Public procurements in Viimsi Municipality and its companies

Do Viimsi Municipality Government and the companies belonging to Viimsi Municipality comply with the Public Procurement Act?

Report of the National Audit Office to the Riigikogu
Tallinn, 13 June 2013

Public procurements in Viimsi Municipality and its undertakings

Do Viimsi Municipality Government and the companies belonging to Viimsi Municipality comply with the Public Procurement Act?

What did we audit?

The National Audit Office audited whether Viimsi Municipality and the most significant companies it owns have organised all necessary public procurements and whether they have done so in compliance with the Public Procurement Act. In order to ascertain this the National Audit Office analysed the compliance of procurement contracts with the terms and conditions previously declared in procurement documents, and if the procurement contracts had been amended, then whether this was done in compliance with the Public Procurement Act. As the authority of the National Audit Office in auditing local authorities is limited, then it did not analyse whether the auditees had acted expediently when purchasing things and contracting for services. In monitoring the transparency of public procurements and adherence to the principles of fair competition, the National Audit Office can only rely on the assessment of formal circumstances.

AS Viimsi Vesi and OÜ Viimsi Haldus were audited in addition to Viimsi Municipality. The audit covered the period from 2010 to 2012.

Why is this important to taxpayers?

Viimsi Municipality is the biggest municipality in Estonia in terms of population, and due to the rapid increase in population in recent decades it is also one of the most rapidly developing local authorities. Fast development is accompanied by a significant need for investments, as it is necessary to create new kindergarten and school places, build the infrastructure that services new residential areas etc. The local taxpayer must have reassurance that the money required for the investments is used transparently, expediently and economically, and that the same principle is followed in purchasing things and contracting for services.

The financial resources of Viimsi Municipality have generated a lot of interest in companies potentially investing in the area, and other local authorities are also keeping an eye on the practices of Viimsi Municipality. This is why it is particularly important that the economic transactions of Viimsi Municipality are transparent and in compliance with the law, and that nobody is given any unjustified competitive advantages.

Of the total volume of the purchases made by the three auditees during the audited period (over 40 million euros) the National Audit Office chose transactions valued at 12 million euros for auditing. 7.3 million of this amount was transactions by Viimsi Municipality, 3.7 million by AS Viimsi Vesi and *ca* 1 million by OÜ Viimsi Haldus.

What did we find and conclude on the basis of the audit?

As a result of the audit the National Audit Office found omissions in the manner in which all three auditees had organised public procurements. All of them had failed to organise procurement procedures or awarded procurement contracts without submitting reports to the Public Procurement Register to a total value of more than 6.3 million euros. When procurement procedures had been organised, the contracts complied with the terms and conditions specified in the procurement documents and were in compliance with the Public Procurement Act. The contracts of some procurements were later amended, which is not in compliance with law.

Key observations of the National Audit Office:

- In one case Viimsi Municipality Government had not organised an international procurement procedure; in two cases it had not launched public procurements via the Public Procurement Register; and in three cases it had not submitted the mandatory report about awarded procurement contracts to the Public Procurement Register. The breaches of these procedural rules related to procurement contracts whose total value exceeds 5.8 million euros. Viimsi Municipality Government did not have a procurement procedure during the audited period even though having one has been a legal requirement since 2012 and was considered good practice in earlier years. The purpose of a procurement procedure is to establish the division of work in the organisation of public procurements and to regulate how smaller purchases are made. The Municipality Government also did not have a procedure for the preparation and approval of an annual procurement plan, which helps plan public procurements better.

- AS Viimsi Vesi had not established the required procurement procedure either during the audited period. No procurement procedure had been organised for purchasing waste water removal services to a value of 242,865 euros. A contract for an unspecified term has been awarded to the existing service provider, which is why the other companies operating in this area of the market have been deprived of the opportunity to compete for the provision of the same service. Most of the procurements organised by AS Viimsi Vesi are related to EU support, and since the use of these funds is overseen by the state the company was more thorough in organising such procurements than in the organisation of procurements for its own funds. Ascertaining the existence of a conflict of interest that damages competition was difficult for AS Viimsi Vesi. Namely, a company managed by the person who was also the chairman of the supervisory board of AS Viimsi Vesi participated in a public procurement organised by AS Viimsi Vesi. Such a conflict of interest could have been prevented with management procedures specified in the procurement procedure, but the auditee had not prepared them.

- OÜ Viimsi Haldus did not organise the mandatory procurement procedure when it contracted for bus stop maintenance work. The company had also purchased security services from the same company all the time without organising a competition. These breaches related to procurement contracts whose total value exceeds 260,000 euros.

- Viimsi Municipality has not guaranteed in its companies that the members of the companies' supervisory boards it appointed use the option of supervising the activities of the management boards of companies in the organisation of public procurements given to them by law, although doing this would help ensure that public funds are used transparently, expediently and economically. Preventing people appointed by the municipality to the supervisory boards of companies and governed by the Anti-corruption Act from participating in making decisions about public procurements where they may have a conflict of interests that damages competition has also not been guaranteed.

The National Audit Office finds that ascertaining conflicts of interest that damage competition and the obligation to remove a tenderer that received an advantage from the procurement procedure should be explained in greater detail in legislation. Local authorities also need clearer guidelines on how to prevent situations related to conflict of interest.

What did we recommend as a result of the audit?

The National Audit Office asked the auditees to take compliance with the Public Procurement Act more seriously to avoid breaches in the future.

The National Audit Office sent the audit report to the Ministry of Finance for a decision on whether to initiate state supervision over the auditees.

Response of Viimsi Municipality Government, AS Viimsi Vesi and OÜ Viimsi Haldus:

Viimsi Municipality Government, AS Viimsi Vesi and OÜ Viimsi Haldus all agreed with the recommendations made by the National Audit Office and promised to consider them in their future work.

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Overview

1. Viimsi Municipality lies next to Tallinn. In recent years it has been a local authority with one of the fastest-growing populations in Estonia. The population of Viimsi Municipality as at 1 January 2013 was 17,673. At present, only cities like Tallinn, Tartu, Pärnu, Narva and Kohtla-Järve have large populations and budgets. According to the capacity of local authority rankings prepared by AS Geomedia on the order of the Ministry of the Interior, Viimsi Municipality has been one the two most capable local authorities in Estonia for many years.

Capacity of local authority - the measure defined by the consultation and training centre Geomedia that shows the sum of the abilities (potential) of the local authority to get something done.

Source: Ministry of the Interior

2. The local government bodies of Viimsi Municipality are the council with 21 members and the municipality government with five members. Eight committees have been formed in the council. Aarne Jõgimaa was the Chairman of the Council during the first audited period and Priit Rebas has been the chairman since 2013. Haldo Oravas was the Municipality Mayor during the audited period.

Public procurement – purchasing supplies, contracting for services and for construction works pursuant to the procedure set forth in the Public Procurement Act.

