



POLICY BRIEF

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# RECOVERY PROCUREMENT: YEAR IN REVIEW AND AREAS FOR IMPROVEMENT



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**AUTHOR: VOLODYMYR LANDA, SENIOR ECONOMIST AT THE CENTRE FOR ECONOMIC STRATEGY**

Since June 2023, the Centre for Economic Strategy, the Institute for Economic Research and Policy Consulting, and the NGO Technologies of Progress have been working on the “Recovery Cost Control” project, funded by the European Union.

The project aims to create a system independent from the state to monitor budgetary and donor funds spent on recovery, analyse these costs, and engage the public in monitoring the reconstruction process.

For more information, please contact [press@ces.org.ua](mailto:press@ces.org.ua).

<b>Summary</b> .....	4
<b>Implementation, current organisation and challenges of public procurement for recovery</b> .....	5
<b>Problem 1: Construction procurement estimates are closed to the public</b> .....	6
<b>Problem 2. Lack of capacity for effective monitoring of recovery procurements</b> .....	6
<b>Problem 3: A large number of below-threshold public procurements</b> .....	7
<b>Problem 4. Extremely limited competition</b> .....	8
<b>Problem 5. Irregular yearly procurement cycle</b> .....	9
<b>Recommendations</b> .....	10
<b>Annexes</b> .....	12
<b>A. Legislation overview</b> .....	12
<b>B. Largest procurement categories in 2023</b> .....	13
<b>B. Recovery procurement overview</b> .....	14
<b>D. Complaints and lot disqualifications</b> .....	14

# Summary

Reconstruction and recovery in Ukraine after the Russian invasion have become vital “civilian” wartime tasks, along with humanitarian aid and maintaining economic stability. According to the Third Rapid Damage and Needs Assessment (RDNA3), as of the end of 2023, direct losses due to the Russian invasion amounted to \$152 billion, and needs for recovery amounted to \$486 billion.

However, significantly fewer funds are allocated for recovery. The annual volume of tenders in construction and current refurbishment amounted to UAH 283 billion in 2023 (about \$8 billion). According to RDNA3, priority expenditures for reconstruction and recovery in 2024 amount to \$15.3 billion

This analysis aims to outline the range of issues within the recovery procurement system based on available data, propose directions for further in-depth analysis, and formulate key recommendations for achieving more open and competitive procurement processes. The ultimate goal of these changes is to make recovery procurement more efficient, ensuring that the state receives services of proper quantity and quality for its funds while competitive private and state-owned companies have the opportunity to grow by securing contracts.

The state's main recovery tool is public procurement for construction and refurbishment works (procurement under CPV code 451). This brief focuses on the analysis of available data on such procurement. Having analysed the data of 173 thousand completed reconstruction procurements in 2023, we identified five key issues that we believe should be the focus of state policy efforts: the lack of transparency in cost estimates, the absence of a comprehensive monitoring mechanism for recovery procurements, the excessive number of below-threshold procurements, severely limited competition, and the uneven procurement pace throughout the year.

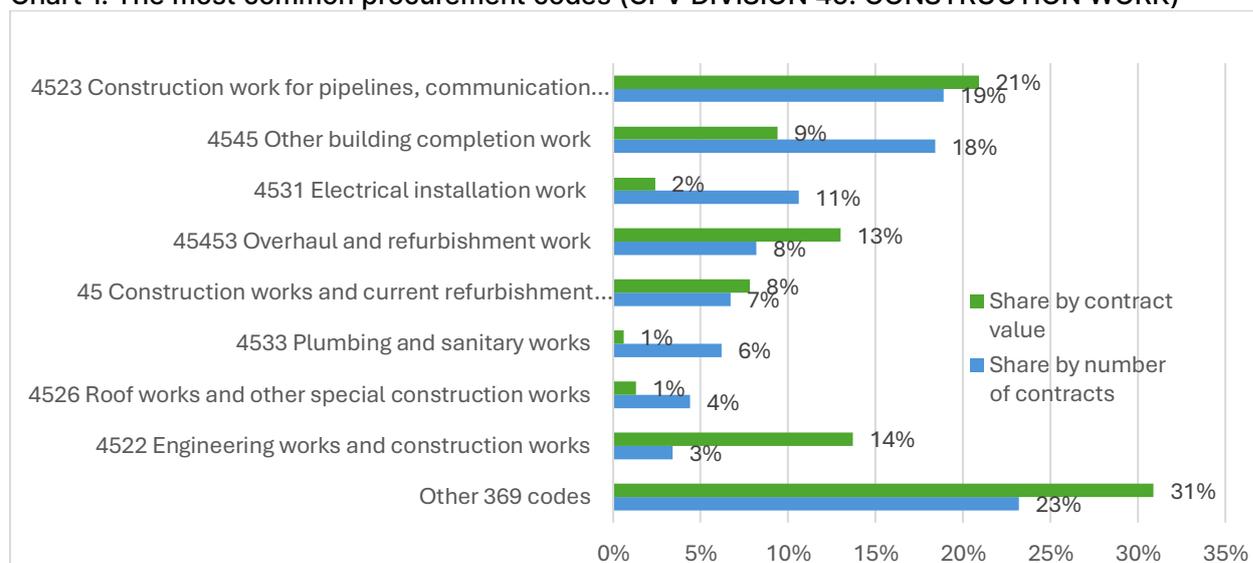
In some cases, a deeper study of these problems is required to develop policy solutions, but some steps can already be taken. We have described this strategy in our recommendations.

