

Non-Simplified Procurement:

Impressions
of Procuring Entities
and Business



AUTHOR:

Artem Davydenko

TEAM:

Yurii Hermashev, Artem Davydenko, Valeriia Zalevska, Khrystyna Zelinska, Ivan Lakhtionov, Oleksandr Orlov, Serhii Pavliuk, Lesia Padalka, Yaroslav Pylypenko, Kateryna Rusina, and Anastasiia Ferents

EDITED BY:

Mariana Doboni

DESIGN:

Kateryna Kysla



The report has been prepared by Transparency International Ukraine's innovation projects program within the USAID / UK aid project "Transparency and Accountability in Public Administration and Services / TAPAS." The views expressed herein do not necessarily reflect the position of the leadership or the Board of Transparency International Ukraine. The data and sources used in the report may change after its publication.

Dissemination of the report for non-commercial purposes is encouraged.

We have verified the accuracy of the information in the report. We believe it accurate as of December 2020. However, Transparency International Ukraine shall not be responsible for the consequences of its use for another purpose or in another context.

This report was made possible by the support of the Eurasia Foundation, funded by the US Government through the United States Agency for International Development (USAID) and the UK Government through UK aid. The contents of this publication are the sole responsibility of Transparency International Ukraine and do not necessarily reflect the views of USAID, the U.S. Government, the U.K. Government or Eurasia Foundation.

We are thankful to everyone who contributed to this study. We are particularly grateful to procuring entities and business representatives who agreed to be interviewed and participated in the online survey. Special thanks to the representatives of the electronic platforms Zakupki.prom.ua, SmartTender, E-Tender and Derzhakupivli.online, who agreed to help us with the survey.

Transparency International Ukraine
37–41 Sichovykh Striltsiv Street, 5th floor
Kyiv, Ukraine, 04053
tel.: +38 044 360 52 42
website: ti-ukraine.org
e-mail: office@ti-ukraine.org



THE STUDY HAS BEEN PREPARED BY THE DOZORRO TEAM

[DOZORRO](#) — is a project of civil society organization Transparency International Ukraine which aims to ensure fair play in public procurement.

The project team has created and administers the [dozorro.org](#) monitoring portal, as well as the [public](#) and [professional](#) BI modules, BI Prozorro. In addition, DOZORRO is developing the DOZORRO community, a network of civil society organizations which monitor public procurement and report violations to supervisory and law enforcement agencies.

Our other studies can be found in the section Research Public Procurement on Transparency International Ukraine's website: bit.ly/DOZORRO-research



CONTENTS

04 TERMS AND ABBREVIATIONS

05 INTRODUCTION

06 SECTION 1. General information about simplified procurement

17 SECTION 2. Survey of procuring entities and businesses in Prozorro

31 SECTION 3. Statistics

62 CONCLUSIONS: short version

63 CONCLUSIONS: long version

65 APPENDIX 1. Some inconsistencies in the Law and implementation in Prozorro regarding simplified procurement

70 APPENDIX 2. Full name of CPV codes





TERMS AND ABBREVIATIONS

SAS the State Audit Service of Ukraine

The Law The Law of Ukraine “On Public Procurement” of December 25, 2015, No. 922 (version in effect since April 19, 2020)

QES qualified electronic signature

AMCU Board Permanent Administrative Board for Consideration of Complaints on Violations of Public Procurement Legislation of the Antimonopoly Committee of Ukraine

MEDT the Ministry for the Development of Economy, Trade, and Agriculture of Ukraine

TD tender documentation

INTRODUCTION

On April 19, 2020, a new type of procurement was added to Prozorro—simplified procurement. Now all procuring entities that used direct contracts or pre-threshold procurement for purchases with an expected value of UAH 50,000 to 200,000 for goods and services and up to UAH 1.5 million for works are obliged to hold auctions.¹

This innovation is designed to cast light on many purchases and create new opportunities for businesses to participate in public procurement.² Since these purchases are for relatively low amounts, they have much lower requirements compared to open bidding. Hence the name, simplified procurement.

In short, the difference between simplified procurement and open bidding can be described by three "less":

- *less time*: stages in simplified procurement last for fewer days, and the procurement itself is completed much faster than open bidding;
- *fewer documents*: both the customer and the bidder should generally prepare fewer documents to participate in / conduct the procurement;
- *fewer restrictions*: the procuring entities have more freedom of action and do not need to regularly indicate such phrases as “or equivalent,” and their decisions cannot be disputed with the Permanent Administrative Board for Consideration of Complaints on Violations of Public Procurement Legislation of the Antimonopoly Committee of Ukraine (hereinafter — AMCU Board). As for the price offers of the participants, for example, the mechanism of abnormally low price does not work.

1. For monopoly procuring entities the threshold is UAH 1 million for goods and services and UAH 5 million for works.

2. If the procuring entity has signed a direct agreement, you can see the fact of its conclusion on Prozorro, information on the contractor, and read the agreement itself. Introducing simplified procurement allowed businesses to participate in this procurement as well. An outside observer can study the price proposals, requirements for the subject of procurement, the number and legality of disqualifications, the quality of the customer's answers, the grounds for his decision to determine the winner, etc.

As of December 2020, simplified purchases in Prozorro have been functioning for almost eight months. Therefore, the main question we ask in this study is: have we managed to achieve the goals declared by the developers of the relevant bill and make these purchases really simple, accountable and competitive?

To accomplish this, in [Section 1](#) we explain what simplified procurement is, what stages it consists of and how it differs from open bidding.

In [Section 2](#), we present the results of our interviews with participants and procuring entities, as well as the results of an online survey. We asked respondents to share their experiences of conducting and participating in simplified procurement and analyzed their responses and assessments.

[Section 3](#) contains statistics with specific indicators:

- how long simplified procurement lasts on average compared to open bidding;
- how often participants are disqualified;
- how different the competition in simplified procurement is to open bidding, etc.

In [Appendix 1](#), we have collected the inaccuracies in the regulation of simplified procurement which the relevant law contains as of December 2020.

This study will primarily be useful for:

- members of the Committee of the Verkhovna Rada of Ukraine on Economic Development, as its results may form the basis of relevant legislative initiatives;
- Public Procurement Department of the Ministry for the Development of Economy, Trade, and Agriculture of Ukraine (hereinafter MEDT) and SE Prozorro, as it will help make decisions on changes in the system of simplified procurement based on analytical data.

SECTION 1

GENERAL INFORMATION ABOUT SIMPLIFIED PROCUREMENT

Concept of simplified procurement

Under the Law of Ukraine "On Public Procurement" of December 25, 2015, No. 922 (hereinafter Law) simplified procurement is

«
...purchase of goods, works and services by a procuring entity whose cost is equal to or exceeds UAH 50,000 but is lower than UAH 200,000 for goods and services or lower than UAH 1.5 million for works (1 and 5 million respectively for so-called monopolist procuring entities).³
»

Introduction of simplified procurement

The term "simplified procurement" first appeared in the Law as amended on April 19, 2020.

Before April 19, there were three ways for a procuring entity to conduct procurement for a pre-threshold amount exceeding UAH 50,000:

- through the electronic catalog Prozorro-market;
- through a direct contract with the supplier, uploading a report to Prozorro;
- by conducting competitive sub-threshold procurement.

After April 19, 2020, the procuring entity will have to choose whether they want to do it:

- through the electronic catalog Prozorro-market;⁴
- by conducting competitive simplified procurement;

- or by signing a direct contract after two unsuccessful simplified tenders due to the absence of participants or for other reasons under Art. 3, part 7, clause 1 of the Law.⁵

Simplified procurement has become mandatory for use in a certain range of expected value, while competitive sub-threshold procurement until April 19, 2020, could be used by the procuring entity at its own initiative.

Reasons for introducing the mechanism

The initiators of the draft law explained their decision to introduce simplified procurement through four reasons:

- 1) procuring entities neglect the right to use Prozorro for competitive selection of suppliers and enter into direct agreements, which is not always economically reasonable;
- 2) Prozorro procurement is a prerequisite for the development of small and medium-sized businesses;
- 3) "pre-threshold procurement" accounts for 85% of the total number of tenders. At the same time, 69% of "pre-threshold purchases" take place without the use of Prozorro, and procuring entities negotiate with "friendly" suppliers, which reduces competition;
- 4) "pre-threshold procurement" without the use of Prozorro does not provide opportunities for public control over the spending of budget funds.⁶

In fact, these reasons can be summarized by the need to better control procurement, develop business and save budget funds.

3. Art. 1: bit.ly/3nkQy9t

4. As of November 2020, Prozorro-Market operates in test mode, and the procurement can actually be done only for amounts up to UAH 50,000

5. Under Art. 3, part 7, clause 1 of the Law

6. Draft Law of Ukraine "On Amendments to the Law of Ukraine "On Public Procurement" and Certain Other Legislative Acts of Ukraine to Improve Public Procurement" of August 29, 2019, No. 1076: bit.ly/31wvZPb

Stages of simplified procurement

Note that the requirements for the timing of individual stages of simplified procurement as of December 2020 can be interpreted differently. In this section, we use the deadlines provided by the official explanation of the MEDT. However, we should note that the letters from the MEDT⁷ do not establish laws but rather have a recommendatory, informative nature.

The law stipulates that simplified procurement consists of seven successive stages. They are listed in Article 14, part 2 of the Law:

1) Publication of the simplified tender announcement:

The procuring entity publishes the announcement of a simplified tender and the draft procurement contract no later than six working days before the deadline for submission of bids.

The submission deadline is established by the procuring entity itself.

2) Specification of information published by the procuring entity in the simplified tender announcement.

At this stage, bidders have the right to ask the procuring entity for clarification of the information in the announcement or in the requirements to the procurement item, or to request the removal of a violation. Within one working day from the date of publication of such a request, the procuring entity is obliged to provide clarifications or make changes to the announcement or requirements.

If the procuring entity has made the decision to make changes to the tender announcement, the bid submission deadline is extended for at least two working days.

There is, however, no unanimous view of whether requirements to the procurement item constitute part of the tender announcement as per the Law or not. This is important because it affects whether or not the deadline should be extended in the event of changes to the requirements.

The stage of clarification cannot be shorter than three working days.

3) Submission of bids.

Participants submit proposals by filling out electronic forms and uploading the necessary documents to Prozorro. At this stage, participants cannot send requests and questions to the procuring entity, as opposed to the way it works in open bidding. Procuring entities, on the other hand, cannot make changes to the announcement and requirements to the procurement item.

The time limit for clarifying information and submitting proposals together cannot be less than six working days.

4) Electronic auction.

Prozorro automatically determines the date and time of the electronic auction. Similarly, Prozorro automatically evaluates proposals based on criteria and methodologies defined in advance by the procuring entity.

If only one bid is submitted, the purchase automatically proceeds to the bid review stage;

5) Consideration of the bid for compliance with the announcement and requirements to the procurement item.

The procuring entity considers the most cost-effective bid for no more than five working days from the day of identifying the most cost-effective bid.

In case of rejection of the most cost-effective offer, the procuring entity considers the offer of the next participant;

6) Award and signing a contract.

Based on the bid evaluation by the Prozorro system and consideration of the proposal by the procuring entity, the latter awards a contract and publishes a notice of intention to enter into a procurement contract.

7. bit.ly/32Govtg

The notice of intention to enter into a procurement contract shall be published by the procuring entity in Prozorro within one day from the date of the decision.

The procuring entity enters into a procurement contract no later than 20 days from the date of publication of the notice of intent to enter into the contract. At the same time, the Ministry of Economy claims⁸ that the procuring entity can enter into a contract at any time, starting from this day. The Law stipulates that in order to ensure an appeal, a procurement contract may not be concluded earlier than in 10 days (there is no appeal in simplified procurement).

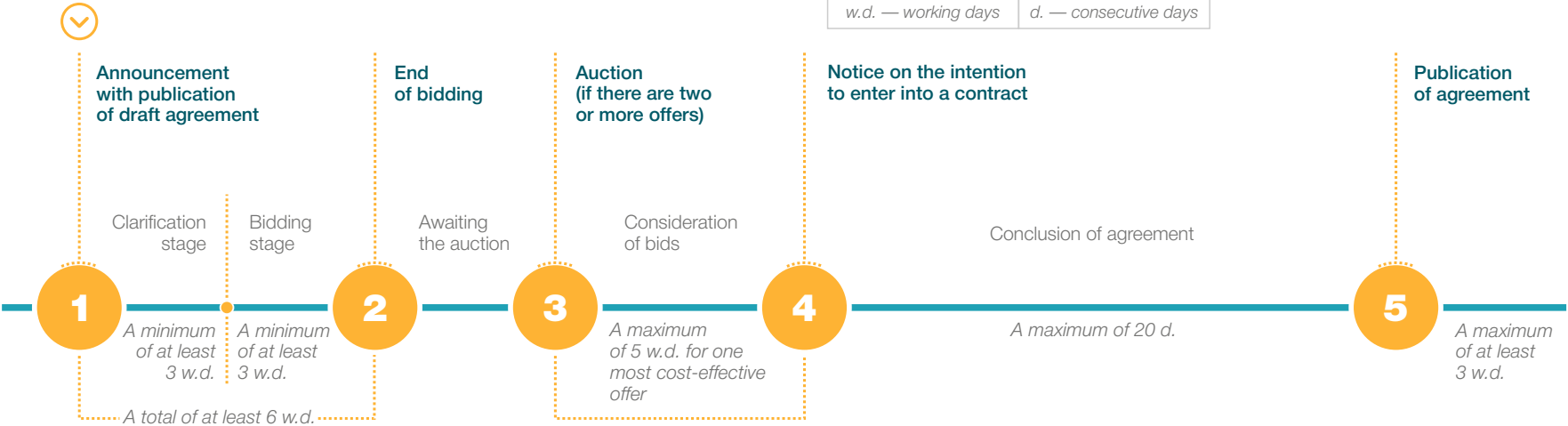
The procuring entity must publish a signed agreement in Prozorro within three working days from the day of its conclusion.

Differences in simplified procurement and open bidding

During the study period, simplified procurement and open bidding were the most common types of competitive procurement. They accounted for 79% of all competitive lots (according to the Prozorro BI module, see Section 3 for details). Starting from April 19, 2020, in addition to open bidding, simplified procurement⁹ has become regulated by the Law, and the processes of the two are very similar.

We decided to compare how the Law regulates simplified procurement and open bidding by highlighting the differences. This is also important because sometimes, participants and procuring entities are not fully aware of the difference and may make the wrong decisions. For example, they may expect that the anomalously low price mechanism will flag something, or that the procuring entity will also consider equivalents, if this is not explicitly specified in the announcement.

w.d. — working days d. — consecutive days



9. Pre-threshold procurement from UAH 50,000 is regulated by the order of SE Prozorro No. 10 "On Approval of the Guidelines on the Procedure of the Use of the Electronic Procurement System with Value Lower than the Value Established by Article 2, part 1, para. two and three of the Law of Ukraine 'On Public Procurement'" : bit.ly/2UqAfM4. As of December 2020, this order regulates pre-threshold procurement in the amount of up to UAH 50,000

8. bit.ly/32Govtg

	Open bidding	Simplified procurement
	Terms of use	
Requirement of at least two bids	<p>At least two bids must be submitted for the open bidding.</p> <p>If one bid is submitted, the purchase will not take place.</p>	<p>For simplified procurement to take place, at least two bids must be submitted.</p> <p>If one proposal is submitted, Prozorro automatically proceeds to its consideration after the deadline for submission of proposals.</p>
	Procurement announcement	
Information on the characteristics of the procurement item	<p>The tender documentation contains:¹⁰</p> <ul style="list-style-type: none"> • information on the technical, qualitative and other characteristics of the procurement item; • a list of criteria and methods of evaluation of proposals with indication of specific weight of criteria; • the amount, type, period and conditions of granting, return and non-return of the security payment for the performance of the procurement contract; • bidding deadline 	<p>All the same information is published in the announcement of the simplified procurement (and in the requirements to the subject of procurement).</p>
Deadline for submission of bids	Cannot be shorter than 15 days from the moment of the open bidding announcement.	The total duration of the clarification stage and the bidding stage cannot be shorter than 6 working days since the publication of the tender announcement.
The requirement to indicate the language(s) of the bid(s)	The procuring entity must indicate the language in which tenders must be prepared.	No provision.
Security payment for contract implementation	The procuring entity may provide for the type and period of security payment for contract implementation, as well as the terms of its return and non-return.	No provision. (the procuring entity can determine only the amount and terms of the security payment).
The use of non-price criteria	If a mathematical formula is used to calculate the adjusted price, the procuring entity indicates it in the announcement.	No provision. However, the procuring entity can specify a list of criteria and methods of evaluation of proposals with indication of specific weight of criteria.

10. For more details see Art. 22 of the Law: bit.ly/3nvPI9R

	Open bidding	Simplified procurement
	Tender documentation in open bidding / announcement and requirements of simplified procurement	
Documentary confirmation of public information	The tender documentation cannot contain requirements to the documentary confirmation of information about the compliance with the tender documentation if such information is public, published in the open data format and/or if it is contained in unified open public registers with free access.	<i>No provision.</i>
Information indicated in the tender documentation of open bidding but absent as a requirement to the announcement on a simplified tender	<p>The tender documentation must contain:</p> <ul style="list-style-type: none"> • instruction on the preparation tender proposals; • one or more qualification criteria in accordance with Article 16 of the Law, the grounds established by Article 17 of the Law, and information on the method of confirming the compliance of participants with the established criteria and requirements; • technical specification; • information on markings, test reports or certificates (if necessary); • a draft procurement contract with a mandatory indication of the procedure for changing its terms (simplified procurement announcement, however, does contain a draft contract); • a description of the components of the life cycle if this criterion is applied; • validity period of the tender proposal; • the currency in which the price of the tender offer must be indicated; • the language of bids; • among other things, the type, period and terms of return and non-return of the security payment for the execution of the contract; • contact details of procuring entity officials who can communicate with participants; • the requirement for the bidder to indicate information about each subcontractor / co-contractor; • description and examples of formal errors. 	<p><i>No provision.</i></p> <p>Importantly, the procuring entity can include all this information in the simplified procurement announcement at its own initiative because the law provides a non-exhaustive list of requirements to the announcement.</p> <p>What makes it different from the draft contract is that the Law does not require the procuring entity to publish it with mandatory indication of the procedure of changes of its terms.</p> <p>The procurement agreement is concluded as prescribed by Article 41 of the Law.</p>

	Open bidding	Simplified procurement
Requirement to certify documents submitted with a qualified electronic signature (hereinafter—QES)	Procuring entities are prohibited from demanding that participants certify the documents submitted as part of the tender bid with the seal and signature of the authorized person if such documents are provided in electronic form via Prozorro with a QES.	<p><i>There is no similar provision for simplified procurement.</i></p> <p>However, Article 12, part 8 of the Law prohibits procuring entities from demanding information filed during procurement / simplified procurement procedures in paper form.</p>
	Technical specifications and other means of proving compliance	
Technical specifications and other means of proving compliance	In establishing the requirements for the procurement item, procuring entities are limited by the provisions of Article 23 of the Law.	<p>Procuring entities are not restricted by the provisions of Article 23 of the Law in establishing the requirements for the procurement item.</p> <p>In particular, procuring entities are not obliged to use the phrasing “or equivalent” when they refer to standard characteristics, technical regulations, specific brands, ways of production, etc.</p>
	Providing clarifications	
Period for clarifications	The clarification period closes ten days before the deadline for submission of bids.	The procuring entity defines the clarification period independently. It cannot be less than three working days.
Who requests clarification	All individuals and legal entities can request clarification.	The participants of simplified procurement can request clarification.
What can the clarification be about	Bidders ask for clarification concerning the tender documentation and / or violations during the procurement.	Bidders request clarification of the tender announcement and/or requirements for the procurement item and/or with the requirement to eliminate a violation in procurement.
Period to provide clarifications	Within three working days.	Within one working day.
Actions of the procuring entity during this period	The procuring entity must provide a clarification within three working days and publish it on Prozorro.	The procuring entity is obliged to provide a clarification by publishing it on Prozorro and/or making changes to the announcement and/or requirements for the procurement item within one working day.