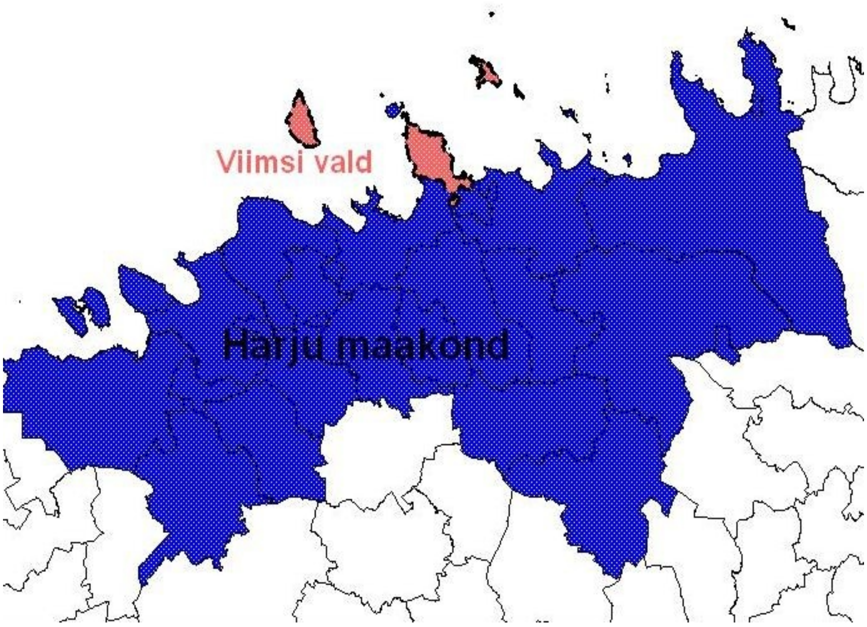
Source: Public Procurement Act

3. The total planned operating expenses in the municipality during the audited period were 16.7 million in 2010, 15.9 million in 2011 and 12.7 million in 2012. The budget of Viimsi Municipality for 2013 including the supplementary budget was *ca* 22 million euros. Both Viimsi Municipality itself and its undertakings must organise public procurements in order to use public funds transparently, expediently and sustainably. Due to the scale of the operating expenses of Viimsi Municipality, the scope of the public procurements organised in the municipality is one of the biggest among the local authorities in Estonia.

Coat of arms of Viimsi Municipality

Source: Viimsi Municipality

Figure 1. Geographic location of Viimsi Municipality



Source: National Audit Office, MapInfo

4. During the audited period, the biggest investments made by Viimsi Municipality were the establishment of a water treatment plant, the design and construction of pipelines in Püünsi village and the construction of the Pärnamäe light traffic path. The rapid increase in population has increased the demand for school and nursery school places, which the municipality is unable to cover solely with the existing infrastructure. That is why using different options for increasing the number of nursery school places is an important priority for the municipality. Taking buildings on rent and outsourcing nursery school services from private partners has been used for this purpose. The Viimsi Municipality Development Plan and 2014-2020 Budget Strategy state that residential housing development, road construction and establishment of educational institutions (incl. nursery school places) are still problems for the municipality.

Viimsi Municipality owns five commercial undertakings:

- AS Viimsi Vesi;
- AS Rannapere Pansionaat;
- OÜ Viimsi Haldus;
- OÜ Viimsi Valla Arenduskeskus; and
- OÜ Haabneeme Lasteaed.

Source: Viimsi Municipality

5. The municipality has preferred to carry out most of its large-scale investments via companies belonging to the municipality – AS Viimsi Vesi and OÜ Viimsi Haldus – which is why the risks of organising and carrying out public procurements are bigger in the case of these companies than the other companies of the municipality. Viimsi Municipality Government, AS Viimsi Vesi and OÜ Viimsi Haldus organised 62 public procurements during the audited periods according to the public procurement register kept by the Ministry of Finance.

Procurement procedure – the set of activities set forth in the Public Procurement Act in the case of expensive purchases. Types of procurement procedure include open procedure, restricted procedure, competitive dialogue, negotiated procedure with prior publication and negotiated procedure without prior publication.

Open procedure – a procurement where every person that meets the qualification terms may participate and submit their tender.

Simplified procedure – a procurement that must be organised in respect of supplies and services costing 10,000 euros or more and construction works costing 30,000 euros or more. If the cost is below the simplified procedure limit, the contracting authority must only adhere to the general principles of organising a public procurement.

Service to be purchased in accordance with simplified procedure – the process whereby the contracting authority is not obliged to adhere to most of the rules stipulated in the Public Procurement Act.

Source: Public Procurement Act

6. The organisation of public procurements is regulated with the Public Procurement Act. The Act prescribes different rules for public procurements depending on the cost of the supply, service or construction work. A procurement procedure must be carried out if the expected cost of the purchase without VAT is higher than the limit set forth in the Act. All of the procurement costs given in this audit report are without VAT. The existing conditions for competition must be taken advantage of and the tenderers taking part in the public procurement must be treated equally in the case of both large and small purchases.

7. The main activity of AS Viimsi Vesi is the provision of water supply and sewerage services and the development of water management projects, and the main activity of OÜ Viimsi Haldus is property management and development, property transactions, general construction and renovation works, organisation of construction and construction supervision.

Procurements organised by Viimsi Municipality

8. The National Audit Office found omissions in the organisation of public procurements in Viimsi Municipality Government, which included failure to organise the necessary procurement procedures (points 24-31) and failure to enter procurement contracts in the public procurement register (points 15-22). In addition to this, the absence of the procurement rules and procurement plan (points 9-13), which have been mandatory since 2012, in Viimsi Municipality Government is a problem in the opinion of the National Audit Office, as their existence would make it possible to avoid some of the breaches.

Table 1. Audited transactions of Viimsi Municipality Government

Name of transaction/ procurement	Type of transaction/ procurement	Cost of transaction in euros (w/out VAT)	Transaction/ procurement carried out by	Year of transaction/ procurement	Identified breach
Summer and winter maintenance and repair works on Viimsi Municipality roads, 2009-2015	Open procedure	939,943	Teede REV2 AS	2009	Failure to organise international procurement procedure
Repair of asphalt pavement on Vana-Narva Road in Viimsi Municipality, milling to remove distresses in the road and repaving the road with new asphalt	According to the general principles of organisation of public procurements	19,266	Baltifalt AS	2011	–
Public roads no. 11251 Viimsi – Rohuneeme km 0.0–1.1 and no. 11250 Viimsi – Randvere km 7.2–11.0	Open procedure	112,802	Lemminkäinen AS	2009	–
Road construction in Püünsi village, Viimsi Municipality, extension of Kooli Road to Niidu Road	According to the general principles of organisation of public procurements	18,665	Lemminkäinen AS	2010	–
Double surfacing of the section of Vana-Narva Road in Laiaküla village	Simplified procedure	Initial cost of contract 28,479 Actual cost of contract 33,969	OÜ Üle	2012	The cost of the contract was changed. This change contravenes the Public Procurement Act. The procurement was not launched in the public procurement register. The procurement contract report is missing from the public procurement register
Repair of the pavement on Ampri Road from the Randvere Road/Ampri Road intersection to the Ampri Road 9 intersection	According to the general principles of organisation of public procurements	22,327	OÜ Üle	2012	–
Surfacing of roads in Viimsi Municipality	Simplified procedure	91,301	OÜ Üle	2011	The procurement contract report is missing from the public procurement register
Construction of the light traffic path of Pärnamäe Road with outdoor lighting	Open procedure	772,000	Baltfalt AS	2011	–
Construction of Lille Road nursery school building and taking it on rent	Public adjudication	1,067,324	Thermo Module Group OÜ/Lille tee Lasteaed OÜ	2010	Failure to organise international procurement procedure
Outsourcing the nursery school service	Service ordered by simplified procedure	4,083,960	MTÜ Laste Aeg	2011	The procurement contract report is missing from the public procurement register

Source: National Audit Office, 2013

Public adjudication – purchase of supplies or contracting for services or construction works without the implementation of the procedural provisions stipulated in the Public Procurement Act.

