



Executive summary of the audit report

THE FUNCTIONING OF THE PUBLIC PROCUREMENT SYSTEM

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SUMMARY

The Importance of the Audit

In 2014-2015, the value of public procurement was 9.4 billion Eur, and 4.6 billion Eur in 2016. In 2016, procurement was conducted by approximately 4,000 contracting authorities. Public procurement is an important means which helps to address issues related to public policy, such as the reduction of social exclusion, the creation of jobs, the improvement of environmental sustainability, and others. It's the foundation of the common market and the principal means¹ of investment. Funds allocated to public procurement amounts to 12 percent of the gross domestic product (GDP).

The effective performance of public procurement not only ensures the rational use of funds and promotes economic growth, but also contributes to other political ends, such as the reduction of social exclusion and the promotion of environmental sustainability and innovation, thereby making a contribution to the improvement of environmental sustainability. The European Commission and other international organisations (such as the OECD and SIGMA) allocate a significant amount of attention to this area by issuing recommendations regarding public procurement, analysing and generalising about the experiences of different countries, developing good practices, and clarifying the requirements of the directives of the European Commission.

In terms of the value and number of participants of public procurement, as well as the environment it takes place in, the public procurement system is a complex mechanism, the improvement of which requires that each member of the system clearly understands his/her duties and responsibilities as well as discharges his/her functions in a proper and timely manner.

The public procurement system consists of the following subjects: public procurement policy-makers, authorities responsible for the implementation of policy, subjects tasked with conducting procurement, suppliers, as well as supervisory, control and law-enforcement authorities. In cases of legal disputes, the system is complemented by courts which explain the provisions of the Law on Public Procurement and contribute to the development of the public procurement policy.

In 2016, the Public Procurement Office assessed 244 public procurement procedures (which amounts to 2.7 percent of all completed international and simplified procurement). 83 percent of violations² have been identified on the basis of the aforesaid assessments. In conducting public procurement, contracting authorities often violate the legislation which regulates it, thereby necessitating the assessment of not only the legality of individual procedures of public procurement, i.e., their compliance with legal requirements, but also the functioning of the system itself, the analysis of factors which contribute to the violations, and the proposal of methods for addressing them. Pursuant to the above, a decision was made to assess the functioning of the public procurement system.

¹ Commission Recommendation (EU) 2017/1805 of 3 October 2017 on the professionalisation of public procurement — Building an architecture for the professionalisation of public procurement, C(2017) 6654 final.

² Available on the Internet at: http://vpt.lrv.lt/uploads/vpt/documents/files/VPT_2016_veiklos_ataskaita.pdf.

The Goals and Scope of the Audit

The goal of the audit was to assess whether the public procurement system is functioning effectively.

The key questions of the audit were as follows:

- is the proper development of the public procurement policy and the functioning of the public procurement system appropriately ensured;
- are the measures which promote the effectiveness of public procurement used to their full capacity;
- does the national public procurement policy succeed in providing the conditions necessary for the effective functioning of the public procurement system;
- do contracting authorities have the requisite competency for properly conducting public procurement.

Audited entities:

- the Ministry of Economy responsible for the development of the public procurement policy and the organisation, coordination and control of its implementation;
- the Public Procurement Office responsible for the implementation of the public procurement policy and the monitoring of the compliance with related legislation;
- the SE CCA responsible for discharging the functions of a contracting authority.

The audited period: III quarter of 2016-2017. In some cases, data from earlier periods was also used in order to conduct a comprehensive assessment. The following were analysed during the audit: statistics of public procurement which took place in 2014-2016; activity reports of the Public Procurement Office for 2014-2016; national legislation regulating public procurement; draft legislation and European Union directives; judgements and rulings of Lithuanian courts.

In order to identify the key risks of public procurement, the auditors organised meetings with the heads of ministerial administrations (chancellors), authorities responsible for the development and implementation of the public procurement policy, the Competition Council, law enforcement agencies, contracting authorities, institutions responsible for the administration of EU investment funds, business associations, representatives of the Lithuanian Bar Association, the National Courts Administration, and others. Meetings were focused on discussions and analyses of the key public procurement issues, and the introduction of proposed means of addressing them.