	Open bidding	Simplified procurement
Grounds for amendments	Request for clarification from a natural or legal person, own initiative, conclusion of the State Audit Service of Ukraine, decision of the AMCU Board	Request for clarification from the participants of the simplified procurement, own initiative.
Changes based on clarifications and suggestions	Changes to the tender documentation may be made during the submission period.	The procuring entity may make changes before the start of the bidding period.
Extension of the period of bid submission in case of changes	In the event of changes, the bid submission deadline is extended in a way that it lasts at least seven days after the changes.	In the event of changes to the announcement the bid submission deadline is extended by at least two working days. However, the Law does not clearly define whether the requirements for the procurement item are part of the announcement or not. This is important because it stipulates whether the submission deadline should be extended by two working days if changes are made to the requirements.
Announcement of changes	The new version of the tender documentation is published in addition to the initial version. The list of changes is published separately.	Changes are published in the form of a new version.
Late submission clarifications	In case if the clarification is filed late, the Prozorro system automatically suspends the tender.	<i>No provision.</i>
	Security payment for a bid	
	No differences	
	Procedure for submission of bids / proposals	
Period for submission of bids / proposals	Tender proposals are submitted from the moment of publication of the procurement notice.	Bids are submitted after the end of the clarification period.
Content of the tender proposal / bid	The tender proposal contains information on the bidder's compliance with the qualification criteria, presence / absence of grounds set forth in Article 17 of the Law and tender documentation.	The proposal must contain documents confirming compliance with the requirements specified by the procuring entity.
Validity period of the tender proposal / bid	Tender proposals remain valid for the period specified in the tender documentation, but not less than 90 days from the date of the deadline for submission of tender proposals.	<i>No provision.</i>

	Open bidding	Simplified procurement
	Security payment for contract implementation	
	No differences	
	Disclosure of tender proposals / bids	
	No differences	
	Consideration and evaluation of tender proposals / bids	
Consideration of bids without an auction	Tender proposals are considered only after the auction.	Bids may be considered without an auction if only one participant has made a bid.
Abnormally low price	In open bidding, the abnormally low price mechanism is used.	<i>The abnormally low price mechanism is not used.</i>
False information	If there is evidence of significant false information from the participant, the procuring entity rejects the tender proposal.	<i>No provision.</i>
Extension of the consideration period of tender proposals / bids	The procuring entity can reasonably extend the period up to 20 working days. In case of extension, the procuring entity shall publish the notice in Prozorro within one day from the date of the decision.	<i>No provision.</i>
Rejection of participant if false information is identified	In case of receiving reliable information about the winner's non-compliance with the requirements of the qualification criteria or the grounds set forth in Part 1 of Article 17 of the Law or the fact of the winner providing inaccurate information, the procuring entity rejects the tender offer of such a bidder.	<i>No provision.</i>
Requirement to eliminate inconsistencies	If the procuring entity finds discrepancies during the consideration of the tender proposal, it shall place a notice with the requirement to eliminate such discrepancies within a period of not less than two working days before the expiration of the term of consideration of tender proposals.	<i>No provision.</i>
	Electronic auction	
	No differences	

	Open bidding	Simplified procurement
	Rejection of tender proposals	
Time for the procuring entity to respond on the reason for rejection	No later than five days from the date of receipt of the request.	No later than three working days from the date of receipt of the request.
Grounds for rejection provided in open bidding, but not in simplified procurement	<p>Grounds for rejection include the following:</p> <ul style="list-style-type: none"> the participant does not meet the qualification criteria in accordance with Article 16 of the Law and / or the existing grounds established by part 1 of Article 17 of the Law; the participant does not comply with the requirements of Article 22, part 3, clause 1 of the Law; the bidder indicated inaccurate information in the tender proposal; security of the tender proposal is not in line with the requirements specified in the tender documentation by the procuring entity; the bidder did not correct the inaccuracies identified by the procuring entity after the disclosure of tender proposals; the participant did not provide a justification for the abnormally low price; the participant has identified information as confidential while it cannot be characterized as such; the participant's tender proposal is in a different language than required by the tender documentation; the validity period of the participant's tender proposal has expired; the winner did not confirm the absence of grounds set forth by Article 17 of the Law; the winner failed to provide a copy of a license or other permit under Article 41, part 2 of the Law; the winner failed to provide the security payment for contract implementation if it was required. 	<i>These reasons are not grounds for rejection of participants in simplified procurement.</i>
Grounds for rejection provided in simplified procurement, but not in open bidding	<i>No provision.</i>	Within one year prior to the date of publication of the simplified procurement notice, the bidder refused to sign the procurement contract more than twice with the procuring entity conducting such simplified procurement.

	Open bidding	Simplified procurement
Explanation of the grounds for rejection	Along with the information about the rejection, the procuring entity also explains the reasons for this rejection with reference to the relevant provisions of the Law and the terms of the tender documentation which are not met by the tender proposal and/or participant.	<i>No provision.</i> However, the participant may request that the procuring entity explain the grounds for rejection.
Who receives the information on the rejection of a tender proposal / bid	The information is sent to the participant / winner of the procedure.	The information is sent to the participant
Tender cancellation or recognition of the tender as invalid		
Cancellation of procurement to eliminate violations	If the procuring entity cancels the tender because a public procurement violation cannot be eliminated, this procuring entity must describe these violations.	<i>No provision.</i>
Automatic cancellation of a tender ¹¹	If fewer than two tender proposals are submitted (and all participants have been rejected).	If there are no proposals (the procurement still takes place with one proposal).
Recognition of a tender as invalid	The procuring entity has the right to recognize the tender invalid due to force majeure circumstances or due to a reduction of expenditures.	The procuring entity can cancel simplified procurement in case of a reduction of expenditures.
Cancellation notice	In case of cancellation of the tender, the procuring entity publishes the grounds for such a decision.	In case of cancellation of the simplified procurement, the procuring entity publishes a notice of cancellation of the purchase.
Information on automatic cancellation	Cancellation information is published automatically.	The notice on procurement cancellation is automatically published by the Prozorro system within one day of its automatic cancellation.
Decision on the intention to enter into a procurement contract		
Extension of the period for signing the agreement	If justifiably necessary, the term for concluding the contract may be extended for up to 60 days.	<i>No provision.</i>
Appeal of the notice on the intention to enter into a procurement contract	Participant can dispute the notice on the intention to enter into a procurement contract.	<i>The law does not envisage the possibility of contesting simplified procurement.</i>
Report on procurement results		
	No differences	

11. This applies to no-lot / one-lot tenders or to a separate lot

	Open bidding	Simplified procurement
	Protection of the rights and interests of the participant	
	In order to protect their rights, the participant may approach the procuring entity, the appellate body and the court.	In order to protect their rights, the participant may approach the procuring entity, the supervisory body or the court.
	Violation of procurement legislation	
Article 164-14 of the Code of Ukraine on Administrative Offenses	Of the 20 violations provided for in Article 164-14 of the Code of Administrative Offenses, 18 may pertain to procuring entities involved in open bidding.	Of the 20 violations provided for in Article 164-14 of the Code of Administrative Offenses, 8 may pertain procuring entities involved in simplified procurement.
Bodies that can draw up a protocol under Article 164-14 of the Code of Administrative Offenses	<p>State Audit Service within procurement monitoring, procurement verification, inspection (audit) or state financial audit.</p> <p>The Accounting Chamber of Ukraine within its own control measures.</p>	<p>State Audit Service within procurement verification, inspection (audit) or state financial audit.</p> <p>The Accounting Chamber of Ukraine within its own control measures.</p>
Disputing with the AMCU Board	Participants may file a complaint about discriminatory conditions in the tender documentation, illegal award or disqualification of the participant, illegal (non-) admission of the participant to the auction or illegal choice of the procurement procedure.	<i>There is no possibility to file a complaint with the AMCU Board.</i>



SECTION 2

SURVEY OF PROCURING ENTITIES AND BUSINESSES IN PROZORRO

We decided to ask procuring entities and companies what they think of simplified procurement. To do this, we first conducted a series of interviews, and then based on them organized online surveys in cooperation with four electronic platforms—Zakupki.prom.ua, SmartTender, E-Tender and Derzhzakupivli.online.

INTERVIEWS WITH PROCURING ENTITIES AND BUSINESS

We interviewed five procuring entities, five bidders, and a lawyer who advises participants. We asked them what they believe to be the shortcomings and advantages of simplified procurement.

Below are the opinions of our interviewees. Note that these are subjective opinions of individual respondents which are not representative. That is, it cannot be said that they are shared by all procuring entities and participants in Prozorro.

Procuring entities:

- the time between the need arising and the conclusion of the contract has increased. If we compare competitive pre-threshold procurement before April 19, 2020, and simplified procurement, the former was faster and more convenient;
- the procuring entity may not have enough time for individual stages while conducting several simplified tenders at the same time;
- other procuring entities, conversely, believe that the stages are too long and the deadlines can be reduced or combined (proposals could also be submitted during the clarification stage);

- there is no clear understanding of time requirements. In particular, the deadline for signing the agreement after the award. Experts have different opinions on this, which all boil down to three main options: the next day, in three days, and in 10 days.

This leads to the situation that some procuring entities try to set maximum deadlines to avoid making mistakes. This in turn delays simplified procurement and may bring its duration closer to open bidding.

The respondents also proposed to specify in the Law that Article 33, part 5 concerns only procurement procedures (“...in order to ensure the right to contest... the procurement contract cannot be concluded earlier than 10 days”);

- procurement of certain goods through simplified procurement can be economically disadvantageous if you look at the time needed to organize it and the resulting savings. This mainly applies to the purchase of goods for small amounts, which could previously be purchased faster and for a lower adjusted price¹² by signing a direct contract;
- it is necessary to introduce responsibility in simplified procurement, as there must be effective control over the use of budget funds. Although the amounts and deadlines are smaller in simplified procurement compared to open bidding, participants pay for participation and should be able to protect their interests. In addition, some participants do not distinguish between different types of procurement in Prozorro.¹³ If the participants are discriminated against in simplified procurement, this may reduce their willingness to participate in Prozorro in general.

12. The cost of the procurement item itself and the resources necessary for procurement

13. This was also observed in the survey. In his comment, one of the participants complained that the mechanism of abnormally low price does not work in simplified procurement: “... Is the abnormally low price mechanism a simple formality?”

Participants:

- the advantage of simplified procurement over direct contracts is the obligation to announce this procurement in Prozorro. Compared to open bidding, the advantages are simpler tender documentation and shorter deadlines which allow supplying the goods and, consequently, receiving the funds faster after the moment of contract conclusion;
- as for the shortcomings, the respondents most often mentioned the lack of appeals in simplified procurement. At the same time, some participants claim that they often encounter discrimination in announcements, requirements for procurement items and decisions made by procuring entities. For example, they may be required to provide the extract from the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations, and after the participant has provided it, reject the bid on the grounds that there is no extract.

It has already been noted that appealing simplified procurement makes sense only if it takes place much faster than in open bidding. Otherwise, it invalidates the very idea of simplified procurement, which is also about the speed (there were cases when due to appeals open bidding announced in April ended almost six months later in September).

Writing demands to the procuring entity is not always effective, because the procuring entity may refuse to make changes or agree to make changes but still upload the previous version of the document. Respondents also pointed to the ineffectiveness of appeals to the governing body of the procuring entity.

Few participants try to defend their rights in court, especially if the amounts are less than UAH 200–300 thousand. Analyzing the court decisions in the relevant register, we found only one case of appeal against disqualification in the simplified procurement.¹⁴ As a result, the court did not satisfy the participant's claim.

To reduce their costs, individual participants can maintain a so-called blacklist of procuring entities. It includes procuring entities not worth the time and effort that goes into procurement.

- lack of opportunity to use the practice of the AMCU Board and adjust actions in simplified procurement accordingly;
- procuring entities sometimes violate the deadlines set by law. For example, they may consider a participant's proposal late or publish a certain document late;
- some procuring entities avoid open bidding. For example, they organize a simplified tender with an expected cost for works amounting to UAH 1,499,999;
- fewer restrictions for procuring entities compared to open bidding. For example, procuring entities may indicate a specific brand in a simplified purchase announcement without the wording "or equivalent";
- some procuring entities require many documents (e.g. certificates). According to respondents, this is not the norm for simplified procurement, while it may be justified for open bidding. In some cases, procuring entities copy all the requirements from similar open bidding and transfer them to a simplified purchase, forcing the bidder to prepare a large package of documents, but in less time.

If the supplier can sell a wide range of goods in Prozorro, it is easier for them to refuse to participate in risky simplified procurement. They can compensate for the lack of profit under this nomenclature by participating in, and winning, other simplified tenders. At the same time, a business that sells a small range of goods is less flexible and may have to participate in procurement even when there is a high risk of a discriminatory decision by the procuring entity, or the procuring entity requires a large package of documents.

14. bit.ly/2IAJYMU

The respondents proposed to limit the procuring entity in what documents it may require from the participant in the case of procurement of goods. It was noted that such restrictions should not be introduced in the procurement of services and works;

- some procuring entities demand to provide product samples. The practice of the AMCU Board shows that failure to provide a product sample cannot be a ground for rejection in open bidding. However, since simplified procurement cannot be challenged, certain procuring entities demand this and reject bidders if samples are not provided;
- some procuring entities demand that the winner provide the documents in a paper form.¹⁵

ONLINE SURVEY

To confirm or disprove some of the simplified procurement issues we learned about during the interview, we conducted an online survey and asked eight questions to participants and eight questions to procuring entities.

Disclaimer: Our online survey cannot be considered representative. We cannot claim that the opinion of our respondents is shared by all procuring entities and participants in Prozorro.

In total, we received responses from 865 procuring entities and 636 business representatives in Prozorro.¹⁶ Most respondents had little experience in organizing / participating in simplified procurement: up to 20 simplified tenders for 67% of both procuring entities and participants.

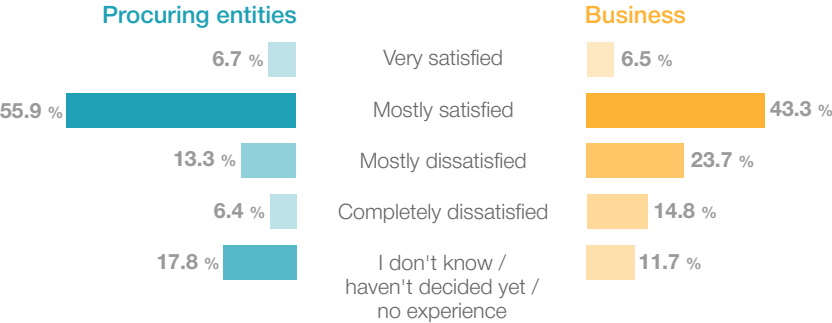
The majority previously participated in / organized both pre-threshold procurement (from UAH 50,000) and open bidding. 69% of participants and 53% of procuring entities had such experience.

Satisfaction with the experience of organizing / participating in simplified procurement

Procuring entities tend to evaluate their experience with simplified procurement more positively (62.6%), while business was more restrained (49.8%). 38.5% of participants and one in five procuring entity representatives (19.6%) are dissatisfied with their experience in simplified procurement.

At the same time, when asked about satisfaction, both participants and procuring entities tended to answer "Mostly satisfied" and "Mostly dissatisfied" and were less prone to extremes such as "Very satisfied" and "Completely dissatisfied."

How satisfied are you with your experience of conducting / participating in simplified procurement (after April 19, 2020)?



Conclusion: Procuring entities are more satisfied with simplified procurement than participants (62.6% vs. 49.8%). Business representatives were less hesitant in this question (i.e. answered "I don't know") and indicated their dissatisfaction much more often (38.5% vs. 19.6%).

15. See last paragraph of Annex 2 to the tender announcement [UA-2020-09-30-001182-a](#)
16. 0.9% come from the category "Other." In this category, respondents mostly indicated "Both procuring entity and participant." However, there were also options such as "Consultant," "Procurement officer," "Authorized official."

Assessment of whether the Law sufficiently regulates simplified procurement

During the interview, some procuring entities and businesses pointed out inaccuracies in the law. To understand how widespread this opinion is, we added a question to the survey.

One in three respondents from both groups were not ready to either confirm or disprove this idea. This can be explained by little experience of both conducting and participating in simplified procurement (66% of procuring entities and 60% of participants without experience in simplified procurement were not ready to answer). However, that is it in terms of common characteristics of both groups.

Almost half (47%) of all businesses are convinced that the legislation either does not regulate certain issues at all or regulates them insufficiently. Among procuring entities, this opinion is shared by 30% of respondents, which is also a lot.

38% of customers and twice as few participants in terms of percentage (19%) said that the legislation sufficiently regulates simplified procurement.

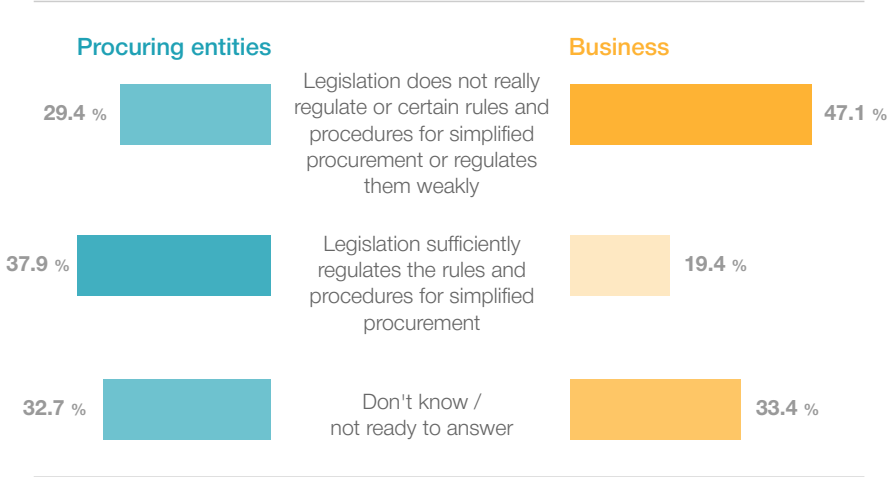
We did not find that the number of experiences with simplified purchases made influenced the opinion of procuring entities on this issue. 34% of procuring entities with experience from 1 to 100 simplified tenders claim the presence of “gaps” in the legislation, and 39% disagree.

We noticed the opposite trend in the answers of the participants: the more times the business participated in simplified procurement, the more it was inclined to think about the presence of gaps in the legislation. This opinion was shared by:

- 47.4% of participants among those who had up to 20 experiences with simplified procurement;
- 54.8% — from 21 to 100 experiences;
- 59.4% — more than 100 participations.

Opinions differ: some believe that the legislation does not regulate certain rules and procedures for simplified procurement (or regulates them weakly), and this complicates participation, while others believe that the legislation is sufficient.

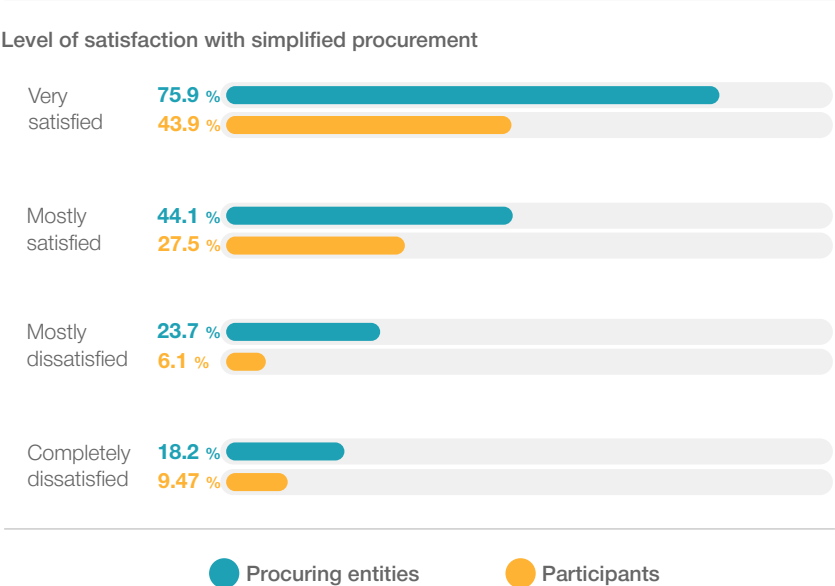
Please rate which of the statements you agree with more.



We found interesting connections between respondents' satisfaction and their opinion on how well simplified procurement is regulated by law.

Procuring entities who are satisfied with the legislation on simplified procurement are more satisfied with simplified procurement in general. However, sufficient regulation of simplified procurement seems to have less of an impact on business satisfaction with simplified procurement. Thus, we can assume that this factor is more important for satisfaction of procuring entities.

Share of participants / procuring entities of each group by level of satisfaction who believe that the Law sufficiently regulates simplified procurement



Conclusion: Business representatives are more likely to believe that the Law has blind spots than procuring entities (47% vs. 29%). Such an opinion is probably more typical of experienced participants. Therefore, it is possible that over time the number of participants with this position will increase.

At the same time, for procuring entities, satisfaction with the legislative regulation of simplified procurement is more important than for participants, and has a greater impact on their overall satisfaction with this type of procurement.

“Blind spots” in the legislation on simplified procurement: the view of procuring entities

Respondents who believe that there are “blind spots” in the legislation could share specific examples. At the same time, quite often instead they left comments on the shortcomings of simplified procurement and the entire public procurement system in general. We took such comments into account as well. 257 procuring entities left a detailed answer, and we divided their comments into 372 statements.

Procuring entities that provided detailed answers most often mentioned the problem of **unregulated deadlines** for simplified procurement (it could be found in almost one in three statements). For the most part, respondents did not understand the requirements for:

- identification of the bid submission deadline;
- the deadline for signing the procurement contract.

The problem of **inaccuracies in the Law or the unresolved nature of certain issues** is closely related to the issue of setting deadlines, but not always. Respondents also meant problems connected with:

- requirements for the publication of additional agreements;
- the concept of urgent need;
- “scattering” of rules on simplified procurement throughout the Law;
- requirements for the list of documents to be submitted by the participant;
- lack of a list of formal errors, etc.

During both the interview and the survey, some procuring entities complained that **simplified procurement was too time-consuming** and could almost take as much time as open bidding. The urgency of this problem was especially emphasized in the case of “urgent” purchases, which cannot be foreseen in advance. For example, here are three quotes:



The timing of procurement is close to open bidding, which creates inconvenience.

It takes two weeks to purchase food for patients, while you can do it in 7 days like in pre-threshold procurement.

Maintenance repairs can be done through simplified procurement, but what about real urgent repairs? You have to wait 2 or 4 weeks for a simplified purchase and sit without water or heating.



The comment group entitled **“Contesting simplified tenders”** mostly includes complaints about platforms blocking the opportunity to publish the agreement within two days¹⁷ after the publication of the notice of intention.



The period of appeals after the auction in 2 (3) days does not allow to conclude the contract at once (the system does not let it through), while the Law does not regulate this.



In addition, it was noted that it is impractical to wait 10 days from the date of the notice of intention to enter into a contract, as this period is intended for the submission of appeals, which are not provided for in simplified procurement.

The need to revise the thresholds (increase them) was justified by the procuring entities mainly by the fact that few participants come to simplified procurement, & the procurement itself takes a lot of effort and time. It was proposed to increase the lower threshold for simplified procurement to UAH 100,000 150,000 200,000 and even UAH 300,000.

¹⁷. Sometimes, they indicate this period as three days.



The main problem is the low threshold, namely 50 thousand. It needs to be increased at least to 100,000. It is not normal that given the huge inflation, the threshold remains the same. There are a lot of tenders happening.

50 thousand is not enough to carry out complex procedures, including simplified procurement.



“Fines / insecurity of the procuring entity.” Procuring entities rarely gave examples of how they were not protected from unscrupulous bidders / suppliers. The most frequently mentioned cases were the ones when participants could ask questions to the procurement in the last minutes of the clarification period & thus force the procuring entity to extend this stage and stall the tender overall.



Article 14, part 7, para. 4 gives suppliers the right to manipulate procuring entities (sending proposals for changes on the last days, thereby extending the procurement period, this is unacceptable for the budget).



In addition, procuring entities sometimes pointed to large fines. However, it is only the State Audit Service and the Accounting Chamber of Ukraine that can fine a procuring entity. The former does not monitor simplified procurement, but may penalize the results of audits and inspections. However, these three control measures occur significantly less frequently than monitoring. Therefore, either the procuring entities confused the simplified procurement with open bidding procedures, or indeed the State Audit Service or the Accounting Chamber of Ukraine applied its control measures to one of the procuring entities.