Procurement rules and procurement plan

The required procurement rules have not been established

9. In order to properly think through the organisation of public procurements, contracting authorities have been required to establish internal procurement rules since 1 January 2012. These rules must set out the procedure for the preparation and approval of the planning or public procurements and the preparation of the annual procurement plan, the appointment of the responsible person, the organisation of procurements below the limit and the contracting for services by simplified procedure. Many contracting authorities established their internal procurement rules in the previous period to regulate the aforementioned areas, but at that time this meant adherence to good practice in the organisation of public procurements, which was not compulsory.

10. Viimsi Municipality Government has not established any internal procurement rules. The person responsible for the procurement is appointed according to the auditee’s good practice for the performance of a public procurement and a committee is generally formed for carrying out the procurement procedure.

11. Neither has the municipality prepared a procurement plan, although this has been mandatory since 2012. Viimsi Municipality did not consider the preparation of a separate procurement plan mandatory for the reason that the volume of the purchases to be made in the coming year will become clear during the budgeting process anyway. Viimsi Municipality Government established a procurement plan for 2013 at the time of the audit.

12. It is clear that the existence of procurement rules and the annual planning of procurements alone and in itself does not guarantee proper compliance with the requirements of the Public Procurement Act. However, it can be said that well-prepared procurement rules are of significant help to the employees who organise procurements. Especially when the estimated cost of a procurement is correctly planned at the time the procurement plan is prepared, because this makes it possible to correctly select the type of procedure of the future procurement early on.

13. Procurement planning, the existence of procurement rules and a functioning internal control system could have prevented violations of the requirements of the Public Procurement Act in the case of a few procurements organised by Viimsi Municipality Government, which are discussed below.

14. Recommendation of the National Audit Office to Viimsi Municipality Government:

- establish internal procurement rules which determine the procedure for planning and carrying out procurements and the responsible persons in order to make the organisation of procurements more transparent and the internal control system more efficient; and
- prepare an annual procurement plan to improve the planning of procurements.

Response of Viimsi Municipality Government: The procurement rules are being prepared at the time this response is being written. The procurement plan for 2013 has been approved.

Not all procurements are entered in the public procurement register

Announcement of procurements and reporting

15. When the estimated cost of construction and repair works exceeds 30,000 euros, the public procurement must be launched as a simplified procedure via the public procurement register. Also, a report must be submitted to the public procurement register after the awarding of the procurement contract. The same rules apply to purchases of supplies and services from 10,000 euros. The requirement to enter the procurement in the public procurement register was not adhered to in the case of three of the ten reviewed procurements of Viimsi Municipality (see points 15–22).

Surfacing of roads in Viimsi Municipality

16. On 29 June 2012 Viimsi Municipality awarded a contract to the contractor for double-surfacing of the section of Vana-Narva Road located in Laiaküla village. The parties agreed that the works would cost 28,473 euros. Almost two months later, the parties agreed that they would amend the procurement contract and increase the volume of the surfacing works. The new cost of the works was 33,969 euros.

17. The National Audit Office points out that the Public Procurement Act only allows an awarded public contract to be amended if the amendment is caused by objective circumstances that the contracting entity could not foresee during the awarding of the public contract and if in the event of leaving the public contract unamended the achievement of the purpose sought with the public contract would be fully or to a material extent in jeopardy. The National Audit Office is of the opinion that increasing the volume of surfacing works after the awarding of the procurement contract cannot be caused by objective circumstances and that non-amendment does not place the initial objective of the procurement contract - to perform surfacing works on the agreed road sections - in jeopardy. The amendment of the procurement contract was more likely the result of superficial planning.

18. The incorrect planning of the procurement was the reason why the aforementioned procurement was not launched in the public procurement register, as the initially calculated cost of the public procurement was below 30,000 euros, not 33,969 euros. Moreover, the public procurement report about the awarding of the contract was also not submitted to the public procurement register.

19. A public procurement was also not submitted for the contract for services awarded on 7 July 2011, which required the contractor to surface the roads of Viimsi Municipality according to the price quoted on 9 May 2011. Works were done for 91,301 euros, but they were not entered in the public procurement register.

20. The contracting authority is not required to comply with the majority of the provisions of the Public Procurement Act when certain types of services are outsourced. However, a contracting authority is required to submit a public procurement report when the cost of the procurement contract exceeds 40,000 euros. Nursery schools are a service of this type.

Outsourcing the nursery school service

21. On 25 January 2011 Viimsi Municipality awarded a contract for outsourcing the nursery school service in the Väike Päike nursery school in Pärnamäe village. The cost of the contract is 34,033 euros per month for ten years. Although the total cost of the procurement exceeded 40,000 euros, the municipality did not submit a report about the awarding of the procurement contract to the public procurement register.

22. The National Audit Office is of the opinion that although the submission of reports about awarded procurement contracts to the public procurement register may seem insignificant in the case of small contracts or services ordered by the simplified procedure, this attitude is in no way justified. The regulator has deemed it important to also have an overview of procurement contracts in a simpler format. The only way this can be achieved is by submitting reports to the public procurement register. Such a breach of the Public Procurement Act must therefore be considered significant.

23. **Recommendation of the National Audit Office to Viimsi Municipality Government:** update the internal procurement rules and require the appointment of persons who are responsible for entering procurements in the public procurement register.

Response of Viimsi Municipality Government: Viimsi Municipality Government will consider the recommendation made by the National Audit Office in the procurement rules that are currently being prepared.

The municipality did not guarantee compliance with the Public Procurement Act

Construction works of nursery school building ordered by the municipality

24. The Public Procurement Act prescribes an exception for cases where a contract is awarded for taking an immovable on rent. The contracting authority as the lessee must not implement the procedure established in the Public Procurement Act in such a case. However, if the lessor performs construction works in respect of the immovable according to the lessee's instructions before the immovable is handed over to the lessee, the lessor is obliged to comply with the Public Procurement Act when contracting for the construction works. The aforementioned rule was not observed in the case of a procurement organised by Viimsi Municipality.

