



**NATIONAL AUDIT OFFICE
OF THE REPUBLIC OF LITHUANIA**

PUBLIC AUDIT REPORT
SIMPLIFIED PROCUREMENT PROCEDURES

27 December 2012, No. VA-P-20-8-20
Vilnius

Audit started 7 November 2011
Audit completed 27 December 2012

Full audit report in Lithuanian is available on the website
of the National Audit Office: www.vkontrole.lt

The main objective of public procurement is to award, pursuant to the requirements of the Law on Public Procurement, a procurement contract enabling to procure goods, services or works necessary for the contracting authority or third persons rationally using the resources allocated for this purpose.

Today there is no public procurement system developed in Lithuania the purpose of which would be the result and not the public procurement process as such. Both contracting authorities and institutions which monitor procurements are very much focused on procurement procedures and legal compliance, which most often results in insufficient attention to the objective of public procurement and so funds are not used in the most rational way thus preventing economic benefit.

Simplified procurement procedures account for a significant share of public procurement. In 2011, 10 435 procurements were conducted under the simplified procedure, which is 80 per cent of all procurements, for LTL 4 278.4 million, which makes 33 per cent of the total procurement value.

The audit objective was to assess whether the simplified procurement procedure allows for efficient procurement, answering the following questions:

- How does constant amendment of the Law on Public Procurement complicate public procurement under the simplified procedure?
- Do contracting authorities achieve the intended procurement objective by conducting simplified public procurement procedures?
- Does the existing public procurement control system ensure efficiency of procurement?

Audit conclusions were formulated upon analysis of the problems encountered by contracting authorities when carrying out public procurements under the simplified procedure during the period from 2009 to first quarter 2012.

The audit conclusions and recommendations below are provided taking into consideration the audit findings:

Audit conclusions

1. The Law on Public Procurement is complicated and difficult to understand for the staff of contracting authorities responsible for public procurement, and its continuous amendment (from its entry into force on 1 January 1997 until 1 July 2012 the Law was amended 37 times), prevents establishing a consistent public procurement practice. This complicates simplified procurement procedures, increases the risk of irregularities, and does not facilitate achieving the desired results, namely, to ensure rational use of funds, to increase transparency and efficiency of procurement and competition between tenderers:

1.1. Seeking to avoid violating the Law on Public Procurement, contracting authorities mainly focus on procurement procedures, which undermines the procurement result.

1.2. Contracting authorities incur higher procurement costs because:

1.2.1. employees involved in procurement constantly improve their competence by participating in training courses and seminars, most of which are paid;

1.2.2. they buy additional experts' services because of a lack of specialists with adequate competences;

1.2.3. the number of public procurement procedures is increasing and the public procurement process is getting longer thus resulting in more technical work, which, in its turn, requires additional human resources and time costs.

1.3. The Public Procurement Requirements, which entered into force on 1 January 2012, to provide prompt information about the initiation of any procurement (except for low value procurement), the successful tenderer, the intended award of the contract, and the contract awarded on the website of the contracting authority and in the information supplement of the official gazette

Valstybės žinios, Informaciniai pranešimai, as well as to publish draft technical specifications of the procurement prior to the start of the public procurement not only increased the administrative and financial burden of contracting authorities but also stretched the duration of procurement procedures.

1.4. Pursuant to the current Law on Public Procurement, Supplier's Declaration (of Bona Fides) is included among contract documents which may not be revised. As a result of such regulation, should the supplier provide inaccurate or invalid version of the Supplier's Declaration (of Bona Fides), the contracting authority shall reject the supplier's tender, even if it meets all other requirements of the conditions of the tender procedure and offers a competitive price of the object being procured.

2. Having opted for the lowest price criterion, contracting authorities not always receive a high quality result; however, they choose this criteria both because of its simplicity and in order to prevent violations of public procurement procedures.

3. The "economic benefit" criterion is applied by contracting authorities only in 4 per cent of all procurement cases. They find it difficult to establish defined and non-subjective criteria and lack practical examples of how to set and evaluate such criteria.

4. Public procurements of electricity supply either fail or have only one tenderer taking part therein because no favourable conditions have been provided for competition between tenderers, and there is no possibility to buy electricity through the Central Purchasing Organization.

5. The public procurement control system does not ensure efficiency of the procurement procedure:

5.1. The internal control of public procurement of contracting authorities is insufficiently effective because it covers only certain procedures instead of the entire procurement process. To be able to establish an effective internal control system for the procurement process (from the formation of the need to the execution of the contract and assessment of its results), the majority of contracting authorities require additional financial and human resources.

5.2. Contracting authorities have to get a permission of the Public Procurement Office in order to modify contractual terms and conditions both on changes which occurred and had not been assessed in the contracts and on improperly formulated contractual terms and conditions. Contracting authorities do not have sufficient skills and lack practical examples of how contractual terms and conditions should be formulated to prevent time costs and financial losses in future due to modifications.

