Construction of Quay No. 17 at Muuga Container Terminal

Could the Port of Tallinn have organised the construction of the quay better?

Report of the National Audit Office to the Riigikogu, Tallinn, 11 September 2012

The National Audit Office audited the activities of the Port of Tallinn during the expansion of Muuga Container Terminal from 2007-2010 (construction of new quay lines in the sea and establishing a 27-hectare area of land for the terminal behind the lines). The port invested more than 64 million euros (incl. VAT) into the expansion of the container terminal. Some of the money was received from the EU Cohesion Fund.

The National Audit Office audited the rationality of the decisions made by the executive management of the Port of Tallinn during the preparation of construction and the performance of the procurement contract, and the compliance of these decisions with law.

The Port of Tallinn is a state-owned company that invests large amounts of money in the development of ports every year. The investments made by the company from 2009-2011 total 88.5 million euros.

As a state-owned company, the port has to adhere to the Public Procurement Act during the organisation of procurements. The Public Procurement Act gives all market participants equal opportunities to offer goods, works and services to the part, and using competition to its advantage should give the port the opportunity to buy everything it needs at the best possible price.

Adhering to the requirements established for public procurements is also important if the money provided by the EU Cohesion Fund is used, as breaking the rules of public procurements means that the Fund may demand that the Port of Tallinn return the money. Also, if the European Commission sees that procurement rules are not followed in a Member State, it may come to the conclusion that the state's internal control system does not guarantee adherence to the rules established for the use of EU funds and therefore suspend payments from EU funds until it is convinced that internal control measures are efficient. This means that failure to adhere to rules in one procurement may have an impact on the funding of many other procurements.

The National Audit Office is of the opinion that the Port of Tallinn repeatedly ignored the Public Procurement Act during the construction of Muuga Container Terminal and the company's management failed to exercise due diligence as required, which is why the Port of Tallinn was forced to incur unjustified and avoidable expenses.

Other important conclusions made by the National Audit Office:

■ The Port of Tallinn failed to perform a critical assessment of the technical conditions of the construction of quay no. 17 at the Port of Muuga that had been prepared on the basis of its order. During the performance of the procurement contract it became evident that a different technical solution would have reduced the quantity of materials considerably, thereby also cutting the cost of construction.

■ The Port of Tallinn failed to adhere to several provisions of the Public Procurement Act in the procurement process. The terms and conditions of the procurement were ambiguous and established too many restrictions on potential tenderers. Also, one of the most important qualitative characteristics of the object of procurement – the load capacity of quay no. 17 – was changed during the performance of the procurement contract, which is clearly not in line with the Public Procurement Act.

■ The Port of Tallinn compensated the contractor for the increase in the price of materials, which is in contravention to the terms and conditions of the procurement. Although the contracting agency was not obliged to compensate the contractor for the increase in the price of materials according to the procurement or the terms and conditions of the procurement contract, the Port of Tallinn compensated the contractor for the increase in the price of the metal used to build the quay.

■ The Port of Tallinn agreed, without any reason, with the contractor's request to increase the fee payable to the latter by 28.9 million kroons in order to change the design. The design was actually not changed.

■ The Port of Tallinn did not inform the persons who participated in the procurement that there may be explosives in the deposit which they had to use to obtain sand for the construction of the quay. Failure to give this information gave the contractor the right to demand additional money from the port for the purpose of repairing the equipment damaged by explosions and implementing preventive measures. The Port of Tallinn paid the contractor nine million kroons as compensation for damages and extended the completion deadline of the works by six months.

Responses of the Management Board and Chairman of the Supervisory Board of the Port of Tallinn, the Minister of Finance and the Minister of Economic Affairs and Communications:

The Chairman of the Management Board of the Port of Tallinn disagreed with every opinion of the National Audit Office. The National Audit Office did not consider it necessary to change its opinions on the basis of the response given by the Management Board.

The Chairman of the Supervisory Board of the Port of Tallinn said that he has started to analyse the allegations made by the National Audit Office and will give his opinion on the recommendations made to the Supervisory Board as soon as possible.

The Minister of Finance said that the Financial Control Department of the Ministry has started to prepare a declaration to terminate supporting the project Extension of Eastern Park of Port of Muuga, which will also include giving an opinion of whether the project was carried out according to the goals and financing conditions provided for in the financing agreement.

The Minister of Agriculture acting for the Minister of Economic Affairs and Communications said that the Ministry will prepare an opinion on the conclusions presented in the audit report and the steps that need to be taken in the future after it has received the final audit report and reviewed the positions of the Port of Tallinn and the Ministry of Finance regarding adherence to the requirements set forth in the Public Procurement Act.

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