



CABINET OF MINISTERS OF UKRAINE

RESOLUTION

of 22 April 2020 No. 292

Kyiv

On setting the amount of a filing fee and approving the Procedure for payment of a fee for filing a complaint to the Complaint Review Authority via an electronic procurement system and return thereof to the complainant

In accordance with Article 18(7) of the Law of Ukraine “On Public Procurement”, the Cabinet of Ministers of Ukraine hereby **resolves that:**

1. The filing fee to be paid for filing a complaint to the Complaint Review Authority shall be set in the following amounts:

1) 0.3 per cent of expected cost of a procured item or a part thereof (lot) if challenged, but not less than UAH 2 thousand and no more than UAH 85 thousand — in the case if the following is challenged:

tender documents;

technical, quantitative and qualitative characteristics of a procured item and/or qualification criteria for the bidders, as established in accordance with the requirements of the Law of Ukraine “On Specific Features of Procurement for Goods, Works and Services to Ensure Meeting Defence Needs”;

decisions taken by the procuring entity, the latter’s actions or inactivity taking place:

before expiry of the tendering period;

before expiry of the quotation period as established in accordance with the requirements of the Law of Ukraine “On Specific Features of Procurement for Goods, Works and Services to Ensure Meeting Defence Needs”;

2) UAH 2 thousand — in the case of appeal against tender documents containing conditions of a tender in accordance with the Law of Ukraine “On Enabling New Investment Opportunities, Ensuring Rights and Lawful Interests of Economic Entities with the View to Full-Scale Energy Modernisation”;

3) UAH 2 thousand — in the case of appeal against decision, actions or inactivity of a procuring entity taking place during an e-auction within the electronic procurement system, in accordance with the Law of Ukraine “On Enabling New Investment Opportunities, Ensuring Rights and Lawful Interests of Economic Entities with the View to Full-Scale Energy Modernisation”;

4) 0.6 per cent of expected cost of a procured item or a part thereof (lot) if challenged, or of the value of an energy service agreement as indicated by the complainant in a tender in accordance with the Law of Ukraine “On Enabling New Investment Opportunities, Ensuring Rights and Lawful Interests of Economic Entities with the View to Full-Scale Energy Modernisation”, but not less than UAH 3 thousand and no more than UAH 170 thousand — in the case of appealing against decisions adopted by the procuring entity, its actions or inactivity, which took place:

after tender evaluation;

after consideration of the tenders in accordance with Article 29 of the Law of Ukraine “On Public Procurement”;

after examination of the tenders submitted for the first stage of the competitive dialogue, for their compliance with the requirements established in the tender documents in respect of the first stage;

after checking the documents submitted by a tenderer for the qualitative selection at the first stage of the selective tendering, for compliance with the requirements as established in the tender documents in respect of the first stage, and assessment of the tenderers’ qualifications at the first stage of the selective tendering;

after publication of a notice of intent to award the procurement contract in an electronic procurement system.

The amount of payment shall be calculated automatically by an electronic procurement system and approximated to next 10 hryvnias.

2. The Procedure for payment of a fee for filing a complaint to the Complaint Review Authority via an electronic procurement system and return thereof as attached hereto shall be approved.

3. It shall be established that during public procurement of goods, works and services launched prior to enactment of the Law of Ukraine of 19 September 2019 No. 114—IX “On Amending the Law of Ukraine “On Public Procurement” and Some Other Legislative Acts of Ukraine as regards Improvement of Public Procurement”, the amount of a filing fee to be paid by the complainant to the Complaint Review Authority shall be established in accordance with the Resolution of the Cabinet of Ministers of Ukraine of 23 March 2016 No. 291 “On setting the amount of a filing fee” (Official Journal of Ukraine, 2016, No. 30, p. 1188).

4. The State-owned Enterprise PROZORRO (electronic procurement system administrator) under the administration of the Ministry for Development of Economy, Trade and Agriculture of Ukraine shall be designated a responsible executive ensuring receipt of payment of a fee for filing a complaint to the Complaint Review Authority via an electronic procurement system and return thereof to the complainant or for transfer thereof to the state budget.

5. The Resolution of the Cabinet of Ministers of Ukraine of 23 March 2016 No. 291 “On setting the amount of a filing fee” (Official Journal of Ukraine, 2016, No. 30, p. 1188) shall be repealed.

6. This Resolution shall enter into force as on the day of enactment of the Law of Ukraine of 19 September 2019 No. 114—IX “On Amending the Law of Ukraine “On Public Procurement” and Some Other Legislative Acts of Ukraine as regards Improvement of Public Procurement”, but not earlier than on the date of publishing hereof, except for paragraph 5 hereof, which shall enter into force as from 1 January 2021.

Prime Minister of Ukraine

D. SHMYHAL

APPROVED
by the Resolution of the Cabinet of Ministers of
Ukraine
of 22 April 2020 No. 292

PROCEDURE

for payment of fee for filing a complaint to the Complaint Review Authority via an
electronic procurement system and return thereof

1. This Procedure shall establish the conditions of payment of a fee for filing a complaint to the Complaint Review Authority (hereinafter — “the filing fee”) via an electronic procurement system, and transfer thereof to the state budget.

