



## Judicial Examinations in the Investigation of Crimes in the Field of Public Procurements

Vadym VYNOHRADOV <sup>1</sup>

**Abstract:** *The main form of use of special knowledge in the investigation of crimes in the field of public procurements is judicial examination, which is intended to establish the circumstances relevant to criminal proceedings, when this requires special knowledge. In order to obtain evidence of a crime in the field of public procurements, there is often a need for forensic examinations: accounting, commodity, document examination, computer and technical examination, etc. During the pre-trial investigation of crimes in the field of public procurements, it may be necessary to examine the documents of enterprises - from statutory to documents on current activities. The expert is obliged to personally conduct a full study and give a reasoned and objective written opinion on the questions asked. The list of questions depends on the objects of technical examination of documents. Thus, the objects of examination in the investigation of crimes in the field of public procurements can be paper documents, technical means of making documents and document materials. The diagnostic and identification tasks and the list of questions to be solved depend on the objects of examination. Of course, the peculiarities of each type of examination are due to the specificity of the objects of study, reflecting the circumstances of the crime. Most often, the evidence found by experts becomes the main in the pre-trial investigation of crimes in the field of public procurements.*

**Keywords:** *public procurements; investigation of crimes; judicial examination; crimes in public procurements*

**JEL classification:** K4

### 1. Introduction

Revealing the truth in the investigation of public procurement crimes often requires the involvement of specialized knowledge in the form of expertise. In accordance with Part 1 of Art. 69 of the CPC of Ukraine, an expert in criminal proceedings is a person who has scientific, technical or other special knowledge, has the right in accordance with the Law of Ukraine "On Forensic Science" to conduct an examination and who is instructed to study

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<sup>1</sup> Post-graduate student, National University "Odessa Law Academy", Ukraine. E-mail: [vadimvinogradov@gmail.com](mailto:vadimvinogradov@gmail.com). This article was presented at the International Conference "Exploration, Education and Progress in the Third Millennium", that took place in Galati, Romania, on the 13<sup>th</sup> May 2021.

objects, phenomena and processes containing information on the circumstances of the commission of a criminal offense, and to give an opinion on issues that arise during the criminal proceedings and relate to the scope of its knowledge. In Part 5 of Art. 69 of the CPC of Ukraine stipulates that the expert is obliged to personally conduct a full study and give a reasoned and objective written opinion on the questions asked.

In the field of public procurement, it is impossible to single out one object of criminal encroachment, as well as one specific type of crime. This area differs primarily in that criminal offenses committed within its boundaries are subject to qualification under various articles of the Criminal Code of Ukraine. These are usually interrelated crimes that are combined by purpose and perpetrators that may commit a particular crime at a particular stage.

Volobuev AF distinguishes such crimes as a complex, where the main and subordinate (secondary, auxiliary) crimes are distinguished<sup>1</sup>. A.M. Medentsev proposes to consider fraud as the main crimes in the field of public procurement (Article 190 of the Criminal Code of Ukraine); misappropriation, misappropriation of property or taking possession of it by abuse of office (Article 191 of the Criminal Code of Ukraine); acceptance of an offer, promise or receipt of illegal benefit by an official (Article 368 of the Criminal Code of Ukraine)<sup>2</sup>. Subordinate (auxiliary) crimes, depending on certain circumstances, may be legalization (laundering) of property obtained by criminal means (Article 209 of the Criminal Code of Ukraine), forgery of documents, seals, stamps and forms, their sale, use of forged documents (Article 358 of the Criminal Code of Ukraine), abuse of power or official position (Article 364 of the Criminal Code of Ukraine), forgery (Article 366 of the Criminal Code of Ukraine), unauthorized interference in the work of electronic computers, automated systems, computer networks or power networks (Article 361 of the Criminal Code of Ukraine) and other criminal acts.

As mentioned above, the main form of use of special knowledge in the investigation of crimes in the field of public procurement is forensic examination, which is intended to establish the circumstances relevant to criminal proceedings, when this requires special knowledge.