Anomalous fines with a salary of UAH 5,000.00 (under USD 200 — ed. note). The procuring entity is not at all protected from suppliers.



We included the less frequently mentioned complaints in the "Other" category. Here are some examples:

- **few participants take part in simplified tenders:**

« Our organization has a fairly large movement of road transport between structural units. Our issue is about car insurance. Insurers do not want to take part in simplified procurement for UAH 3,500. The car should function, not wait a month for 2 simplified tenders to take place; »

- **working conditions of authorized persons:**

« Remuneration of the authorized person is not established by law, does not correspond to the scope of work and may be regulated by management"; »

- **difficulties with the procurement of certain procurement items:**

« Electricity purchases are highly underregulated;

Simplified procurement for services is not thought-through or practical; »

- **approved document templates:**

« There are no recommended samples of documentation under the simplified procedure; »

- **e-catalogs:**

« Every procuring entity tries to buy a product, a service or work. And it becomes about collecting a pile of paper, because 'what if there is an inspection' and they start asking questions... So, my big sincere request is this: develop Prozorro-market. Expand access. Let there be not only goods, but also services, works. And for a start, let it be up to UAH 200 thousand. This will help the procuring entity to buy what is needed in several days or even in one day. »

Conclusion: Procuring entities mostly complain about inaccuracies in the Law, the duration of simplified procurement, and failure to understand the time frame of simplified tenders.

In addition, it can be assumed that not all procuring entities fully understand the difference between simplified procurement and open bidding.

"Blind spots" in the legislation on simplified procurement: the view of business

A detailed answer to the question of what exactly is not regulated by the legislation on simplified procurement was provided by 302 participants. We singled out 407 statements from their comments.

Participants who provided detailed answers most often mentioned the problem of no option to appeal simplified procurement (almost one in three statements).

« Procuring entities independently (at their own discretion) prescribe discriminatory conditions in the tender documentation, which cannot be influenced. »

« The lack of opportunity to appeal against simplified procurement leads to anarchy. Procuring entities unreasonably reject the proposals of participants they do not like. It takes too much time and effort to appeal it in court. If we are legally obliged to conduct pre-threshold procurement, pay for participation in the tender, and provide as many documents as in open bidding at the request of customers (because they write whatever they want in the announcement, and it is impossible to appeal), then it is necessary to be able to challenge such illegal actions, rather than running through bureaucratic courts. »

Almost one in five statements dealt with a related topic—business complained about **discrimination and collusion**.

« The procuring entity demands 'similar experience' at its own discretion. For example: when performing overhaul of premises, they require a similar contract for the performance of such work in medical institutions. What is the difference between performing work on the premises of medical institutions or educational institutions? »

The requirements are not regulated, so procuring entities demand all kinds of nonsense in the announcement. For example, 'The review or extract from the USR dated only after the date of the announcement,' or 'The review must contain the name, subject, EDRPOU code, address, manager,' and a bunch of other details that will inevitably cause your disqualification, because you have a comma in the wrong place. »

Participants mentioned that in terms of shorter deadlines, procuring entities often require **too many documents**.

« Illegal requirements of the procuring entity regarding the tender documentation (for example, the requirement to have a license where the complexity of the work does not require such a document). In half the cases, procuring entities do not respond to the participants' demands. »

The procuring entity prescribes the same package of documents as in open bidding in the qualification requirements. »

As in the case of procuring entities, the participants also pointed out **inaccuracies in the Law or unresolved issues**.

« It is unclear when the articles of the Law apply, which makes the Law more complicated and easier to misinterpret. »

Procuring entities have gone off the charts. Public authorities must clearly define what documentation is required to participate in the tender. Otherwise, it will soon come to the point that you will need to provide information on how many women I am married to and whether they are happy with me. Sounds like a joke, but it's true. And there is nowhere to complain. »

From the comments made by the business, you can assume that not all of them know that in simplified procurement, the procuring entity has the right to omit the phrasing **"or equivalent."** Some others probably knew about it, but complained about the abuse of this right.

Procuring entities often ask for specific brands and indicate that they are not considering equivalents.

Less mentioned comments ended up in the category “Other.” In particular, complaints about dumping of participants and the lack of a mechanism of abnormally low prices, the inability to amend the offer after the auction, inconsistencies in requirements of procuring entities, failure of procuring entities to respond to questions and requirements of participants, too short deadlines and more.

Conclusion: Participants most often mentioned issues related to the impossibility of appealing simplified procurement, collusion, and discrimination.

At least in some cases, business dissatisfaction with simplified procurement and its legal regulation can be explained by lack of awareness.

Contesting simplified tenders

Almost 40% of respondents not only agree that appeals against simplified procurement should be introduced, but also consider this issue urgent. In general, this idea is supported by 65% of respondents. At the same time, one in four surveyed business representative opposed such a decision (and 8% were strongly against it).

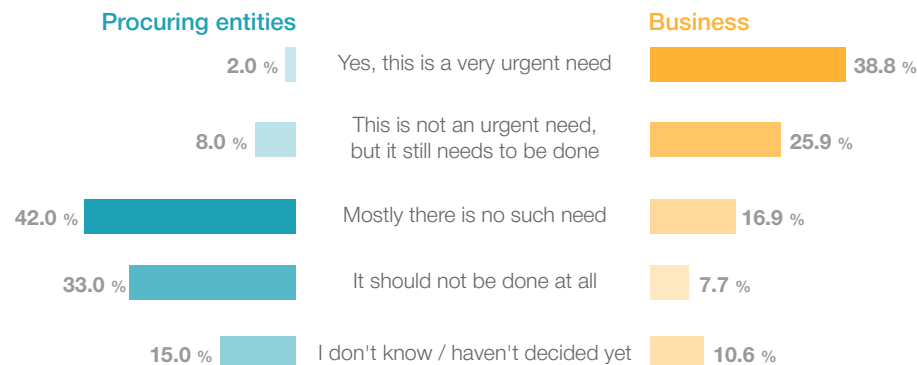
Interestingly, the more experience a business has in simplified procurement, the more convinced it is of the need to introduce the appeal mechanism. Thus, we can assume that over time, support for this idea among businesses will grow.

This idea is mostly supported by businesses that previously participated only in pre-threshold procurement. It is least supported by those who never participated either in open bidding or in pre-threshold procurement.

The situation with procuring entities is entirely different. 75% of surveyed procuring entities oppose such an initiative and only 10% support it.

The procuring entities that have experience both with pre-threshold procurement and open bidding have the highest level of opposition (82%). Procuring entities without experience in either of these two types were least opposed (63%).

In your opinion, should the law provide for the possibility of appealing against simplified procurement?



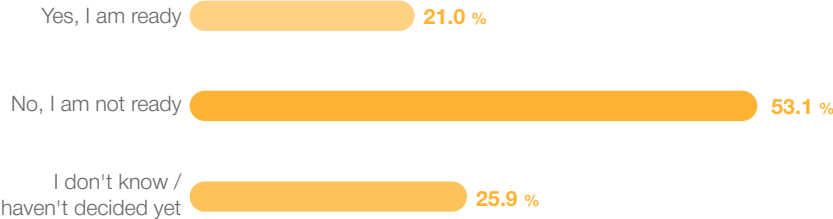
The AMCU Board is responsible for appeals against procurement procedures. At the same time, it is overloaded with complaints, and their consideration may be postponed several times and continue well into the night.¹⁸ We suggested that it would be more realistic to introduce complaints against simplified procurement if

18. See more in our research "How Anti-Monopoly Committee of Ukraine Works in Public Procurement: Analysis of Disputes": bit.ly/AMCU-report

the financial resources of the body of appeal were increased (be it the AMCU board or another, newly created agency). This can be done, in particular, by introducing a certain non-refundable¹⁹ fee for filing a complaint, which will be credited to the special fund of the appellate body, regardless of its decision in the complaint.

We asked business representatives if they were willing to pay a certain amount for the possibility of an appeal. Only one in five participants (21%) indicated their readiness, while slightly more than half of the respondents had a negative response. Another 26% were undecided.

Are you willing to pay a certain amount of non-refundable fee to appeal against simplified procurement?



Those who supported the initiative indicated a share of the expected cost they were willing to pay. Business representatives submitted 123 proposals and indicated percentages from 0.01% to 10%.²⁰ The median value was 1%. Thus, the fee for appeals for goods and services could be in the range of UAH 500-2,000, and for works — UAH 500-15,000.²¹

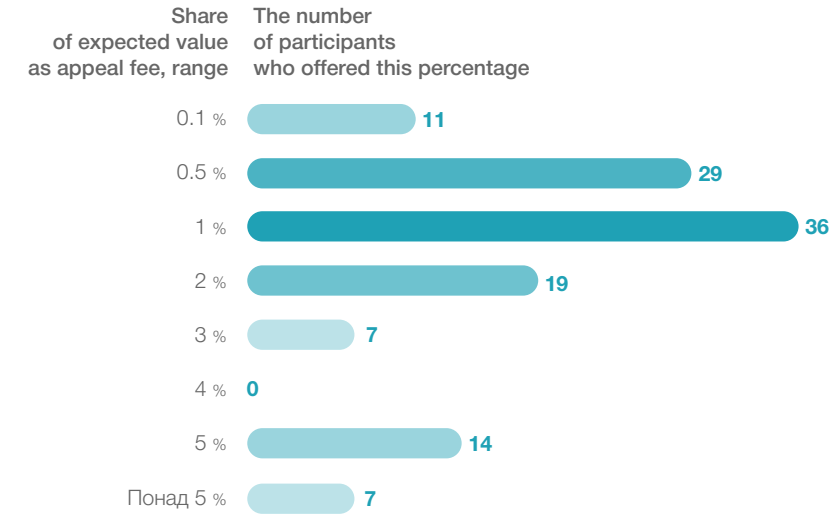
19. Introducing appeals in simplified procurement would require additional financial resources regardless of whether it will be the AMCU Board that will consider it or it will be another agency. In the situation of a budget deficit, a situation may arise where the agency will be more likely to receive these funds from the participants as the complaint fee rather than from the budget

20. When respondents indicated percentage ranges, we took into account their maximum limit

21. This amount is calculated as 1% of the lower (UAH 50 thousand) and upper (UAH 200 thousand for goods and services and UAH 1.5 million for works) thresholds of the expected value of simplified procurement for "regular" procuring entities

Here are the examples of ranges:

- 0.1% should be read as "up to 0.1% inclusive";
- 0.5% should be read as "from 0.1% (not inclusive) up to 0.5% inclusive."



Conclusion: Business mostly supports introducing the option to contest simplified procurement (65% voted in favor). The greater the experience of participating in simplified procurement, the more participants tend to support this idea.

At the same time, only one in five participants would be willing to pay a certain amount for such an opportunity. This amount would most likely be 1% of the expected value of the procurement item.

Procuring entities, as might be expected, generally do not support the introduction of appeals (75% voted against it).

Economic effect of simplified tenders

During the interview, some procuring entities expressed the opinion that conducting simplified procurement in some cases may not be economically beneficial. This is particularly true of purchases with a low expected cost (e.g. UAH 50,000).

During the survey, most procuring entities disagreed with this statement. 53% said that the economic effect of simplified procurement is greater than the resources spent on these tenders. One in three (33%) disagreed.

Interestingly, simplified procurement with expected value under UAH 50,000 was still conducted by 40% of all procuring entities, and such lots accounted for 35% of all lots in simplified procurement.

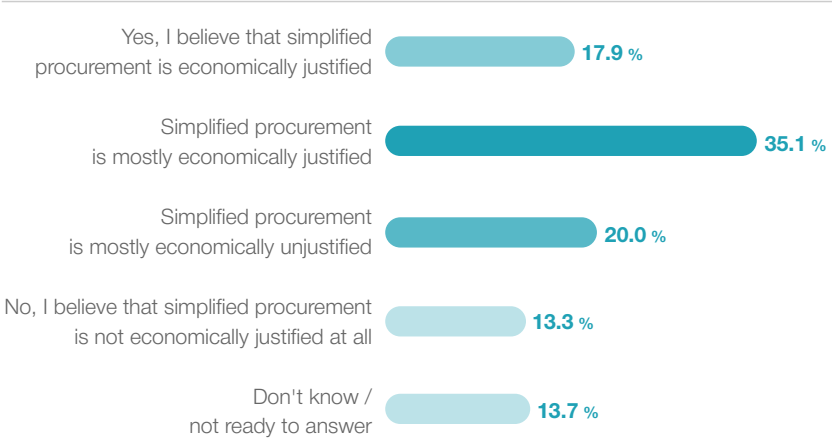
Our results suggest that experience in simplified procurement is unlikely to strongly influence the position of procuring entities on this issue. However, the assessment of economic feasibility is rather influenced by the procuring entity's satisfaction with their experience in simplified procurement.

Procuring entities that are very satisfied with their experience in simplified procurement highly appreciate the savings obtained—86.2% consider these purchases to be economically justified. Those who are very dissatisfied with simplified procurement mostly consider this type of procurement to be economically unjustified (77.8%).

The assessment of the economic effect of simplified procurement may also be influenced by the procuring entity's previous experience with other types of procurement. For example, simplified procurement is considered economically impractical by:

- 29% of procuring entities with previous experience in pre-threshold procurement;
- 35% of procuring entities with previous experience in pre-threshold procurement and in open bidding;
- 40% of procuring entities with previous experience in open bidding.

In your opinion, are the times and funds you need for simplified procurement commensurate or not with the savings provided by simplified procurement?



Conclusion: half of the procuring entities still agree that the savings in simplified procurement justify the resources spent on conducting it.

However, the assessment of the economic feasibility of simplified procurement may strongly depend on the overall satisfaction of the procuring entity with their experience in this procurement. Accordingly, it may be more emotional than one might think.

The greater experience procuring entities have with open bidding, the more they tend to consider simplified procurement economically unjustified. Procuring entities with significant experience in pre-threshold procurement, on the contrary, appreciate the economic effect of simplified procurement. This may be due to the fact that more professional procuring entities mostly conduct above-threshold procurement and understand that they will get a greater economic effect from open bidding than from simplified procurement.

Periods in simplified procurement

One of the most frequently mentioned problems of procuring entities in simplified procurement was deadlines. Respondents mostly stated that:

- The law contains conflicting rules on the deadlines in simplified procurement;
- They do not understand the requirements for deadlines and therefore set the maximum duration of all stages;
- Certain deadlines need to be reviewed.

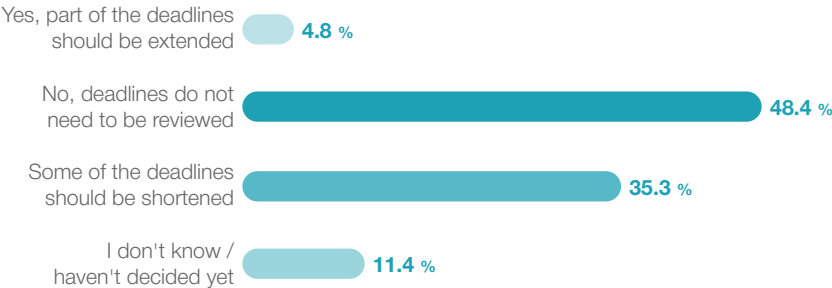
Just under half the surveyed procuring entities supported the deadlines in the form in which they exist in the Law as of fall 2020 (48%). Another 35% of procuring entities suggested reducing them.

Interestingly, if the procuring entity already had experience in conducting open bidding, they are more likely to support the reduction of deadlines. The initiative would be supported by ~41% of such procuring entities. Only ~3.4% would be opposed. Among procuring entities that had only organized pre-threshold procurement before, 27% would be in favor of reduction and 8% against it.

Another interesting connection is that the more procuring entities are satisfied with their experience in simplified procurement, the less they support the revision of deadlines (or vice versa—perhaps, the perceived adequacy of deadlines can affect satisfaction). If satisfaction drops, support for the idea of reducing deadlines increases sharply.



Do you think that the legislation should increase the period(s) for certain stages of simplified procurement?



Conclusion: about half the surveyed procuring entities did not support the idea of reconsidering deadlines in simplified procurement. At the same time, just over a third would want to reduce them.

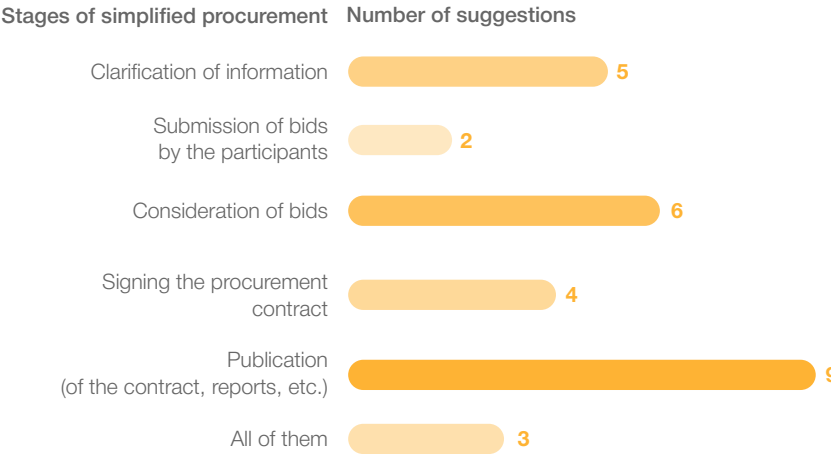
Procuring entities that are more dissatisfied with simplified procurement tend to support the idea of reducing deadlines. It can be assumed that at least in part their dissatisfaction is due to the significant duration of these purchases.

Reducing deadlines is more supported among those procuring entities that have already participated in open bidding. This may be because they tend to think that deadlines in open bidding are too long, or because they would like to spend less time on simplified procurement in favor of open bidding.

Which deadlines should be reviewed

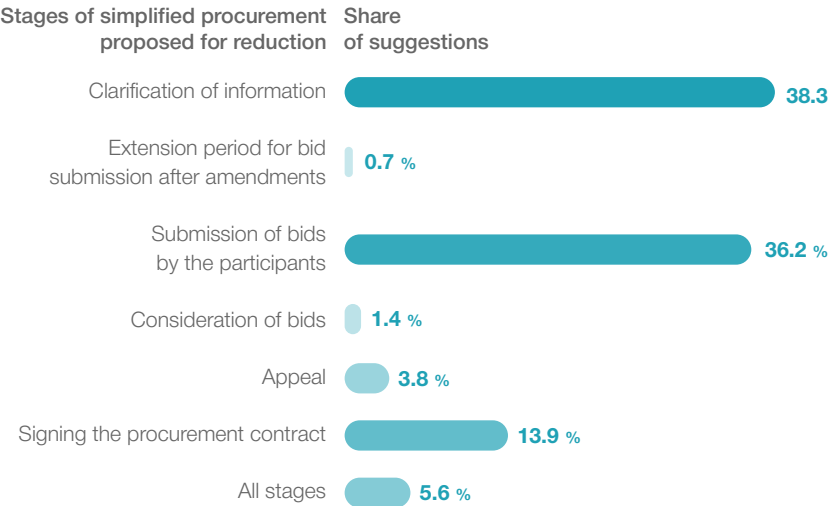
We have given procuring entities the opportunity to offer their version of the updated terms of simplified procurement. We categorized all the comments into two groups: those who suggested extending the deadlines and those who suggested reducing them.

Procuring entities that suggested extending the deadlines. Very few procuring entities wanted the deadlines in simplified tenders to be extended. Most suggestions supported extending deadlines for publication of the contract, the notice of intention to inter into a procurement contract, and reports on contract implementation (9 suggestions). Some procuring entities also proposed to increase the time for consideration of proposals and clarification of information by participants.



Procuring entities that suggested reducing the deadlines. Way more procuring entities supported reducing the deadlines. The initiative to reduce the deadlines for clarifying information and submitting proposals by participants received the greatest support. About 37% of mentions were about each of these two stages.

The next most popular proposal was the one to reduce the period for concluding the contract—18%. We also included comments which were about the period of disputing and deadlines for signing the contract in this group. Although bidders cannot appeal simplified procurement, this period is still regulated by law. Due to this provision, procuring entities are formally obliged to wait for at least 10 days after the award to sign the contract. The position of the Ministry of Economic Development is that procuring entities can enter into contracts immediately after the award.



Most often, procuring entities suggested reducing the time to clarify the information to:

- two working days (21 suggestions);
- two consecutive days (17 suggestions);
- one day (9 suggestions).

Procuring entities suggested reducing the bid submission period most often to:

- three working days (17 suggestions);
- two consecutive days (11 suggestions);
- three consecutive days (8 suggestions).

Interestingly, as of December 2020, procuring entities can limit the bidding phase to three working days, based on the official explanation of the Ministry of Economic Development.²²

Procuring entities only rarely made their own suggestions about the period for signing the contract. However, four suggestions concerned three days from the date of the award, and three—one day.

Conclusion: procuring entities that were in favor of revising the deadlines were the most supportive of the idea of reducing the deadlines for clarifying information and submitting proposals. They proposed to reduce the clarification stage to two consecutive / working days, and bid submission to three working days or two consecutive days.

It was also proposed to reduce the time for concluding the contract.

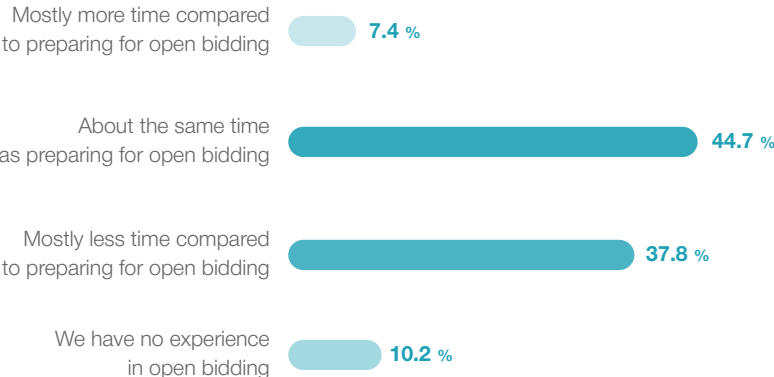
Time spent on preparation for simplified procurement

The last question we asked the participants was about their time spent preparing for the auction. This question is important because during both the interviews and the survey, some business representatives complained about the high requirements for participants (especially the number of documents that need to be prepared). This is surprising, because simplified procurement should have become easier not only for procuring entities but also for participants.