# Implementation, current organisation and challenges of public procurement for recovery

In 2015, Ukraine introduced the Prozorro digital public procurement system, making it mandatory for all public customers in 2016. From 2017 to 2020, the implementation of this system was recognised with numerous international awards and prizes. In 2023, 3.7 million procurements were made through the Prozorro system (for more details, see Annex B: Largest procurement categories in 2023).

In 2023, 173 thousand procurements worth UAH 283 billion were completed in construction and refurbishment (code 45). According to the breakdown provided by the tender organisers, the following subcodes made up the most significant procurement volume:

Chart 1. The most common procurement codes (CPV DIVISION 45: CONSTRUCTION WORK)



Implementing the digital system has increased the transparency of the tender process, contributed to the transition to digital document workflow, fostered the creation of private digital platforms, and transformed public procurement into an open and controlled process.

Public procurement legislation is regularly amended. Notably, two essential documents - the Law of Ukraine "On Public Procurement" and the Cabinet of Ministers' Resolution "On approval of the specifics of public procurement of goods, works, and services for customers specified by the Law of Ukraine "On Public Procurement", for the period of the legal regime of martial law in Ukraine and within 90 days from the date of its termination or cancellation" - have been amended dozens of times (for more details, see Annex A. Overview of Legislation). Some of the amendments were due to the need to harmonise procurement legislation with EU rules.

However, the system's complexity, changes in external factors affecting external procurement, burdensome regulations, and frequent amendments retain the potential for several targeted optimisations of the e-procurement system. On the one hand, changes in the legal framework that are too frequent complicate the procurement process, leading to less competition and higher public spending. On the other hand, specific changes to the legislation can be implemented quickly and have a significant positive impact on the procurement system.

In the following, we will highlight the problems typical for the recovery procurement system to provide a starting point for further analysis and policy development.

## **Problem 1: Construction procurement estimates are closed to the public**

Only 21% of procuring entities in construction tenders publish estimates. Procurements with disclosed estimates are more competitive. The Recovery Agency's experience publishing estimates in a machine-readable format shows that this always leads to budgetary savings in such procurements.

To extend this positive experience to other reconstruction procurements, bill No. 11057<sup>1</sup> ("Transparent Construction") has been registered in parliament. However, despite being registered in parliament as early as March 4, 2024, the relevant committee has not yet reviewed this bill.

### **Recommendation:**

1.1. Increase the transparency and competitiveness of reconstruction procurements by introducing a requirement to publish project estimates documentation for construction procurements (bill No. 11057, "Transparent Construction").

## **Problem 2. Lack of capacity for effective monitoring of recovery procurements**

Recovery procurements cannot be distinguished from the 3.7 million procurements conducted in 2023. However, this sector is one of the most important for both the state and international donors; therefore, there is a need for efficient monitoring of such procurements. As the state will be spending billions on reconstruction in the coming years, it is crucial to have all the necessary data, conduct an in-depth analysis, and understand the problems and efficiency of spending, especially given the large deficit in public finances.

In this policy brief, we will analyse procurements under CPV 45 (Construction works and current refurbishment) to estimate the number and volume of recovery procurements. Meanwhile, it is worth considering that not all procurements under this code are recovery procurements, and some may be conducted under other codes. To simplify the analysis of recovery procurements in the future, it would be reasonable to implement a unique procurement identifier that would define whether a procurement belongs to the procurement of recovery and restoration.

According to the results in 2023, 182.2 thousand tenders were held under code 45 (Construction works and current refurbishment), the seventh most frequently used procurement category. It amounted to 4.9% of all procurements in 2023 (for more details, see Annex B. Overview of recovery procurements). Some reconstruction-related procurements are also made under the most popular procurement code 44 (Construction structures and materials; auxiliary products to construction (excepts electric apparatus)).

