

# FIGHTING BID RIGGING IN THE ENERGY SECTOR IN UKRAINE A REVIEW OF PUBLIC PROCUREMENT AT UKRENERGO

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## Highlights from the review of Ukrenergo's procurement practices and recommendations for change

In 2019, the OECD launched the project '[Supporting Energy Sector Reform in Ukraine](#)', with the financial support of the Government of Norway. As part of this project, the OECD assessed the procurement practices of Ukrenergo, the Ukrainian energy state-owned enterprise and national-grid operator, against the OECD Recommendation on Fighting Bid Rigging in Public Procurement.

This review finds that Ukrenergo's professional procurement team is in an ideal position to address the challenges of bidder collusion, and to engage more actively in the prevention, detection and reporting of bid rigging. The focus of Ukrenergo's efforts to date has been on creating a more efficient and professional procurement structure with strong safeguards against fraud and corruption, in order to tackle the legacy of systemic inefficiency, corruption and embezzlement in public spending in Ukraine. Despite this real progress, Ukrenergo can improve further. Bidder conspiracies and collusion have yet to be sufficiently targeted, and Ukrenergo has only recently initiated the reporting of suspicions of illegal bid rigging to the Antimonopoly Committee of Ukraine (ACMU) for investigation and prosecution, despite bid rigging being a widely recognised problem in public tenders.

A close analysis of current practices has generated a number of recommendations that will help Ukrenergo improve its procurement system. These recommendations address actions to be taken to prevent bidder collusion – such as more and better market research, increased bidder numbers, better tender design, and reduced communication between bidders – and to improve detection of bidder collusion and its reporting to the competent authorities. An additional section addressed to the Government of Ukraine issues recommendations for changing Ukrainian procurement law, in particular a reduction in the high levels of transparency in the procurement process that can facilitate bidder collusion.

The review's recommendations can help promote more supplier competition in Ukrenergo tenders and open up markets. The recommendations can be used by other SOEs in Ukraine to benchmark their own practices and adjust them accordingly. **Supplier collusion can increase procurement cost by 20% or more, which will ultimately be borne by Ukrainian consumers.**

The full results of the review are available at <http://oe.cd/fbr-nrg-ukr> in English and Ukrainian.

### OECD Recommendation and Guidelines for Fighting Bid Rigging

The **OECD Council Recommendation on Fighting Bid Rigging in Public Procurement** calls for governments to assess their public procurement laws and practices at all levels of government in order to promote more effective procurement and reduce the risk of bid rigging in public tenders.

The **OECD Guidelines for Fighting Bid Rigging in Public Procurement** help public officials to reduce the risks of bid rigging, through the careful design of public procurement tenders, and to detect bid-rigging conspiracies during procurement processes.

The Guidelines are available in 26 languages at [oe.cd/qfbr](http://oe.cd/qfbr).



# KEY FINDINGS AND MAIN RECOMMENDATIONS

## IMPROVE TENDER PREPARATION

The most decisive stages of procurement take place before the tender process begins, with the formulation of needs and their translation into published tenders. Only good market knowledge will ensure that markets with little competition and high prices can be easily identified. Tender preparation and design should aim to increase competition for high value tenders and for markets with low competitiveness.

Ukrenergo's market research, tender design and the verification of reference prices take place within different units and could benefit from a more centralised and specialised approach. Specialisation can improve market knowledge and help focus on markets with competition risks. The current approach to ensuring competitive tender results is focusing mostly on determining reference prices that are deemed to reflect an acceptable price level. Decentralised procurement responsibilities lead to large imbalances in tender values per procurement staff, with headquarter staff being responsible for seven times the procurement value compared to regional level staff on average.

