Procurement management in the field of IT systems, software products and software services

Audit report no. 2-5/04/16 of March 26, 2004

Executive summary

The purpose of the SAO audit was to find out whether and why the Ministries have made mistakes in formulating the terms and conditions (qualification criteria for tenderers and technical conditions) of public tenders for IT systems and software services, which have caused delays in the receipt of the required items by public departments.

IT procurements, especially those for the creation of systems and the acquisition of software, are far more important than other procurements of similar value, since these may have a considerable effect on a public department's work organisation for years. The acquired system or software product predetermines not only the subject and the terms and conditions of many future IT procurements, but it also has a substantial impact on the organisation of all the activities of the department (as well as on its efficiency). In this regard, the requirement of compatibility between IT systems is essential for the departments as well as for the entire government sector.

The choice of the audit topic was also influenced by the fact that in connection with earlier procurement audits the heads of government agencies have pointed out the specific problems related to IT procurements and their uncertainty in solving these problems.

The audit examined the activities of the Ministry of Environment, the Ministry of Economic Affairs and Communications and the Ministry of Agriculture related to the management of procurements, which concern the field of IT systems, IT services and software products and which have been contested in the Public Procurement Office.

Main findings

In theory, the problems noted during the audit can be divided into two categories:

- issues related to the planning of IT systems creation and purchases of software services and the financing of such procurements;
- issues related to procurement terms and conditions and the implementation of procurement projects.

None of the audited Ministries had a long-term plan for information system development. There was no clarity as to the possibilities of financing the planned development activities in the future. In addition, no specific action plan (who does what and by which date, who is responsible for certain segments and who is responsible for the entire project) had been drawn up for the preparation and implementation of any of the examined procurement projects. Furthermore, the Ministries had not adopted general rules (list of procedures and standards) for the acquisition of software and IT services.

Usually the public departments are not able to prepare properly the technical conditions of such procurements without included external specialists. Since the buyer of the service must not limit its actions only to determining its own needs, but keep in mind also the possibilities of providers, it should co-operate with persons who are very familiar with the required service and the possibilities of persons offering that service. There is no doubt that such persons have an advantage in a tender – as they have more information, the can better understand the needs of the buyers and give a more precise estimation of the amount of work that the procurement involves. One can assume that where the buyer has had a successful co-operative relationship with someone, it will prefer that someone to other tenderers. This was the case with the audited procurement procedures.

Contestations have arisen from the assessment of the technical competence of tenderers, i.e. the buyers' decisions on whether the tenderers are technically competent (especially as regards their skills and experience) to provide the procured items with the required quality and within the time limits and who is more competent. This issue caused many arguments in the qualification of tenderers and the evaluation of tenders, and the Ministries had to admit that they had made incorrect decisions in several procurement procedures. The Ministries had not asked for help from the Estonian Informatics Centre

(currently the Government Information Systems Development Centre).

Normally, tenders cannot be assessed (just like tenderers cannot be qualified) without applying qualitative criteria. However, it is difficult to rank the tenders on the basis of these criteria and the share of subjective factors is inevitably large. The decision-makers must be familiar with the specifics of the procurement item and be impartial and able to compare tenders as well as tenderers with one another. All the persons responsible for the substantive aspects of the audited procurement projects agreed to this. However, the contestations made and the documents pertaining thereto reveal that these requirements have not always been respected in full.

SAO proposals and positions of the Ministers

The SAO addressed the Minister of Environment, the Minister of Economic Affairs and Communications, and the Minister of Agriculture with the following proposals:

- to develop guidelines for the Ministries and the agencies it governs so that these would, when planning the procurement of IT systems, software products and software services, refer to the development plan for the field in question and the long-term (at least three-year) procurement plans co-ordinated with the competent structural units of the Ministry and accepted by the Ministry's management;
- to prepare and approve the procurement implementation plan in the procurement preparation phase to specify the timeframe for specific activities, the entities responsible, the general co-ordinators and the financing scheme as well as assess the likely risks and envisage measures for risk management;
- the Ministry and the agencies it governs should involve the Government Information Systems Development Centre in the organisation of more complex procurement projects.

The Ministers agreed to these proposals.

Proposals to the Minister of Economic Affairs and Communications

- To take a position on whether it is necessary and practicable
    - To require, by a legal instrument adopted by the competent authority, the public departments to involve the Government Information Systems Development Centre in the preparation of procurement of IT systems, software products and software services and to establish rules for determining the procurements where such involvement is compulsory and how to proceed on the basis of the assessments given.
    - To provide for the preparation of the official list of tenderers qualified for major procurement of IT systems, software products and software services.
    - To lay down the principle of project-based financing of IT development activities in order to allow long-term planning of major (more complex, more important for the government) IT activities (and procurements) and thus create better conditions for their proper preparation.
- To request the corresponding amendments to the legislation in liaison with the Minister of Finance, provided that the implementation of the above proposals is considered necessary.

The Minister replied that he considers it necessary and practicable to adopt implementing provisions supplementing the Public Procurement Act similarly to public procurement rules in the field of construction, in order to regulate the management of public procurement related to IT, and to develop the criteria for determining the administrative documents for IT procurements to be co-ordinated with the Government Information Systems Development Centre. The Minister's response does not imply that the legislative provisions necessary for implementing the above are already being drafted in the Ministry.

The Minister does not find it appropriate to draw up a list of tenderers qualified for IT procurement, since this would set unnecessary limitations to market participants. According to the Minister, the risks related to the qualification of tenderers are mitigated by the more precise regulation of the management of IT procurement projects.

The Minister deems it necessary to lay down the principle of the project-based financing for significant IT development activities.

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The SAO asked also the Minister of Finance to give an opinion on the proposals included in the draft audit report. The Minister supports the proposal to recognise IT development activities in the budget on project

basis. Where applicable, the Ministry of Finance will attempt to regulate this issue already in conjunction with the establishment of the state budget for 2005.

The Minister supports the proposal to increase the involvement of the Government Information Systems Development Centre in the management of IT procurement projects of public departments, noting, however, that the EU Directives on public procurement do not allow limiting by law the buyer's freedom in public procurement procedures (for example, it is not allowed to require the buyer to co-ordinate its activities with third parties). The SAO is of the opinion that since the public departments effect procurements as the representatives of one buyer – the government – and the Government Information Systems Development Centre is a public department as well, the Government's right to set mandatory requirements to those departments with regard to the procurement management would not be in conflict with the EU rules.

The Minister does not agree with the proposal contained in the expert assessment annexed to the audit report to envisage the amount for IT development activities in the state budget as a single limit value, which in the initial phase would stand apart from the total amount of the budget for the Ministry's government area. The Minister of Finance finds that it would be reasonable, if the Ministry of Economic Affairs and Communications would give an assessment to the IT expenditure envisaged in the budget applications, which the Ministry of Finance could take into account when processing the draft budget. The SAO thinks that this procedure should be established by adopting the corresponding legislative provisions.

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