2. The terms used in this Procedure shall have the following meanings:

complaint identifier — a unique number formed automatically within the electronic procurement system during creation of a complaint, and indicated in the field ‘payment details’ of a payment document template;

administrator’s individual account — a current account opened by an administrator of the electronic procurement system (hereinafter — “the administrator”) at the bank in whose registered capital the State holds a 75% share, with the view to keeping funds received from the complainant as a filing fee, their transfer to the state budget or return to the complainant in the cases as provided for the Law of Ukraine “On Public Procurement” (hereinafter — “the Law”) and herein.

payment document — an electronic document formed by a complainant with the view to making payment for filing of a complain by means of a payment instrument or a payment order;

payment document template — a form of a payment document in which an electronic procurement system fills in the details automatically, and specifically, those are the following fields: payer’s name and code, amount of payment, name of a recipient’s bank, recipient’s account, payment details.

Other terms shall be used in the meanings as set out in the Law and in the Laws of Ukraine “On Electronic Documents and Electronic Document Flow”, “On Electronic Trust Services”, “On Banks and Banking”, “On Payment Systems and Money Transfers in Ukraine”, and in the Resolution of the Cabinet of Ministers of Ukraine of 24 February 2016 No. 166 “On approval On approval of the Procedure for operations of electronic procurement system and authorisation of electronic platforms” (Official Journal of Ukraine, 2016, No. 22, p. 855).

3. The administrator shall ensure opening of an individual account at the bank in whose registered capital the State holds a 75% share, and more, with the view to receipt of a filing fee paid via an electronic procurement system.

The administrator shall post information containing details of an account for receipt of a complaint via an electronic procurement system or information about a

change of such details on the website of the Authorised Body — within one working day from making such changes.

4. Filing fee shall be kept at an administrator's individual account until the date of transfer by the latter of the funds in the cases as provided for in paragraphs 13 and 14 hereof.

5. Filing fee shall be paid by the complainant via an electronic procurement system in one of the following ways:

- 1) by means of an electronic payment instrument;
- 2) by wire transfer of funds from the complainant's bank account.

6. A complainant shall, on the mandatory basis, indicate the details of an account to which funds are to be returned in the cases as laid down in the Law and herein.

7. When drawing up a payment document, the complainant shall fill in all the details contained in the payment document template.

8. Where details indicated by the complainant in the payment document do not conform with the payment document template, such payment shall not be credited.

9. The complaint shall be deemed paid off as soon as the funds have been credited to the administrator's individual account.

10. To be able to have the complaint put on the register and drawing up a registration card when filing a complaint to the Complaint Review Authority via an electronic procurement system, and payment made for the complaint, the complainant must take into account the time limits of interbank transfers as established by legislation.

11. Where a filing fee is credited to an administrator's individual account after expiry of the period for appeal as established by the Law and the Law of Ukraine "On Specific Features of Procurement for Goods, Works and Services to Ensure Meeting Defence Needs", the administrator shall, within two working days from crediting of the funds to an administrator's individual account, return the filing fee received to the complainant's account. In this case, the complaint shall not be put on the register of complaints, and a relevant registration card shall not be generated within the electronic procurement system.

12. The administrator shall transfer filing fee to the state budget within two working days from the date of publishing in the electronic procurement system of a decision of the Complaint Review Authority on:

- 1) dismissal of a complaint;
- 2) leaving a complaint without consideration where:

a complainant submitted a complaint with regard to the same violation within the same procurement procedure and on the same grounds which had already been

reviewed by the Complaint Review Authority and in whose respect the Complaint Review Authority had already adopted a respective decision;

a complaint does not conform with the requirements of paragraphs 2—5 and 9 of Article 18 of the Law;

the procuring entity had made a decision to cancel the procurement procedure or recognise it null and void, to cancel the negotiated procurement procedure before filing of a complaint, unless either of these decisions has been challenged;

3) dismissing the case where a complainant submitted a complaint with regard to the same violation within the same procurement procedure and on the same grounds which had already been reviewed by the Complaint Review Authority and in whose respect the Complaint Review Authority had already adopted a respective decision, or where a complaint does not conform with the requirements of paragraphs 2—5 and 9 of Article 18 of the Law and the above circumstances were established by the Complaint Review Authority after the complaint was admitted.

13. The administrator shall return filing fee to the complainant within two working days from the date of publishing in the electronic procurement system of a decision of the Complaint Review Authority on:

1) granting a complaint or granting it in part;

2) leaving a complaint without consideration where a procuring entity has, in accordance with the Law, removed the violations complained of;

3) dismissing the case where a procuring entity has, in accordance with the Law, removed the violations complained of;

14. Funds transferred to an administrator's individual account without details of the payer and/or payment indicated, which cannot be returned to a complainant because of lack of those details and/or a complaint identifier, shall be transferred to the state budget after expiry of three-year period of keeping thereof at the administrator's individual account under the procedure as established by legislation.

Where and when specified in the first indent of this paragraph, the complainant may file a written application to an administrator for return of the funds the former paid, with the documents in confirmation of payment of such funds to an administrator's individual account attached thereto on the mandatory basis. The administrator shall verify information contained in such request. Where information is confirmed, the funds shall be transferred to the complainant's account within ten working days from the date of registration of the complainant's application by the administrator.