25. In 2010 Viimsi Municipality launched a public adjudication for taking a nursery school building on rent. As a result of the adjudication the municipality awarded the lease to the winning company and the contract required the private partner as the lessor to build the nursery school building and lease it to Viimsi Municipality for 7.5 years. The nursery school building was completed in 2012 and the lessor has handed it over to the municipality. Lille Road Nursery School, which is operated by Viimsi Municipality, occupies the building at present.

26. The private partner should have launched a public procedure via the public procurement register for the construction works of the nursery school building. Instead, it found the builder in a public adjudication, but the failure to organise a public procurement meant that it ignored the provisions of the Public Procurement Act.

27. The National Audit Office is of the opinion that Viimsi Municipality should have guaranteed that the private partner find the builder by way of an appropriately organised public procurement.

An international procurement was not declared

28. The Public Procurement Act stipulates the principle according to which the contracting authority may not use a construction procurement contract to order services for which contracting is not required for the construction works that are the object of the procurement contract. The aforementioned rule was not observed in the case of a procurement organised by Viimsi Municipality and an international procurement was not organised.

Contracting for road construction works and winter maintenance works

29. In September 2009 Viimsi Municipality launched an open procedure for the awarding of the municipal road maintenance contract for the period of November 2009 to April 2015. The procurement contract was awarded to the company whose tender cost 173,913 euros for the first year of maintenance. The maintenance fee is adjusted in every subsequent year according to the construction price index. The total cost of the contract according to the municipality's estimates was 939,943 euros.

30. According to the awarded contract, the maintenance of the roads of Viimsi Municipality covers various activities that are divided in two by their nature: various road construction and surfacing works that cost 85,467 euros per year and winter maintenance works that cost 88,446 euros per year.

Did you know that

road construction works can only be performed by holders of relevant activity licences. The performance of winter maintenance works, however, requires no activity licence.

31. The National Audit Office is of the opinion that an international procurement procedure should have been organised for the winter maintenance procurement contract, as the total cost of the winter maintenance on the basis of the winning tender is more than 530,000 euros according to the most modest estimate. The threshold of an international public procurement at the time the procurement was organised was 133,000 euros.

Threshold of international procurement procedure – the amount from which the publication of public procurements in the European Union database TED is mandatory.

32. **Recommendation of the National Audit Office to Viimsi Municipality Government:** set forth in the procurement rules that a construction procurement contract may not be used to order services for which contracting is not required for the construction works that are the object of the procurement contract.

Response of Viimsi Municipality Government: Viimsi Municipality Government agrees with the recommendation made by the National Audit Office.

Procurements organised by AS Viimsi Vesi

33. The majority of the procurements of AS Viimsi Vesi are projects financed from European Union funds which pass inspection by the Environmental Investment Centre. This practice considerably reduces the risk of mistakes in the organisation of public procurements. Irrespective of this, the National Audit Office found omissions in the procurement activities of the auditee (for which EU funds were not used): the principle of taking advantage of existing competition was ignored and the required procurement procedure was not organised (see points 38-43). The public

limited company had also not established internal procurement rules (see point 34).

Table 2. Audited transactions of AS Viimsi Vesi

Name of transaction/ procurement	Type of transaction/ procurement	Cost of transaction in euros (w/out VAT)	Type of transaction/ procurement	Year of transaction/ procurement	Identified breach
Removal of wastewater with suction vehicle 2010-2012	–	265,419	OÜ Tehnip	2010–2012	Failure to organise international procurement procedure
Repair of pipelines in Muuga and Pringi village	According to the general principles of organisation of public procurements	5,570	Tero Ehitus OÜ	2012	–
Construction of water supply and sewerage pipelines at 133, 154 & 165 Rohuneeme Road	According to the general principles of organisation of public procurements	28,836	Olio Projekt OÜ	2012	–
Supervision of the construction of Viimsi water supply and sewerage facilities	Open procedure	356,300	AS Telora-E	2005	–
Establishment of Viimsi water treatment plant	Open procedure	3,288,629	AS Esmar Ehitus	2010	–

Source: National Audit Office, 2013

Procurement rules and procurement plan

The internal procurement procedure of the company was established after the inquiry by National Audit Office

34. AS Viimsi Vesi had not established internal procurement rules that would have been effective during the audited period. The procurement rules were prepared after the National Audit Office inquired about the existence of the procurement rules required by the Public Procurement Act in the end of 2012.

The procurement plan is prepared selectively

35. A procurement plan had not been prepared for all of the procurements organised by AS Viimsi Vesi. A procurement plan had been prepared for the procurements related to the construction of stage II of water management in Viimsi, which were received with European Union support to a value of over 14.5 million euros from 2010 to 2013. No procurement plan had been prepared for the purchases financed from the municipality's own funds during the audited period.

36. It is likely that the auditee’s practice of preparing procurement plans selectively only for procurements financed with European Union support and the fact that the remaining procurements are not planned for the purposes of the Public Procurement Act helped lead to a situation where a procurement procedure for wastewater removal has not been organised for years (see points 38-44).

37. **Recommendation of the National Audit Office to the director of AS Viimsi Vesi:** also add the procurements financed from the company's own funds to the procurement plan.

Response of the director of AS Viimsi Vesi: AS Viimsi Vesi will take the recommendations made by the National Audit Office on board and prepare a procurement plan for all procurements.

The company did not add the procurements financed from it is own funds to the procurement plan, as there were no such procurements during the audited period. There was only a simplified procedure, but no public procurement. Should AS Viimsi Vesi have to carry out a public procurement procedure that also involves financing from the company's own funds, the company will add such a procedure to the procurement plan.

Organisation of a new procurement has been avoided for years

Outsourcing of wastewater removal service

38. In 2005 AS Viimsi Vesi awarded a one-year contract for wastewater removal as a result of an open procedure whose cost was 21,776 euros. An agreement was signed with the carrier in 2006 pursuant to which the contract for wastewater removal was changed to a contract for an unspecified term.

39. The volume of the contract started growing considerably thereafter. This was caused by the fact that, for various reasons, the construction of the public sewerage system did not manage to keep up with the increase in the quantity of wastewater generated by new districts. In 2012 the carrier provided wastewater removal services for *ca* 90,000 euros, i.e. a four-fold increase compared to the initial annual volume of the procurement contract, i.e. 21,776 euros. A new procurement for contracting for the wastewater removal service was not organised.

40. The new Public Procurement Act entered into force on 1 May 2007. The Act now also stipulates the general principles for the organisation of public procurements. They include the requirement that the contracting authority must guarantee the efficient use of existing competition in public procurements.

Did you know that

there are at least ten wastewater removal service providers in Harju County and Tallinn alone.

41. It is generally known that there are enough wastewater removal service providers in Harju County and its surrounding area alone. As new procurement objects emerged, AS Viimsi Vesi should have given these service providers the opportunity to compete for the provision of the wastewater removal service.

42. The National Audit Office is of the opinion that the auditee gave new objects to the wastewater removal service provider with which it considerably increased the volume of the initial contract. As other providers of a similar service were not allowed to submit their tenders, then the auditee did not comply with one of the general principles of the organisation of public procurements, which is to guarantee efficient use of the existing competition.