As a result, 52% of respondents said that they spend either the same or more time preparing for a simplified procurement compared to open bidding. 38% of respondents said they spent less time on it.

Participants who have participated in simplified procurement at least 20 times are more likely to believe that they have begun to spend less time preparing.

How much time do you and your colleagues spend together preparing to participate in simplified procurement compared to open bidding?



Conclusion: although simplified procurement is meant to be faster, most participants spend as much time preparing for it as with open bidding. An explanation for this may be that particular procuring entities require the same set of documents as in open bidding.

Participants with more experience in simplified procurement tend to say that they spend less time preparing. They are likely to learn from mistakes and gain experience that reduces time. They may have already prepared a standard package of documents.

22. bit.ly/32Govtg

SECTION 3

STATISTICS

Research object: 54 978 simplified tenders, which were successfully completed during the first half of the year this kind of procurement existed from April 20 to September 20, 2020.

In the cases, when we analyzed all the simplified tenders, we clearly indicate it.

By "successful" lots in this section we mean those lots where the tender resulted in the signing of a contract.

Data relevance: the data are up-to-date as of January 2020.

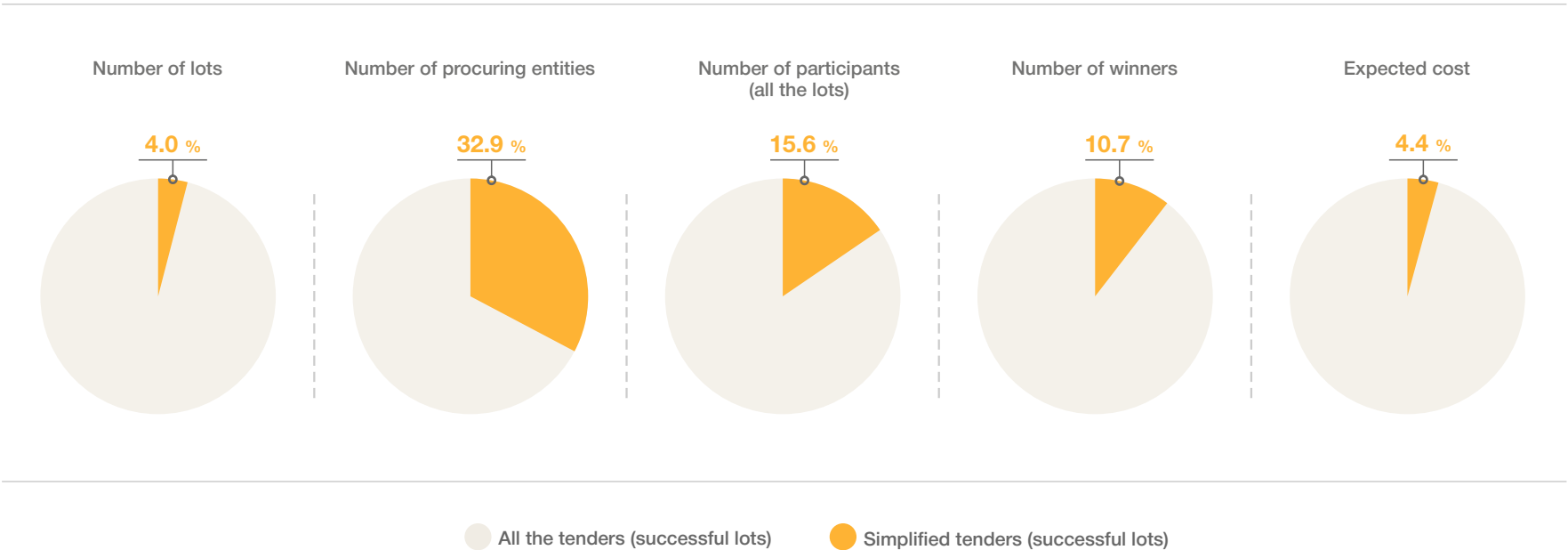
Methodology: we used the data available in the Prozorro system. We processed them using the professional and public BI Prozorro modules and Microsoft Excel.

Research limitations: due to technical limitations, the BI Prozorro module cannot obtain information on such types of procurement as competitive dialogue and framework agreements (specifically on the stage of selection of participants). Therefore, this stage of procurement is not taken into account in our data.

NB: Due to rounding the percentage to tenths, the amount calculated may not match (up to tenths) the amount specified.

GENERAL STATISTICS

The share of the simplified tenders among all the tenders

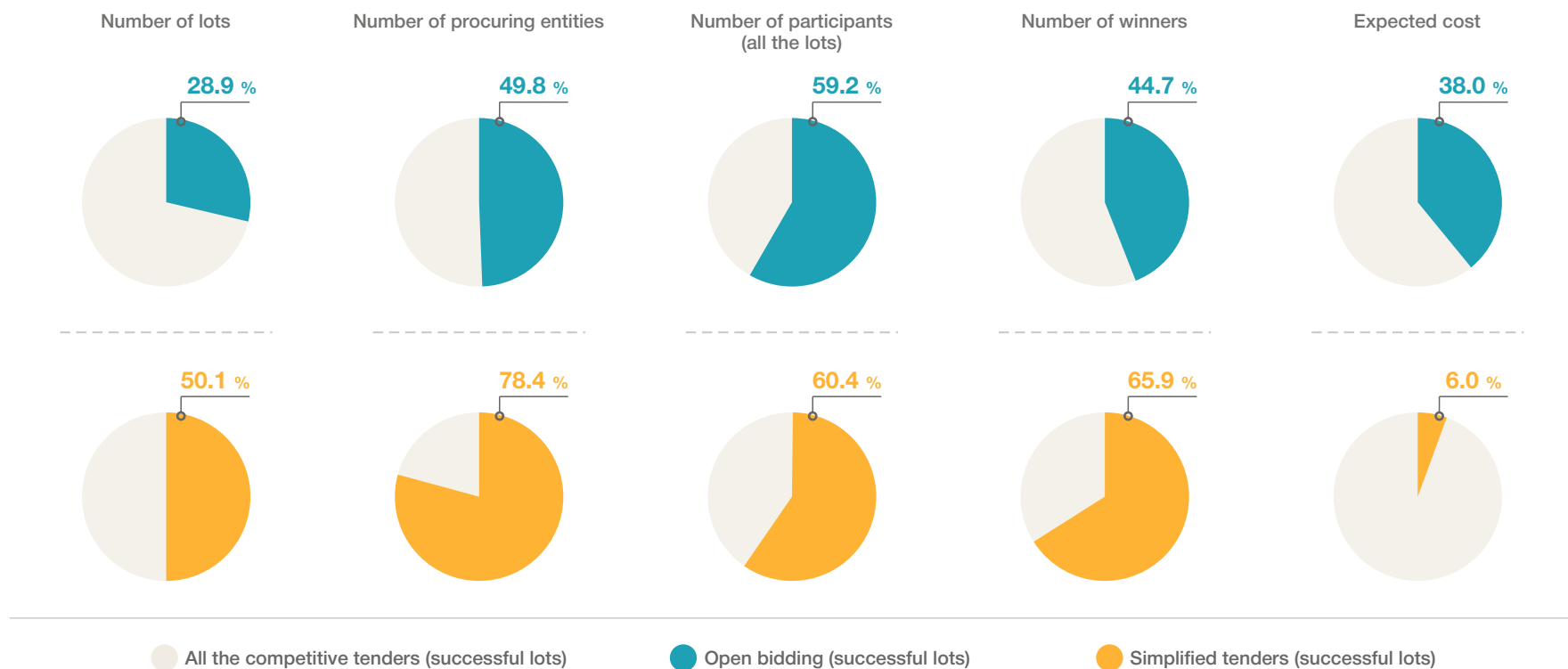


By understanding the share of the simplified tenders among all the tenders, the authorities may determine how much priority is given to the solution of the problems in this area in comparison to others in the absence of resources. If simplified tenders turn out insignificant in quantity and expected value, it may be more appropriate to focus on the solution of other problems.

To begin with, we will consider the position of simplified tenders among all the tenders in Prozorro (in terms of successfully completed lots).

Given the limitation of the expected cost of the simplified tenders set by the law, it is not surprising that this type of procurement amounts to only 4.4% of the expected cost of all the tenders.

A small share of simplified tenders in quantity is also predictable, as usually in this indicator the reports on concluded agreements are in the lead. During the period of our study, they amounted to 87% of all the successful lots in total.



It should be noted though that every third procuring entity in Prozorro had successful simplified tenders. One in six participants took part in the simplified tender and every tenth won at least once.

Given that simplified tenders are a competitive kind of procurement, it is appropriate to compare them with other competitive tenders. To all the competitive tenders we included:

- open bidding;
- open bidding with publication in English;
- framework agreements;
- competitive dialogue;
- simplified procurement;
- pre-threshold tenders;

Apart from that, we also compared simplified tenders with open bidding.

For the reasons already mentioned, it is clear why simplified tenders amount to such an insignificant percentage at the expected cost (6%). However, by all other indicators they turned out to be an important component of Prozorro.

Simplified tenders amounted to half of all the successfully completed competitive lots.²³ At the same time, almost 80% of all the procuring entities in competitive tenders had at least one successful tender.

Both simplified tenders and open bidding involve the same share of business, around 60% among those taking part in competitive tenders. At the same time, more participants conclude agreements precisely in the simplified tenders (by 20%).

Conclusion: Simplified tenders by all indicators (except for the expected cost) is a significant component of competitive tenders in Prozorro. Respectively, problem solution in simplified tenders and their improvement can influence a significant number of both the procuring entities and businesses.

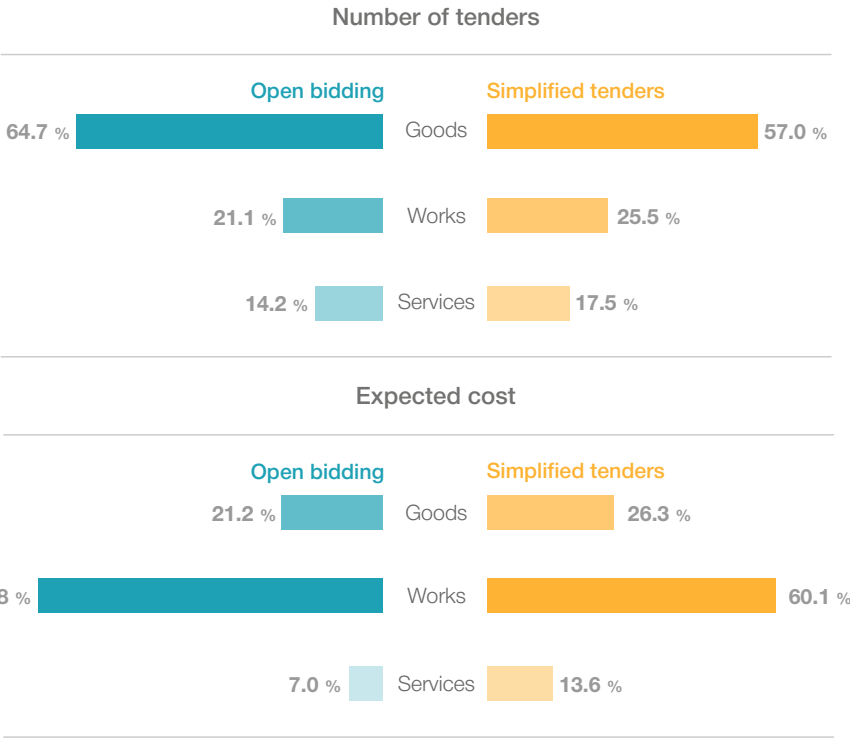
Simplified tenders amount to half of all the competitive tenders in quantity. This means that they will often be noticed by the participants. Thus, it can be assumed that the experience of partaking in simplified tenders may greatly influence the overall business experience in Prozorro.

Procurement items

We compared simplified tenders by quantity and expected cost in terms of goods, works and services, as well as CPV codes. Simplified tenders and open bidding generally have a similar CVP breakdown in both the expected value and quantity (as opposed to the negotiation procedure or reports on concluded agreements).

23. And 45% of all announced simplified tenders

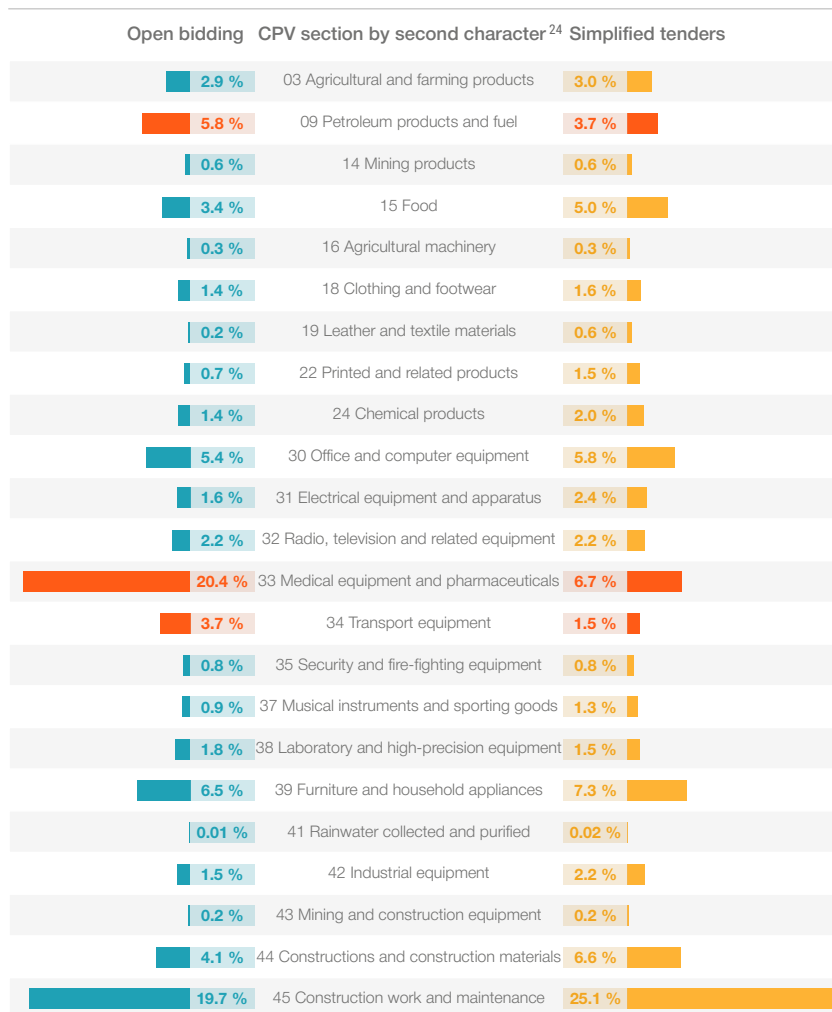
However, there is a significant difference in procurement of works. This can be explained by the fact that works are purchased mainly for large amounts, which are more likely to go beyond simplified procurement.



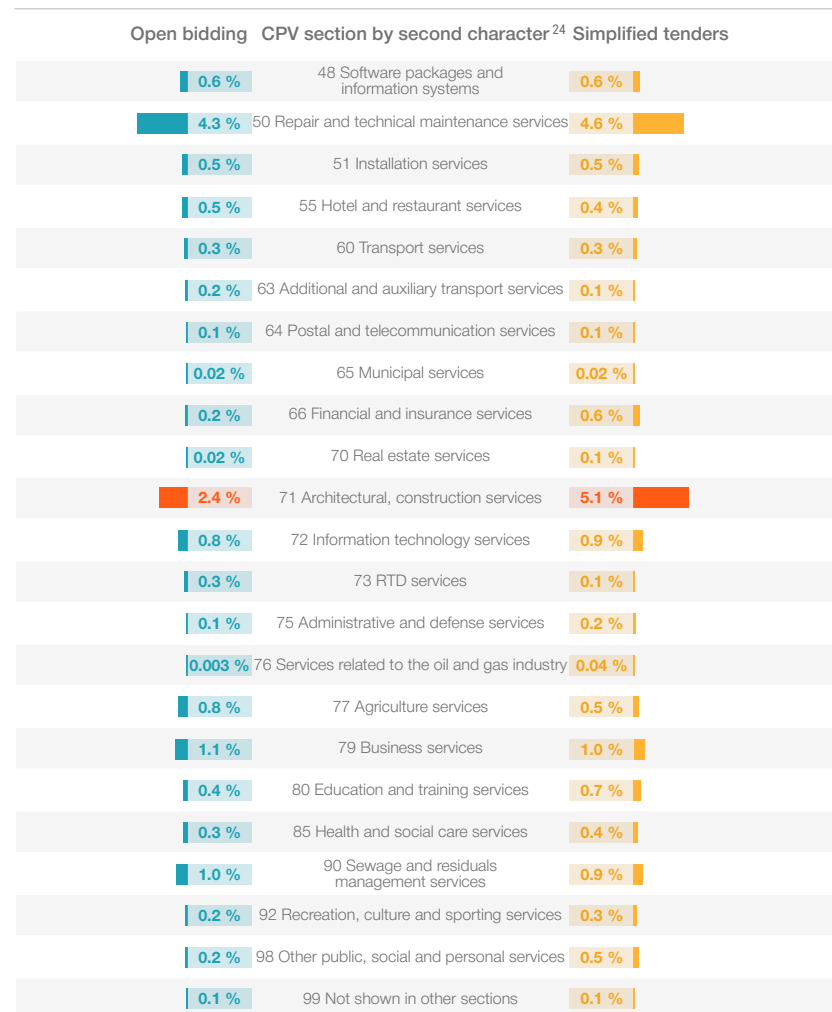
Similar conclusions can also be drawn by analyzing both types of procurement in terms of CPV codes by the second character. Only in sections 4-5 of the CPV out of a total of 46, we found significant differences in the proportions in which procuring entities spend money on the procurement of certain items.

In the infographic, those CPV codes where the difference between the values from 2% approached twice or more are highlighted in red.

Number of tenders



Number of tenders



24. For full name, see in Annex 2. Full name of CPV codes

Expected cost

Open bidding CPV section by second character²⁵ Simplified tenders

0.7 %	03 Agricultural and farming products	1.2 %
2.2 %	09 Petroleum products and fuel	1.9 %
0.3 %	14 Mining products	0.5 %
0.6 %	15 Food	1.9 %
0.1 %	16 Agricultural machinery	0.2 %
0.4 %	18 Clothing and footwear	0.9 %
0.1 %	19 Leather and textile materials	0.3 %
0.1 %	22 Printed and related products	0.4 %
0.4 %	24 Chemical products	0.9 %
1.3 %	30 Office and computer equipment	2.3 %
0.6 %	31 Electrical equipment and apparatus	1.4 %
0.7 %	32 Radio, television and related equipment	1.2 %
5.9 %	33 Medical equipment and pharmaceuticals	2.2 %
2.0 %	34 Transport equipment	0.9 %
0.4 %	35 Security and fire-fighting equipment	0.4 %
0.2 %	37 Musical instruments and sporting goods	0.8 %
0.6 %	38 Laboratory and high-precision equipment	0.9 %
1.9 %	39 Furniture and household appliances	3.4 %
0.002 %	41 Rainwater collected and purified	0.01 %
0.8 %	42 Industrial equipment	1.3 %
0.2 %	43 Mining and construction equipment	0.1 %
1.7 %	44 Constructions and construction materials	3.3 %
71.8 %	45 Construction work and maintenance	60.1 %

Expected cost

Open bidding CPV section by second character²⁵ Simplified tenders

0.3 %	48 Software packages and information systems	0.5 %
1.3 %	50 Repair and technical maintenance services	2.2 %
0.1 %	51 Installation services	0.4 %
0.2 %	55 Hotel and restaurant services	0.3 %
0.1 %	60 Transport services	0.2 %
0.3 %	63 Additional and auxiliary transport services	0.1 %
0.03 %	64 Postal and telecommunication services	0.1 %
0.02 %	65 Municipal services	0.02 %
0.04 %	66 Financial and insurance services	0.2 %
0.01 %	70 Real estate services	0.03 %
2.6 %	71 Architectural, construction services	6.3 %
0.4 %	72 Information technology services	0.5 %
0.1 %	73 RTD services	0.1 %
0.03 %	75 Administrative and defense services	0.1 %
0.01 %	76 Services related to the oil and gas industry	0.1 %
0.3 %	77 Agriculture services	0.4 %
0.4 %	79 Business services	0.6 %
0.1 %	80 Education and training services	0.3 %
0.1 %	85 Health and social care services	0.2 %
0.3 %	90 Sewage and residuals management services	0.6 %
0.1 %	92 Recreation, culture and sporting services	0.2 %
0.1 %	98 Other public, social and personal services	0.3 %
0.1 %	99 Not shown in other sections	0.1 %

25. For full name, see in Annex 2. Full name of CPV codes

Conclusion: if you compare the proportions in which procuring entities purchase a particular range of items, the differences will be insignificant. According to the nomenclature, simplified procurement with certain precaution can be called “open bidding for smaller amounts.”

It can be assumed that there is a risk that certain procuring entities will try to purchase the same range of open tender nomenclature through simplified procurement in order to avoid control and sign a contract with the “favorable” supplier.