5.3. When making decisions on the irregularities identified and refusals to modify contractual terms and provisions, the Public Procurement Office evaluates adherence to the key

procurement principles, however, it does not always assess consequences of its decisions on the ultimate procurement result.

5.4. Contracting authorities are not always satisfied with the quality of consultations of the Public Procurement Office and time of the provision of its written responses; also, there are cases when different oral and written replies are received to the same question.

5.5. There are cases when different interpretations of the same issue are given by the Public Procurement Office and by institutions implementing the European Union financial assistance, so agreement of the conditions of contract documents with these institutions causes additional time costs for contracting authorities.

6. The irregularities identified by the Public Procurement Office and courts when assessing public procurements are mainly violations of the key principles of public procurement; however, the concepts of these principles have not been defined either in the Law on Public Procurement or in the legislation implementing this Law.

Changes which took place during the audit

1. Law No. XI-2177 amending and supplementing the Law on Public Procurement was adopted on 29 June 2012, liberalising the procedure of low value procurements.

2. Draft Law No. XIP-4932 19 October 2019 on amending and supplementing Articles 6, 7, 9, 12, 18, 22, 24, 28, 33, 39, 85, 86, 87, 94¹ of the Law on Public Procurement was prepared and submitted to the Seimas for consideration, providing for the following:

2.1. Part 1 of Article 7 of the Law shall be amended as follows: “The contracting authority shall publish a prior information notice of draft technical specifications of large scale procurements of high importance”, i.e. the mandatory provision on publishing a notice on draft technical specifications of procurements, except of low value ones, was deleted;

2.2. Part 3 of Article 7 of the Law shall be declared null and void, i.e. the mandatory provision to provide a prior information notice, a notice of the successful tenderer, a notice of the intention to award the contract, and a contract award notice to the Seimas publishing house *Valstybės žinios* was deleted;

2.3. the Law shall be supplemented with part 10 of Article 28: “In case the supplier failed to provide an accurate and complete Supplier’s Declaration specified in paragraph 5 of Part 2 of Article 24 herein, the supplier’s authorisation to a person to sign the request or the tender, or did not provide these, the contracting authority shall request that the supplier clarifies, supplements or provides the said documents within the time limit specified by the contracting authority.”

Recommendations for the improvement of the simplified public procurement procedure

The recommendations have been produced taking into account the following:

1. Plans to amend regulation of EU public procurement. In December 2011 the European Commission presented a Proposal¹ for a Directive of the European Parliament and of the Council on public procurement (hereinafter referred to as the Public Procurement Directive), which aims at revising and modernising the existing public procurement regulation. As part of the modernisation (simplification) of public procurement, it is proposed to reduce the deadlines for the submission of tenders, to provide a possibility for contracting authorities to independently choose the sequence of public procurement, i.e. whether first to verify tenderers' qualification or to assess their tenders. It is proposed to make it possible in some cases to amend the conditions of the signed procurement contract. It is proposed that the Public Procurement Directive should obligate Member States to establish two separate institutions – an oversight body and a knowledge centre. The oversight body would be responsible for the implementation of the public procurement policy and monitoring and control of procurement. Knowledge centres would offer legal and economic advice, methodological guidance, training and assistance in preparing public procurement procedures. It should be noted that draft directives on public procurement may be amended upon assessment of the opinions and comments provided by Member States on the relevance of certain provisions.

2. A commentary on Chapters I-III of the Law on Public Procurement was prepared, focusing on the interpretation of public procurement principles and their application in practice.

To the Ministry of Economy of the Republic of Lithuania:

1. With a view to developing public procurement policy and ensuring adherence to the principles of relevance of legal regulation, proportionality and clarity:

to continue monitoring the Law on Public Procurement and legislation implementing this Law, identifying the problems related to the application of this legislation. Taking into account the monitoring results, to reduce the administrative burden of contracting authorities.

To the Public Procurement Office:

2. In order to expand and enhance training activities, to organize more trainings in regions, providing practical examples of the following:

2.1. how to set and evaluate criteria of assessment of the most economically advantageous tender;

2.2. how to prepare conditions of purchase-sales contracts.

¹Proposal for a Directive of the European Parliament and of the Council on public procurement 18966/11. The proposal has been submitted to the EU Council and to the European Parliament.

3. As part of preventive public procurement control, to provide explanations of systematic and repeated irregularities.

4. With a view to enhancing consultation activities and avoiding different interpretations of the Law on Public Procurement, to set up a call centre, providing for a possibility to record consultations over the phone.

5. To cooperate with institutions implementing EU financial assistance aiming at uniform application of the provisions of the Law on Public Procurement: to provide training and advisory assistance, methodological guidance in the preparation of standard documentation related to public procurement, and findings of the checks of public procurements.

6. When taking decisions on irregularities identified and refusals to amend contractual provisions, to take into account and to evaluate consequences of the decisions that affect the ultimate objective of procurement, namely, the rational use of resources.