



**SIGMA**

**Support for Improvement in Governance and Management**

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# **PUBLIC PROCUREMENT REVIEW**

## **ACCEDING COUNTRIES (8)**

### **CENTRAL & EASTERN EUROPE**

**Latvia: June 2003**

This document should be read together with the *Consolidated Report*

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## 1. Executive Summary

- The number of contracting entities in Latvia amounts to 965. The annual expenditures on public procurements are about €850 million. About 150 public contracts per year exceed the EU thresholds.
- There are two laws regulating public procurement procedures: the Law for the public sector, adopted on 5 July 2001, and the Law for the entities operating in the utilities sectors, adopted on 4 November 1999. The laws are supplemented with several pieces of secondary legislation. The procurement regulations are basically in line with the EU legislation, although some discrepancies still remain. Recently the Parliament formulated an entire set of amendments to the procurement Law. The current legislative process aimed at achieving full compliance with the *acquis communautaire* and was expected to be finalised before the end of June.
- The Latvian procurement Law stipulates four main procurement methods; three of them closely follow relevant EU procedures (open, restricted and negotiated procedures), while the request for price quotation is designated for smaller procurements, far below the EU thresholds. The open and restricted procedures are equally preferred; the contracting authority may freely select one of these methods, while the negotiated procedure remains a procedure used in exceptional circumstances. In reality, the restricted procedure is not used.
- Although in theory the qualification procedure is modelled on the EU provision; in practice, because of rigidity, and the formalistic and bureaucratic approach of contracting entities, it creates a lot of unnecessary and burdensome obstacles for companies. This leads to the rejection of substantially responsive tenders, and the exclusion of eligible candidates for minor formal reasons remains a common practice. SIGMA considers this to be incorrect procurement practice, which leads directly inefficient results and the awarding of contracts to economically less advantageous tenders — although it remains fully compatible with the Law.
- All procurement notices are to be published in the Official Gazette, on the Internet and in one of the commercial newspapers. The system of dissemination of procurement information safeguards transparency and provides potential contractors with sufficient information on procurement opportunities, although it may be assessed as costly and troublesome for contracting authorities. The tenders are submitted in two separate envelopes (technical and financial parts). In the case of procurement of services the contracting authority selects the economically most advantageous tender, taking into account various objective criteria. In the case of purchasing of goods and construction works, the only admissible criterion is the lowest price. This limitation may significantly lower the quality of contracts and long-term relationships.
- The Procurement Monitoring Bureau (20 persons), subordinate to the Ministry of Finance, is the central governmental institution responsible for the public procurement system. The Bureau's main tasks include: drafting regulations, providing training and support, collecting statistical information, issuing consent for application of the negotiated procedure, and examining complaints submitted by disappointed candidates and tenderers. The implementation aspect (introduction of standard tender documents, training, and advice) of the procurement reform was identified by SIGMA as being weak and requiring attention.

## **PART I — PROCUREMENT REVIEW ANALYSIS**

### **2. Country Background Information**

The Republic of Latvia covers 64 589 sq km and has a population a little above 2.3 million inhabitants. Latvia lies along the Baltic Sea its three major ports are Ventspils, Riga and Liepaja. Ventspils is the largest port in the Baltic Sea region and is among the 15 leading European ports in terms of cargo turnover.

Latvia regained its independence from the former Soviet Union in 1991.

Latvia belongs to the group of smaller acceding countries. GDP in 2001 was approximately €7 800 million. The inflation rate in 2001 was equal to 2.4% (one of the smallest in the region). Sectors in the economy are: electronics and mechanical engineering, chemical and pharmaceutical industries, wood processing, food processing, textiles, information technology. The largest trading partner is the European Union.

According to reports published by the Latvian Procurement Monitoring Bureau: in 2001 558.9 million Latvian Lats (about €850 million) were spent for central and local government needs — which is about 12% of GDP.

The number of contracting entities covered by the Public Procurement Law amounts to 965, from which 310 belongs at central government level and 655 to regional and local authorities. About 150 public contracts per year exceed the EU thresholds.

#### ***History of Legislation***

The first modern law regulating public procurement procedures for public sector institutions in Latvia was adopted by the *Saeima* (Parliament) on 24 October 1996. The Law entered into force on 1 January 1997. The Law was modelled closely on UNCITRAL Model Law. It applied to all contracts concluded by public institutions, both by central government and local governments. The Law substantially met the international standards. It covered public institutions, financed from public funds. Utilities were not included. The basic procurement method was open tendering. The Law also authorised, in exceptional cases, the application of other procedures: competition, request for price quotation, single-source procurement. The Law enforced and protected the basic principles of the procurement system – transparency, equal treatment, accountability. However, the old procurement Law introduced the scheme of national preferences, discriminating against foreign companies in favour of Latvian firms. The central government institution responsible for procurement matters was the Public Procurement Department, located within the Ministry of Finance. The Department was responsible for drafting legislation in the area of public procurement, supporting policy development, providing advice to contracting authorities, and monitoring the procurement system including the collection of basic statistical data.

The previous procurement Law was widely criticised by international experts and institutions. Among the most important weaknesses were: partial coverage (non-inclusion of utilities), existence of national preferences, inconsistency with the EU Directives, lack of a credible and efficient complaints review procedure.