### Key recommendations to Ukrenergo

1. Improve market research – **focus and prioritise, benchmark and compare** – and use a systematic approach to **identifying risks** of bidder collusion and lack of competition.
2. Increase knowledge of technical and administrative procurement staff and ensure good communication between them.
3. Rethink the **regional organisation** of procurement and the internal **staff allocation and specialisation**.
4. Learn from **international experience** and the procurement expertise gained in tenders based on International Financial Institutions' rules.
5. **Benchmark** against prices by other large purchasers and foreign transmission system operators to inform procurement processes and priorities.
6. **Do not rely on reference prices** as a proxy for competition as they cannot replace the competitive process.

## MAXIMISE BIDDER PARTICIPATION

A higher number of bidders will increase competition in tender procedures. Competition generated between bidders will not only bring down prices, but also lead to higher quality and more innovation. Higher bidder numbers and tenders that attract new bidders will decrease the risk of collusive practices in tenders, as anti-competitive collusion is harder to initiate and sustain by a large number of competitors.

The average number of bidders in Ukrenergo tenders is less than three, and more than half of all open tenders are cancelled. Foreign bidder participation is rare. However, higher value tenders tend to attract on average more bidders. Ukrenergo currently purchases only based on price, and does not use qualitative tender award criteria. Tenders for similar products are not sufficiently aggregated and lots are not used in tender design. There is no specific focus on joint bids or sub-contracting.

### Key recommendations to Ukrenergo

1. Higher value tenders show higher bidder numbers – **aggregate tenders** and use framework agreements where adequate.
2. Smaller bidders can be attracted to bid when **contracts are split into lots**. Lots should be designed in a way to make bidder collusion more difficult. The choice between aggregation and splitting into lots will depend on the specific characteristics of the procurement market.
3. **Attract more foreign bidders**, publish more tenders in English in full and advertise them widely.
4. Pay close attention to **joint bids and sub-contracting** as they can support the implementation of collusive agreements between bidders.
5. Reduce the high number of cancelled tenders through **clear tender design and requirements** and education of potential suppliers.

## AVOID BIDDER COMMUNICATION

Collusion is facilitated when bidders have access to information that helps them verify the implementation of a collusive agreement and communicate with each other. Tender procedures that allow meetings between bidders provide them opportunities to communicate, and spread information to facilitate bidder collusion and should be avoided.

### Key recommendations to Ukrenergo

1. **Avoid organising in-person tender or general information meetings that allow competitors to meet.** Avoid joint site visits, and make use of alternatives to in-person meetings with suppliers, such as virtual seminars.
2. Ensure that **appropriate safeguards** are in place for when in-person meetings with several suppliers are unavoidable; these might include detailed meeting notes, and the presence of anti-corruption and compliance staff.
3. As the Ukrainian procurement system's notable transparency can facilitate the formation and functioning of collusive practices among bidders, **do not be more transparent** about competitors, bids, technical and qualitative characteristics or other competitively relevant information **than necessary**. Educate procurement staff to avoid any unnecessary disclosure of sensitive information.
4. Be cautious when contracting **industry consultants** and ensure that they are independent and free of any conflicts of interest. Ensure they sign strict **confidentiality agreements**.

## IMPROVE DETECTION AND REPORTING

Collusion of bidders in public procurement procedures is a common phenomenon in all jurisdictions and one of AMCU's enforcement priorities. Ukrenergo has only recently started to report to AMCU suspicions and incidents of bidder collusion. Currently, efforts to prevent bidder collusion are limited to more and improved market research that aims to increase bidder numbers, and establishing reference prices that should ensure a quasi-competitive outcome in every tender process.

To implement recommended practices to prevent bid rigging and increase competition, Ukrenergo staff at every stage of procurement must be supported to develop an understanding of the risks, mechanisms and signs of bidder collusion, and of the required actions to take. Suppliers can be also targeted so they are informed about competition-related requirements in tenders, and the risks they run by entering into collusive agreements. Ukrenergo's management needs to introduce reporting mechanisms and incentives to ensure that due weight is given to the topic.