The audit included a survey of all contracting authorities³ active in 2016. Survey population: 3,894 contracting authorities which had conducted public procurement in 2016. The survey was performed during the period between 30 June 2017 and 17 July 2017 using the questionnaire method in accordance with a questionnaire which had been developed in advance (see Annex No. 3 to the Report). The survey was designed to identify the problems faced by contracting authorities in performing public procurement, to evaluate the potential lack of training and competent and skilled experts of public procurement, to determine whether the legal regulation is clear and easy to understand, and to gauge the expenses related to the performance of public procurement.

³ An active contracting authority is a contracting authority registered via the CPP IS which, based on the data provided by the Public Procurement Office, had conducted at least one procedure of public procurement in 2016.

The audit was carried out in accordance with the Public Audit Requirements and the international standards of supreme audit institutions. A description of the audit methodology and scope is provided in Annex No. 2 "Audit Methodology and Scope".

Main Results of the Audit

Conditions necessary for the effective functioning of the public procurement system are lacking

At the national level, the tasks and goals of the public procurement policy are geared towards different outcomes, with the following authorities being responsible for their achievement: the Ministry of Economy, the Ministry of Environment, the Ministry of National Defence, the Public Procurement Office, the SE CCA, and the Agency for Science, Innovation and Technology.

The assessment of the development process of the public procurement policy conducted during the audit has shown that the purposeful development of the PPP, which could proceed through the specification of clear priorities, is not being ensured. The operation of the Ministry of Economy encompasses the implementation of individual measures, the development of legislation related to public procurement and the development of draft amendments of said legislation, which is also attended by other authorities engaged in the provision of comments in accordance with their specific areas of competence.

Given the absence of priorities set for the public procurement policy, it is currently impossible to ensure a uniform strategic planning of public procurement, and to assign the system with tasks and goals at the national level. Authorities⁴ comprising the public procurement system are engaged in performing different activities related to public procurement and often fail to coordinate their actions due to different goals. As a policy-maker, the Ministry of Economy fails to ensure the sufficient organisation, coordination and control of the actions performed by different authorities in this area.

The monitoring of the public procurement system is insufficiently effective. Although, in performing the monitoring of indicators, the Ministry of Economy and other authorities independently assess whether the goals assigned to them have been achieved, said authorities do not notify the Ministry of Economy about the results of such assessments, which means that the Ministry lacks sufficient information on the functioning of the public procurement system and the areas where it could be improved.

The failure to use the tools for the centralisation and consolidation of procurement, and the drawing up of lists of unreliable suppliers to their full capacity leads to the failure to fully exploit the possibilities for increasing the effectiveness of the administration of public procurement, the specialisation and professionalisation of individual areas of public procurement, the concentration of expert knowledge (the public procurement system is actively attended only by around 4,000 contracting authorities), the avoidance of unreliable suppliers taking part in procurement, and the

⁴ The Seimas of the Republic of Lithuania, the Government of the Republic of Lithuania, the Public Procurement Office, the Ministry of Economy, the Ministry of Environment, the Ministry of Finance, the Ministry of Energy, the Ministry of Transport and Communications, the Ministry of National Defence, the Ministry of Foreign Affairs, the Competition Council, courts, the SE CCA, the Information Society Development Committee under the Ministry of Transport and Communications, implementing bodies, and contracting authorities.

reduction of mistakes and violations, expense for public procurement, and the prices for goods, services and works obtained through public procurement.

National legal regulation does not always provide the conditions necessary for the effective operation of the public procurement system

The goal of the legal regulation of public procurement is to increase the transparency by solidifying the old and developing new additional procedures of procurement oriented towards the process, rather than the outcome. Situations analysed during the audit have shown that legal regulation oriented towards the process of procurement had failed to address the relevant issues related to public procurement, and actually reduced their effectiveness. When conducting public procurement, contracting authorities are often forced to focus on legal requirements and the performance of formal procedures.

The Law on Public Procurement is currently being intensely amended: during the period between 1996 and 2017, the Law was amended 37 times, and prior to 2017 there had been 49 versions of it in total. Between 22 December 2005 and 20 September 2016, 74 of the 100 articles contained within the Law were amended, with some of the articles being amended 5 to 10 times by supplementing them with new provisions. Such instability of legal regulation prohibits the development of uniform practices of public procurement and complicates the relevant procedures: the Law becomes more complex and more difficult to understand, forcing contracting authorities to continuously monitor and adapt to the relevant changes.