The process of negotiations with the European Union required full harmonisation of the Latvian procurement regime with the European legislation. In order to fully transpose the Directives into the national legal system, two new laws on public procurement were adopted. The new Public Procurement Law for State and local governments, adopted on 5 July 2001 (in force since 1 January 2002) replaced the old procurement Law entirely. The new Public Procurement Law for entities in the utilities sectors was adopted on 4 November 1999 (in force since 1 July 2000). The latter regulation fully covered the utilities sector, omitted by the first procurement law. Thus the Republic of Latvia is the only country among the acceding countries, in which two legal acts separately regulate procurement procedures for the public sector and for utilities.

Although both new procurement laws are closer to the EU procurement Directives, some discrepancies still remain and full compliance is still not achieved. The most important problems include:

- incorrect transposition of the definition of a contracting authority — especially as regards the body of public law — and consequently, incorrect coverage of procurement Law;
- extended list of exceptions (when the procurement rules do not apply at all) and cases justifying the use of exceptional procedures (negotiated);
- insufficient implementation of European provisions relating to the technical specifications
- discrimination against foreign companies and their demands to have local registration in Latvia; and
- lack of mandatory publication of some types of procurement notices required by the Directives (prior indicative notices).

In order to finalise the process of harmonisation of procurement regulations with the *acquis communautaire*, the Latvian government at the end of December 2002 adopted a set of amendments to the Public Procurement Law for the public sector, which are now subject to consideration by the Parliament. The recent (April 2003) ongoing legislative process in the Parliament should bring the Latvian procurement system towards full harmonisation, and all remaining gaps and discrepancies should be removed. It is intended that the legislative process be completed before the end of June 2003. As there is no special parliamentary procedure for projects implementing European law, and all changes (also incompatible with EU law) may be introduced, the process must be carefully monitored.

In the course of 2003 amendments to the procurement Law for utilities are to be formulated.

### **3. Legislative Framework**

The current Latvian legislative framework for the public procurement system consists of two separate acts:

- the Law of 5 July 2001 on Procurement for State or Local Government Needs;
- the Law of 4 November 1999 on Construction Work, Supply, Leasing and Services for the needs of Public Service Undertakings.

Both laws are supplemented with secondary legislation:

- Cabinet Regulation No. 558 of 27 December 2001 on Procedures for Open Competition in Relation to Purchase or Lease of Goods;
- Cabinet Regulation No. 559 of 27 December 2001 on Open and Restricted Competition Procedures for Provision of Services;
- Cabinet Regulation No. 560 of 27 December 2001 on Procedures for Open Competition with Respect to the Performance of Construction Work.

In addition, some key ministries have their own internal regulations, regulating procurement procedures for subordinate entities (for example the Ministry of Defence's Regulation on procurement procedures, 26 March 2001).

The next secondary government regulations are to be formulated during 2003:

- regulation for the procedure for examination of complaints;
- regulation on design contests;
- regulation on the establishing of a special list of tenderers excluded from participation in public procurement proceedings.

The laws regulate basic legal institutions, while the secondary legislation contains rather technical provisions and instructions.

The Law on procurement procedures for state institutions consists of 10 chapters and 42 sections, structured as follows:

- Chapter 1 General Provisions (section 1 — 5);
- Chapter 2 Determination of Estimated Value of Procurement (section 6 — 11);
- Chapter 3 Description of Work and Technical Specifications (section 12 — 13);
- Chapter 4 Requirements to be Met by Tenderers (section 14 — 21);
- Chapter 5 Procurement Methods (section 22 — 29);
- Chapter 6 Selection of Tenders (section 30 — 33<sup>1</sup>);
- Chapter 7 Documentation and Reports (section 34 — 35);
- Chapter 8 Monitoring and Control (section 36 — 37);
- Chapter 9 Procurement Monitoring Bureau (section 38 — 40) ;
- Chapter 10 Procedure for Examination of Complaints (section 41 — 42).

The Law on procurement procedures for the utilities sector is shorter and consists of 9 chapters and 35 sections, structured as follows:

- Chapter 1 General Provisions (section 1 — 3);
- Chapter 2 Selection of Tenderers and Choice of Tenders (section 4 — 8);
- Chapter 3 Determination of the Estimated Contract Price (section 9 — 14);
- Chapter 4 Tenders for a Competition or for Negotiations (section 15 — 18);
- Chapter 5 Notices and Invitations (section 19 — 23);
- Chapter 6 Technical Specifications (section 24 — 26);
- Chapter 7 Documentation of Procedures and Reports (section 27 — 28);
- Chapter 8 Procurement Monitoring Bureau (section 29 — 31);
- Chapter 9 Procedures for Review of Complaints (section 32 — 35).

Both procurement laws are very comprehensive and detailed. The regulations are not seen as user-friendly.

### **Coverage — Contracting Authorities**

According to section 1 (3) of State Procurement Law, the following institutions are defined as contracting authorities, obliged to follow the procurement rules:

- state government institutions and agencies;
- local government institutions and agencies;
- commercial companies, owned (at least 25%) by State or local government;
- commercial companies financed by State Budget or local government;
- a concessionaire (with respect to construction work) if the concession is entered into regarding use of the structure but payment for the concession is construction work;
- persons performing projects financed by State or local governments.

There is no official list, enumerating all entities obliged to follow the procurement rules. The interested institutions have to deduce their obligation directly from the text of law.