Not all similar procurements for recovery are conducted under the same codes. The most frequent variation is that procurements are not specified in sufficient detail. For example, road repairs can be carried out both directly under code 45 (Construction works and current refurbishment) and under codes with more detailed specifications - 4523 (Construction work for pipelines, communication and power lines, for highways, roads, airfields and railways; flatwork.), 45233 (Construction, foundation and surface works for highways, roads), 45233120 (Road construction works).

New amendments to the legislation (Resolution of the Cabinet of Ministers of Ukraine No. 382) have made it possible to conceal sensitive information not only by disguising specific procurement characteristics but also by closing information on the procurement itself. This makes external monitoring and analysis impossible. At the same time, the latest changes retain the possibility of

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<sup>1</sup> <https://itd.rada.gov.ua/billInfo/Bills/Card/43783>

submitting tender documents in a non-machine-readable format. This leads to complications of computer data processing, thus, intentionally or unintentionally, limiting the number of potential participants.

**Recommendations:**

2.1. Implement a unique procurement identifier in the e-procurement system that would determine whether a procurement belongs to the procurement of recovery and restoration.

2.2. To streamline the indication of procurement codes, which would allow:

- a) group procurements of similar goods, works and services under the same procurement codes;
- b) apply a single practice of detailing CPV codes for all procurements.

2.3. Ensure publication of tender documents in machine-readable form.

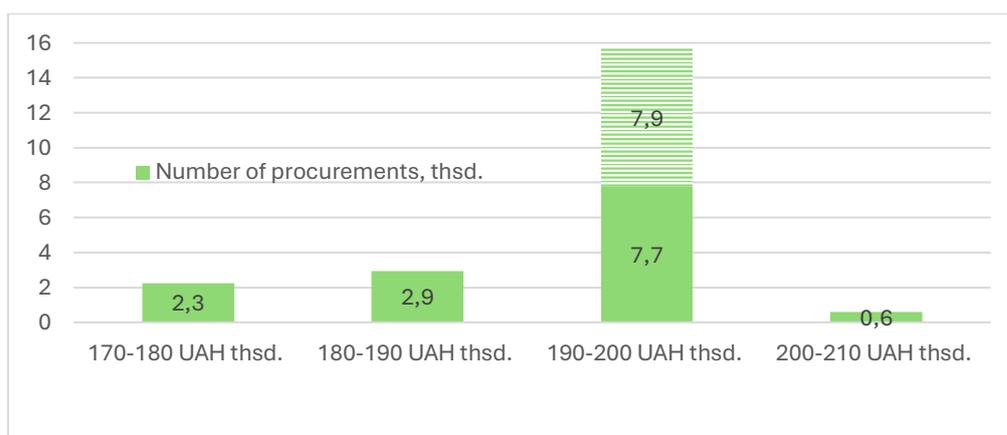
### **Problem 3: A large number of below-threshold public procurements**

An excessive number of below-threshold procurements characterises the statistical distribution of public procurement.

The Law of Ukraine, "On Public Procurement,"<sup>2</sup> establishes that procurement procedures are used for procuring goods and services if the value of the procurement item is UAH 200 thousand or more and works worth UAH 1.5 million or more. For certain categories of customers, these amounts are UAH 1 million and UAH 5 million, respectively. To avoid higher requirements and greater transparency to procurement, procuring entities announce multiple below-threshold procurements compared to the number of above-threshold procurements in similar price ranges.

This tendency is most evident for amounts below UAH 200 thousand.

