Ukraine is organized and regulated in a manner that not only allows for, but even establishes a mandatory requirement to carry out procurement procedures remotely through electronic means. Therefore, no specific amendment providing for exceptional use of electronic means in public procurement procedures is required.

In addition, the Antimonopoly Committee of Ukraine (the "AMCU") – a body empowered to consider claims related to procurement procedures – announced that parties' participation in the respective hearings will be enabled by submitting the necessary arguments through the electronic system or by means of video connection.

**5. The deadlines for remedies under public procurement are not automatically suspended.**

This, however, only relates to the specific procedures set forth by Public Procurement Law. Moreover, the AMCU continues to function and conducts its activity in a regular manner through electronic means.

As for the deadlines related to submission of claims to courts, the measures recently adopted by the parliament include automatic suspension of statute of limitations deadlines for initiating legal proceedings in courts and other procedural terms for the duration of quarantine period.

**6. The procedure to be followed in the event no offers are submitted remains the same.**

Under general regulation provided by the Public Procurement Law, a contracting authority cancels a procurement procedure if fewer than two offers were submitted (or fewer than three when contracting with several participants), or fewer than two offers submitted are admissible (or fewer than three respectively). In the event a contracting authority has to cancel procurement procedure twice, it may resort to negotiation procedure, provided that the terms remain the same as in the cancelled bidding procedure.

**7. The adopted quarantine measures do not directly allow for the existing contracts to be modified.**

The current provisions of the Public Procurement Law that establish grounds for contract modifications do not include unforeseen circumstances and thus do not cover the current coronavirus (COVID-19) outbreak.

However, there are provisions that allow modification of the contract to a certain extent due to the quarantine and its consequences, e.g. decreasing the amount of procurement due to the contracting authority's budget being curtailed or extending the term of the contract due to objective circumstances that did not allow the parties to perform their obligations in time.

For any further information and legal assistance, please contact [Ana Pogrebna](#), Partner at CMS Ukraine.