Public institutions are bound to apply the formal procurement procedures to all contracts, irrespective of their value. But for smaller contracts the simplified procedures may apply.

The coverage of the Public Procurement Law is not fully compatible with international standards. In some respects the coverage is broader than that required by the European law. All commercial

companies are covered, which are owned fully or partly by the State or local government or which are financed by State Budget or local governments. The European definition, however, of “body governed by public law” as provided for in the Directives is not yet fully and properly transposed into the Latvian procurement Law. Some institutions, which in the light of EU procurement law are contracting entities, might not be covered by the Latvian legislation. Some adjustments are therefore still needed.

The definition of public service undertaking, obliged to follow the procurement Law for utilities, is fully harmonised with the relevant EU Directive (93/38). According to section 1 of the Law on Construction Work, Supply, Leasing and Services for the needs of Public Service Undertakings, the term “public service undertaking” covers all companies (regardless of their legal form and status) which operate on the basis of exclusive rights and have a monopoly position, in one of the following fields:

- energy supply;
- acquisition and supply of drinking water;
- construction and management of sewerage networks;
- administration of airports and seaports;
- exploration of oil or gas deposits;
- provision of telecommunications services and maintenance of public telecommunications networks;
- management and maintenance of the railway infrastructure for public use;
- transportation of passengers by buses, trams and trolleybuses.

According to section 4 (3) of the procurement Law for utilities, the public service undertakings shall apply the formalised procurement procedures for contracts above relatively high thresholds: 250 000 Latvian Lats (approximately €375 000) for supplies and services and 3 000 000 Latvian Lats (approximately €4 500 000) for construction works. Contracts below these values may be awarded freely without any restrictions.

***Commentary:***

The recent list of entities covered by the Public Procurement Law for the public sector is unnecessarily extended. The inclusion of purely commercial companies, owned by the State or local municipalities, is unique and unusual in international terms and is not requested by any EU regulation. Fortunately, as SIGMA has been told, coverage will soon be adjusted precisely to EU standards.

The inclusion of entities operating in the utilities sector in a separate legal act to that of public institutions avoids a lot of complications, which are experienced by the entities in other acceding countries where they are covered by a uniform public procurement regime. However, such separation leads to some legal duplications and difficulties.

***Exceptions***

According to section 4 (1) of the PPL some contracts are exempted from the scope of the Law. The list of exemptions is relatively long (15 items) and includes some items modelled on the EU provisions, such as:

- the services of an arbitration board;
- financial services for the realisation of monetary policy, currency exchange policy, management of State debt, reserves, and other financial management policies that include transactions with securities and other financial instruments; and the services of the Bank of Latvia and the State Treasury, with the non-material services associated with the financial services referred to;
- services of natural persons in accordance with employment contracts;
- research services, except those services as are fully paid for by the contracting authority and are utilised for its own needs only.

In introducing some exemptions the Latvian legislator went a step further and some exemptions do not have any direct equivalents in EU legislation, such as:

- official travel expenditure;
- utilisation of the works of authors if the author has exclusive rights in accordance with the Copyright Law.

The wording of some descriptions differs very clearly from the wording of the EU legislation:

- provision of services or supply of goods from public services undertakings for the provision or supply of which such undertakings have exclusive rights in accordance with the Law On Construction Work, Supply, Leasing and Services for the Needs of Public Services Undertakings;
- services by such institutions as have been established to ensure the functions of the contracting authority and which fully observe the requirements of this Law;
- procurement of goods and services of a military nature utilising the NATO procurement system, if for each particular case the Cabinet has taken a decision regarding it;
- common procurement of goods and services of a military nature for all three Baltic States if for the procedures to be applied in each particular case the Cabinet has taken a decision;
- procurement of goods and services of a military nature from foreign armed forces if for the procedures to be applied in each particular case the Cabinet has taken a decision;
- procurement of goods and services of a military nature, which is not conducted according to the procedures specified in Clauses 8, 9 and 10 of this Paragraph, as well as procurements that in accordance with laws and other regulatory enactments are classified as official secret objects if for the procedures to be applied in each particular case the Cabinet has taken a decision;
- procurement of official secrets objects for the needs of State security institutions;
- procurement of immovable property utilising right of first refusal or right of pre-emption; and
- lease of land if the existing buildings (structures) of the contracting authority are located on land belonging to another owner.

***Commentary:***

As clearly noticeable above, the list of exemptions provided in the Latvian law is generally compatible with the relevant list of exemptions provided in the European law, but the wording is often different. In order to avoid any uncertainty, the wording of these provisions should be carefully adjusted to that of the Directives.

In theory, the procurement law exempts procurement of goods and services of a military nature from the scope of procedural regulations. Such exemptions, however, must on each occasion be formally accepted by the entire Cabinet for each procurement. The Cabinet has not yet issued any such decision to date; because of these bureaucratic complications, in practice, all goods and services for military purposes are purchased through the normal procurement civil procedures — something that is very unique.

***Thresholds for Application of the PPL***

There is a bottom 1 000 Lats (€1 500) threshold for application of procedures in Latvian procurement law for the public sector. Once the public institution is covered by the procurement law, it has to apply the procurement procedures to all contracts where the value exceeds 1 000 Lats.