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<sup>1</sup> Волобуєв А. Ф. Економічні злочини: поняття та проблеми розробки методик розслідування. Актуальні проблеми держави і права. 2003. Вип. 20. С. 35-39.

<sup>2</sup> Меденцев А. М. Експертизи при розслідування злочинів у сфері державних закупівель. Науковий вісник Міжнародного гуманітарного університету. Сер.: Юриспруденція. 2015. Вип. 13, т. 2. С. 109-111.

In order to obtain evidence of a crime in the field of public procurement, there is often a need for forensic examinations: accounting, commodity, document examination, computer and technical examination, etc.

## **2. Accounting Examination**

If the services of individual business entities were used during the commission of the crime, there is a need to study the cash flow, material values of such enterprises. The usual way is a documentary audit, but it can detect only signs of a crime, and the establishment of facts - the scope of forensic accounting. Practice shows that one of the ways to mask the traces of crimes in the field of public procurement is to distort and distort the reflection of accounting and reporting, to identify which is used forensic accounting. The subject of this examination is information about financial transactions and performance of the entity, as well as factual data that characterize the turnover of funds<sup>1</sup>.

Therefore, among the main tasks of forensic accounting are the following: detection of facts (signs) of distortion of accounting data specific to accounting techniques and diagnosis of identified distortions, the degree of their impact on economic performance; establishing the identity or differences accounting; establishing compliance of analytical and synthetic accounting data with the data of primary documents, accounting; establishing compliance of the reflection of the performed financial and economic operations with the rules of accounting.

## **3. Financial and Economic Expertise**

In cases of crimes in the field of public procurement, this examination should be conducted, in particular, in case of detection of signs of use by criminals of fictitious enterprises participating in the tender.

Typical tasks of financial and economic examination are to establish: the statutory and actual purpose and subject of activity of the enterprise-bidder; availability and sources of formation of financial resources of the enterprise; real economic activity of the enterprise; the company has sufficient staff to carry out the declared economic activity; compliance with the rules of accrual and deadlines for payment of taxes and other mandatory payments; compliance with the rules of financing and lending established by current

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<sup>1</sup> Гончаренко В. Г. Експертизи в судовій практиці / В. Г. Гончаренко, В. С. Бергер, Л. П. Булига та ін. Київ : Юрінком Інтер, 2004. 388 с.

legislation (including currency legislation); the ability of the enterprise to meet its obligations under the agreements).

#### **4. Commodity Expertise**

In cases where the crime was committed during the public procurement of goods, there is a need for an examination of inventory. First of all, signs of previous use or operation, properties of the object, compliance with standards and technical conditions must be identified, i.e. identification, diagnostic, classification and situational tasks are set before the commodity examination.

The main tasks of commodity examination are identification, diagnostic, classification and situational, namely: determination of belonging of goods (commodity products) to the classification categories, which are accepted in the production and trade sphere (type, grade, article, brand, model, size, completeness, etc.); determination of qualitative changes in marketable products; determining the causes of high-quality manufactured goods (have a production nature, arose during transportation, storage, during operation); establishing the method of production of marketable products: industrial or home-made, the manufacturer, the country of origin; determination of the value of marketable products, in particular taking into account the partial loss of its marketable qualities due to wear and tear and damage from external factors; determining the compliance of packaging and transportation, conditions and terms of storage of marketable products to the requirements of current regulations<sup>1</sup>.

#### **5. Examination of Documents**

During the pre-trial investigation of crimes in the field of public procurement, it may be necessary to examine the documents of enterprises - from statutory to documents on current activities. The list of questions depends on the objects of technical examination of documents. Thus, the objects of examination in the investigation of crimes in the field of public procurement can be paper documents, technical means of making documents and document materials. The diagnostic and identification tasks and the list of questions to be solved depend on the objects of examination.