The constant changes to legal regulation and the process of making it progressively more stringent is one of the key factors which prolong the duration of public procurement, thereby making it more difficult for contracting authorities to procure the requisite goods, services and works in a timely manner. According to the data provided by the Public Procurement Office, the average duration of public procurement during the period between 2014 and 2016 was 85 days, which means that public procurement takes, on average, 3 months. Compared to 2015, the duration of public procurement has changed quite significantly in 2016, becoming 15.8 days longer. The issue of the prolonged duration of public procurement is currently being addressed by setting shorter deadlines for the announcement of procurement, the submission of tenders, and shortening other terms specified in the Law on Public Procurement.

Member states of the European Union have been granted the right to set their own procurement thresholds at the national level and to select the legal regulation of public procurement which does not exceed the specified threshold at their own discretion. Lithuania, which has the right to establish special procedures for simplified procurement, which could facilitate and simplify the process of public procurement, and to subject low-value procurement to no more than minimum procedural requirements, or to forego them altogether, has chosen to comprehensively regulate all types of procurement. Such legal regulation complicates the functioning of the public procurement system, reduces its effectiveness and limits the potential of optimising the process of public procurement.

The Public Procurement Office is an important part of the public procurement system which has a significant impact on the effectiveness of the public procurement system. One of its key functions is to draft and (or) adopt the legislation specified in the Law on Public Procurement and other laws, to provide methodological assistance, and to develop the recommendations and

guidelines⁵ necessary for the application and implementation of the Law on Public Procurement. We have determined that the methodological assistance provided by the Office complicates the application of the legislation regulating public procurement because the newly drafted legislation, methodologies and guidelines are not amended in accordance with changes in the market and the legal environment, which makes them irrelevant, redundant, insufficient, unclear, ambiguous, and, sometimes, ineffective in practice. This leads to even more uncertainty in the legislation regulating public procurement, thereby reducing the effectiveness of the public procurement system.

Experts of public procurement with the skills and competencies requisite for conducting public procurement in a satisfactory manner are lacking

The Republic of Lithuania currently lacks a public procurement specialisation strategy which would specify the skills and competencies required of experts of public procurement, relevant training programmes, and career and motivational systems, which could ensure the attractiveness of work in the area of public procurement as well as motivate the experts to strive towards strategically significant outcomes⁶. This issue is now being addressed by the Ministry of Economy which is currently engaged in the European Commission-funded project “Building the Capacities of the Experts of Public Procurement” implemented together with experts of the Organisation for Economic Cooperation and Development.

The survey of the contracting authorities has shown that almost half of them lack public procurement experts, a third of the authorities have employees which are not motivated to perform the functions of public procurement due to a negative popular opinion regarding public procurement, and more than a third lack sufficiently competent experts. Results of the surveys have indicated that the shortage of experts is more prevalent in contracting authorities which conduct fewer public procurement procedures.

Thirty percent of contracting authorities rate the quality of the training organised by the Public Procurement Office as satisfactory and bad; 67 percent of the surveyed contracting authorities lack access to aforesaid training; 47 percent of contracting authorities have indicated that the Public Procurement Office has never invited them to training; and more than half of the contracting authorities have never taken part in the training organised by the Public Procurement Office. Training sessions organised by the Public Procurement Office in 2016 were attended by approximately 1/4 of the contracting authorities. This indicates that the types and formats of training chosen by the Public Procurement Office fail to ensure the sufficient number and effectiveness of public procurement experts working for contracting authorities.

Contracting authorities neglect to allocate enough attention to public procurement because the function of public procurement is typically assigned to experts as an additional function among others, which leads to the failure to develop and manage the appropriate competencies in this area. Results of the survey have shown that public procurement in as many as 70 percent of the contracting authorities was conducted by experts whose main function is not public procurement, and that only in 10 percent of the contracting authorities public procurement was performed by experts with the requisite specialisation. The existence of almost 4,000 operational contracting authorities necessitates the consideration of the centralisation of public procurement and the

⁵ Clauses 9.1 and 9.2 of the Provisions of the Public Procurement Office approved by Order No. 1517 of the Government of the Republic of Lithuania of 21 December 2011 (version No. 889 of 31 October 2017).