The estimated contract value is determined based on the total sum of expected contract prices. In the case of procurements of a regular nature, when for similar contracts several contracts will be awarded, the estimated value is equal to the sum of all contracts awarded within at least 3 months. The estimated value cannot be lowered and the contracts cannot be divided in order to avoid the appropriate method of procurement. The detailed provisions for calculation of the estimated value for particular types of contracts are harmonised with the relevant EU provisions.

For contracts of the smallest value the law provides very little obligations [section 4 (2)]. The simplified procedures apply to contracts, whose estimated value is less than 1 000 Latvian Lats (approximately €1 500), and less than 10 000 Latvian Lats (approximately €15 000), for design projects, research services, consultation, management, and drafting services. Awarding contracts of the smallest value the contracting authority shall apply only the provisions of the Law relating to general principles, to the calculation of the estimated value of the contract, and to statistical obligation. The rest of the provisions do not need to be respected. This allows the contracting authorities to act freely, without any formalities.

The Law (section 22) allows for some simplification for the next group of procurements — for contracts of value between 1 000 and 10 000 Latvian Lats (between €1 500 and €15 000) for supplies and services (below 10 000 Latvian Lats — approximately €15 000 — for some services), and in range between 1 000 and 50 000 Latvian Lats (between €1 500 and €75 000) for construction works. The Law allows for the application of simpler procedures (request for price quotation and negotiated procedure) instead of regular tendering procedures, but all other provisions must be fully applied.

For contracts of value above 10 000 Latvian Lats (approximately €15 000) for services and supplies and 50 000 Latvian Lats (approximately €75 000) for construction works, all the provisions of the Law fully apply.

The situation looks different in the case of procurement Law for entities operating in the utilities sector. According to section 4 (3) of the Law, public service undertakings shall apply the formalised procurement procedures only for awarding contracts whose value exceeds 250 000 Latvian Lats (approximately €375 000) for services and supplies, or 3 000 000 Latvian Lats (approximately €4 500 000) for construction works. Below the thresholds the contracting entities are free to select their contractors. Since the Law does not apply to contracts of smaller value, no simplified procedures are provided.

### ***International Thresholds***

The Latvian procurement laws do not define any international thresholds. Contracts of international importance are not separately distinguished. However, in provisions regulating the open procedure, new thresholds are introduced. The thresholds are equal to: 120 000 Latvian Lats (approximately €180 000) for services and supplies, and 4 500 000 Latvian Lats (approximately €6 790 000) for construction works. Above the thresholds, the time limits for the submission of tenders cannot be shorter than 52 days. Below the thresholds the time limits might be shorter. These minimum time limits correspond to those defined by the EU Directives. The Latvian procurement Law does not add any further obligations to procedures for the awarding of contracts covered by the EU Directives, because of their value.

### ***Commentary:***

The new amendments to the Law should clearly define the contracts above EU thresholds, as these contracts are of international (European) importance, and therefore subject to obligations prescribed by the EU Directives. The new obligations for contracting authorities, connected closely to future membership in the European Union (publication of procurement notices in the OJ, providing information and statistical reports to the Commission), should be clearly and explicitly defined in the Law.

The European thresholds provided in recent Latvian legislation differ (are higher) from those provided directly in the Directives. In the future the thresholds in the Latvian legislation will have to be formulated in Euros, or another mechanism introduced to maintain compatibility of the thresholds prescribed in the Latvian Law with the EU thresholds (annual publication of the thresholds in national currency).

### ***Qualification of Contractors***

The PPL in section 16 (1) provides an extensive list of grounds for the exclusion of companies from participation in public procurement procedures. Companies are excluded which:

- are declared insolvent, are in the process of liquidation, or against which a process of bankruptcy or liquidation has been started;
- do not pay taxes or social payments regularly in Latvia or in their country of establishment;
- have been responsible for violations of professional obligations during the last three years;
- do not have certifications or licenses if the certifications or licenses are required by other regulations;
- provide false information or no information concerning their credibility.

The Latvian Law allows the introduction of a blacklist — a special list of excluded companies, maintained and published (on the Internet) by the PMB. The procedure for maintaining the list is to be defined by the secondary regulation, issued by the Cabinet. The regulation has not been issued; therefore the blacklist has not been established. The blacklist has been eliminated from the Law by the amendments of June 5.

According to the PPL, in every procurement proceeding the contracting authority has to verify the qualifications of candidates. The Law provides an extensive list of documents, which may be requested by the contracting authority from candidates in order to prove their qualifications. The enumeration of documents is in line (with small exceptions) with the EU law. The Law does not prescribe the level of qualifications requested in the procedure. The level of qualification and the specific requirements must be determined by the contracting authority separately in relation to the specific features of each procurement.

If the candidate does not conform to the conditions specified by the contracting authority, they will be excluded from further participation.

***Commentary:***

According to opinions expressed during the meetings with SIGMA, in practice, the qualification procedure is very bureaucratic and formalistic. The contracting authorities demand a lot of documents, and companies are frequently excluded from participation because of small formal mistakes or omissions in documents. The mistakes or omissions in documents requested for qualification might be easily corrected and/or clarified, but the Law does not allow this to be done. In SIGMA's opinion, the process of qualification needs to be treated in a less formalistic way, and be focused more on merit. The candidates could have the opportunity to correct smaller mistakes (or omissions) in the documents they submit — the Directives expressly allow for such a solution.