43. The National Audit Office points out that increasing the initial volume of a procurement contract year on year constitutes the amendment of such a contract. The Public Procurement Act prohibits the contracting

authority from amending the procurement contract if the objective of the amendment can be achieved with the awarding of a new procurement contract. However, the auditee did not organise a new procurement procedure and did not consider the organisation of an international procurement despite the significant increase in the volume of the provided service.

Long-term contract – a contract entered into for the provision of a long-term repeated service for a term longer than one year or for an unspecified term.

44. **Recommendation of the National Audit Office to the director of AS Viimsi Vesi:** consider updating the internal procurement rules of the company with the rule that requires an annual review of long-term contracts before the approval of the procurement plan. The objective of the annual review is to ascertain whether the nature of the long-term contractual relationship still complies with the initial object and cost of the contract. If its nature has changed, guarantee that the public procurement required by law is organised.

Response of the director of AS Viimsi Vesi: AS Viimsi Vesi agrees with the recommendation made by the National Audit Office. The company is planning to carry out a procurement procedure for outsourcing the wastewater removal service in the near future.

Resolution of a situation related to a conflict of interests caused difficulties

45. In 2010 AS Viimsi Vesi organised a public procurement for the establishment of Viimsi water treatment plant. Five tenders were received. They included a construction company managed by the then chairman of the supervisory board of AS Viimsi Vesi. The procurement contract was later awarded to this company.

46. The Public Procurement Act stipulates that the contracting authority must avoid conflicts of interest that damage competition. Tenderers that participate in the preparation of the procurement documents or are related to the contracting authority in any other manner and that therefore know information that gives them an advantage over other tenderers may be removed from the procurement procedure by the contracting authority. The Anti-corruption Act in force at the time of the procurement prohibited officials from performing transactions related to themselves or conflicts of interest. For example, there is a conflict of interest in a case where an official participates in making a decision that affects the economic interests of the legal entity of whose management board the official is a member.

47. A member of the management board of AS Viimsi Vesi at the time confirmed that the members of the supervisory board did not participate in the preparation of the documents related to the construction procurement of the Viimsi water treatment plant. The members of the supervisory board were only informed that the construction procurement was being prepared and what its deadlines were. No materials related to the procurement were sent to the members of the supervisory board.

Advice of ministries to the contracting authority

48. The management board of AS Viimsi Vesi sought to clarify in the course of the procurement whether the tender made by the company related to a supervisory board member had to be removed from the procurement procedure. As the management board of AS Viimsi Vesi was unable to assess whether removing the tender from the procurement procedure would be justified, it contacted the Ministry of the

Environment to obtain a clear opinion on the situation. In his letter, the Minister of the Environment wrote that a member of the supervisory board and especially the chairman of the supervisory board is in the kind of position that gives them access to information that gives a tenderer related to the supervisory board member an advantage over other tenderers and also allows the activities of the management board – and thereby the activities of the entire company – to be influenced. The minister noted in the letter that there may be a conflict of interests, and in such a case performing a transaction with the tenderer was prohibited, but above all, the contracting authority itself should be aware of whether a member of the supervisory board could influence the decision of declaring a tender successful.

49. The response sent to AS Viimsi Vesi from the Public Procurement and State Aid Department of the Ministry of Finance was that only the contracting authority can assess whether any circumstances exist for removal from the procurement procedure. In its letter, the Ministry of Finance stated that as an advisory authority it could not know whether information that has become known to a tenderer gives them an advantages over other tenderers. They also do not know whether the conflict of interests set forth in the Anti-corruption Act could occur. The contracting authority must therefore decide by itself whether there are any reasons for removing a tenderer from the procurement procedure.

50. The National Audit Office ascertained that AS Viimsi Vesi ended up in a complicated situation because it had not regulated in internal rules of procedure or organisation of work how the transparency and verifiability of a public procurement should be guaranteed, how the company should act in a situation of potential conflict of interest and which measures it should apply to prevent the emergence of an apparent conflict of interest.

Did you know that

the necessary guidelines for prevention of conflicts of interest are offered by the prevention of corruption and public service websites huvidekonflikt.just.ee and avalikteenistus.ee.

51. The National Audit Office is of the opinion that assessing the factors associated with conflicts of interest is not difficult solely for AS Viimsi Vesi, but represents a broader problem for local authorities and their companies. Resolving it depends primarily on the contracting authorities themselves and their preparedness to work hard on furthering their knowledge related to the prevention of conflicts of interest. However, the rules provided by law for the prevention of conflicts of interest are not particularly clear and the contracting authority needs more substantive and practical advice in specific situations.

52. Recommendations of the National Audit Office to the Minister of Finance:

- amend the Public Procurement Act and stipulate the criteria for removing tenderers who have received advantages from the procurement procedure; and
- publish recommendations on the public procurement website about how to create such an organisation of work in an institution and agree on procedures that would allow the contracting authority to decide whether the basis for removing a tenderer from the procurement procedure exists.

Response of the Minister of Finance: You have submitted two proposals to the Minister of Finance in your draft audit report ‘Public procurements in Viimsi Municipality and its undertakings'. The content of the first proposal was to amend the Public Procurement Act and stipulate the criteria for removing tenderers who have received advantages from the procurement procedure. The second proposal concerned the publication of recommendations on the public procurement website about how to create such an organisation of work in an institution and agree on procedures that would allow the contracting authority to decide whether the basis for removing a tenderer from the procurement procedure exists.

Pursuant to Clause 38 (2) 4) of the Public Procurement Act, a contracting authority may remove a tenderer or applicant from the procurement procedure if their tenders were prepared with the involvement of a person who participated in the preparation of the documents of the same public procurement or who is related to the contracting authority in any other manner and the information therefore known to the person gives them an advantage over other tenderers. This means that the Public Procurement Act already regulates the removal of a tenderer with an advantage.

The Minister of Finance does not support the development of guidelines on topics that depend directly on factual circumstances. Whether an advantage was received in the specific case or whether the information was accessible to all interested parties on an equal basis and to an equal extent cannot be decided by anyone other than the relevant contracting authority. In the event of a dispute, the matter will be resolved by the Public Procurement Dispute Committee of the Ministry of Finance or the courts.

The Ministry of Finance has published court practice concerning conflicts of interest in its public procurement portal, where the criteria of specific cases are discussed and they make it possible to assume a position on the existence or absence of advantages. We have also referred to the Handbook on the Prevention of Conflicts of Interest in the public procurement portal, and contracting authorities can use it to agree on the relevant work organisation procedures in their organisations.

The Ministry of Finance is of the opinion that discussing the subject of conflicts of interest and obtaining an unfair competitive advantage in internal procurement rules is recommended. We also explain this aspect in training and via the public procurement portal.

53. **Recommendation of the National Audit Office to the director of AS Viimsi Vesi:** update the procurement rules and establish an internal procedure for the prevention of conflicts of interest in the various stages of public procurements.

Response of the director of AS Viimsi Vesi: AS Viimsi Vesi agrees with the recommendation made by the National Audit Office and will establish an internal procedure.