Chart 2. Number of procurements in certain price ranges, thousand procurements



<sup>2</sup> <https://zakon.rada.gov.ua/laws/show/922-19#Text>

## Recommendations:

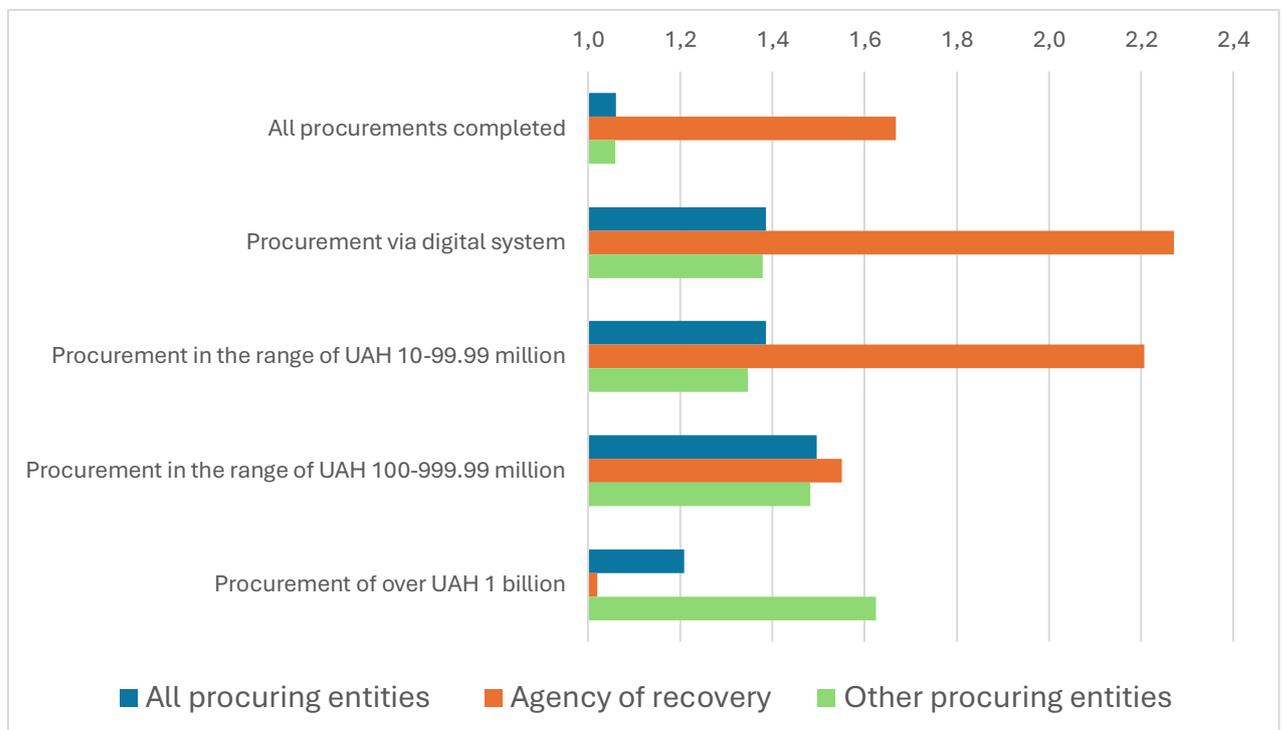
- 3.1. Investigate procurements with signs of fictitious value to maintain the below-threshold criteria.
- 3.2. Implement mechanisms to prevent intentionally splitting one procurement into several separate procurements to ensure the below-threshold status.
- 3.3 Investigate the reasons for splitting procurements, identify administrative barriers that can be simplified or eliminated and prevent procuring entities from conducting a full-value procurement.
- 3.4. Develop and implement amendments to government policies to reduce the number of procurements with signs of fictitious value.

## Problem 4. Extremely limited competition

Extremely limited competition in recovery procurement is one of the primary negative markers of the current procurement procedure. On average, only 1.06 tenderers participate in a successful public procurement, and 1.39 tenderers use the electronic system for procurements. Procurements organised by the Recovery Agency have significantly better performance - 1.67 tenderers for all tenders and 2.27 for e-procurement procedures.

76.5% of recovery procurements using the electronic procedure were made with a single tenderer and another 15.1% - with two tenderers. Accordingly, only 8.4% of all tenders had at least three tenderers (for the Recovery Agency, this figure is almost four times higher - 32.3%).

Chart 3. Average number of tenderers in completed procurements



Studies <sup>3</sup> confirm that competitive tenders are a crucial premise for the success of the entire procurement system.

Another reason for the low competitiveness of tenders is the unwillingness of construction businesses to participate in tenders for budget funds. This is particularly true because winning such tenders significantly increases the risks of dealing with law enforcement bodies, which have not yet been reformed, and monitoring by the State Audit Service of Ukraine (SASU), which has not yet been reformed. The Recovery Agency's better procurement performance is explained by the numerous meetings with market representatives to persuade potential bidders to participate in tenders.

One of the problems may be the procurement timeframe: research on construction procurement in 2023 showed that, in most cases, construction tenders had minimal deadlines for submitting proposals. 75% of lots had a deadline of up to 7 days, and 91%—up to 10 days. In April, the government introduced changes that set the minimum deadline for the procurement of work to be 14 days. At the same time, an extra prolongation of the time limit may also demotivate companies from participating in the bidding process.

The total duration of procurement using the e-procurement system in 2023 was 14-30 days—80% of all procurements under code 45 took place within this timeframe. Another 11% lasted 31-40 days, 4% 41-50 days, 4% 51-280 days, and the rest took less than two weeks.

**Recommendations:**

- 4.1. Investigate the reasons for the refusal of potential tenderers to participate in procurement processes.
- 4.2. Research why certain companies win all or almost all tender procedures in which they participate.
- 4.3. To enhance the competitiveness of recovery procurements, retain the procurement functions of the Reconstruction Agency without transferring them to centralised procurement organisations.