⁶ Commission Recommendation (EU) 2017/1805 of 3 October 2017 on the professionalisation of public procurement — Building an architecture for the professionalisation of public procurement, C(2017) 6654 final.

accumulation of experience and competence of experts working for contracting authorities engaged in centralised procurement.

Conclusions

The public procurement system, legal regulation and the capacities of human resources fail to ensure sufficient conditions necessary for the effective functioning of public procurement and the development of a positive attitude towards it:

1. Lithuania lacks a unified system of public procurement because the policy which regulates it lacks clear priorities, which, in turn, leads to the failure of ensuring the effective strategic planning of the system of public procurement. The current public procurement monitoring system designed to monitor the implementation of the set indicators and employ them for adopting decisions regarding the improvement of said system, is ineffective. The authorities which comprise the system operate separately and strive towards different goals. The coordination and control of their operation is insufficient. The tools for promoting the effectiveness of public procurement are not being used to their full capacity. The current public procurement system fails to provide the conditions necessary for its own effective operation.
2. The regulation of public procurement does not comply with the principles⁷ of proportionality, effectiveness, clarity and systematicity. Such regulation limits the potential for optimising the process of public procurement and increasing its effectiveness because it is oriented towards increasing the appearance of transparency, making regulation more stringent and developing public procurement procedures directed at the process, rather than the outcomes. The instability and the intensive amendment of legal regulation prevents the development of unified practices of public procurement and leads it to become more complicated and more difficult to understand, which forces contracting authorities to continuously monitor and rapidly adapt to the relevant changes. This leads to a delayed process of public procurement and makes it more difficult for contracting authorities to procure the required goods, services and works in a timely manner.
3. There is currently a lack of a specialised public procurement strategy and the establishment of capacities required of experts of public procurement, which makes it difficult to ensure the purposeful and systematic training of said experts and the maintenance of their competencies necessary for the performance of effective public procurement. The above situation also leads to a lack of experts of public procurement with the skills and competencies requisite for conducting public procurement in a satisfactory manner; currently available training is insufficient; and contracting authorities tend not to put a sufficient emphasis on performing the functions of public procurement.

⁷ Article 3 of the Law on Legislative Framework of the Republic of Lithuania No. XI-2220 of 18 September 2012.

Recommendations

To the Government

1. In order to ensure more effective functioning of the public procurement system, the Government should:
 - 1.1 ensure the development of a unified public procurement policy by specifying clear priorities for institutions engaged in its development and implementation;
 - 1.2 improve the strategic planning of public procurement: set goals, tasks and indicators for the system at the national level; organise, coordinate and control the actions of all institutions which comprise the public procurement system.
2. In order for the legal regulation of public procurement to provide opportunities for optimising the process of public procurement and improving its effectiveness, the Government should:
 - 2.1 review the national legislation related to public procurement and seek solutions for simplifying the regulation of low-value and simplified public procurement;
 - 2.2 assess the system of internal controls in the area of public procurement and consolidate it by simplifying the procedures of public procurement in order to maintain balance between the goals related to transparency and effectiveness.

To the Ministry of Economy

3. In order to develop the conditions necessary for the effective operation of the public procurement system, the Ministry of Economy should:
 - 3.1 develop a mechanism for the monitoring and improvement of the effectiveness of the public procurement system;
 - 3.2 develop the means necessary for ensuring the more vigorous application of measures designed to improve the effectiveness of the public procurement system.
4. Ensuring an appropriate system for the preparation and in-service training of public procurement experts as well as the maintenance of their level of qualification, will require the development of a long-term public procurement specialisation plan which specifies and defines the principal capacities and competencies required of each expert of public procurement as well as the relevant training programmes, and career and motivational systems.

To the Public Procurement Office

5. In order to provide more clarity to contracting authorities operating in the field of public procurement, assess whether the methodological assistance provided by the Public Procurement Office is necessary to the participants of public procurement in its full scope, and address the issues related to its optimisation.