Public procurements in Viimsi Municipality and its companies

Do Viimsi Municipal Government and the companies belonging to Viimsi Municipality follow the Public Procurement Act?

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

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, whether this had been done in compliance with the Public Procurement Act. As the authority of the National Audit Office in auditing local authorities is limited, it did not analyse whether the auditees had acted expediently when purchasing things and ordering 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.

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 significant need for investment, as it is necessary to create new kindergarten and school places, build infrastructure that services new residential areas etc. The local taxpayer must be reassured that the money required for investments is used transparently, expediently and economically, and that the same principle is followed in purchasing things and ordering 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 the municipality. This is why it is particularly important that the economic transactions of the 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.

As a result of the audit the National Audit Office found omissions in the way in which all three auditees had organised public procurements. All of them had failed to organise procurement procedures or entered into procurement contracts without submitting reports to the Public Procurement Register to a value of more than 6.3 million euros. When procurement procedures were 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 the law.

Key observations of the National Audit Office:

- **In one case Viimsi Municipal Government had not organised an international procurement procedure; in two cases it had not announced public procurements via the Public Procurement Register; and in three cases it had not submitted the mandatory report about entry into a procurement contract to the Public Procurement Register.** The breaches of these procedural rules related to procurement contracts whose total value exceeds 5.8 million euros. Viimsi Municipal 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 municipal government did not have a procedure for preparation and approval of an annual procurement plan either, which helps plan public procurements more effectively.

- **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 entered into with 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 damaging 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 the 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 ordered bus stop maintenance work.** The company 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 interest 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 conflicts of interest.

The National Audit Office asked the auditees to take compliance with the Public Procurement Act more seriously to avoid breaches in 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 Municipal Government, AS Viimsi Vesi and OÜ Viimsi Haldus: Viimsi Municipal 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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