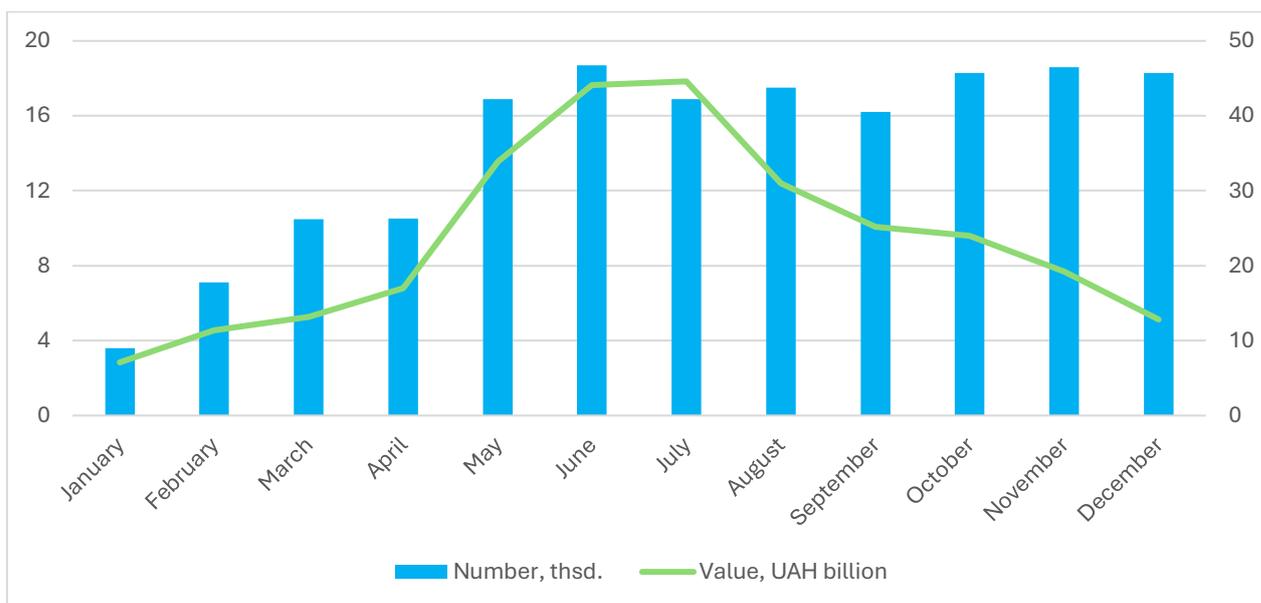
## **Problem 5. Irregular yearly procurement cycle**

Procurement procedures for recovery are seasonal. At the beginning of the year, there are significantly fewer procurements. Thus, in January 2023, only 2.1% of the total procurement in 2023 took place; in February—4.1%; in March and April—6.1% each; and in May-April, 9.4% to 10.8% of the annual procurement volume was conducted.

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<sup>3</sup> <http://itd.rada.gov.ua/f587646c-351b-47c8-a38b-c55284872289>

Chart 5. Breakdown of procurement completed in 2023 by month



### Recommendations:

- 5.1. Research the reasons for complicating procurement announcements in the first months of the year and suggest how to ensure continuity of procurement.
- 5.2. In collaboration with the Ministry of Finance, develop mechanisms to eliminate calendar obstacles to procurement within the public investment management reform framework and the implementation of medium-term budget planning.
- 5.3. The State Audit Service of Ukraine should implement a risk-oriented approach to procurement monitoring.

## Recommendations

Specific recommendations for improving public procurement procedures have already been implemented in the Resolution of the Cabinet of Ministers of Ukraine No. 382<sup>4</sup>, which came into force on April 9, 2024. However, specific procedures still have the potential to be improved. Some recommendations can be implemented through targeted legislative changes, while others can only be implemented as part of comprehensive changes not limited to regulation amendments.

In particular, due to the already amended procedures, it is now possible to hold open tenders in English, thus helping to attract international donors. The number of exceptions to procurement procedures has been reduced, while the possibility of direct contracts has been expanded to include procurement of services related to the creation or attraction of guarantees, loans or grants.

It is also now possible to change tender announcements and essential terms in direct contracts to generally positive norms for protecting energy infrastructure. Regular monitoring should be done to ensure that this norm is not used for abuse by tender initiators.

A potential vulnerability of the recent changes is the rejection of tender proposals from contractors needing more integrity. The abolition of documentary evidence of poor integrity may be the basis for abuse by procuring entities seeking to win the tender in favour of a pre-determined contractor.

<sup>4</sup> <https://zakon.rada.gov.ua/laws/show/382-2024-%D0%BF#Text>

Additionally, the law allowed the government to centralise the Recovery Agency's procurement. This can be done if the Ministry of Economy prepares a draft decision based on the Recovery Agency's proposal. As of today, the Recovery Agency's services procurement has been more competitive than other recovery procurements.

Another change was the ability to conceal sensitive information by disguising specific procurement criteria and closing information on the procurement itself.