The rigidity of application is widely criticised by suppliers who have provided evidence of tenders being rejected because of formalities and irrelevancies. The imposition of such an approach may often lead to the rejection of substantially responsive and formally correct tenders (but where documents submitted by the supplier for qualification contain smaller irrelevant mistakes) and as a result — the awarding of the contract to less economically advantageous tenders, (but to a supplier whose documents are entirely correct in the formal sense). This is completely inefficient procurement practice, which leads to incorrect results. It remains, however, fully compatible with the Law.

There were many objections raised against having a "blacklist" of excluded companies maintained by the PMB. The legitimate interests of suppliers may be easily harmed by the arbitrary decisions of officials from the PMB entering a company on the list. Having such a list would also be very questionable in light of the European Directives regulating public procurement.

***Procurement Procedures***

For the public sector the Latvian Law provides the following procurement methods (Section 22):

- open competition;
- restricted competition;
- request for price quotation;
- negotiated procedure;
- design contest.

The procurement procedures are basically similar to the procurement methods provided in the EU Directives, with the exception of the request for price quotation procedure. The request for price quotation procedure is modelled on the UNCITRAL Model Law and comes from the earlier version of Latvian procurement Law. The request for price quotation method is provided for procurements of smaller values: (below 10 000 Latvian Lats for supplies, 10 000 Latvian Lats for services, 50 000 Latvian Lats for construction works (respectively — €15 000, €15 000, €75 000). The threshold for application of the price quotation procedure is far below the relevant EU thresholds; therefore procedures for such smaller contracts are not subject to detailed harmonisation with the EU Directives. The application of simplified procedures for smaller contracts is fully justified, provided that the simplified procedures guarantee observance of the principles of the Treaty.

The open and restricted procedures are both equally basic and preferred procedures; the contracting authority may freely select one of them. For smaller contracts the contracting authority may also select the request for price quotation procedure.

The negotiated procedure is an exceptionally used procedure, which may be applied only in special cases. The Law enumerates the exhaustive list of circumstances justifying the application of the negotiated procedure (section 27). The list is partly harmonised with the relevant provisions of the EU Directives, but some items exceed the EU list (purchasing of books, the hosting of foreign delegations). However, these inconsistencies will be eliminated with the current amendments as to achieve full compliance with the EU Directives.

The contracting entities, when deciding to employ the exceptional negotiated procedures, need approval (consent) from the Procurement Monitoring Bureau. The PMB may refuse, if it notes that the conditions for application of the negotiated procedure have not been fulfilled.

The procurement Law for the utilities sector provides a slightly different set of procurement methods (Section 5):

- open competition;
- restricted competition;
- negotiations.

Since the Law applies only for the larger contracts of the utilities sector, there is no simplified method of the request for price quotation procedure, which in the public sector is designed for smaller contracts. The Law does not prefer any one procurement procedure for the utilities sector; the contracting entities are free to apply any one of the procurement methods, including negotiations, in all cases. The equal treatment of negotiated and tendering procedures in the utilities sector is compatible with EU Directive 93/38.

#### *Open Competition*

The Latvian procurement method called “open competition” is an equivalent of the European open procedure.

The contracting authority has to establish a Procurement Commission, which is responsible for the preparation and conducting of the procedure. The decisions of the Procurement Commission are binding for the contracting authority.

In the open competition all interested persons may submit tenders. The contracting entity shall invite all possible candidates to participate by publishing a procurement notice. The notice is published on the Internet (by the Procurement Monitoring Bureau on a special web site) and in the official governmental newspaper “*Latvijas Vestnesis*”. The Law determines the minimum time limits for the submission of tenders. Time limits are calculated from the date of the dispatching of the procurement notice by the contracting authority to the Procurement Monitoring Bureau. The minimum time limits for the submission of tender depend on the estimated value of the contract. The time limit for the submission of tender may not be shorter than 52 days, when the value of procurement is higher than 120 000 Latvian Lats (approximately €180 000) for services or supplies and 4 500 000 Latvian Lats (approximately €6 790 000) for construction works. If the estimated value is below these thresholds,

the time limit may not be shorter than 40 days. In the case of the smallest procurements (lower than 500 000 Latvian Lats (approximately €750 000 ) for construction works and 50 000 Latvian Lats (approximately €75 000) for services and supplies — the time limit may not be shorter than 30 days. When the contracting authority changes the tender documentation during the procedure (after publication of notice), it is obliged to extend the time limit for the submission of tender.

Technical and financial parts of the tender are to be submitted separately (two-envelope system).

The Commission shall open the submitted tenders immediately after the end of the time designated for the submission of tenders. The opening of tenders is public — all tenderers or their representatives may participate. Immediately after the opening of tenders, the Commission shall read out the information about the tender, including the offered price and the other factors taken into consideration during the selection of the most economically advantageous tender, as prescribed in the tender documentation. The process of opening of tenders shall be documented as a record. The Commission makes the record available to all interested tenderers within three working days.

The Procurement Commission shall take a decision to select the tenderer: who has appropriate qualifications, whose tender conforms to the description of the procurement and the technical specifications, and whose tender was evaluated as the most advantageous according to the criteria specified previously in the tender documentation.

When evaluating the tenders, the Commission shall first ascertain the qualifications of tenderers, according to the conditions set out in the tender documentation. The candidates who do not fulfil the requirements, are excluded, and their tenders are not examined any further.

After the qualification the Commission performs an examination of the technical tenders. The tenderers, who submitted tenders that do not conform with technical requirements, are excluded from further participation.