PARTICIPANTS

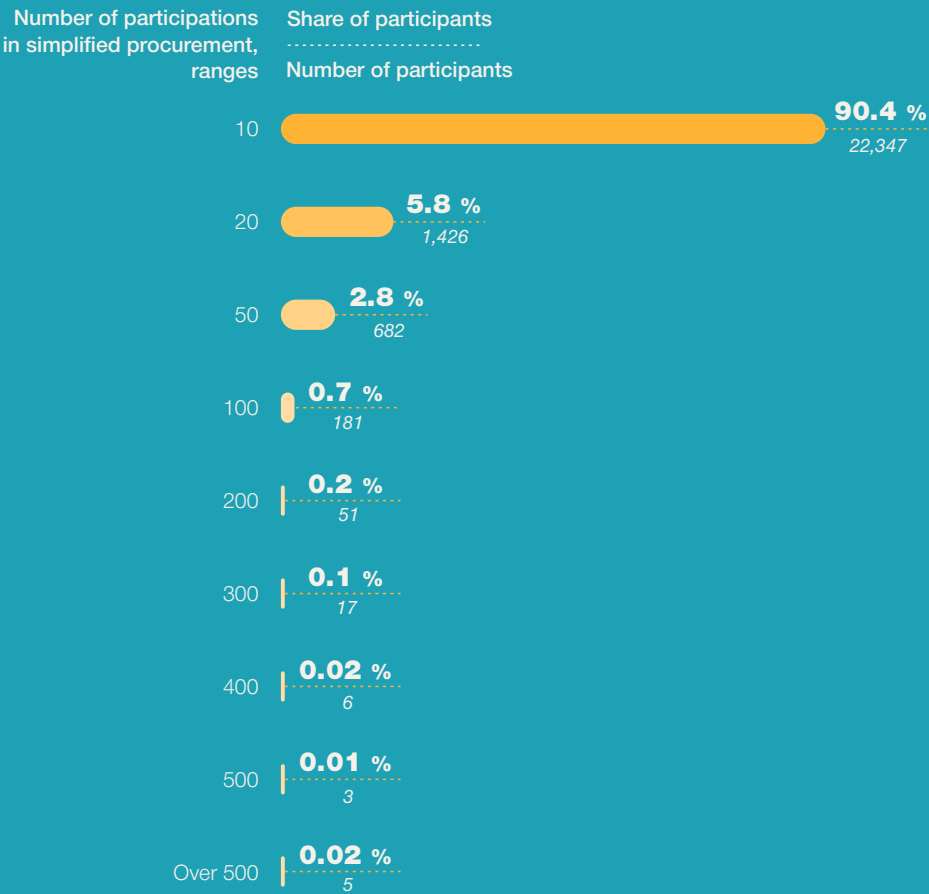
Business participation in simplified procurement

In the first six months of the existence of simplified procurement, it involved 60% of all businesses in Prozorro, which participate in competitive procurement. At the same time, the majority of those who tried to participate (90%) have only up to ten participations, 40% participated only once.

These results correlate with the responses about the participation experience that participants left in our online survey.

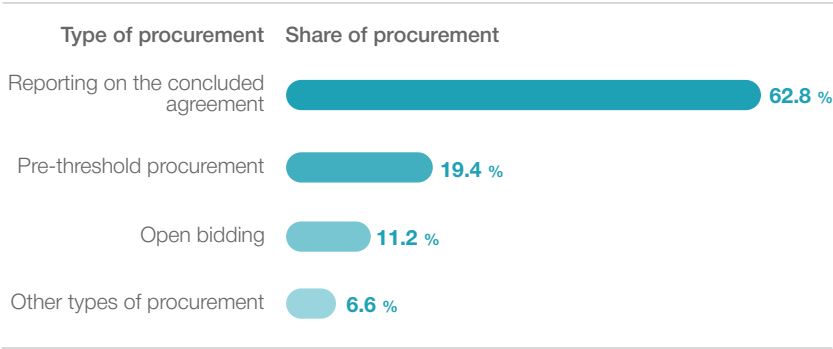
Here are the examples of ranges:

- 10 should be read as “up to 10 inclusive;”
- 20 should be read as “from 10 (not inclusive) up to 20 inclusive.”



It is also interesting that a business that had signed at least one contract in simplified procurement during the period under study, became a supplier by April 19, 2020, mostly by signing direct contracts.²⁶

Distribution of a certain type of procurement among all tenders of procuring entities (from January 1, 2019, to April 18, 2020) who have conducted at least one simplified tender



26. From January 1, 2019, to November 18, 2020

Conclusion: more than half of the participants (within the framework of competitive procurement) managed to participate in simplified procurement at least once in six months. However, most businesses still have little experience of participating in simplified procurement, up to ten tenders.²⁷

This can be explained by the fact that part of the tenders began to take place through the procurement of goods to fight the coronavirus. In addition, it is likely that some procuring entities have tried to conduct the maximum possible number of pre-threshold tenders or conclude direct contracts until April 19, 2020.

This indicator should be monitored and re-analyzed after 6-12 months. If it still remains low, it may indicate distrust of simplified procurement, misunderstanding of the rules, and so on.

27. We interpreted the insignificant experience as less than 10-20 purchases



How often do participants become winners

Slightly more than a third (36%) of simplified procurement participants have never been winners. This can be explained by the small number of business participations in general. In particular, 91.3% of those who never won, participated in only one, two or three lots.

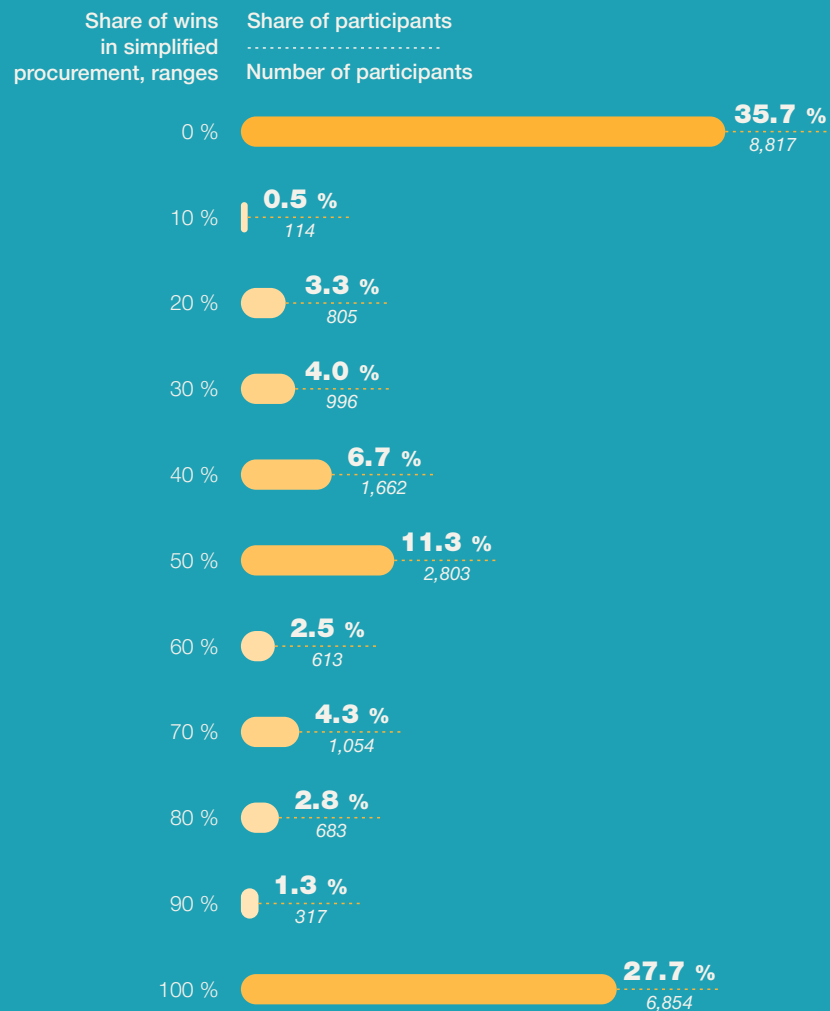
A similar situation is observed with those who won in 100% of cases. Most of them participated in only one, two or three lots (92.2).

We did not find out a correlation between the number of participations and the share of wins (correlation -0.01). This figure is likely to change as businesses become more involved in simplified procurement.

Here are the examples of ranges:

- 0% should be read as "up to 0%;"
- 10% should be read as "from 0% (not inclusive) up to 10% inclusive."

All participants in simplified procurement



Simplified procurement participants with 10 participations and more

We additionally analyzed only those participants who took part in simplified procurement ten or more times (2,661 participants, or 10.8%). 72% of them won 20-60% of all simplified tenders in which they participated.

If, by same principle, we analyze the participants who took part in simplified procurement 50 or 100 times, 85% of them have already won in 20-60% of all their simplified tenders.

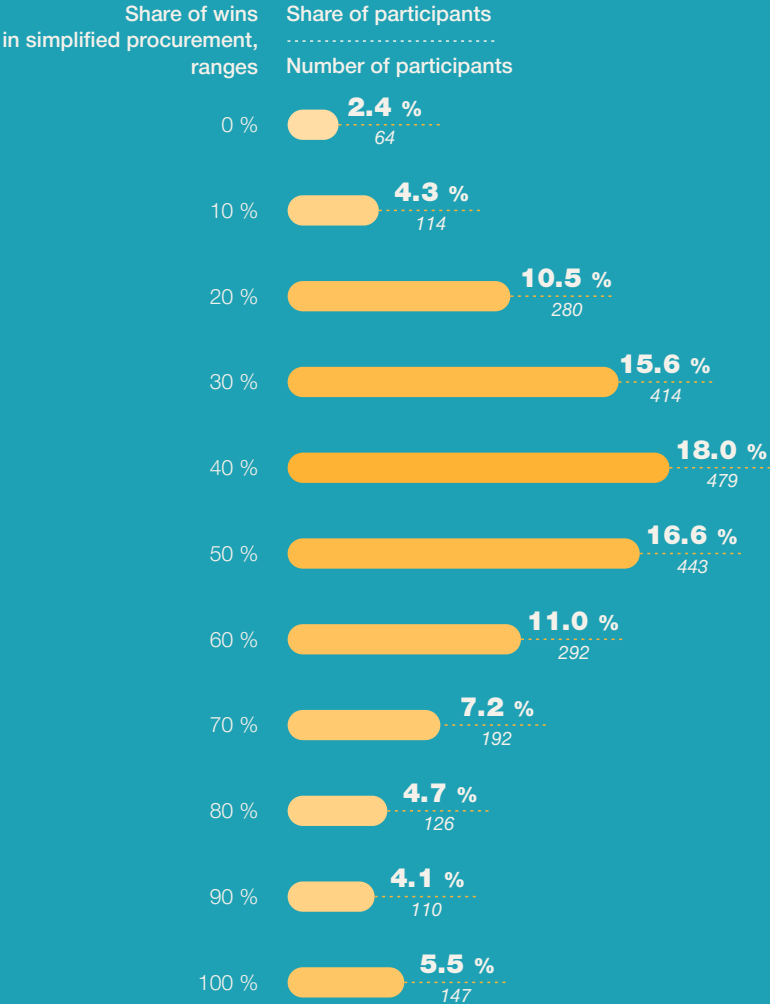
Competition. If we compare successful open bidding and successful simplified procurement with two or more participants,²⁸ the latter will have slightly more competition (2.79 and 3.08 bidders per lot, respectively).

Conclusion: so far, it cannot be stated that the more businesses participate in simplified procurement, the more they will benefit. Perhaps the number of wins is more impacted by other factors.

These conclusions may change as more participants become more involved in simplified procurement.

Competition in simplified procurement with two or more bidders is slightly higher than in open bidding (2.79 and 3.08 bidders per lot, respectively).

28. In general, in all successful simplified tenders, regardless of the number of participants, the competition amounted to 2.03. For more information on why we compare it with simplified procurement with two or more participants, see the section "Simplified procurement with one participant"



PROCURING ENTITIES

How often procuring entities organized simplified purchases (in terms of successful ones)

The situation with procuring entities is similar to the one we observed with the participants. A large proportion of procuring entities (78%) that announced competitive procurement announced as well a simplified tender at least once in the first six months of its existence.

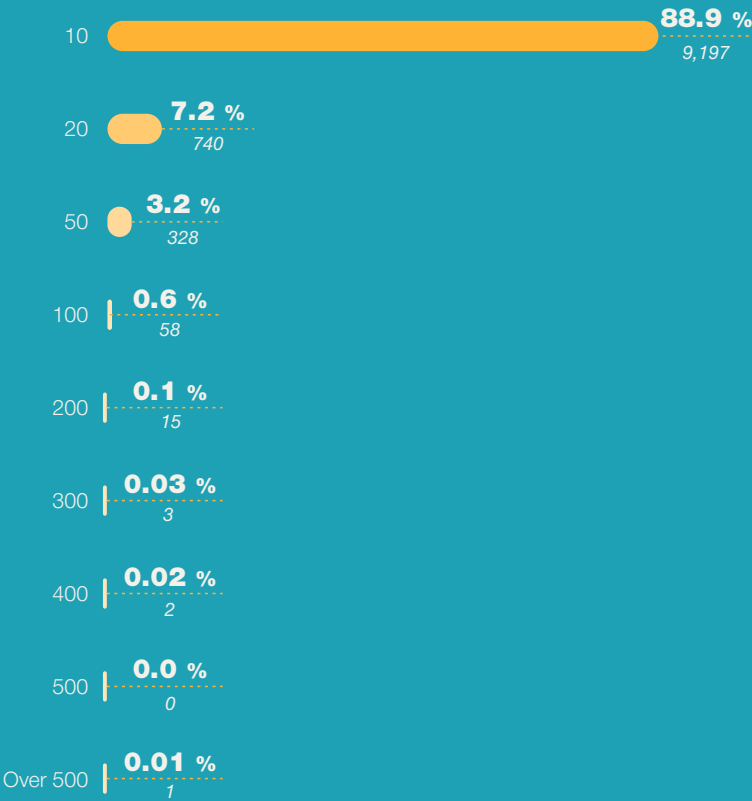
At the same time, the majority of such procuring entities (89%) had up to ten successful simplified tenders. The leader in terms of number for the first six months was municipal enterprise (ME) "Directorate for Capital Construction and Reconstruction 'Kyivbudrekonstruktsiya'," it conducted 731 successful simplified tenders. The next procuring entity in the ranking conducted only 340 simplified tenders.

Here are the examples of ranges:

- 10 should be read as "from 0 up to 10 inclusive;"
- 20 should be read as "from 10 (not inclusive) up to 20 inclusive."

Conclusion: Most procuring entities who use competitive tenders have little experience in simplified procurement (up to ten tenders in the first six months).

Number of announced simplified tenders, ranges Share of procuring entities
Number of procuring entities



Expected value in completed simplified tenders

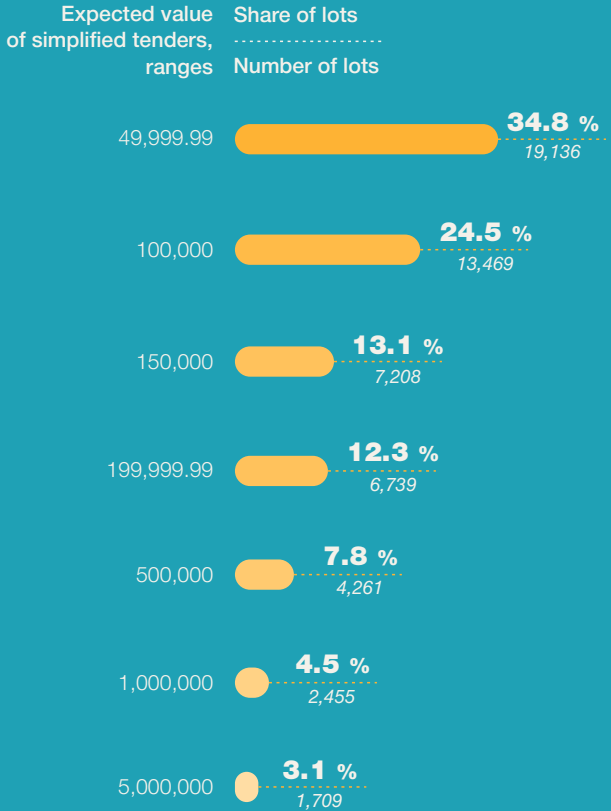
72% of completed simplified tenders had an expected value of up to UAH 200,000. At the same time, in every third case (35%, or 19,136 lots), the expected value was also less than UAH 50,000. It is likely that, at least in some of these cases, procuring entities could legitimately sign a direct contract with the supplier and upload a report to Prozorro or conduct a pre-threshold tender.

For example, Cherniatyn College of Vinnytsia National Agrarian University purchased brake fluid for UAH 80, having spent 18 days on it.²⁹

The reasons for simplified procurement for such amounts should be further investigated, as some procuring entities mentioned during the survey and interview the duration of simplified tenders and their complexity. At the same time, a third of all lots could be omitted.

The explanations for this situation may be that before April 19, 2020, procuring entities managed to conduct separate tenders through direct contracts or pre-threshold procurement, and therefore were forced to conduct the next tender of the same nomenclature through simplified procurement.

29. [UA-2020-06-05-002285-b](#)



One of the explanations may be the decision of local authorities in certain regions to set a threshold of less than UAH 50,000 for pre-threshold procurement.³⁰ However, it turned out that such tenders occurred in all regions of Ukraine. The largest number is in Kyiv oblast (and Kyiv) — 4,573, Dnipropetrovsk oblast — 2,273, Zaporizhia oblast — 1,150 and Chernihiv oblast — 1,040.

At the same time, simplified tenders with an expected value of less than UAH 50,000 were conducted by 40.3% of all procuring entities who conducted simplified tenders (4,166 out of 10,339).

Another explanation may be that not all customers are well aware of the requirements of the law for simplified procurement, and therefore announce them for amounts less than UAH 50,000. In addition, such lots could be part of a multi-lot tender with a total expected value of more than UAH 50,000.

Here are the examples of ranges:

- 49,999.99 should be read as “up to 49,999.99 inclusive;”
- 100,000 should be read as “from 49,999.99 (not inclusive) up to 100,000 inclusive;”

Conclusion: Legally, part of the simplified tenders could not take place at all, as their expected value was less than UAH 50,000. The reasons for this need further study.

Half of all simplified tenders had an expected value in the range of UAH 50-200,000.

30. For example, the Mariupol City Council made it obligatory to use the Prozorro system in tenders with expected cost of UAH 3,000 or more

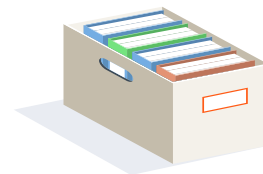
Procuring entities that conducted only pre-threshold tenders (successful lots)

We assume that simplified procurement will help to implement at least some control over those procuring entities that previously conducted tenders only for amounts less than UAH 200,000. Under such procurement we mean tenders through e-catalog, pre-threshold tenders, simplified procurement, and reports on the procurement contract.³¹

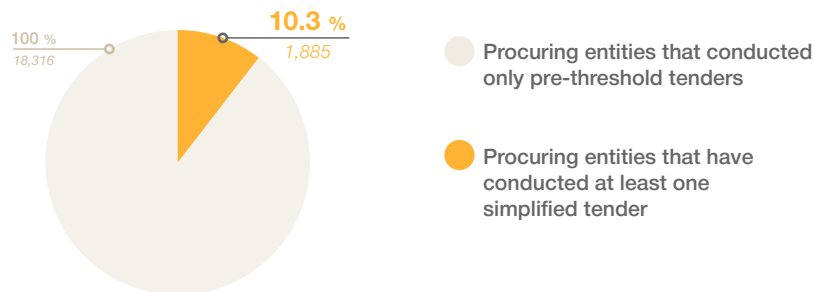
Such procuring entities for the period of January 1, 2019, to September 20, 2020 (1 year and 9 months) turned out to be half of all procuring entities in Prozorro who had conducted tenders.

Tenders for less than UAH 200,000 cannot be the subject of a complaint to the AMCU Board or monitoring by the State Audit Office. These tenders can be controlled only by either the Accounting Chamber of Ukraine or the State Audit Office through audits and inspections. That is, only those types of control are envisaged, which will mainly be carried out after the implementation of the contract. In addition, they occur infrequently.

As a result, the introduction of simplified procurement has hardly helped to cope with this task. Simplified procurement in the first half of the year was organized by only 10% of all procuring entities, that previously had conducted only pre-threshold tenders. At the same time, it is possible that this figure will increase over time.



31. As defined by the order No 10 of the SOE “Prozorro,” of March 19, 2019



Conclusion: If it is decided to introduce any kind of control of simplified procurement (monitoring or review of complaints), it is unlikely to significantly increase control over the actions of “only pre-threshold procuring entities.”

Duration of simplified procurement

Both in the interviews and in the survey, some procuring entities indicated that after the introduction of simplified procurement, the time between the need and its satisfaction increased compared to pre-threshold procurement. In addition, they sometimes noted that simplified procurement could be closer in duration to open bidding. According to some respondents, this undermines the very idea of simplified procurement as “simpler and faster.”

Simplified procurement takes almost as long as competitive procedures (slightly less).³²

32. Quote from one of the respondents (procuring entities) from the online survey

« They are not much different from open bidding. The period of concluding the contract is the same as in open bidding, but it is impossible to extend the period of consideration of bids up to 20 working days. At heavy workload it is essential. Therefore, it is better to conduct procedures by open bidding.³³ »

We compared the duration of simplified procurement (from April 20 to September 20, 2020) with open bidding for the same period. As a result, simplified procurement took on average 17 days fewer than open bidding. The above opinion of individual procuring entities can be explained by the fact that simplified tenders take too long only with some of them, which does not greatly affect the overall statistics. For example, due to the fact that there are different interpretations of the correctness of period calculations, certain procuring entities may allocate the maximum number of days for all stages of simplified procurement to make sure they abode by the deadlines defined by law.

The duration of the procurement is calculated in calendar days as the difference between the date of signing the contract and the date of publication of the announcement.

Average duration in calendar days



It should be taken into account that we represent average values. That is, the duration of simplified procurement for certain procuring entities could be both longer and shorter. For example, the duration of the two fastest simplified tenders

33. Quote from one of the respondents (procuring entities) from the online survey

comprised 8.4 calendar days.³⁴ Within the first one, a municipal enterprise purchased services for the transportation of household waste, and within the second one, another municipal enterprise purchased services for the inspection of the technical and operational condition of medical equipment and machinery.^{35, 36}

At the same time, the longest simplified tender turned out to be the purchase of electricity by the Transcarpathian Regional Laboratory Center of the Ministry of Healthcare of Ukraine.³⁷ It lasted 118.5 calendar days, the signing of the contract took 103 out of the total number (which violates the Law on the need to sign the contract within 20 days).

Our data show that only half of all simplified tenders (52%) lasted up to 25 days inclusive. Other tenders could indeed approach the duration of open bidding. For example, almost one in four simplified tenders (24%) lasted more than 30 days.

Here are the examples of ranges:

- 10 should be read as “10 inclusive;”
- 15 should be read as “from 10 (not inclusive) up to 15 inclusive.”

Conclusion: simplified procurement took on average 17 days fewer than open bidding.