**Recommendations that remain relevant as of May 2024:**

1. Increase the transparency and competitiveness of recovery procurement by making public the estimates of construction procurement (draft law No. 11057, "Transparent Construction")
2. Implement a unique procurement identifier in the e-procurement system that would determine whether a procurement belongs to the procurement of recovery and restoration.
4. To streamline the indication of procurement codes, which would allow:
  - a) group procurements of similar goods, works and services under the same procurement codes;
  - b) apply a single practice of detailing CPV codes for all procurements.
5. Ensure publication of tender documents in machine-readable form.
6. Investigate procurements with signs of fictitious value to maintain the below-threshold criteria.
7. Implement mechanisms to prevent intentionally splitting one procurement into several separate procurements to ensure the below-threshold status.
8. Investigate the reasons for splitting procurements, identify administrative barriers that can be simplified or eliminated and prevent procuring entities from conducting a full-value procurement.
9. Develop and implement amendments to government policies to reduce the number of procurements with signs of fictitious value.
10. Investigate the reasons for the refusal of potential tenderers to participate in procurement processes.
11. Research why certain companies win all or almost all tender procedures in which they participate.
12. To enhance the competitiveness of recovery procurements, retain the procurement functions of the Reconstruction Agency without transferring them to centralised procurement organisations.
13. Research the reasons for complicating procurement announcements in the first months of the year and suggest how to ensure continuity of procurement.
14. In collaboration with the Ministry of Finance, develop mechanisms to eliminate calendar obstacles to procurement within the public investment management reform framework and the implementation of medium-term budget planning.
15. The State Audit Service of Ukraine should implement a risk-oriented approach to procurement monitoring.
16. Harmonize the terminology for responses and clarifications to submitted appeals with the Code of Ukraine on Administrative Offenses requirements.
17. Provide access to data on tax arrears of companies participating in public procurement.

# Annexes

## A. Legislation overview

Public procurement legislation is regularly updated. In particular, **two essential documents** have been amended dozens of times:

- The Law of Ukraine "On Public Procurement" of December 25, 2015 - 29 times
- Resolution of Cabinet of ministers "On approval of the specifics of public procurement of goods, works, and services for customers specified by the Law of Ukraine "On Public Procurement", for the period of the legal regime of martial law in Ukraine and within 90 days from the date of its termination or cancellation" №1178 – 22 times

Furthermore, public procurement is regulated by the following legislative acts

### Laws:

- On Licensing Types of Economic Activity dated March 2, 2015<sup>5</sup>
- On Sanctions dated August 14, 2014<sup>6</sup>
- on the Natural Gas Market dated April 9, 2015<sup>7</sup>
- About Heat Supply dated June 2, 2005<sup>8</sup>
- On the Electricity Market dated April 13, 2017<sup>9</sup>
- On Medicinal Products dated April 4, 1996<sup>10</sup>
- On Electronic Documents and Electronic Document Management dated May 22, 2003<sup>11</sup>
- On Access to Public Information dated January 13, 2011<sup>12</sup>
- On the Antimonopoly Committee of Ukraine, dated November 26, 1993<sup>13</sup>
- On Prevention of Corruption, dated October 14, 2014<sup>14</sup>

### Cabinet of Ministers Resolutions:

- On the approval of procedures for confirming the degree of localisation of production of goods and monitoring compliance with the requirements regarding the degree of localisation of production of procurement items included in the list of goods that are procurement items with a confirmed degree of localisation of production dated August 2, 2022, No. 861<sup>15</sup>
- On the approval of the procedure for the formation and use of the electronic catalogue dated September 14, 2022, No. 822<sup>16</sup>
- On the approval of the procedure for the functioning of the electronic procurement system and the authorisation of electronic platforms dated February 24, 2016, No. 166<sup>17</sup>
- On specific issues of defence procurement during the legal regime of martial law dated November 11, 2022, No. 1275<sup>18</sup>
- On specific issues of state regulation of prices for medicinal products and medical devices dated March 25, 2009, No. 333<sup>19</sup>

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<sup>5</sup> <https://zakon.rada.gov.ua/laws/show/222-19#Text>