### Key recommendations to Ukrenergo

1. Ukrenergo should intensify its efforts **actively to detect bidder collusion** in its tenders. Data from ongoing and past tenders must be reviewed for suspicious signs, and a systematic analysis of priority procurements should be undertaken. ProZorro offers good options for **data screening**. An internal Ukrenergo database should be set up to facilitate screening for collusion indicators.
2. Suspicions must be transmitted to AMCU, and **closer co-operation with AMCU** should be established.
3. Ukrenergo should critically assess the **reporting channels** it offers to suppliers and staff and ensure they are widely known, accessible and trustworthy.
4. Ukrenergo should give staff **regular training in cartel and bid-rigging detection and prevention** with the assistance of competition authorities or external legal consultants, including clear information about reporting mechanisms and action to take when collusion is suspected.
5. **Suppliers should be informed** on a regular basis about the economic and reputational risks related to entering into collusive agreements in Ukrenergo tenders, and asked to sign statements that they have bid independently. Supplier training and tender documentation should include competition-related information.
6. Ukrenergo should proactively seek opportunities to **obtain compensation for damages** whenever it has suffered harm as a result of collusive conduct that has been condemned by AMCU. To this end, **support of AMCU investigations** is vital.

## RECOMMENDATIONS TO THE GOVERNMENT

Legal restrictions prevent Ukrenergo from more effectively preventing bidder collusion or increasing the number of bidders in its tenders. Ukrainian procurement law focuses on a high degree of transparency throughout the procurement process and dictates a focus on price when awarding tenders. The reasons are straightforward: transparency and simple, one-dimensional award criteria limit the discretion of procurement officials, allow for easy monitoring of their actions and increase accountability. This decreases the risks of corruption. At the same time, however, these criteria can favour collusion in public tenders. Due attention should be paid to both collusion and corruption concerns when designing procurement laws. To do so, would require changes to the current legal framework, which does not yet include competition considerations.

The current budgetary approval process limits Ukrenergo's capacity to ensure an efficient and reliable procurement process and may deter relevant bidders from submitting bids in Ukrenergo tenders.

### Key recommendations

1. **Reduce the detail of public information** in the annual plan. Limit public information to aggregated numbers.
2. **Maximum reference prices should not be published.** These prices have value for the purposes of internal planning and performance measurement, but their publication is likely to decrease competition in tenders.
3. **Reduce information available to bidders during an electronic auction.** A bidder can participate successfully in an electronic auction without having information on anything but the lowest price after each round.
4. **Publish the winning bidder's name and winning price but otherwise** reduce the amount of information made public. Detailed information about the number and prices of competing bids should not be published.
5. Use more **non-price award criteria.** Once established, award criteria and their respective weights need to be clearly defined at the beginning of the process and it should not be possible to change them during the tender.
6. When bidders are excluded from tenders because of violations of the procurement law, this can reduce the number of competitors capable to bid. More flexible provisions could allow authorities greater discretion to **readmit bidders.** Any readmission could require AMCU approval to ensure that a neutral and competent authority oversees the process.
7. To become a trusted and reliable purchaser, attractive to bidders, the **capacities of the ownership entity** of Ukrenergo **should be strengthened.** The responsibilities for the approval of key documents, such as the company's strategy, financial plan, business plan, and investment plan should be moved to Ukrenergo's **Supervisory Board.**

### From advice to action: OECD in-country work on fighting bid rigging

The OECD reviews national and sector-specific public procurement regimes, to guide and support countries in combatting collusive practices. As part of these reviews or independently, the OECD develops wide-ranging capacity building programmes on fighting bid rigging in procurement, including workshops and training manuals, for public procurement, budget and internal control officials.

Brazil (2021), Argentina (2019), Mexico (2011, 2012, 2016, 2017, 2018), Colombia (2014) have already undergone similar reviews, and a review is currently underway in Peru.

Access all reviews at [www.oecd.org/competition/bidrigging](http://www.oecd.org/competition/bidrigging)