The problem of long duration of simplified procurement is quite viable. Approximately one in four simplified tenders lasted more than 30 days.

34. Both tenders had only one participant. In tenders with two or more participants, the longer duration was 10.1 days

35. [UA-2020-07-29-006265-c](#)

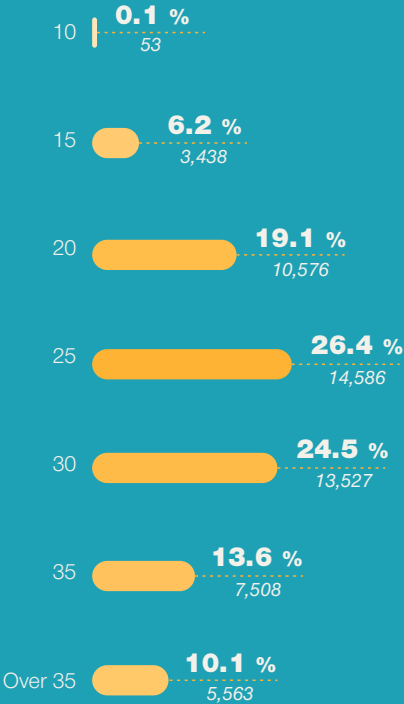
36. [UA-2020-08-12-002843-b](#)

37. [UA-2020-04-29-000322-c](#)

Duration of simplified procurement in calendar days, ranges

Share of simplified tenders

Number of simplified tenders



Duration of individual stages of simplified tenders

As some respondents indicated the need to make simplified procurement faster, we decided to analyze the duration of their individual stages and find out precisely where tenders are “delayed.” It also helped to understand whether procuring entities violate the deadlines set by law.

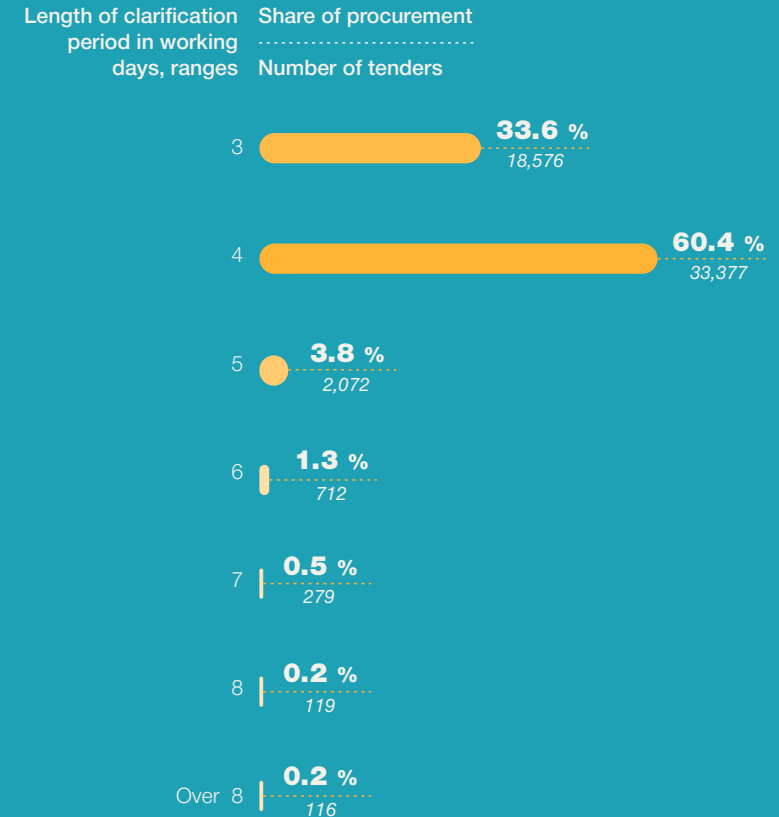
Clarification stage. According to the Law, the length of the clarification period cannot be less than three working days. Prozorro will not allow to establish a shorter period. Only in a third of all tenders this period lasted exactly three working days. In most (60%) of them, the clarification stage covered four working days. An explanation for this may be that Prozorro has adjusted the periods of tenders to the Civil Code of Ukraine.³⁹ And now the period begins from the day after the particular event (for example, the publication of a simplified tender announcement).

In general, procuring entities tried to set a minimum time limit for clarification.

Here are the examples of ranges:

- 3 should be read as “up to 3 inclusive;”
- 4 should be read as “from 3 (not inclusive) up to 4 inclusive;”

39. bit.ly/2lBwllh

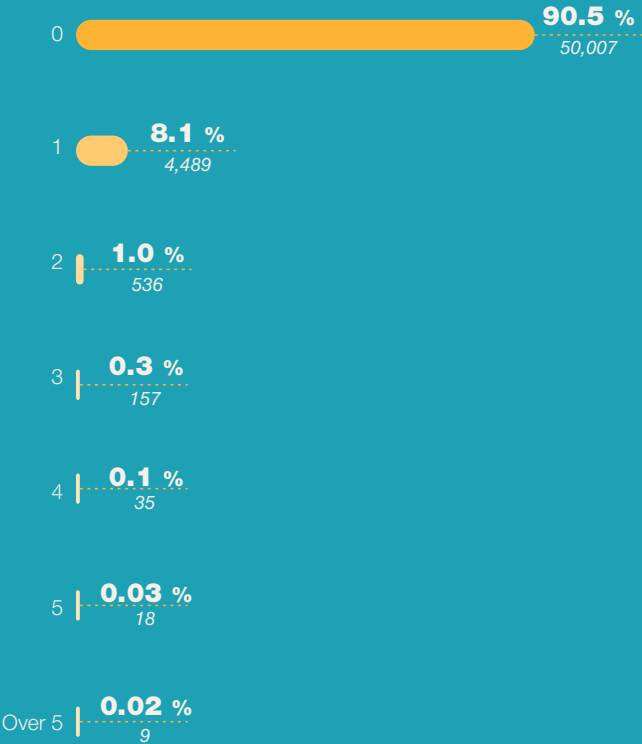


Pending submission of bids. In almost all simplified tenders, procuring entities did not wait long and started the bid submission stage within one day after the clarification stage was completed. However, sometimes procuring entities added a few more working days of a “break.” It is possible that they set this period at the stage of procurement planning as days on which it will be necessary to extend the clarification stage in case of changes to the announcement. One in ten simplified tenders had one or more “break” days.



Number of working days
between stages of clarification
and submission of bids, ranges

Share of procurement
Number of tenders



Submission of bids. In 11 cases, the bidding period lasted only one working day. At the same time in all of them, the clarification stage covered four working days (five altogether). The period of clarification and the period of bid submission, based on the official explanation of the Ministry of Economic Development, must together last at least six working days.^{39, 40}

It is controversial whether these cases should be considered a violation, as the Law can be interpreted differently. For example, procuring entities have different options for how to calculate this total period correctly: three working days for clarification and three working days for submission of bids, or three and two working days, respectively, or three and five working days, and so on.

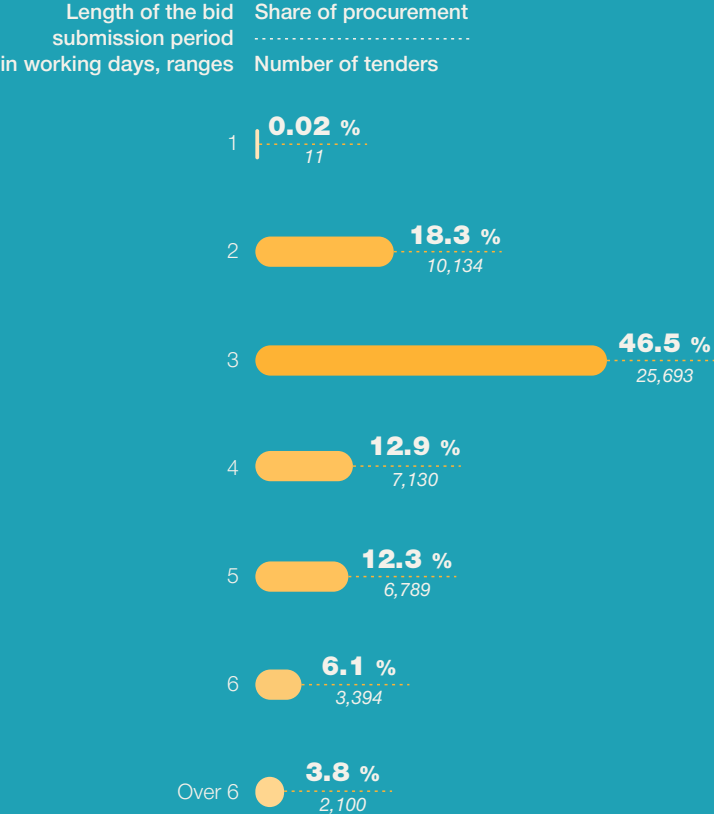
However, Prozorro allowed (or allows) to fit this period in five working days, while the Ministry of Economic Development in its explanations indicates six working days.

Note that procuring entities were more adjustable in establishing the duration of the bid submission stage compared to the clarification stage. A possible explanation for this may be the vagueness and ambiguity of the interpretation of the requirements of the Law to the duration of this stage.

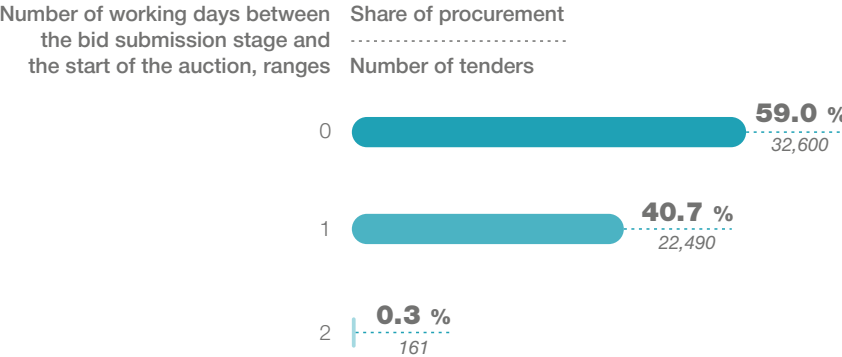
In 65% of all tenders, participants had up to three business days to submit bids.

39. bit.ly/2lwCNWi

40. Art. 10, part 1, clause 2 of the Law

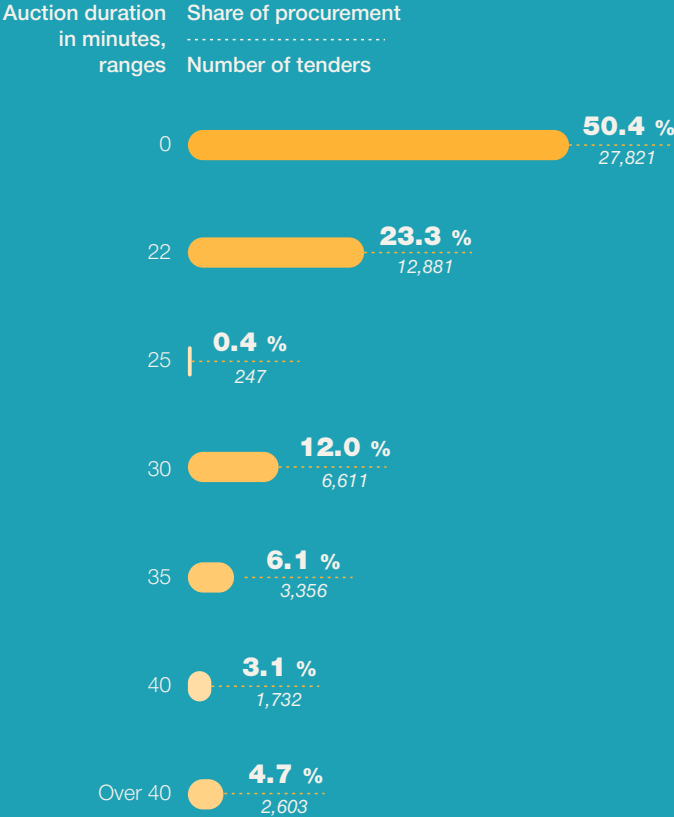


The expectation of the auction in most cases was minimal. In almost 60% of tenders, there was either no auction (due to the presence of only one participant) or it was scheduled immediately after the completion of the bid submission stage. In another 40% of cases, procuring entities waited one working day, and only occasionally two working days.



Auction. In half of the cases there was no auction (duration 0 minutes in the infographic). Almost every fourth auction lasted from 21 to 22 minutes (23%). Almost 42% of the auctions lasted from 21 to 35 minutes).

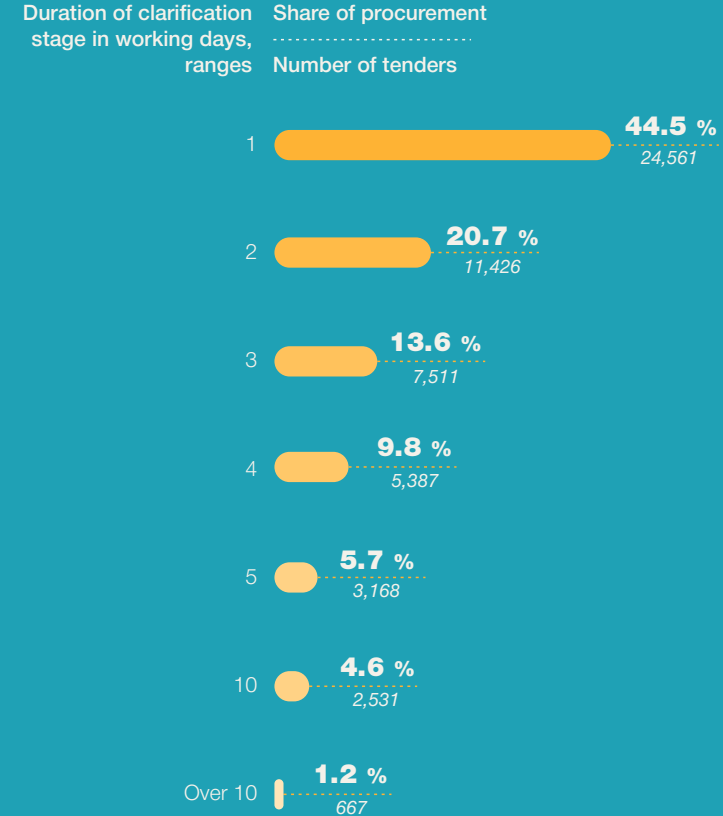
However, in some cases they lasted more than four hours (110 auctions).



Expectation of the award stage. The award stage began almost always immediately after the end of the auction: from 0 to 5 minutes in 98% of cases. We do not provide a separate infographic about it.

Consideration of bids. Qualification of participants according to the Law must last no more than five working days. Regardless of the number of participants, in 94% of cases the entire stage of bid consideration lasted up to five working days inclusive.

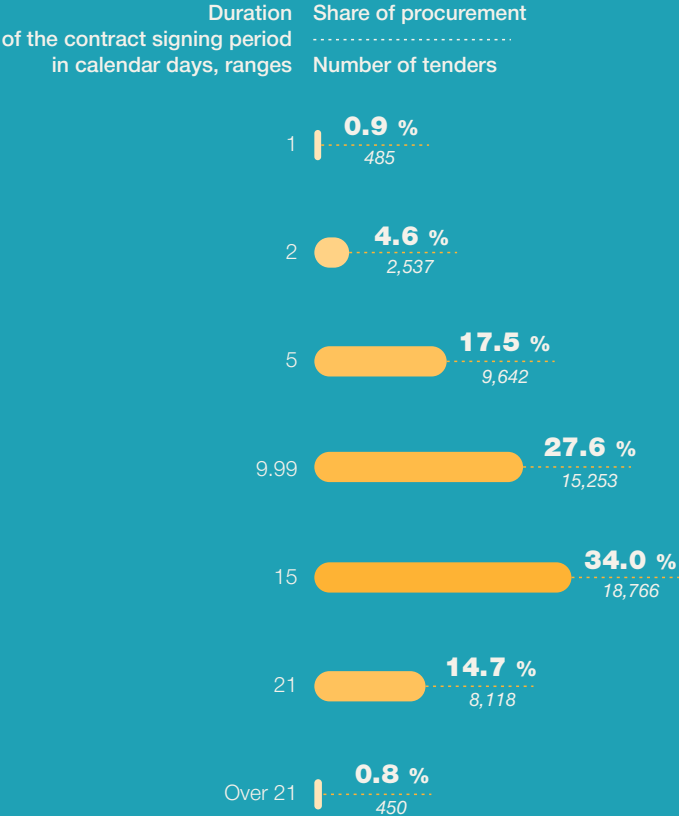
If we analyze simplified tenders with only one participant, then in 99% of cases participants also had time to consider bids up to five working days inclusive. According to the new approaches to calculating the duration of the stages (in concordance with the Civil Code of Ukraine), 185 cases of bid consideration, which lasted seven working days or more, can be considered a violation.



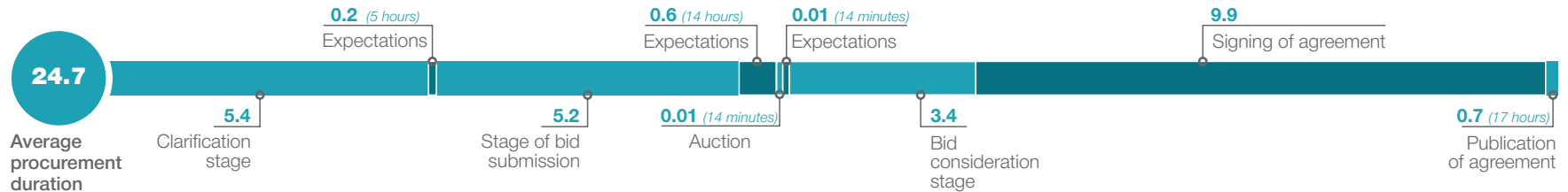
Signing of agreement. Although, according to the explanation of the Ministry of Economic Development, procuring entities can sign the contract immediately after the award, the majority waited a few more days.⁴¹ Within one day after the award, the contract was signed in only 169 tenders. In half of the cases (50.5%) procuring entities waited up to 10 days (inclusive). The other half on the contrary — from 10 days and more. It is possible that this situation is due to the requirement of the Law to conclude a procurement contract not earlier than 10 days from the date of the award to ensure the possibility of contesting (even taking into account that contesting in simplified tenders is not possible).

In another 450 tenders, procuring entities violated the law and signed the contract later than in 21 days.

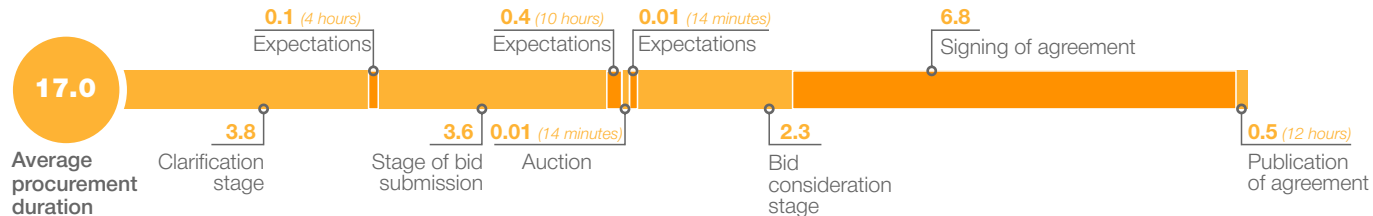
41. bit.ly/2lwCNWi



Calendar days



Working days



Procurement duration in total. In general, simplified tenders took on average 2.5 weeks in working days. 3.5 weeks in calendar days.

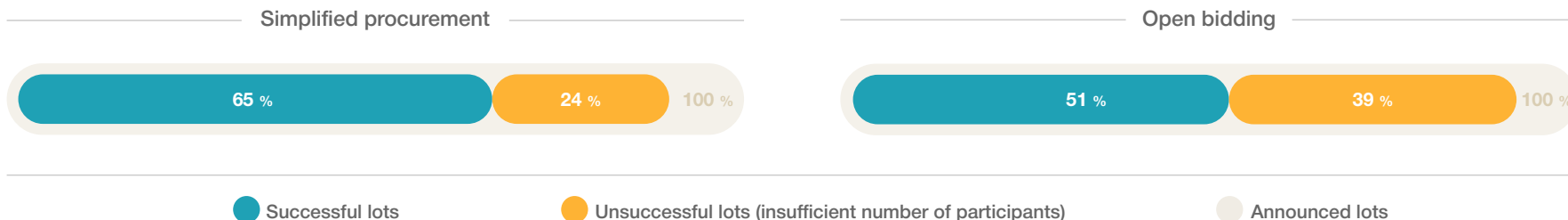
The biggest chunk of time in the simplified procurement took the signing of the contract — almost 10 days. This confirms the opinion of some procuring entities that took part in our survey that this stage should be shortened so that the contract can be signed immediately after the publication of the notice of intent to sign the contract.

In second place in terms of duration are the stages of clarification and bid submission. This also correlates with the desire of individual procuring entities in the survey to shorten these stages as well.

Conclusion: in most cases, procuring entities tried to shorten the stages of simplified procurement. The most time was spent on signing the contract (on average 10 calendar days).

When individual procuring entities claim that a simplified tender is not fast enough, the situation can be partly explained by the weekends, which on average prolong the entire tender by seven days. In addition, the peculiarities of the period calculation (according to the Civil Code of Ukraine) can sometimes extend the stages of simplified procurement for one working day.

Cases of simplified procurement in 8-9 days are possible, although very rare.



Unsuccessful simplified tenders due to insufficient number of participants

In the interviews and surveys, individual procuring entities mentioned the problem of a small number of participants in simplified tenders.

Although there were fewer unsuccessful lots due to the insufficient number of participants in simplified tenders than in open bidding, this problem occurred in every fourth announced lot.⁴² In addition, at least once every second procuring entity had an insufficient number of participants in the simplified tender (50.6%, or 5,235).⁴³

Based on the same data, it can be stated that the probability of successful simplified procurement is slightly higher compared to open bidding.

Some procuring entities claimed that few participants take part in simplified tenders due to the low expected cost. After testing this hypothesis, we found out that such an explanation is likely to be close to be true.

Lots with an expected value of up to UAH 50,000 account for more than half of all unsuccessful tenders due to the lack of participants. An explanation for this may be that the low expected cost and the problems that businesses mentioned during the survey do significantly reduce the interest of participants in this segment of simplified procurement.