After the exclusion of non-responsive tenders, the members of the Commission evaluate the technical aspects of the tenders, according to previously established criteria. Subsequently, the evaluation of price, according to the formula provided in the tender documents, is added to the technical scores. The final evaluation consists of a compilation of technical and financial evaluation. The criteria relating to the qualification cannot be mixed with the criteria relating to the technical and financial evaluation.

The contracting authority signs the contract with the candidate who submitted the highest ranked tender, 10 days after the decision on selection. The 10-day period is designated for the submission of possible complaints.

Detailed rules for the qualification of candidates and the evaluation of tenders are regulated in Cabinet ordinances separately for services, work construction and supplies. Although regulated in separate pieces of legislation, the procedures are basically identical for all three types of contracts.

#### *Restricted Procedure*

The primary legislation (the PPL) does not limit the application of the restricted procedure to one specific type of procurement. However, the secondary legislation (the ordinances) regulating the procedures provides a description of the restricted procedure only in the case of services. The ordinances regulating procedures for the procurement of goods and construction works do not mention the restricted procedure at all and describe only the open procedure. SIGMA was told during the meetings, that the common interpretation is that, therefore, the application of the restricted procedure is limited to the procurement of services only. Such limitation is very unusual. According to the data provided by Latvian counterparts, the restricted procedure has never been used in practice since the PPL came into force, for any type of contract.

For the restricted procedure, as it is regulated by the procurement Law for the public sector, all interested persons may submit an application during the selection of candidates. The invitation is published by the contracting authority in the same way as the notice in the open procedure — on the

Internet (by the PMB), in the official governmental newspaper "*Latvijas Vestnesis*", and in at least one commercial newspaper.

The minimum time period for the submission of applications depends on the estimated value of the contract. If the value is greater than 120 000 Latvian Lats (approximately €180,000), the time may not be shorter than 37 days; if the value is less than 120 000 Latvian Lats, the time may not be shorter than 25 days; if the value is less than 50 000 Latvian Lats (approximately €75 000), the time may not be shorter than 15 days.

The Law itself does not specify clearly which criteria are admissible in the selection of candidates. The Law does not prescribe the maximum or minimum number of participants in the restricted procedure. The Commission has to invite further participation from all candidates conforming to the conditions and requirements specified in the procedure.

The opening of applications for participation is open to everyone, and all interested persons may participate. The Commission has to decide on the selection of candidates. After the selection of candidates phase, the Commission shall send all qualified candidates the invitation to tender. The time limit for the submission of tender may not be shorter than 40 days for contracts of value above 120 000 Latvian Lats (approximately €180 000); not shorter than 25 days for contracts of value below 120 000 Latvian Lats; and not shorter than 15 days for contracts whose estimated value is lower than 50 000 Latvian Lats (approximately €75 000).

The further conducting of the restricted procedure is identical to the open procedure.

In the procurement Law for entities operating in the utilities sector the provisions regulating the restricted procedure still follow the UNCITRAL Model Law on Procurement. The public service undertaking invites candidates pursuant to its own choice on the basis of market research. The invitation to submit the application for qualification is published in accordance with Cabinet Regulation. The later invitation for submitting the tender is simultaneously sent to all selected candidates and must be published without fail in "*Latvijas Vestnesis*" and in the electronic media.

#### *Negotiated Procedure*

The contracting authority may employ the negotiated procedure only in a limited number of cases. The situations justifying the application of the negotiated procedure are enumerated in the PPL. The list is essentially compatible with the relevant list provided by the EU Directives, although it contains some rather untypical provisions (purchasing of books and procurements associated with the reception of foreign delegations). As mentioned above these inconsistencies have been removed from the Law with the new amendments. The negotiated procedure may also be applied for contracts of smaller value.

The negotiated procedure, as designed in the Latvian PPL, corresponds to European negotiated procedure with prior publication of notices. It can, therefore, be noted that the Latvian PPL does not stipulate negotiated procedure without prior publication of notice.

The contracting authority, launching the negotiated procedure, has, at the beginning, to send a notice of publication to the PMB.

The minimum time limit for the submission of applications is prescribed by the PPL. When the estimated value of the contract is higher than 120 000 Latvian Lats (approximately €180 000) for goods and services or 4 500 000 Latvian Lats (approximately €6 790 000) for works — the time limit may not be shorter than 37 days. If the estimated value of the contract is below these thresholds — the time limit may not be shorter than 25 days. In the case of smaller procurements: services and supplies below 50 000 Latvian Lats (approximately €75 000), and construction works below 500 000 Latvian Lats (approximately €750 000) — the time limit may not be shorter than 15 days.

The PMB shall decide whether application of negotiated procedure is justified in the light of the PPL. If the decision is affirmative, the PMB publishes the notice on the Internet and the procedure may be continued. If the decision is negative, the contracting authority has to start the procedure using

another method. As documented in the data provided by the Latvian PMB, in about 15% of cases the decisions are negative. The contracting authority may appeal against the decision of the PMB to the Ministry of Finance as supervisory body and to a regular court. In practice such appeals occur very rarely.

#### *Request for Price Quotation*

The request for price quotation procedure is designated for the smallest procurements. The procedure is inherited from the UNCITRAL Model Law on Public Procurement and has no equivalent in the European Directives coordinating public procurement procedures. Since the procedure applies only to contracts with values far below the thresholds provided by the Directives, the existence of such a procedure is not incompatible with the Directives.