<sup>6</sup> <https://zakon.rada.gov.ua/laws/show/1644-18#Text>

<sup>7</sup> <https://zakon.rada.gov.ua/laws/show/329-19>

<sup>8</sup> <https://zakon.rada.gov.ua/laws/show/2633-15#Text>

<sup>9</sup> <https://zakon.rada.gov.ua/laws/show/2019-19#Text>

<sup>10</sup> <https://zakon.rada.gov.ua/laws/show/123/96-%D0%B2%D1%80#Text>

<sup>11</sup> <https://zakon.rada.gov.ua/laws/show/851-15>

<sup>12</sup> <https://zakon.rada.gov.ua/laws/show/2939-17#Text>

<sup>13</sup> <https://zakon.rada.gov.ua/laws/show/3659-12>

<sup>14</sup> <https://zakon.rada.gov.ua/laws/show/1700-18#Text>

<sup>15</sup> <https://zakon.rada.gov.ua/laws/show/861-2022-%D0%BF>

<sup>16</sup> <https://zakon.rada.gov.ua/laws/show/822-2020-%D0%BF#Text>

<sup>17</sup> <https://zakon.rada.gov.ua/laws/show/166-2016-%D0%BF#Text>

<sup>18</sup> <https://zakon.rada.gov.ua/laws/show/1275-2022-%D0%BF#Text>

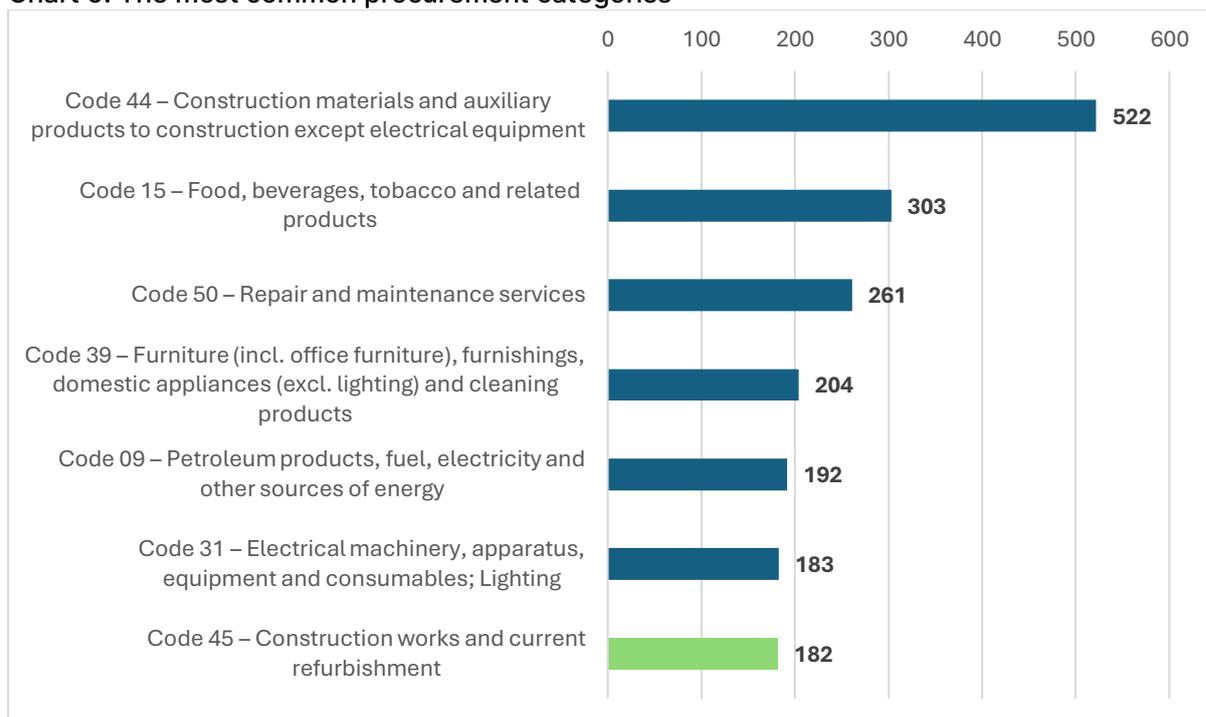
<sup>19</sup> <https://zakon.rada.gov.ua/laws/show/333-2022-%D0%BF#Text>

## Orders:

- On the approval of the professional standard "Public Procurement Specialist" by the Ministry of Economy dated September 14, 2023
- On the approval of the model methodology for determining the life cycle cost by the Ministry of Economy dated September 28, 2020
- On the approval of the form and requirements for ensuring a tender offer by the Ministry of Economy dated December 14, 2020
- On the approval of the national classifier NK 024:2023 and the cancellation of the national classifier NK 024:2019 by the Ministry of Economy dated May 24, 2023
- On the approval of the procedure for determining the volume of procurement needs for medicinal products by health institutions and organisations wholly or partially funded from state and local budgets by the Ministry of Health dated July 11, 2017, No. 782<sup>20</sup>
- On the approval of the procedure for registration and accounting of budget obligations of budget fund managers and recipients in the State Treasury Service of Ukraine by the Ministry of Finance dated March 2, 2012, No. 309<sup>21</sup>

## B. Largest procurement categories in 2023

Chart 6. The most common procurement categories



Among the procurements under CPV 45 in 2023, 173 thousand (95.1%) were completed, and 9 thousand (4.9%) were unsuccessful. Of the unsuccessful procurements, 6 thousand did not occur, and 3 thousand were cancelled.