Procurements organised by OÜ Viimsi Haldus

54. OÜ Viimsi Haldus organises procurements on the basis of internal procurement rules according to which a person responsible for the procurement is appointed for each procurement and a Committee of

Procurement Procedure is generally also formed. Irrespective of this, omissions were found in the procurement activities of the auditee: the principle of taking advantage of the existing competition was ignored (see points 64-68) and the mandatory procurement procedure was not organised in some cases (see points 59–63).

Table 3. Audited transactions of Viimsi Haldus OÜ

Name of transaction/ procurement	Type of transaction/ procurement	Cost of transaction in euros (w/out VAT)	Transaction/ procurement carried out by	Year of transaction/ procurement	Identified breach
Various security services purchased from 2010-2012	Service contracted for by simplified procedure	190,984	Securitas Eesti AS		Breach of general principles of public procurement (failure to take advantage of existing competition)
Maintenance of bus stops in Viimsi Municipality	Simplified procedure	31,700	Elkonte Grupp OÜ	2011	Failure to organise international procurement procedure
Maintenance of bus stops in Viimsi Municipality	Simplified procedure	39,625	Elkonte Grupp OÜ	2012	Failure to organise international procurement procedure
Stage I of the carriageway and light traffic path of Nurme Road, Nurme Alley and Nugise Road	Simplified procedure	248,232	OÜ Kiili Teed	2011	
Renovation of car parks at 1 Nelgi Road	Simplified procedure	89,026	OÜ Kiili Teed	2011	
Cleaning works in Viimsi Secondary School	Open procedure	161,496	P. Dussmann Eesti OÜ	2011	
Cleaning in Karulaugu Primary School	Negotiated procedure with prior publication of a contract notice	111,840	Puhastusproff OÜ	2012	
Cleaning works in Viimsi Secondary School	Negotiated procedure with prior publication of a contract notice	199,846	Puhastusproff Eesti OÜ	2012	
Cleaning in Karulaugu Primary School	Simplified procedure	33,072	Dussmann Eesti OÜ	2011	

Source: National Audit Office, 2013

The required procurement procedure was established at the right time

55. The internal procurement rules of OÜ Viimsi Haldus entered into force on 1 January 2012, i.e. exactly when required by the Public Procurement Act.

56. The National Audit Office is of the opinion that the procurement rules are professionally prepared and a good aide to employees who organise public procurements.

Procurement plans existed before they were made mandatory

57. Pursuant to the Public Procurement Act, contracting authorities have been required to prepare procurement plans since 1 January 2012. The auditee prepared procurement plans even earlier: it had procurement plans for 2012, 2011 and 2010.

58. The National Audit Office is of the opinion that the procurement plans for all three years were prepared in sufficient detail to give the necessary overview of the nature of the planned procurements, the type of procedure and deadlines.

The law was not complied with when the procurement was planned

Procurement divided into lots

59. The Public Procurement Act does not allow the division of procurements into lots for the purpose of avoiding compliance with the norms stipulated in the Public Procurement Act. This rule was ignored in the case of a procurement organised by OÜ Viimsi Haldus.

60. In 2011 OÜ Viimsi Haldus awarded two separate service provision contracts by way of a simplified procedure regarding one and the same object: the maintenance and repair of the bus stops located in Viimsi Municipality. The service provider was also one and the same. The first contract was awarded for eight months and cost 31,700 euros; the second was awarded for ten months and cost 39,625 euros.

61. Both of these contracts had been planned as two separate simplified procedures in the procurement plan for 2011. The planned cost of the first was 33,000 euros and the second was to cost 39,000 euros. The total cost of 72,000 euros would have required one open or an equivalent procurement procedure, because this was basically a case of uninterrupted provision of a service.

62. According to the explanations of the auditee, they planned the same service as two procurements because outsourcing the service in this manner was more practical for Viimsi Municipality Government. OÜ Viimsi Haldus therefore acted according to the requests of the municipality government and ignored the law. The municipality government is the 100% owner of the private limited company. Neither did the auditee proceed from its own procurement rules.

63. The National Audit Office is of the opinion that outsourcing the maintenance of the bus stops located in Viimsi Municipality by way of two simplified procedures is not justified in any way whatsoever. This is a case of dividing a procurement into lots in order to avoid the organisation of the required procurement procedure.

The monopoly position of the service provider is not in the taxpayer's interests

64. Security services are services that can be outsourced by simplified procedure, which means that the contracting authority is not obliged to adhere to the majority of the requirements of the Public Procurement Act. It is important to comply with the general principles of the organisation of public procurements – the contracting authority must guarantee that efficient use of existing competition in public procurements. The auditee has repeatedly violated this general principle when contracting for security services.

Outsourcing security services

65. OÜ Viimsi Haldus has outsourced various security services from the same service provider for a long time. The first contract was awarded on 10 August 2006 for the provision of manned security services in Viimsi Secondary School and a competition had been organised before the contract was awarded. A number of annexes have been added to the first contract for the purpose of either increasing the service charge or agreeing on new security services. Also, several new contracts have been awarded to the same service provider without organising a competition which stipulate the provision of services like car patrol reacting to alarms, maintenance of the fire alarm system and burglar alarm system.

66. The service charge paid to the service provider has increased significantly. The amount paid in the first year according to the contract awarded in 2006 was 37,255 euros, but the total amount paid for various security services in 2011 was *ca* 70,000 euros.

Did you know that

the Estonian Association of Security Companies alone has 20 companies as its members.

67. The National Audit Office is of the opinion that the auditee has not complied with the general principles of competition set forth in the Public Procurement Act when outsourcing security services. There are enough companies on the Estonian market that are capable of providing security services at the required level. OÜ Viimsi Haldus should guarantee that other security service providers can also submit their tenders. The creation of a monopoly in the provision of security services in the area of administration of OÜ Viimsi Haldus is not in the interests of the taxpayer.

68. The National Audit Office also points out that the described practice, i.e. written amendment of the initial security service contract by adding annexes to the contract, does not comply with the Public Procurement Act. The Act prohibits the contracting authority from amending the procurement contract if the objective of the amendment can be achieved with the awarding of a new procurement contract. The National Audit Office is of the opinion that a competition should have been organised for changing the volumes of the initial procurement contract and a new procurement contract should have been awarded.

69. **Recommendation of the National Audit Office to the director of OÜ Viimsi Haldus:** consider updating the internal procurement rules of the company with a rule that requires an annual review of long-term contracts before the approval of the procurement plan. The objective of the annual review is to ascertain whether the nature of the long-term contractual relationship still complies with the initial object and cost of the contract. If the relationship has changed, guarantee that the public procurement required by law is organised.

Response of the director of OÜ Viimsi Haldus: OÜ Viimsi Haldus will consider the recommendations made by the National Audit Office in public procurements to be organised in the future.

Supervision of public procurements of the companies of Viimsi Municipality

The company control system of Viimsi Municipality is not working

Management and supervision of companies

70. The Local Government Organisation Act allows a municipality to establish companies for the performance of its tasks which operate in a similar manner to private companies. The competency of the highest managing body of such a company, i.e. the general meeting, belongs to the municipality government (the council in certain cases), which determines the composition of the company's supervisory board.