In some cases, it may be a multi-lot tender, where individual lots have an expected value of less than UAH 50,000, but the entire tender meets the established thresholds. However, we found out that there were not many multi-lot simplified tenders among all unsuccessful simplified ones (1,958, or 9.5%) to explain such a concentration of unsuccessful lots in this price range.

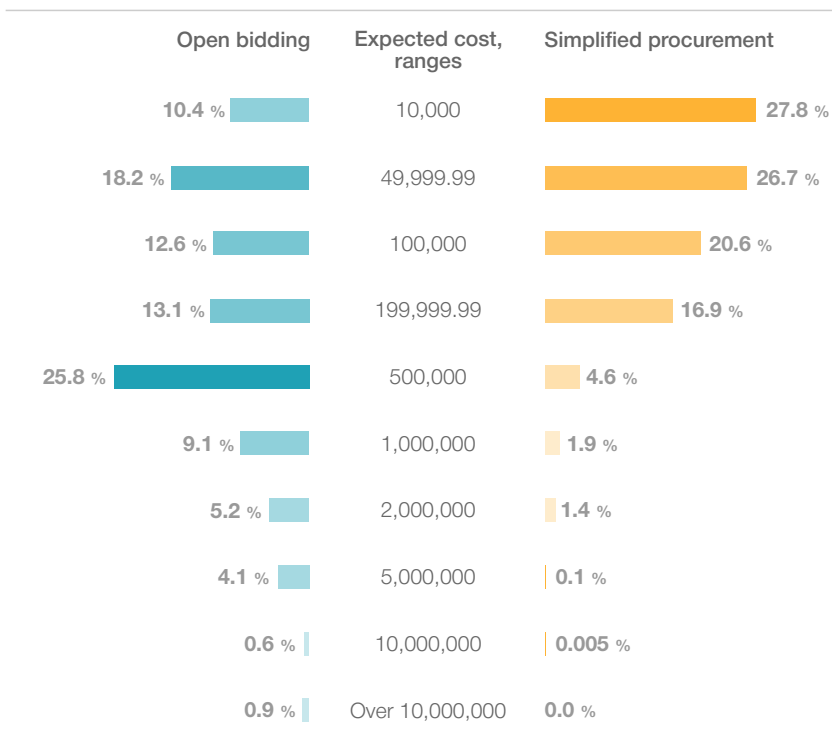
Here are the examples of ranges:

- 10,000 should be read as “up to 10,000 inclusive;”
- 49,999.99 should be read as “from 10,000 (not inclusive) up to 49,999.99 inclusive.”

42. Insufficient number of participants for simplified procurement is 0 participant. For open procedure - 0 and 1 participant.

43. During the same period, 71.4% of all open bidding buyers faced this problem

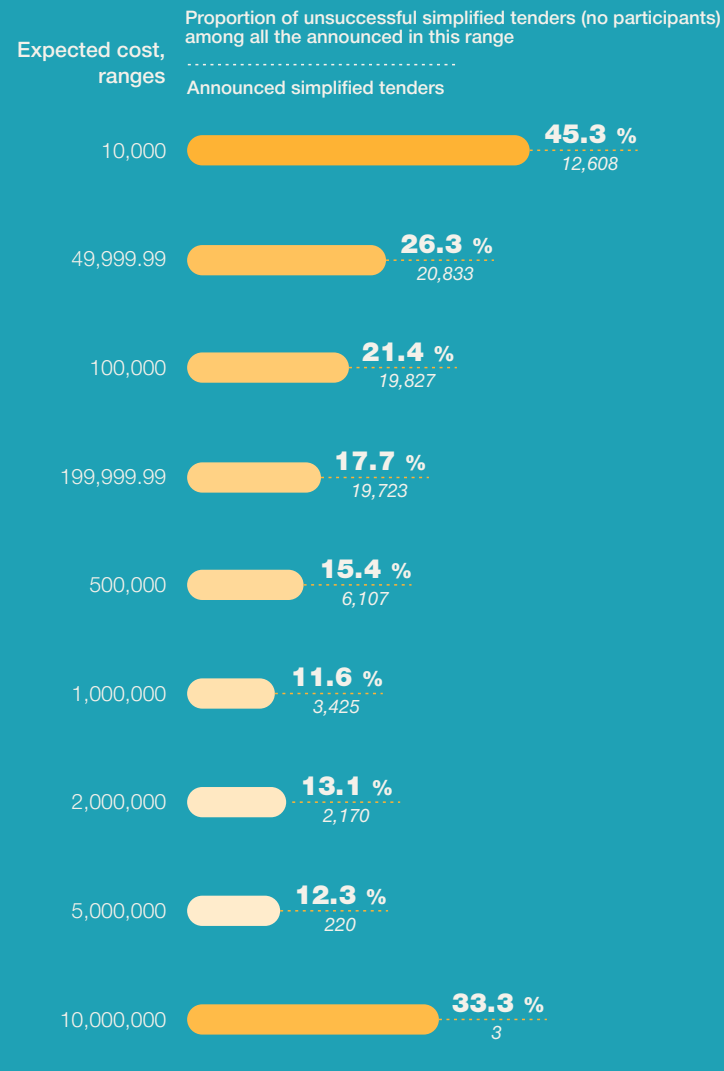
Proportion of unsuccessful tenders (absence of participants) depending on the expected value range



In the range of up to UAH 50,000, not only the largest number of unsuccessful simplified tenders is concentrated (due to the lack of participants). In general, the lower the expected cost, the more likely it was that participants would be absent.

Here are the examples of ranges:

- 10,000 should be read as “up to 10,000 inclusive;”
- 49,999.99 should be read as “from 10,000 (not inclusive) up to 49,999.99 inclusive.”



Interestingly, simplified procurement and open bidding also have common features in which CPV codes unsuccessful procurement is concentrated the most (share of total). Such codes for both types of procurement include in particular:

- 45000000-7 Construction work and maintenance
- 44000000-0 Constructions and construction materials
- 33000000-0 Medical equipment and pharmaceuticals
- 39000000-2 Furniture and household appliances
- 50000000-5 Repair and technical maintenance services

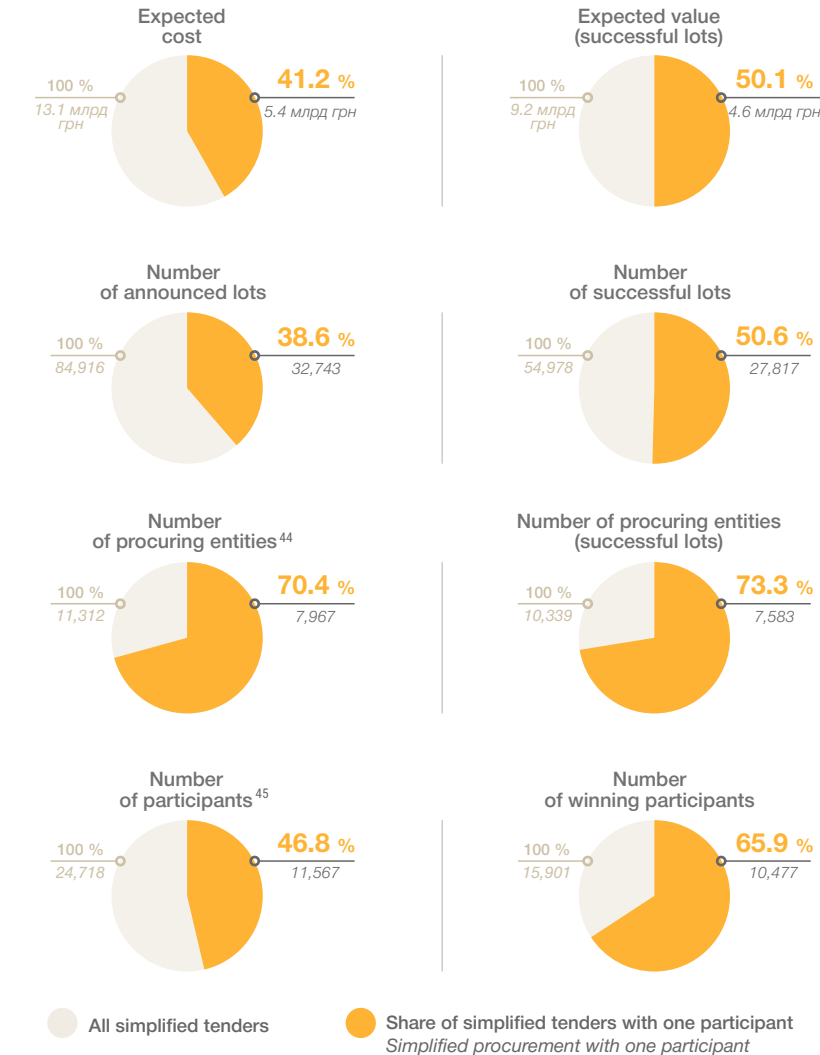
Conclusion: the probability that no participant will take part in the simplified procurement is lower compared to open bidding. Probably, it can be also explained by the fact that the auction will take place even with one bid.

Evidence suggests that fewer participants take part simplified tenders with a lower expected cost and that procurement is more likely to fail. At the same time, a half of all such unsuccessful tenders had an expected value of less than UAH 50,000. That is, the procuring entity had to conduct a pre-threshold tender instead or conclude a direct contract or conduct a tender through e-catalogs.

Simplified procurement with one participant

One of the features of simplified procurement compared to open bidding is that the procurement will take place even with one participant. In this case, the system will skip the auction stage and immediately proceed to the bid consideration stage.

Simplified tenders with one participant turned out to be a much more important component of simplified procurement than we had expected. They accounted for a half of both the expected cost and quantity. Almost 3/4 of all procuring entities conducted at least one successful tender with one participant. Moreover, 66% of all suppliers in simplified procurement concluded at least one contract precisely due to simplified procurement with one participant.



44. Procuring entities with at least one announced simplified procurement

45. Business with at least one participation in simplified procurement

It is important to understand the reasons for the lack of competition in half of all simplified tenders (where there was only one participant). Successful simplified procurement actually ceases to be competitive and instead becomes “complicated by direct contracts.”

In addition, in successful simplified procurement with one participant there is no auction stage. Therefore, the contract with the participant is signed at the price they offered as the initial bid. This can nullify the economic feasibility of such tenders, as the procuring entity's costs for their implementation may be incomparable with the savings at least due to this factor. It should be borne in mind that individual procuring entities may even slightly overestimate the expected tender cost to make it more cost-effective for participants and increase competition.

This may indicate, for example, that participants are uninterested in such tenders due to potentially low profits or that the demand in a particular market may significantly outweigh the supply.

In the worst-case scenario, this situation may indicate that individual procuring entities outline requirements in such a way that only favorable participants can participate in the tender. At the same time, procuring entities may not only not consider the equivalents of goods (in simplified procurement, the law allows it), but also envisage other discriminatory conditions.

It can be assumed that most likely there was no collusion in those cases when simplified tenders with one participant failed. That is, the procuring entity for some reason disqualified the participant or canceled the procurement due to lack of funding. These were 14.8% of all simplified tenders with one participant.

It can also be assumed that simplified procurement with one participant was systematic in only 6% of procuring entities, those were the only ones with 10 or more such successful tenders. The expected value was UAH 2.6 bln, or 28.3% of

all announced simplified ones. Moreover, on average, successful simplified tenders with one participant accounted for 88% of all their successful simplified tenders. That is, not only did they have more than 10 simplified tenders, but only one participant regularly took part in them.

The leader in terms of number for the first six months was municipal enterprise (ME) “Directorate for Capital Construction and Reconstruction ‘Kyivbudrekonstruktsiya’,” it conducted 730 ⁴⁶successful simplified tenders. In total, this procuring entity conducted 731 successful simplified tenders of works for the installation of sport-/playgrounds. At the same time, the second procuring entity according to this indicator conducted only 322 ⁴⁷such tenders.

In almost all simplified tenders with one participant of Kyivbudrekonstruktsiya, the winners were three suppliers, each being a manufacturer of sport-/playgrounds (or part of a group of companies). The announcements of the simplified procurement were identical in all cases, and only the technical tasks changed depending on the types of sport- or playgrounds.

According to the simplified procurement announcement, participant had to provide more than 40 different documents, certificates and letters. In fact, the qualification requirements for participants duplicated the qualification requirements of Article 16 of the Law (employees, material and technical base, similar contract, financial capacity, etc.). The item of all these tenders was the installation of a sport-/playground, which is not a complex construction that requires special machinery, equipment and highly qualified workers. In our opinion, some of these requirements were excessive (not only for simplified procurement, but also for open bidding). It can be assumed that they “scared off” potential participants.⁴⁸

47. And 45% of all the announced tenders.

48. ME “Management Company for Housing Maintenance of Darnytskyi District of Kyiv”

49. Procurement analysis was prepared by Yaroslav Pylypenko, Public Procurement Specialist, Transparency International Ukraine Innovative Projects Program

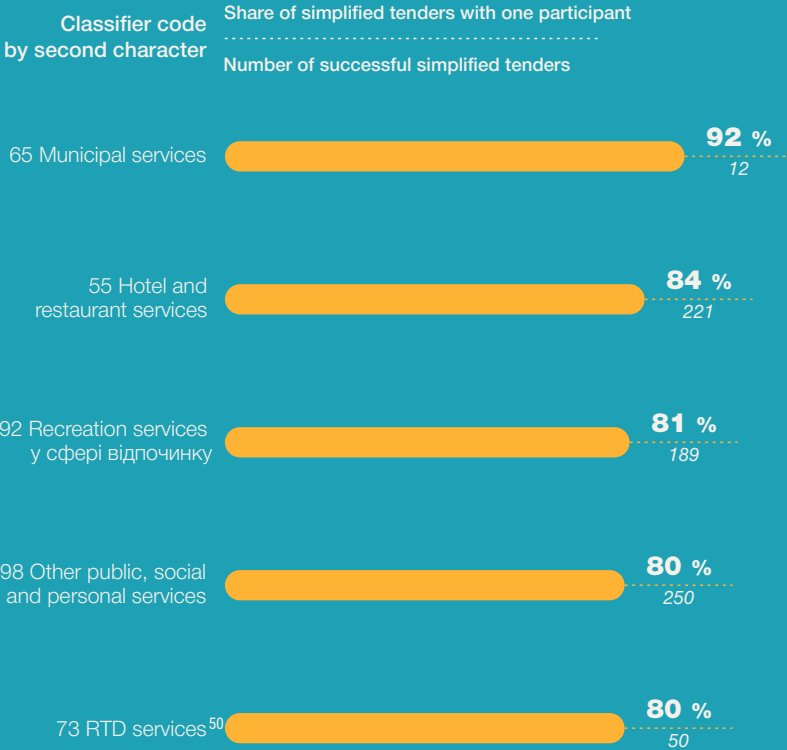
The largest number of successful simplified procurement with one participant was in Kyiv region (26.3%). Therefore, it is unlikely that this situation can be explained by the small number of potential performers, although the risk still remains.

According to the classifier code, the highest number of successful simplified tenders with one participant was in the procurement of construction works and repairs.⁴⁹ In general, every sixth successful simplified procurement was a procurement of construction works and repairs with one participant (16%).

It can be assumed that this situation is due to the small number of participants who could perform these types of works. However, during the period under study, only in simplified procurement, 4,651 suppliers signed contracts for works under this code. A total of 7,143 enterprises participated in the tenders.

According to the classifier code, the highest number of successful simplified tenders with one participant was in the procurement of services.

49. Construction work and maintenance



50. Research and technological development

Interestingly, if simplified tenders with one participant were automatically canceled by the system in the same way as open bidding with one participant, the total share of simplified unsuccessful procurement due to insufficient number of participants would be 63% (53.3 thousand lots) instead of 24%.⁵¹

Conclusion: Although simplified procurement is considered competitive, de facto it is only partially so. Simplified tenders, where the auction did not take place, account for half of all funds and lots.

In the worst-case scenario, the existence of such tenders may indicate a collusion between the participant and the procuring entity.

Savings in simplified procurement depending on the number of participants

Although Prozorro's savings ratio is controversial, it demonstrates well the differences between successful simplified tenders with one or more participants.

In almost every fifth (18.6%) successful lot with one participant, there were no savings. Savings constituted from 0% to 1% in almost every second lot (48.2%). The corresponding percentage for simplified procurement with two or more participants were 2.6% and 9.1%. The difference is seven and five times, respectively.

In almost half (46.3%) successful lots with one participant, savings accounted for UAH 500.

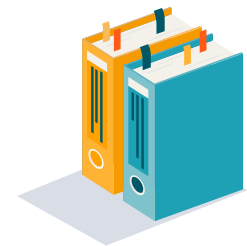
Such high price offers in simplified tenders with one participant (which are equal to or almost equal to the expected value) the businesses could offer for various reasons. This could be part of the strategy of winning the auction, due to little experience or so little potential profitability.

Another explanation is the possible collusion between the procuring entity and the participant. In this case, the participant knew in advance about the absence of competitors and therefore offered the maximum possible price or a price that is almost no different from the expected value.

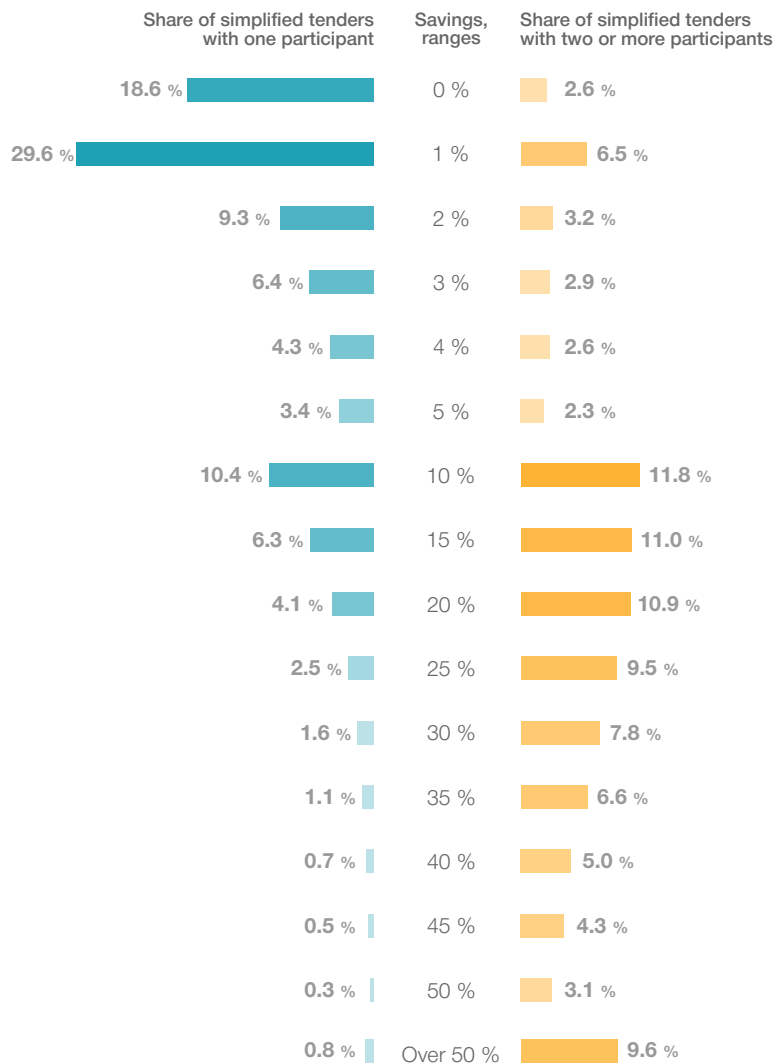
5,182 lots with no economy could potentially indicate a collusion and need further verification.

Here are the examples of ranges:

- 0% should be read as "0%;"
- 1% should be read as "from 0% (not inclusive) up to 1% inclusive."



52. See part "Unsuccessful Simplified Procurement" in Section 3



Conclusion: successful lots with one participant have much less savings compared to the rest of simplified tenders. Almost in half of them there were no savings or only 1% of the expected value.

This does not directly indicate the existence of collusion, but it is worth considering such a possibility at least as a potential corruption risk.

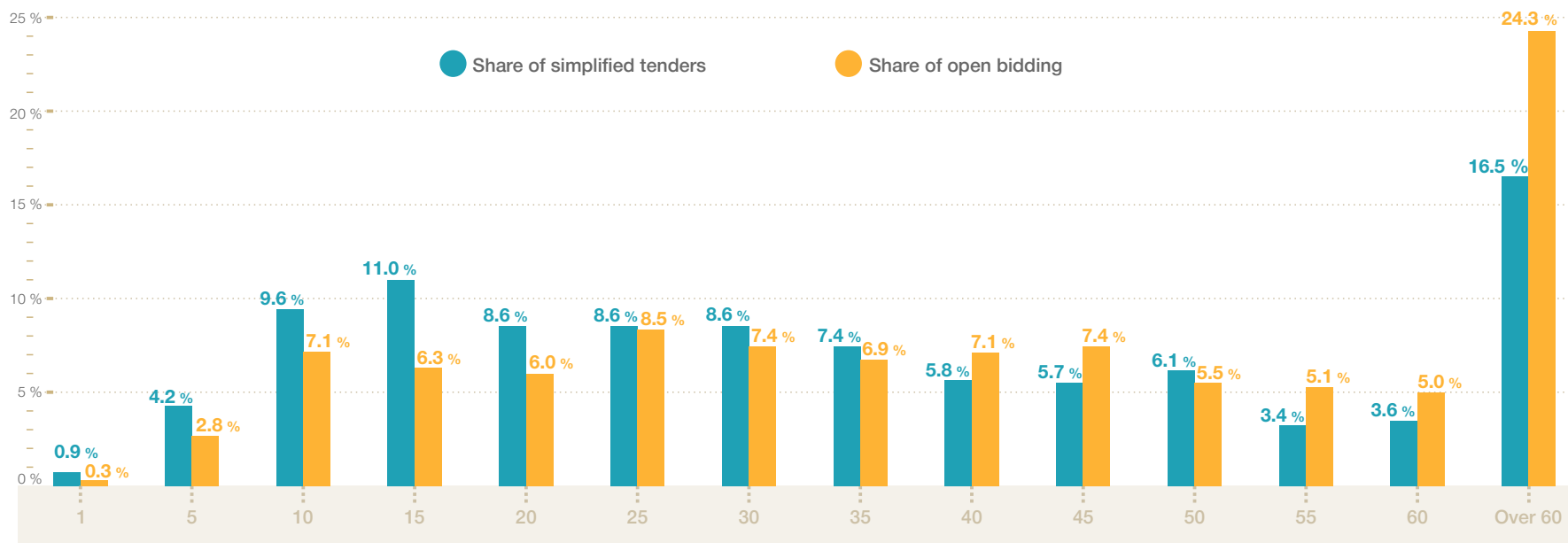
The introduction of simplified procurement has given businesses the opportunity to participate in more auctions. However, it can be assumed that conducting at least some of them in the current format is hardly economically justified. This does not mean that it is necessary to return to the practice of signing direct contracts. However, the focus should be on maximizing the economic impact of existing simplified procurement.