The request for price quotation procedure may be applied for smaller contracts, whose estimated value does not exceed 10 000 Latvian Lats (approximately €15 000) for goods, 5 000 Latvian Lats (approximately €7 500) for services, and 50 000 Latvian Lats (approximately €75 000) for works construction.

The request for price quotation is the simplest method of procurement provided in the Latvian system.

The contracting authority selects (at least) three economic operators, to which it sends technical specifications for procured goods, services or construction. The Law itself does not provide any criteria for the selection of candidates; the contracting authority freely selects the candidates regarding the qualifications and reliability of which it has no reservations. The time for the submission of tender may not be shorter than five working days.

After the submission of tenders, the Commission checks the conformity of the submitted tender with the technical specification. The only admissible criterion in that procedure for selection of the best tender is the lowest price. No other qualitative criteria can be used.

#### ***Commentary:***

The Request for Quotation procedure is mainly designed for the procurement for readily available off the shelf items or items of recurrent needs, where the price is the only criterion, and, generally, is not seen as the appropriate method for the procurement of services and works. However, it is positive that the PPL includes a simplified method below thresholds of such comparable high values.

#### ***Award Criteria***

The contracting authority shall indicate all the criteria it intends to use during the evaluation of tenders to identify the best tender.

In the case of procurement of services, the contracting authority shall use the criterion of the most economically advantageous tender. Identifying the most economically advantageous tender the contracting authority shall take into consideration various criteria, such as: quality, aesthetical and functional characteristics, conditions of payment, after-sales service, and technical assistance. There are no detailed guidelines or instructions on how the detailed criteria should be used in regard to the various types of services.

For procurement of goods and construction works the only criterion permitted for the selection of the best tender is the lowest price. The application of other, qualitative criteria is expressly prohibited by the PPL. The contracting authority has to select the cheapest tender from those ones conforming to the technical requirements specified in the tender documents.

In the past, the 1996 procurement law allowed different criteria to be used to determine the most economically advantageous tender for all types of contracts; including supplies and construction works. In the opinion of Latvian experts the previous provisions were frequently misused, through the mixing of measurable and objective criteria with subjective ones. The selection process was arbitrary, not transparent and was not efficiently protected against corruption.

The procurement Law for entities operating in the utilities sector allows the application of different criteria in order to identify the economically most advantageous tender: costs, effectiveness, quality, aesthetical and functional characteristics, costs of exploitation, security of supplies, availability of spare parts, and other aspects related to the subject of procurement (the criteria are listed as examples and the list is not exhaustive). The list of evaluation criteria is compatible with the relevant EU provisions.

**Commentary:**

The Latvian procurement Law, which allows for the application of only the lowest price criterion for selection of the best offer, differs in this respect from the EU Directives, which explicitly provide the additional criterion of most economically advantageous tender. Use of such criterion, allowed by the EU legislation, is clearly prohibited by the Latvian Law.

Application of the lowest price criterion instead of the most economically advantageous tender is simpler and provides less room for corruption or other malpractices. Using the lowest price as the single selection factor also has other benefits, such as, speed and facilitating the decision-making process. At the same time, however, such an approach has its obvious disadvantages — such as loss of quality. In the long term it does not support the development of good, sound relationships between business and public sectors.

***Tender Securities***

The contracting authority may request a tender security from the participants. The demand for tender security is not mandatory. The amount of tender security is declared by the contracting authority. The same amount of tender security must be requested from all participants, on equal terms. The Law does not enumerate all the possible forms in which the tender security may be submitted by the candidate (and which forms the contracting authority has always to accept). Lack of such clear and detailed provisions enables the contracting authority to make arbitrary and voluntary decisions. The Law does not determine limits for the amount of tender security — theoretically the contracting authority may demand a very high tender security. In practice, the average tender security is about 5% of the estimated value of the contract. Some other contracting authorities, however, never demand tender security since it is not mandatory.

**Commentary:**

In other regulations in the acceding countries the procurement laws themselves specify the limits of tender security — in relation to the estimated value of the contract (generally not above 3 — 5% of the value of contract). Demanding very high tender security may discourage companies from participation — especially small and medium-sized local companies. The necessity for submitting high tender security increases participation costs for candidates, and, ultimately, increases prices paid by the public sector.

The provisions regulating acceptable forms of tender security should be developed in order to create a clearly defined situation for participants.

***Electronic Tendering***

The Latvian procurement regulations do not contain any provisions relating to the issues of electronic procurement. According to section 3 of the PPL, the exchange of all information between contracting authority and tenderer can take place only in writing, no electronic means are accessible. Contracts must also be prepared and signed in writing.

**Commentary:**

There are some plans concerning the introduction of electronic procurements, but nothing is as of yet finalised.

#### **4. Central Public Procurement Organisation (PPO)**

The central institution within the central government, responsible for public procurement matters is the Procurement Monitoring Bureau. The legal basis for its establishment and operation is chapter IX of procurement Law for the public sector and chapter VIII of procurement Law for utilities.

Before the PMB was established, between the beginning of 1997 and the end of 2001, the central procurement institution was the Public Procurement Department, located within the Ministry of Finance. The PMB in its current form started its activity on 1 January 2002, when the new Public Procurement Law entered into force.