Did you know that

The National Audit Office found in its 2010 audit 'Participation of municipalities, towns and cities in companies and foundations' that above all, supervisory boards are the directing bodies that should live up to their role in municipal companies, as in essence their duty is to exercise supervision over the lawfulness of the activities of the company and fulfilment of the objectives established for the management board. Unfortunately, supervisory boards are often formed on political grounds and their members do not have the skills required for overseeing the management board. Unlike the collective political responsibility of a council or government member, failure to perform the obligations of a member of a directing body of a company may lead to personal material liability.

71. The tasks of a company's supervisory board are the election of management board members, the organisation of the company's management and the supervision of the activities of the management board. The management board of a company represents and manages the company and is directly aware of the different aspects of the company's activities, including the organisation of public procurements and direct of control of this in the company.

72. As the municipality exercises the rights of the owner in the company, the activities of the company often depend on the attitudes of the municipality government. Although the municipality does not participate in the direct management of such companies, it must look after the interests of the owner and guarantee that the companies which were established with and are using public funds are capable of performing the requirements arising from the Public Procurement Act. The municipality government can also guarantee the realisation of the owner's interests via the supervisory board of the company.

73. In order to assess compliance with the requirements of the Public Procurement Act, the municipality can also use control mechanisms in its companies, one of the most important of which is the supervision exercised by the supervisory board over the activities of the company and the management board. In order to organise efficient supervision and give opinions on the regularity of the management board's activities in the organisation of public procurements, the supervisory board must, among other things, consist of persons who have knowledge of the area of public procurements.

Designating a special audit of public procurement activities

74. In addition to the above, it is also possible for the municipality government to designate a special audit of the public procurement activities of the management board in companies. This is probably one of the most efficient ways of inspecting the activities of the management board in the organisation of public procurements, as special audits are carried out by professionals – lawyers and auditors. However, special audits are rarely designated due to the fact that the specialists who carry them out are expensive.

75. Although omissions were found in the planning of public procurements as well as in existence of the necessary processes during the audited period, the National Audit Office did not find any evidence of the supervisory boards of companies inspecting the activities of the management boards in the organisation of public procurements.

Audit committee of the council as controller of public procurement activities

76. Since 1 January 2013, the audit committee of the municipality council also has the right to control and assess the companies belonging to a local authority in addition to the activities of the municipality government. Using this method means that there should be a person who knows the area of public procurements among the members of the audit committee or that the audit committee involves an expert who knows the area. No such controls were included in the audit committee's work plan for 2013.

77. The National Audit Office is of the opinion that whilst being independent of the daily management of the local authority, a company established by the local authority clearly performs the functions prescribed by the local authority and there is clear public interest in the regularity of their performance and the owner of the company should also be interested in this. In the cases described in the audit, Viimsi Municipality has not guaranteed efficient control of the companies operating in public interests, which would also guarantee better organisation of the public procurements of the company.

Opinion of the National Audit Office on the public procurements of Viimsi Municipality and its undertakings

Question	Response	Summary of opinion
Were all the necessary procurement procedures during the audited period of 2010-2012 organised pursuant to the Public Procurement Act (PPA)?	**NO** **NO** **NO**	**Viimsi Municipality** has not complied with the requirements arising from the Public Procurement Act, because procurement procedures have not been organised in some cases. **AS Viimsi Vesi** has not complied with the requirements arising from the Public Procurement Act, because procurement procedures have not been organised in some cases. **OÜ Viimsi Haldus** has not complied with the requirements arising from the Public Procurement Act, because procurement procedures have not been organised in some cases.
1. Do the procurement contracts awarded as a result of procurement procedures comply with the terms and conditions of the procurement documents and the Public Procurement Act? 2. Do the amendments made to the procurement contracts comply with the Public Procurement Act?	**1. YES** **2. NO** **1. YES** **2. NO** **1. YES** **2. NO**	The procurement contracts of **Viimsi Municipality** that were awarded as a result of procurement procedures comply with the terms and conditions specified in the procurement documents and with the PPA. There was one case where the amendment of a procurement contract did not comply with the above. The procurement contracts of **AS Viimsi Vesi** that were awarded as a result of procurement procedures comply with the terms and conditions specified in the procurement documents and with the PPA. There were cases where the amendments to procurement contracts did not comply with the above. The procurement contracts of **OÜ Viimsi Haldus** that were awarded as a result of procurement procedures comply with the terms and conditions specified in the procurement documents and with the PPA. There were cases where the amendments to procurement contracts did not comply with the above.

/digitally signed/

Airi Mikli
Director of Audit, Local Governments Audit Department

Recommendations made by National Audit Office and responses of the auditees

On the basis of the audit, the National Audit Office made several recommendations to the Minister of Finance and Viimsi Municipality Government, the director of AS Viimsi Vesi and the director of OÜ Viimsi Haldus. The minister and the auditees sent their responses to the recommendations made by the National Audit Office on 11 June 2013.

Recommendations of National Audit Office	Responses of auditees
Procurement rules and procurement plan **14. Recommendation of the National Audit Office to Viimsi Municipality Government:** ▪ establish internal procurement rules which determine the procedure for planning and carrying out procurements and the responsible persons in order to make the organisation of procurements more transparent and the internal control system more efficient; and ▪ prepare an annual procurement plan to improve the planning of procurements. points 9–13	**Response of Viimsi Municipality Government:** The procurement rules are being prepared at the time this response is being written. The procurement plan for 2013 has been approved.
Procurements in public procurement register **23. Recommendation of the National Audit Office to Viimsi Municipality Government:** update the internal procurement rules and require the appointment of persons who are responsible for entering procurements in the public procurement register. points 15–22	**Response of Viimsi Municipality Government:** Viimsi Municipality Government will consider the recommendation made by the National Audit Office in the procurement rules that are currently being prepared.
Contracting for additional works **32. Recommendation of the National Audit Office to Viimsi Municipality Government:** set forth in the procurement rules that a construction procurement contract may not be used to order services for which contracting is not required for the construction works that are the object of the procurement contract. points 28–31	**Response of Viimsi Municipality Government:** Viimsi Municipality Government agrees with the recommendation made by the National Audit Office.
Procurement plan **37. Recommendation of the National Audit Office to the director of AS Viimsi Vesi:** also add the procurements financed from the company's own funds to the procurement plan. points 35–37	**Response of the director of AS Viimsi Vesi:** AS Viimsi Vesi will take the recommendations made by the National Audit Office on board and prepare a procurement plan for all procurements. The company did not add the procurements financed from it is own funds to the procurement plan, as there were no such procurements during the audited period. There was only a simplified procedure, but no public procurement. Should AS Viimsi Vesi have to carry out a public procurement procedure that also involves financing from the company's own funds, the company will add such a procedure to the procurement plan.
Review of long-term contracts **44. Recommendation of the National Audit Office to the director of AS Viimsi Vesi:** consider updating the internal procurement rules of the company with a rule that requires an annual review of long-term contracts before the approval of the procurement plan. The objective of the annual review is to ascertain whether the nature of the long-term contractual relationship	**Response of the director of AS Viimsi Vesi:** AS Viimsi Vesi agrees with the recommendation made by the National Audit Office. The company is planning to carry out a procurement procedure for outsourcing the wastewater removal service in the near future.