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<sup>1</sup> Донцова О. С. Проблемні питання методичного забезпечення су-дово-товарознавчих експертиз / О. С. Донцова, А. С. Посохов, О. О. Михальський // Теорія та практика судової експертизи і кри-міналістики. - 2011. - Вип. 11. - С. 645-653

The question to the expert in the technical examination of documents in the investigation of crimes in the field of public procurements is formed by the participant in the criminal proceedings, who appoints / initiates the examination within and in accordance with the CPC of Ukraine.

In criminal proceedings it can be a need to study the documents (founding documents, guarantee letters, pledge, deposit, etc.): to establish the fact of making a document using a computer technique or obtaining a copy with the help of copying and duplicating equipment; in solving diagnostic and, in some cases, identification problems on documents made with the help of tube, laser printers and copying and duplicating equipment; printers on the documents made with their help.

The expert in the technical examination of documents during the investigation of crimes in the field of public procurement may be asked the following general questions:

1. How is the document made? Are one or more methods used?
2. What traces are available on the document? The nature of their origin and content?
3. Have changes been made to the document? If so, which way? What changes were made from the beginning and what after?
4. Is the signature made by facsimile?
5. Are there indented texts on the document? If so, what is their content and at what point was it applied to the document?
6. On which device is the document made? On one or on several? What are the characteristics of this device? Is this device provided for examination?
7. What tools are used to make a document? What are the characteristics of these tools? Are these the tools that are provided for examination?
8. Is the document intact or is it part of another document?
9. What is the content of the document?
10. Are there details, stamps, seals, etc. in the document? How were they applied and in what sequence were they applied? Are the prints and stamps provided? What is this kind of cliché, its characteristics?
11. What are the characteristics of the paper from which the document is made?
12. What are the characteristics of the ink (toner, ink, etc.) with which the text / print is made?

The above issues are of dominant importance in almost all types of technical examinations of documents and serve for general acquaintance with the possibilities of these types of examinations. In practice, the list of issues varies significantly depending on the type of technical expertise, available

facilities for research and tasks. In the context of the investigation of crimes in the field of public procurement, it should be recognized that the bulk of the examinations required to establish the circumstances of a criminally relevant event (i.e. the mechanism of the crime) are accounting and financial. Within the framework of which the most frequent questions for clarification relate to the content of documents contained in the founding, accounting, financial, auditing, auditing or other documents of enterprises, institutions and organizations seized during inspections by regulatory authorities.

Thus, the list of questions of the expert in the technical examination of documents in the investigation of crimes in the field of public procurement is determined by the object of examination, the identification and diagnostic tasks and the mechanism of the crime.

## **6. Computer and Technical Expertise**

In the context of the fact that the Law of Ukraine "On Public Procurement" provides for the use of electronic procurement system and electronic trading platforms, there is a problem of establishing the likelihood of interference in computer equipment and/or software during a crime in public procurement. Of course, electronic documents go through several stages of verification, but very often there is a need to establish the circumstances associated with the use of computer hardware, information and software, to identify information and software contained on computer media, to establish facts and methods of transmission (receipt) of information in telecommunication systems, establishment of facts and methods of access to systems, resources and information in the field of telecommunications, etc. Therefore, given the growing prevalence of information technology, the issue of computer forensics in public procurement crimes should not be ruled out.

The tasks to be solved within the framework of computer-technical examination are: establishing the type (type, brand), properties of the hardware, as well as its technical and functional characteristics; establishment of the actual condition and serviceability of the hardware; detection and research of functional properties, as well as software settings, time of its installation; identification of the required information, setting its properties and type of display in the computer system; recovery of deleted and encrypted information on various types of media; detection of signs of malware activity; detection of traces of activity on the Internet, the content of e-mail, the history of messaging in communication programs and more.

Objects of computer technical examination are both hardware (computer system units and their components, servers, laptops, hard drives, flash

drives, modems, routers, etc.) and software products (computer programs, databases, etc.).

## **7. Conclusions**

Of course, the peculiarities of each type of examination are due to the specificity of the objects of study, reflecting the circumstances of the crime. Most often, the evidence found by experts becomes the main in the pre-trial investigation of crimes in the field of public procurement.

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