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НОВЫЕ  
решения  
для государственного  
управления

# Public Procurement: Increasing Transparency and Accountability

The public procurement legislation in Belarus does not ensure transparency and accountability of public procurement procedures to citizens, mass media and the business community adequately. A range of changes in the legislation is required.

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## MAIN PROBLEM

The public procurement legislation in the Republic of Belarus does not adequately ensure transparency and accountability of public procurement procedures to citizens, mass media and the business community.

## RECOMMENDATIONS:

1. The Ministry of Commerce, as the state body responsible for public procurement, should clarify and consolidate in the legal acts a list of information about public procurement, which cannot be classified as commercial and professional secrets.
2. The Law "On public procurement of goods (works, services)" should be amended in the following way:
  - a. The announcement of the result of the procedure of public procurement should include not only the value of the signed contract, but a full tender offer of each tenderer together with the evaluation criteria and explanation of selecting the winner of the competition commission
  - b. The creation of a registry of contracts concluded as a result of public procurement procedures. This register must be published on the official website with the full text of the agreement with all additions and specifications, and before the official publication the contract should not be considered valid
  - c. The announcement of result of the procedure of public procurement must be published on the official website in all types of public procurement procedures except the cases when the information about public procurement constitute state secrets
3. To re-institute the coverage of the procurement of works and services in the construction sphere by the law "About public procurement of goods (works, services)" thus abolishing the separate legal act on construction procurement



4. To exclude the discriminatory measures provided for by the current legislation about foreign goods and companies in order to provide equal opportunities to all the bidders.

## THE CONTEXT

The new law "On public procurement of goods (works, services)" was adopted on 13 July 2012, and entered into force on 1 January 2013. The introduction of changes was caused by the need to harmonize the national legislation with the new international obligations of Belarus, specifically the agreement on the state (municipal) procurement which was signed by Belarus on 9 December 9 2010 in Moscow in the framework of the Customs Union agreement with Russia and Kazakhstan.

However, on 31 December 2013 the President signed the decrees № 590 "About some issues of public procurement of goods (works, services)" and №591 "About carrying out procurement procedures in the construction sector" which could potentially greatly reduce the transparency and accountability of public procurement procedures to citizens, mass media and business community.

First, the mechanism for coordinating the procurement from a single supplier in case previous public procurement procedures fail will be simplified, and the information about the procurement from a single supplier will not be published. Second, the decree №591 states that "legislation on public procurement of goods (works, services) shall not apply until January 1, 2016 in public procurement procedures in the construction sphere", which can not only reduce the transparency and accountability of public procurement, but also prejudices the implementation of international agreements by the Republic of Belarus.

## ARGUMENTS

We believe that measures to improve the transparency and accountability of the public procurement procedures to the citizens, mass media and the business community are required in the interests of the society and the state provided that relevant commercial secrets are protected and relevant international agreements by the Republic of Belarus are implemented.

The keeping of "status quo" is not appropriate. First, the simplification of a mechanism for procurement from a single supplier reduces external (mass media, citizens, business) and internal (the Ministry of Commerce) control over public procurement. Second, the transfer of managing procurement procedures from a single source to the bodies which oversee the contractor will

increase the potential for corruption in this kind of public procurement, as contractor managers are appointed by the overseeing organization and therefore accordingly are not independent from it. Finally, the exception of the procurement procedures in the construction sphere from the Law "On public procurement of goods (works, services)" contradicts the international agreements of the Republic of Belarus.

The involvement of well-known international companies with good reputation in public procurement procedures in Belarus can significantly reduce the risks of a corruption in the construction sphere, energy and other sensitive industries where contract values are high. It is necessary to eliminate the discriminatory measures against the foreign goods and companies to provide an equal opportunity to all the bidders.

Despite the necessity of keeping of "commercial secrets" of the bidders and the contractors should ensure the transparency of the public procurement procedures at all stages. The Ministry of Commerce should clarify and secure in the legal acts which information about public procurement constitute commercial or professional secret. Not only the data about the auction winner and the contract price, but also a tender offer to all participants and the reasons of selecting the winner should be published.

The simplification of the mechanism to procurement from a single supplier must be accompanied by the improvement of transparency of this and the other types of public procurement procedures. The need to speed up the delayed construction projects and the congestion in the ability to approve the procurement in the Ministry of Commerce are not sufficient grounds to reduce the transparency and accountability of public procurement and the violation of international agreements. All the information about public procurement which does not contain state secrets should be published on the official website regardless of the type of a procurement procedure.

*BIRART is a research project of the School of Young Managers in Public Administration (SYMPA).*

*Its goal is promotion of a public administration reform in Belarus and increase of its efficiency: <http://sympa-by.eu/ru/research/center.html>*