Recommendations of National Audit Office	Responses of auditees
still complies with the initial object and cost of the contract. If its nature has changed, guarantee that the public procurement required by law is organised. **points 38–43**	
Conflict of interest **52. Recommendations of the National Audit Office to the Minister of Finance:** ▪ amend the Public Procurement Act and stipulate the criteria for removing tenderers who have received advantages from the procurement procedure; and ▪ publish recommendations on the public procurement website about how to create such an organisation of work in an institution and agree on procedures that would allow the contracting authority to decide whether the basis for removing a tenderer from the procurement procedure exists. **points 45–51**	**Response of the Minister of Finance:** You have submitted two proposals to the Minister of Finance in your draft audit report 'Public procurements in Viimsi Municipality and its undertakings'. The content of the first proposal was to amend the Public Procurement Act and stipulate the criteria for removing tenderers who have received advantages from the procurement procedure. The second proposal concerned the publication of recommendations on the public procurement website about how to create such an organisation of work in an institution and agree on procedures that would allow the contracting authority to decide whether the basis for removing a tenderer from the procurement procedure exists. Pursuant to Clause 38 (2) 4) of the Public Procurement Act, a contracting authority may remove a tenderer or applicant from the procurement procedure if their tenders were prepared with the participation of a person who participated in the preparation of the documents of the same public procurement or who is related to the contracting authority in any other manner and the information therefore known to the person gives them an advantage over other tenderers. This means that the Public Procurement Act already regulates the removal of a tenderer with an advantage. The Minister of Finance does not support the development of guidelines on topics that depend directly on factual circumstances. Whether an advantage was received in the specific case or whether the information was accessible to all interested parties on an equal basis and to an equal extent cannot be decided by anyone other than the relevant contracting authority. In the event of a dispute, the matter will be resolved by the Public Procurement Dispute Committee of the Ministry of Finance or the courts. The Ministry of Finance has published court practice concerning conflicts of interest in its public procurement portal, where the criteria of specific cases are discussed and they make it possible to assume a position on the existence or absence of advantages. We have also referred to the Handbook on Prevention of Conflicts of Interest in the public procurement portal, and contracting authorities can use it to agree on the relevant work organisation procedures in their organisations. The Ministry of Finance is of the opinion that discussing the subject of conflict of interest and obtaining an unfair competitive advantage in internal procurement rules is recommended. We also explain this aspect in training and via the public procurement portal.
Conflict of interest **53. Recommendation of the National Audit Office to the director of AS Viimsi Vesi:** update the procurement rules and establish an internal procedure for the prevention of conflicts of interest in the various stages of public procurements. **points 45–51**	**Response of the director of AS Viimsi Vesi:** AS Viimsi Vesi agrees with the recommendation made by the National Audit Office and will establish an internal procedure.
Review of long-term contracts **69. Recommendation of the National Audit Office to the director of OÜ Viimsi Haldus:** consider updating the internal procurement rules of the company with a rule that requires an annual review of long-term contracts before the approval of the procurement plan. The objective of the annual review is to ascertain whether the nature of the long-term contractual relationship still complies with the initial object and cost of the contract. If the relationship has changed, guarantee that the public procurement required	**Response of the director of OÜ Viimsi Haldus:** OÜ Viimsi Haldus will consider the recommendations made by the National Audit Office in public procurements to be organised in the future.

Recommendations of National Audit Office	Responses of auditees
by law is organised. **points 64–68**	

Characteristics of audit

Purpose of audit

The purpose of the audit was to give an opinion on the activities of Viimsi Municipality Government, OÜ Viimsi Haldus and AS Viimsi Vesi in the organisation of public procurements and performance of procurement contracts from 2010-2012.

The audit focused mainly on the following issues.

- Had the auditees organised all the necessary public procurements, the obligation to organise which arise from the Public Procurement Act, in the period from 2010-2012?
- Were the procurement contracts awarded as a result of public procurements entered into and amended pursuant to the terms and conditions of the procurement documents and in compliance with the Public Procurement Act?

Assessment criteria

The opinion of the National Audit Office is positive if the following criteria are met:

- all procurement procedures that must be organised pursuant to the Public Procurement Act were organised (§§ 15, 16 of the PPA) and the procurements were not divided into lots in order to ignore the public procurement rules; the public procurements that were carried out complied with the Public Procurement Act (Chapters I and II of the PPA); and
- public procurement contracts were awarded and amended in compliance with the law (§§ 69 and 69^1 of the PPA).

Scope and focus of audit

The audit covered Viimsi Municipality and two of the most important companies in its consolidation group, AS Viimsi Vesi and OÜ Viimsi Haldus.

The auditees were first asked to provide extracts of accounting documents about the transactions carried out in the audited period and the internal documents that regulate the organisation of public procurements. Based on extracts of accounting documents, the auditors reviewed transactions from 5000 euros and purchases of the same type the amounts paid for which exceeded 10,000 euros per year. A sample of public procurements was then selected on the basis of risk assessments and their compliance with criteria was checked.

The performance of the obligation to prevent conflicts of interest that damage competition which arises from the Public Procurement Act was audited at the same time. It covered checking the existence of the relationships prohibited by the Anti-corruption Act between officials from Viimsi Municipality and the managing bodies of the transaction parties.

Time of completion of audit

The audit was completed in May 2013.

Audit team

Audit Manager Illar Tõnisson, Senior Auditor Taavi Mölder, Auditor Marek Kübarsepp

Contact information

Further information on the audit is available from the Communication Service of the National Audit Office:
telephone: +372 640 0704 or +372 640 0777; e-mail: riigikontroll@riigikontroll.ee

An electronic copy of the audit report (PDF) is available online at www.riigikontroll.ee.

A summary of the audit report is also available in English.

The number of the audit report in the records management system of the National Audit Office is 2-1.9/13/50062/10.

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Previous audits of National Audit Office in the area of procurements

21 April 2010 – **Organisation of public procurements by companies, foundations and non-profit organisations established or partially owned by municipalities, towns and cities**

30 May 2008 – **Organisation of construction procurements in rural municipalities and cities**

All reports are available on the website of the National Audit Office at www.riigikontroll.ee

Annex. Interviews carried out in the course of the audit

Date	Auditee	Participants
19 December 2012	Viimsi Municipality	Haldo Oravas (Municipality Mayor), Randar Lohu (Member of Municipality Government and Head of Finance Department), Jan Trei (Deputy Municipality Mayor), Toivo Eensalu (Member of the Management Board of AS Viimsi Vesi)
17 January 2013	AS Viimsi Vesi	Toivo Eensalu (Member of Management Board), Marge Vaino (Lawyer), Lauri Lagle (Public Procurement Specialist)
7 February 2013	OÜ Viimsi Haldus	Heiki Virronen (Member of Management Board), August Kiisk (Public Procurement Specialist)