Speed of contracts' implementation

During one of the interviews, the participant noted that the advantage of simplified procurement is not only shorter deadlines, but also the ability to quickly fulfill the contract. We decided to test this hypothesis and selected 8,827⁵² already implemented simplified tenders and open bidding, announced from April 20 to September 20, 2020.

The general dynamics of contracts' implementation in simplified procurement and open bidding in the days almost did not differ (the correlation between them was strong and amounted to 0.9277). However, we also found minor differences. In the first 15 days after signing the contract, procuring entities reported on the implementation of the contract in 25.6% of all simplified tenders. For open bidding, this figure comprised 16.5%.

52. This sample included 12% of simplified tenders and 7% of open bidding (of all successfully completed during the study period)



The difference in days between signing the contract and publishing a report on its implementation, ranges

It should be borne in mind that procuring entities may report on the implementation of the contract later than they actually implemented it (for example, postpone reporting until the end of the contract).

Here are the examples of ranges:

- 1 should be read as “up to 1 inclusive”;
- 5 should be read as “from 1 (not inclusive) up to 5 inclusive.”

In terms of CPV codes, the general trend persists. At the same time, in at least four of them the reporting period in simplified procurement is equal to or exceeds the same period for open bidding. It is about:

- food (15000000-8);
- Transport equipment (34000000-7);
- laboratory and other equipment (38000000-5);
- Business services (79000000-4)

Conclusion: in simplified procurement, procuring entities and participants do implement contracts slightly faster than in open bidding, although no significant difference was found. This may be due to lower number of tenders.

Disqualification of participants

It is not easy to investigate disqualifications, as each case must be considered separately. The procuring entity may legally reject ten participants or only one, but with violation. Given this limitation, we decided to quantify disqualifications in simplified procurement.

The feature of simplified procurement is that unscrupulous procuring entities may de facto disqualify participants and commit other violations with minimal risk of being punished. The hypothesis is that if this opportunity is used, disqualifications in simplified procurement should occur more often than in open bidding.

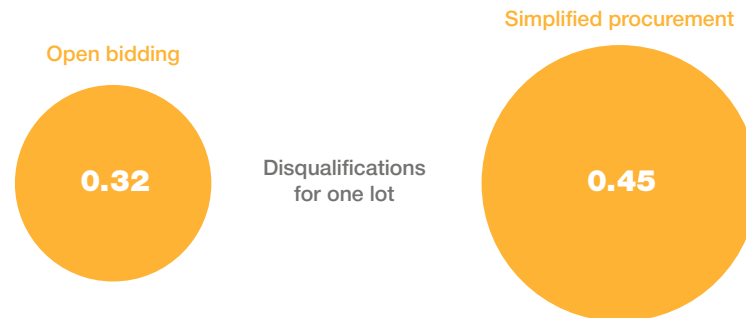
One lot of successful simplified procurement in our sample accounted for 0.23 disqualifications. For open bidding, this figure comprised 0.34%.

We decided that we would get more accurate data if we limited the sample with:

- procuring entities that have conducted at least 10 successful simplified tenders/open bidding (experienced buyers);
- successful simplified procurement with two or more participants.

Under such conditions, the indicator for open bidding remained almost unchanged (0.32), but the result for simplified procurement increased significantly — 0.45. That is, almost every second tender was disqualified.

The previous figure (0.23) is probably distorted due to the large number of successful simplified tenders with one participant.



Conclusion: the answer to the question of wide-spread disqualification of participants in simplified procurement largely depends on the calculation method.

It can be argued that disqualifications in simplified procurement do occur more often than in open bidding. However, this result is justified provided that the tenders of procuring entities that systematically conduct and successfully complete simplified tender (from two participants) and open bidding are analyzed.

It is important to note that on the basis of these data we cannot draw conclusions about the legitimacy of such disqualifications.



CONCLUSIONS:

short version

Both procuring entities and participants are mostly satisfied with their experience in simplified procurement. However, the level of business satisfaction was lower.

First of all, procuring entities would like to clearly understand the requirements of the Law on the periods of simplified procurement, to conduct simplified procurement in a shorter time, to raise the lower threshold of expected value and to strengthen their own protection against unscrupulous suppliers. First of all, businesses would like to be able to protect their rights and force procuring entities to comply with the Law, as well as to speed up and facilitate their preparation for participation in simplified procurement.

Existing mechanisms to protect the rights of participants are unlikely to be effective. And given how many simplified tenders are announced in Prozorro, the business experience with this type of procurement can have an important impact on their perception of Prozorro in general. Some procuring entities commit violations (in particular, not meeting the deadlines). However, it is unlikely to stimulate them to carry out the stages of simplified procurement in a timely manner, as well as to comply with other requirements of the Law, without the introduction of effective forms of control and influence.



CONCLUSIONS:

long version

Share of simplified tenders in Prozorro

Simplified tenders amounted to *half of all the competitive tenders* and their improvement can influence a significant number of both the procuring entities (minimum of 78%) and businesses (minimum of 60%). Under the optimistic scenario, this will have a significant positive effect on competition, speed of procurement and overall confidence in Prozorro.

At the same time, such an improvement is likely to have a *smaller effect on cost savings* compared to open bidding, as simplified procurement takes place in small amounts (6% of the expected value of competitive procurement).

Expected cost

Simplified procurement in the amount of less than UAH 50,000 creates a number of problems. In particular, *businesses are less interested* in participating in such procurement (2.82 participants per lot compared to 3.12 in other simplified procurement). Many simplified tenders up to UAH 50,000 become unsuccessful, and procuring entities are forced to re-announce them, which takes time to meet the need.

Experience of procuring entities and businesses in simplified procurement

The majority of both procuring entities and businesses have *little experience* in conducting and participating in simplified procurement ($\approx 90\%$ conducted up to 10 simplified tenders). In some cases, this significantly affects the results of the analysis, so such a study should be repeated after some time.

Satisfaction with simplified procurement

Procuring entities are more satisfied with simplified tenders than participants (63% vs. 50%). Conversely, business representatives are much more likely to indicate their dissatisfaction (39% vs. 20%).

Economic effect of simplified tenders

Half of the surveyed procuring entities agreed that the *savings in simplified tenders are comparable to the costs* of their implementation. 33% disagreed with this statement.

In practice, the situation turned out to be as ambiguous. In a third of all successful lots (35%) savings amounted to UAH 1,000. Another third (33%) — from UAH 50,000 and more.

Although simplified procurement is considered competitive, de facto it is only partially so. Simplified tenders with one participant, where *the auction did not take place, account for half of all funds and lots*. Such lots have much less savings, there were no savings or only 1% of the expected value.

However, it can be assumed that conducting at least some of the tenders in the current format is hardly *economically justified*.

Unsuccessful procurement

The share of *unsuccessful simplified procurement* is smaller compared to open bidding.

The lower the expected tender price, the more often it becomes unsuccessful. At the same time, a half of all such tenders had the expected value of less than UAH 50,000, i.e., the procuring entity at least in part of them at all should not have carried out the very tender as a simplified one.

Insufficient legal regulation of simplified procurement

Business representatives are more likely to believe that the Law has blind spots than procuring entities (47% vs. 29%).

Procuring entities mostly complain about inaccuracies in the Law, failure to understand the time frame of simplified procurement, and stalling. Participants mostly point to the impossibility of appealing simplified procurement, collusion, discrimination and excessive demands.

Periods in simplified procurement

About half of the surveyed procuring entities (48%) *did not support the idea of revising the periods*. At the same time, slightly more than a third (35%), on the contrary, would like to reduce them.

The highest number of procuring entities supporting the revision of deadlines believe that it is necessary to reduce the periods of *information clarification, bid submission, and the conclusion of the contract*.

Simplified procurement takes on average 17 days fewer than open bidding. However, the issue of delaying is real: approximately every fourth simplified tenders lasted more than 30 days.

Preparation period for simplified procurement

Most participants *spend as much time preparing as in open bidding*, or even more (52%). An explanation for this may be that particular procuring entities do demand a great amount of documentation.

Speed of contracts' implementation

In simplified procurement, procuring entities and participants do *implement contracts slightly faster* than in open bidding, although no significant difference was found. This may be due to lower amounts and, respectively, number of tenders.

Disqualification of participants

Experienced procuring entities more often *disqualified participants in simplified procurement* than in open bidding (0.45 vs 0.32 disqualifications per lot, respectively).

Contesting simplified tenders

Business mostly supports introducing the option to contest simplified procurement (65% voted in favor). At the same time, only 21% would be willing to pay a certain amount for such an opportunity. This amount would most likely be 1% of the expected value of the procurement item.

If contesting is introduced, it is likely to have a positive impact not so much on cost savings as on participants' perceptions of fairness in simplified procurement. As some of them do not distinguish well between different tender types/procedures, and simplified ones are announced relatively often, the introduction of contesting can have a positive effect on their satisfaction with Prozorro in general.

It is also worth noting that if it is decided to introduce any kind of control of simplified procurement (monitoring or review of complaints), it is unlikely to significantly increase control over the actions "solely of pre-threshold procuring entities." Simplified tenders were conducted at least once by only 10.3% of them.



APPENDIX 1

Some inconsistencies in the Law and implementation in Prozorro regarding simplified procurement

1. Disclosure of bids

Article 14 “Simplified Procurement,” part 10:

*Bids shall be disclosed in accordance with the procedure envisaged in the first and second paragraphs of Article 28, **part 1** of this Law.*

Article 28 is called “Disclosure of Tender Bids/Bids” and is part of Section IV “Open Bidding.”

In this case, the word “bids” (and not “tender bids”), which refers to simplified procurement, occurs in all four parts of this article (except for part 1, paragraph 3), and not only in the first and second paragraphs of the first part.

2. Bidding period

Article 14 “Simplified Procurement,” part 3, clause 9:

*...the period for submission of bids may not be less than **five working days** from the date of publication of the announcement of a simplified tender in the electronic procurement system.*

According to Article 14, part 2, the stage of bid submission by participants takes place after the completion of the stage of information clarification. Accordingly, its duration cannot be counted from the date of publication of the procurement notice.

If five working days are counted for the bidding stage, starting from the date of publication of the procurement notice, its duration may be two working days, as the other at least three working days in accordance with Article 14, part 3, paragraph 8 must be allocated for the clarification stage:

*...clarification period of procurement information (not less than **three working days**).*

In this case, the total duration of the information clarification and the bid submission stages is five working days. At the same time, in accordance with Article 10 “Disclosure of Procurement Information,” part 1, paragraph 2:

*The procuring entity independently and free of charge through the authorized electronic platforms publishes... the announcement of a simplified tender and the draft procurement contract, **no later than six working days before the deadline for submission of bids.***

3. Prohibition to demand documents in paper form

Article 12 “Electronic Procurement System,” part 3:

*Submission of information during a procurement/simplified procurement procedure is conducted electronically through the electronic procurement system. Procuring entities **are prohibited from demanding** that participants submit the information in paper form provided by them during the procurement/simplified procurement procedure.*

This prohibition is also partially duplicated in Article 22 “Tender Documentation,” part 5. However, it applies only to tender documentation, but not to announcements and requirements to the item of simplified procurement:

*Procuring entities are prohibited from demanding that participants certify the documents (materials and information) submitted **as part of the tender bid**, the seal and signature of the authorized person, if such documents (materials and information) are provided in electronic form through the electronic procurement system with a qualified electronic signature.*

It is possible that this wording forces individual procuring entities to demand that the winner provide documents in paper form.⁵³

4. Prohibition of discrimination against participants

In accordance with Article 14 “Simplified Procurement,” part 4, paragraph 2, the procuring entity may, at their own discretion, determine whether they will consider equivalent goods:

In the requirements to the procurement item, which contain references to a specific trademark or company, patent, design or type of the procurement item, its source or manufacturer, the procuring entity may indicate which analogues and/or equivalents are accepted in the bids.

Though in part 5 of the same article it is stated:

*Simplified procurement notices and requirements to the procurement item **must not contain requirements that restrict competition and discriminate against participants.***

Thus, in one part the Law prohibits discrimination against participants, while in another it allows to envisage a certain type of discrimination in the requirements to the procurement item.

5. Period of consideration of the most economically advantageous bid

According to Article 14 “Simplified Procurement,” part 11, paragraph 2:

*The period for consideration of the most cost-effective bid should not exceed five working days **from the day of completion of the electronic auction.***

In this case, in accordance with Article 29 “Consideration and Evaluation of Tender Bids/Bids,” part 10, the provisions of which are also applicable to simplified procurement:

*The period for consideration of the most cost-effective tender bid/bid should not exceed five working days **from the day of determining the most cost-effective bid.***

If the procuring entity awards the first participant out of several, then both rules are equivalent. However, if the procuring entity rejects the first participant's bid and starts considering the second (as well as all subsequent ones), both articles will require different periods.

53. See the last paragraph of Appendix 2 to the procurement announcement [UA-2020-09-30-001182-a](#)

If guided by Article 29, part 10, the procuring entity will have five working days to consider each of the most cost-effective bids separately.

According to Article 14, part 11, paragraph 2, the consideration of the second participant, whose bid is considered the next most cost-effective, must also take place within five working days from the date of completion of the electronic auction. Accordingly, the procuring entity cannot spend five working days on the first participant as well.

6. The minimum term for contract signing

The law does not envisage the possibility of contesting simplified procurement. At the same time, in accordance with Article 33 “Decision on the Intention to Enter into a Procurement Contract,” part 5, which also applies to simplified procurement:

*In order to ensure the right to contest the decisions of the procuring entity, the procurement contract **cannot be concluded earlier than 10 days** from the date of publication in the electronic procurement system of the notice of intent to conclude a procurement contract.*

In addition, in its explanation⁵⁴, the Ministry of Economic Development states that procuring entities can sign the contract immediately after the publication of the notice of intent to sign the contract.

7. Unification of the use of terminology

According to Article 14 “Simplified Procurement,” part 17, paragraph 3:

*The procuring entity **cancels** the simplified tender in case of... reduction of expenses for the purchase of goods, works and services.*

In accordance with Article 32 “Cancellation of the Tender or Recognition of the Tender as Not Having Taken Place,” paragraph 2, part 5, in open bidding, the procuring entity has the right to:

...to recognize the tender as not having taken place, in case of... reduction of expenses for procurement of goods, works or services.

In addition, within simplified procurement in accordance with Article 14 “Simplified Procurement,” paragraph 4, part 19, a “**notice of cancellation**” is published automatically; within open bidding in accordance with Article 32 “Cancellation of the Tender or Recognition of the Tender as Not Having Taken Place,” paragraph 2, part 7, “**information on cancellation**” is published automatically.

8. Entities of request for explanation

In accordance with Article 14 “Simplified Procurement,” part 7:

*During the period of information clarification, **the participants** of the simplified procurement have the right to appeal to the procuring entity through the electronic procurement system for clarification of the information...*

In accordance with Article 1 “Definition of Basic Terms,” paragraph 37, part 1:

Participant of the procurement/simplified procurement procedure (hereinafter — the participant) — a natural person, individual entrepreneur or legal entity, resident or non-resident, including the association of participants who submitted a tender bid/bid...

Thus, only those who have submitted a proposal can clarify the information in simplified procurement. However, bids can only be submitted after the clarification stage has been completed.

54. bit.ly/2lwCNWi

In this case, in accordance with Article 24 “Clarification of Tender Documents and Amendments Thereto,” part 1, a similar rule for open bidding allows for clarification for all natural persons and legal entities, regardless of whether they have submitted a bid.

9. Obligation to provide clarification

According to Article 14 “Simplified Procurement,” part 7, paragraph 3:

*Within one working day from the date of their publication, the procuring entity **is obliged** to provide clarification on the appeals of the participants of the simplified procurement, which are published in the electronic procurement system, and/or amend the announcement of the simplified procurement and/or requirements to the item of the procurement.*

The “or” part of the wording of this paragraph actually indicates that the procuring entity may not provide clarification on the participants’ appeals, but instead only make changes. In this case, judging by the wording of this rule, the procuring entity will comply with the requirements of the Law, making any changes.

In addition, the Prozorro system will block the buyer’s ability to publish the contract, provided that there is at least one claim in the procurement with a certain status (“claim”). However, the Law does not envisage this.

10. Extension of the term in case of changes

According to Article 14 “Simplified Procurement,” part 7, paragraph 5, the procuring entity may amend both the announcement of the simplified tender and the requirements to the procurement item.

In this case, in accordance with part 7, paragraph 4 of the same article, the procuring entity must extend the period for bid submission for at least two working days only in the case of amendments of the simplified procurement

announcement, but not in the case of amendments of the requirements to the procurement item.

*In case of amending the **announcement** of a simplified procurement, the period for bid submission is extended by the procuring entity in the electronic procurement system for not less than two working days.*

In addition, the legislator should clearly define in the Law that the requirements to the procurement item and the announcement of a simplified procurement are two different objects. Or, conversely, clearly define that the requirements are part of the announcement.

11. Extension of period of bid submission

According to Article 14 “Simplified Procurement,” part 7, paragraph 4:

*In case of amending the announcement of a simplified procurement, **the period for bid submission** is extended by the procuring entity in the electronic procurement system for at least two working days.*

In our opinion, this norm is not fully thought through, and the benefit of extending the period for bid submission in case amendments to the announcement is doubtful. The stage of bid submission does not begin simultaneously with the stage of explanations, as in open bidding, but after it. That is, there can be no situations when the participant submitted their bid, and the procuring entity amended the announcement right after it.

It is possible that this norm was mistakenly transferred to simplified procurement from open bidding, not taking into account that the stages of clarification and bid submission in simplified procurement do not begin simultaneously, but sequentially.

12. Deadline for amendments

According to Article 14 “Simplified Procurement,” part 7, paragraph 5:

*The procuring entity has the right on its own initiative to amend the announcement of a simplified procurement and/or requirements to the procurement item, but **before the deadline for bid submission**...*

The Law does not require that the bidding stage begin immediately after the clarification stage. Therefore, this feature is implemented in Prozorro in the same way: the procuring entity can set an unlimited number of days of a “break” between the stages of clarification and bid submission. For example, in our sample, this “break” lasted from one day or more in 755 simplified tenders. At the same time, during these “break” days, the procuring entity in practice can no longer amend the announcement and requirements to the procurement item, as required by the Law. Therefore, it would be more logical to limit the right of a procuring entity to make changes not at the beginning of the period for bid submission, but at the end of the clarification stage.

13. Initiator of amendments to the notice

According to Article 14 “Simplified Procurement,” part 7, paragraph 5:

*The procuring entity has the right **on its own initiative** to amend the announcement of a simplified procurement...*

In this case, Article 14 “Simplified Procurement,” part 7, defines that participants may appeal to the procuring entity, and the procuring entity may then amend the announcement and requirements to the procurement item.

Thus, in terms of logic, changes can be made at the initiative of the participants. However, part 7, paragraph 5 of this article, mentions only the buyer's own initiative. Although in fact the functionality of Prozorro allows you to make changes before the period for bid submission begins also at the initiative of the participant.



APPENDIX 2

Full name of CPV codes

03000000-1 Agricultural, farming, fishery, forestry and related products

09000000-3 Petroleum products, fuel, electricity, and other energy sources

14000000-1 Mining, base metals and related products

15000000-8 Food, beverages, tobacco and related products

16000000-5 Agricultural machinery

18000000-9 Clothing, footwear, bags and accessories

19000000-6 Leather and textile, plastic and rubber materials

22000000-0 Printed and related products

24000000-4 Chemical products

30000000-9 Office and computer machinery, equipment and appliances, except furniture and software packages

31000000-6 Electrical equipment, apparatus, equipment and materials; lighting equipment

32000000-3 Radio, television, communication, telecommunication, and related apparatus and equipment

33000000-0 Medical equipment and pharmaceuticals

34000000-7 Transport equipment and accessories therefor

35000000-4 Security, fire-fighting, police and defense equipment

37000000-8 Musical instruments, sporting goods, games, toys, handicrafts, artistic materials and accessories

38000000-5 Laboratory, optical and high-precision equipment

39000000-2 Furniture (incl. office furniture), decorative articles, household appliances (excl. lighting equipment) and cleaning products

41000000-9 Rainwater collected and purified

42000000-6 Industrial equipment

43000000-3 Mining and construction equipment

44000000-0 Constructions and construction materials; auxiliary construction products (excl. electrical equipment)

45000000-7 Construction work and maintenance

48000000-8 Software packages and information systems

50000000-5 Repair and technical maintenance services

51000000-9 Installation services (excl. software)

55000000-0 Hotel, restaurant, and retail trade services

60000000-8 Transport services (except waste transportation)

63000000-9 Additional and auxiliary transport services; travel agency services

64000000-6 Postal and telecommunication services

65000000-3 Municipal services

66000000-0 Financial and insurance services

70000000-1 Real estate services

71000000-8 Architectural, construction, engineering, and inspection services

72000000-5 Information technology services: consulting, software development, Internet services and support services

73000000-2 RTD and related consultancy services

75000000-6 Administrative, defense, and social protection services

76000000-3 Services related to the oil and gas industry

77000000-0 Services in the field of agriculture, forestry, crop production, water management, and beekeeping

79000000-4 Business services: legal, marketing, consulting, personnel, printing, and security

80000000-4 Education and training services

85000000-9 Health and social care services

90000000-7 Sewage and residuals management services, sanitation and environmental protection services

92000000-1 Recreation, culture, and sporting services

98000000-3 Other public, social, and personal services

99999999-9 Not shown in other sections

