Organisation of public procurement in public undertakings and public foundations

Have public undertakings and foundations created a sufficient internal control system for adherence to the main requirements of the Public Procurement Act?

Report of the National Audit Office to the *Riigikogu*. Tallinn, 5 February 2013

Summary of audit results

A state agency, local government agency or entity, legal entity governed by public law or any other public entity uses public funds or taxpayers' money to pay for the items, services and construction work it needs for its activities, which is why it must follow strict principles and guarantee the transparency of its activities and decisions when it organises a public procurement.

The National Audit Office audited whether public undertakings and foundations have created a sufficient internal control system for adherence to the main requirements of the Public Procurement Act. The National Audit Office also wanted to examine whether all public undertakings had defined themselves as a contracting authority for the purposes of the Public Procurement Act.

The internal control system relating to procurement carried out by the undertakings and foundations was also inspected and assessed in the course of the audit, and its compliance with the requirements of the Public Procurement Act and its adequacy were also inspected and analysed. The National Audit Office checked in the nine selected undertakings whether procurement procedures have been organised for procurements that exceed the public procurement limit, whether the correct type of procedure had been selected, and whether the requirements arising from the established internal control system and the Public Procurement Act have been adhered to within the scope of the audited procurement. Performance of contracts was also inspected. The period covered by the audit is 1 January 2011 to 31 May 2012.

The main shortcomings in the organisation of public procurements are problems in the interpretation of the act, the inconsistent implementation of the act in practice, and insufficient experience or capability, especially in the case of smaller contracting authorities.

Although the Ministry of Finance was not an auditee in this audit, observations about the activities of the ministry in counselling and supervision have been given in the audit report.

The main conclusions are the following:

- Several significant changes have recently occurred in the area of public procurement. The Public Procurement Board that operated in the area of government of the Ministry of Finance terminated its activities in 2010 and its area of responsibility and duties transferred to the Ministry of Finance from 1 July 2010. The goal of the changes – improving the efficiency of supervision – is not jet achieved. The audit revealed that contracting authorities are not satisfied with the counselling provided by the Ministry of Finance, mostly due to variability and the fact that opinions are changed later on. The Public Procurement Act grants the Ministry of Finance the sole competency to exercise supervision over contracting authorities, but the ministry had not exercised any supervision over public undertakings and public foundations.

- Inspection of the lawfulness of public procurement was a problem for many public foundations that performed the role of implementing entity in the discussion of EU grants. The reason being that the rights and obligations of implementing entities, incl. assessment of the lawfulness of public procurement in checking the eligibility of support, identification of breaches and counselling, have not be clearly specified in legislation.

- Five undertakings (Estonian Air Navigation Services, KredEx Credit Insurance, Teede Tehnokeskuse AS, AS Eesti Vanglatööstus and AS Eesti Loto) of 26 found that they are not contracting agencies for the purposes of the Public Procurement Act. As a result of the audit the National Audit Office concluded that all of the abovementioned undertakings are contracting agencies for the purposes of the Public Procurement Act and must organise their procurement activities according to the requirements set out in the act, because they provide services in public interest that are not industrial and/or commercial in nature.

- The audit indicated that 49 of 84 undertakings and foundations had established internal procurement procedures. However, the National Audit Office found that 15 of the procurement procedures were not adequate considering the scale of procurement. Although the failure to establish an internal procurement procedure was justified with the organisation of procurement on a small scale and/or direct consideration of the Public Procurement Act in the procurement of things or ordering of services, the reason why a procurement procedure had not been established was in most cases the fact that the undertaking was unaware that establishing an internal procedure was a required and is necessary element of internal control.

- The main omissions found by the National Audit Office in the procurement procedures is deemed to be inadequate concerning the general principles of transparency and inspection of procurement. The responsibility of the persons engaged in procurement, deadlines or connection with the budget had often not been specified.

In addition to reviewing all of the procedures submitted, the National Audit Office also tested the organisation of public procurement in selected undertakings and foundations, incl. whether the procurement procedure required by law had been organise for procurement that exceeds the public procurement limit and whether internal procedures had been established and the main principles of the Public Procurement Act had been adhered to in the scope of the audited procurement. The National Audit Office carried out on-site audit activities in Enterprise Estonia, State Real Estate, North Estonia Medical Centre, Estonian Post, AS Metrosert, Tehvandi Sport Centre, AS Hoolekandeteenused, Viljandi Hospital and Tallinn Airport. The conclusions made by the National Audit Office are as follows:

- The auditors are of the opinion that all of the auditees, except North Estonia Medical Centre, have described the process of procurement procedure in sufficient detail in their internal procedures, and the transparency of the procurement procedure is guaranteed and it can be inspected if the internal procedure is adhered to. The internal procedures were also in line with the requirements set forth in the Public Procurement Act and the practice used in the undertakings or foundation. Most of the audited undertakings and foundations had prepared procurement plans and these plans had been approved.

- The National Audit Office found no unperformed procurement procedures in Enterprise Estonia, State Real Estate, North Estonia Medical Centre, Estonian Post and AS Metrosert. The National Audit Office found unperformed procurement procedures in Tehvandi Sport Centre, AS Hoolekandeteenused, Viljandi Hospital and Tallinn Airport.

- Other identified shortcomings included inadequate documentation, presentation of misleading information in the Public Procurement Register and failure to enter into a written contract. The National Audit Office found these shortcomings in the North Estonia Medical Centre, Viljandi Hospital and AS Hoolekandeteenused.

- The National Audit Office also found that AS Hoolekandeteenused, Enterprise Estonia and North Estonia Medical Centre have not presented and/or have been late in presenting procurement reports in the Public Procurement Register as required in the Public Procurement Act.

Responses of the auditees:

The Ministry of Finance agreed with all of the recommendations made by the National Audit Office, except the recommendation to update the role of the implementing entity in the Structural Aid Act.

Estonian Air Navigation Services, KredEx Credit Insurance, Teede Tehnokeskuse AS, AS Eesti Vanglatööstus and AS Eesti Loto all found that the National Audit Office's opinion that they are contracting authorities for the purposes of the Public Procurement Act is incorrect, because they are of the opinion that the conditions of being a contracting authority have not been met in their case.

Comment by the National Audit Office
The National Audit Office is convinced that these five undertakings are contracting authorities for the purposes of the Public Procurement Act. The National Audit Office has justified its opinion in clauses 21-33 of the audit report and in its comments on the responses given by the management boards of the undertakings, which are given below the relevant clauses. All of the undertakings were established in public interest and perform tasks related to public interest to a larger or smaller extent, the state is interested in maintaining control over the provision of their services and the management of the undertakings as a whole is controlled by the state.

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