Elevator Service LLC, which specialises in repairing elevators in several districts of Kyiv, was the most frequent winner in recovery procurement. The company won 0.8% of all tenders under code 45, and another 1.9% were defence procurements, where the winners' data were disguised.

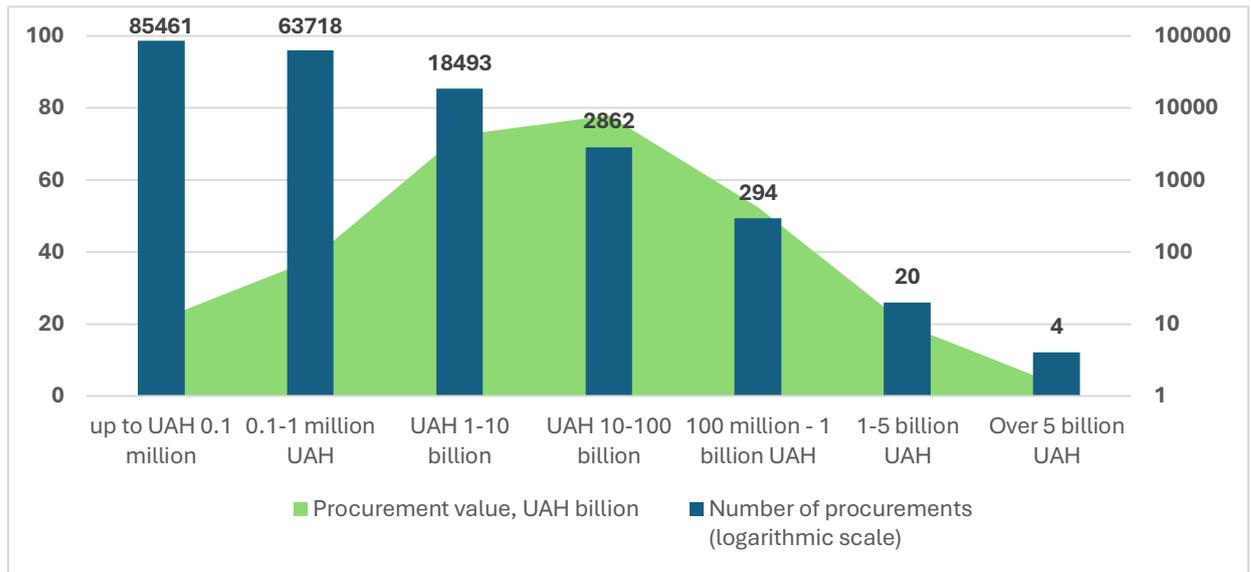
<sup>20</sup> <https://zakon.rada.gov.ua/laws/show/z0851-17#Text>

<sup>21</sup> <https://zakon.rada.gov.ua/laws/show/z0419-12#Text>

## B. Recovery procurement overview

The total value of contracts for 173 thousand procurements announced and completed in 2023 is UAH 283 billion. It is important to note that here and further in the text, procurements that were completed in 2024 and other changes that may have occurred after January 2, 2024, are not considered. In this case, the total amount of contracts does not include the number of contracts of 12 thousand procurements where this information is not specified or disguised. Thus, the contract value for one successful procurement with a known value is UAH 1.8 million.

Graph 7. Breakdown of construction procurements by value



All ten most significant procurements were placed by regional units of the Recovery Agency. Procurements include the construction of water pipelines, reconstruction of electrical substations, and non-detailed engineering and construction works. Capital and current road repairs are another frequent subject of procurement worth over UAH 1 billion.

Five of the ten largest procuring entities in terms of procurement value are regional services for infrastructure restoration and development. The most significant purchases were made by services in Dnipro (UAH 12.7 billion) and Lviv (UAH 9.8 billion) regions, as well as by PrJSC Ukrhydroenergo (UAH 9.5 billion).

## D. Complaints and lot disqualifications

Procurements under code 45 in 2023 totalled 992 complaints and 2736 lot disqualifications, an average of 0.6 complaints and 1.6 lot disqualifications per 100 successful procurements, and not a concerning indicator for the entire sampling.

Most complaints were received by the education departments of Mykolaiv and Mukachevo city councils - 23 and 18, respectively. This is 6.8 and 14.1 complaints per 100 successful procurements, respectively.

The Department of Regional Development of Kyiv Regional State Administration has the highest number of lot disqualifications - 81 (20.9 per 100 procurements). UkrGasVydobuvannya JSC has 1.5 times more lot disqualifications than procurements - 33 and 22, respectively.