Organisation of Public Procurement Related to Road Repair

Audit Report No 2-5/04/44 18.06.2004

Summary

The State Audit Office audited the activities of the Ministry of Economic Affairs and Communications (MEAC) and the Road Administration in conducting the procurement related to road repair works. The audit was based on the cases of procurement where the state had taken loans and received foreign assistance to fund the activities. The objective was to establish whether in case of properly conducted road project the road repaired would remain in good condition – when suitably maintained – as long as specified in the project. The intention also was to explain whether the organisation of invitation to a competitive tender offers the road construction companies serious competition that could assure the state, acting as a contracting entity, profitable terms and conditions.

The performance of the state in 2003, while preparing the contracts to be concluded for repairing Tallinn-Tartu-Luhamaa, Tallinn-Pärnu and Tallinn-Narva highways, was the object of assessment. As for the first project, the funds of the International Bank of Reconstruction and Development were used while the other projects were funded by the European Union (ISPA).

In matters related to planning of road repair works the State Audit Office was assisted by the Road Institute of Tallinn Technical University while the Competition Board was consulted in matters related to competition matters.

Main Observations

The state fails to comply with the Road Act when funding road maintenance activities AS of the year 2002, the state's expenditures on road repair works have considerably grown every year. As in 2001, less than 800 million kroons were allocated for road maintenance works, the amount to be used for that purpose in 2004 is 1.8 billion kroons. At the same time the State Audit Office has formed an opinion that as the works were funded, the requirement set in the Road Act – to channel at least 75% of the receipts gained from excise duty on fuel for funding road maintenance as of the year 2003 – has been neglected. In 2004, only 56% of respective funds were utilised for that purpose. The difference was intended to be made up with the monies received from the European Union.

Road projects include numerous mistakes

A number of mistakes has been made as roads were planned, gone unnoticed by the Road Administration as the projects were approved. The experts having reviewed the projects have also not pointed attention to such mistakes. The deficiencies are excused with the situation that Estonia lacks the number of project design engineers with the required qualification, needed to cover the rapidly growing workload. Nevertheless, in some cases the project was designed in such a way that the road surface can't survive for long. This has been also facilitated by the guidelines given by the Road Administration – while attempting to repair as many road kilometre as possible within a period as short as possible, the Administration has foregone several works which are inevitable if we want the road surface to maintain its good condition for the required period. After the conclusion of contracts with the construction companies the projects have been altered to a great extent, nevertheless, it is not sure whether the surfaces repaired retain the required condition for the intended period (15 years).

The specialists have not reached consensus in some principal matters regarding the calculation and planning of various road surfaces. Also, there are no reliable estimates concerning the changes in road traffic and weight of trucks (density frequency) at the disposal of systems planners.

Accountability issues related to planning have not been settled explicitly

Sufficient attention has not been paid to several general technical issues, related to the planning of road works (establishment and updating of standards and guidelines) and funding the research required to settle the aforementioned issues. According to the Road Act, the principal decisions and resolutions should be prepared by the Road Administration and endorsed by the MEAC. Nevertheless, the statutes of the Ministry doe not reveal explicitly who is accountable for the timely passing of respective decisions. The MEAC lacks the technical competence to determine the priority raking of issues to be settled and respective proposals made by the Administration.

The capacities of state authorities on organising road construction efforts is increasing

Over the last years the competence of the MEAC, but above all, the Road Administration within the area of large-scale road repair projects and invitation to competitive tender for road repair has increased considerably. At the same time, it's not sure whether the MEAC and the Ministry of Finance can cope well with the functions, discharged so far by the Delegation of the European Commission in Estonia when making decisions in matters related to the use of benefits granted for road repair by the EU (harmonisation of all the tender documents – project designs, criteria for the selection of a contractor and respective decisions, contracts to be concluded and the amendments to thereof).

Competition situation in road construction sphere has worsened

The contracts concluded by Estonian four largest road construction companies in March 2003 for collective tendering in three of the largest invitations to competitive road construction tender of 2003 considerably worsened the competition situation of the road construction works market.

Main recommendations

To the Minister of Economic Affairs and Communications

- to set out requirements arising of the specific features of road repair work in addition ;
- to issues related to the construction of new road in the guidelines for road planning;
- to reach a conclusive statement regarding the proposals from the research specialist of the Road Institute of Tallinn Technical University concerning important technical issues of general nature;
- to apply necessary measures (if necessary, re-allocating road maintenance funds for that purpose) to explain the real traffic frequency on main road of Estonia;
- to assess the reliability of potential traffic frequency indicators used in the road repair projects currently initiated and if necessary, adjust the project on the basis of the expected traffic densities;
- to provide the Ministry with substantial competence to assess the tasks given to road construction system planners and expert analysis concerning the projects to decide whether additional expert analysis is required and form opinion with regard to possible solutions to principle questions arising in course of works;
- to set out specific tasks to the departments of the ministry, applicable in the process of planning and conduction road construction works that involve foreign aid and relations with the Road Administration, considering the need not to decrease the initiative and rights and responsibilities of the Road Administration in such matters.

To the Minister of Finance

- To review the outstanding plans for funding road maintenance works, if it is decided that the compliance with the Road Act is not possible in this sphere, application should be made for the alteration of the Road Act;
- To avoid specifying the value of a contract at a level so high that Estonian operators can only participate in the invitation to competitive tender by concluding group contracts when concluding agreements with the providers of foreign aid and loans.

To the Director General of the Competition Board

- To decide whether the initiation of additional investigation is required to explain whether agreements being in contradiction with the Competition Act have been accompanying the group agreements concluded to participate in the invitation for competitive tender financed from the funds of the European Union.

Answers given by the audited entities

The Minister of Economic Affairs and Communications announced that

- The standards for road planning need to be updated and should, in future, also consider the specific features of repair works; he did not give any specific deadlines to the State Audit Office;
- The staff of the Road Institute of Tallinn Technical University has prepared a new draft version of the "Road Planning Standards". Nevertheless, their opinion regarding a number of technical issues requires additional analysis as a number of experts have reached different conclusions;

- Determination of real traffic frequency on roads is the function of the Road Administration and they've been allocated respective funds. The Ministry does not consider the provision of additional guidelines to the Administration necessary;
- Decisions concerning the specification and related adjustment of traffic frequency applicable to projects for the repair works yet to be started must be passed by the Road Administration;
- The Ministry doesn't consider it expedient to establish substantial competence to assess expert analysis concerning road projects and to decide whether additional expertise is required. The assessment of conformity of road construction projects is the function of individuals conducting construction supervision;
- The Ministry doesn't consider it necessary to increase the participation of the departments of ministries in the process of passing decisions concerning technical issues related to the funding of road construction works involving foreign aid funds. The ministry is involved only in the organisation of invitation for competitive tender, conclusion or contracts and making payments and specific and sufficient rules of procedure apply in this sphere. Provision of technical substance and accuracy of terms of reference for project design and documentation is the task of the Road Administration.

The answers given by the Minister reveal that the Ministry deny the need to obtain competence required to assess the operations of the Road Administration and decisions concerning technical issues related to road maintenance.

The Minister of Finance announced that according to his opinion, road maintenance is funded in compliance with the Road Act and there is no need to alter the respective act. It is the opinion of the Minister that the provision of the Road Act, discussing the funding of road maintenance, are aimed at establishing the scope of funding road maintenance but not the possible sources for financing the respective activities.

The Minister expressed his opinion that while the number of procurements to be organised to implement the funded project and their value are specified in the agreements concluded to obtain foreign aid and foreign loans, this does not serve as the basis for a requirement to determine the object of procurement within equivalent scope – the Public Procurement Act allows a public procurement to be divided into parts by objects or amount or both by objects and amounts within one and the same tendering procedure.

Director General of the Road Administration informed the State Audit Office that in principle, he agrees with the opinions given in the draft audit report. He explained that when conducting road repair works, the Administration has pursued the objective to assure road maintenance and improved travelling conditions covering a mileage as large as possible. The Director General stressed the need to obtain long-term reliable information concerning the alternatives for funding road maintenance. He also referred to serious problems with the education of road repair engineers – currently, their number does not meet the abruptly increased need for such specialists, occurring from increased volume of road maintenance works. The Administration considers the opinion of respective specialists of the European Union Member States when forming its opinion with regard to technical issues related to road planning and design.

Director General of the Competition Board announced that the organisation of procurement activities, audited by the State Audit Office and the activities of the participants in invitations for tender are consistently of interest for the Competition Board within the limits and scope, set out in legislation.

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