The PMB is a separate government administrative body, supervised directly by the Ministry of Finance. The PMB has its own legal personality and its own separate budget.

The PMB is managed by the Head of the Office. The procurement Law itself does not contain any special provisions regulating the procedures for nominating and dismissing the Head of the PMB. Since the head of the government agency is a member of the civil service, the procedure is regulated by the Civil Service Law. The Head of the PMB is nominated by the government, upon a motion submitted by the Ministry of Finance. The candidate must be selected after a publicly announced competition has been held. This does not specify any special conditions (requirements) for candidates for the position. The Head of the PMB is nominated for a 5-year contract; this may be revoked before the end of that period only in exceptional cases. It seems that the procedure for the selection of the candidate for the position of the Head of the PMB and his/her later stability, create sound protection and guarantees of independence from political influence.

The PMB is under the control of the Ministry of Finance. The Minister of Finance exercises a supervisory control over the PMB, in respect of administrative procedure. The Minister has the authority to annul the decisions taken by the PMB, if such decisions are appealed against by the interested persons.

The main tasks performed by the Procurement Monitoring Bureau in Latvia are:

- monitoring procurement procedures and supervision of all procedures for conformity with the Law;
- collecting and analysing statistical information about public procurement;
- issuing various administrative decisions relating to individual procurement proceedings (consent for the application of negotiated procedure);
- organising and providing training for contracting authorities and economic operators, involved in public contracts;
- advice and consultancy to contracting authorities and economic operators;
- reviewing complaints submitted by tenderers;
- terminating procurement procedure, in the case of violation of the rules;
- preparing yearly reports on the functioning of public procurement in the country;
- international co-operation in the area of public procurement;
- participation in publishing procurement notices;
- maintaining a publicly accessible information system for the procurement notices and other related information (results of complaints).

In addition, the PMB practically prepares all the draft regulations relating to public procurement matters, although theoretically, the task belongs to the Ministry of Finance.

Recently the entire staff of the PMB totalled 22 persons. The management of the PMB expects the number of staff to increase to 25 persons in the course of the current fiscal year (2003).

The Procurement Monitoring Bureau is composed of 3 departments:

- Methodology Department.

- Information Department.
- Legal Department.

The *Methodology Department* (5 persons) is responsible for: drafting legislation; and the preparation and dissemination of standard model tender documents, guidelines, manuals and training materials. The Department also provides advice and consultancy to contracting entities and economic operators on public procurement issues. It is SIGMA's understanding that the PMB is in the position to give purchasers and suppliers adequate operational support. The PMB has enough resources and staff allocated for the task. Some guidelines (on smaller procurements and on the request for price quotation procedure) have already been developed and further guidelines will be developed within the framework of the ongoing twinning project. The PMB, to a limited extent, organises training and takes part in training sessions and conferences organised by others. The Department also prepares approvals for the application of negotiated procedure.

The *Information Department* (5 persons) is responsible for: collecting statistical information, processing procurement notices sent by contracting authorities and publication of notices on the Internet web site. The Department is also responsible for the development of electronic procurement.

The *Legal Department* (7 persons — plans to contract 2 additional staff soon) is responsible for: drafting legislation, elaborating secondary legislation and examining complaints submitted by tenderers. There are plans within the Department to organise the control section, whose main task will be the supervision of procurement procedure launched by the contracting authorities. The Law gives the PBM the possibility of collecting information regarding the procedure, and prohibiting the conclusion of the contract (terminating the procedure), when the rules are not observed. The PMB may investigate the procedure on its own initiative. The PMB also frequently receives orders from different Ministries to undertake control in specific cases. The PMB is additionally responsible for reviewing complaints submitted by tenderers. In order to review the complaints, the PMB will form a commission consisting of not less than three members. Members of the Commission may not be persons who have previously provided consultations or who have an interest in the actual procurement.

#### **Commentary:**

The PMB is not officially supported by any formal advisory board. The involvement in the policy making and developing of the system of representatives from all groups of players in the public procurement system: suppliers and contractors, contracting officers, auditors, etc. — is crucial for the sound development of the system. The need for and the importance of such consultations are accepted by the management of the PPO. In fact, the main decisions influencing the whole system (such as the drafting of new regulations) are discussed with some of the main players — for example with the biggest association of construction companies. Such consultations, however, would need to be regulated by some formal rules and conducted in an official and transparent manner. The PPO could, therefore, be officially accompanied and supported by an Advisory Board, with members representing: associations of suppliers or other business and professional associations, contracting officers, trade unions, and audit institutions. The Advisory Board would ideally have the right to advise the Head of the Bureau and to issue opinions on all documents important to the development of the public procurement system (annual reports, regulations, drafts, etc.).

The PMB provides support, consultancy and advice for contracting entities and economic operators. At the same time the PMB might be directly involved in the conducting of the procedure, when issuing the consent for the application of negotiated procedure. Subsequently, still in the same procedure, the PMB might perform the supervisory function — being responsible for the review of complaints submitted by tenderers or controlling the legality of the procedure on its own initiative. It may happen that in one single procedure the PMB, as an institution, combines the roles of consultant and supervisor. This combination might easily lead to a potential conflict of interests. Persons involved in the earlier stages of the procedure are therefore excluded from the Commission reviewing the complaint. Individual exclusions do not do away with the problem of conflict of interests for the PMB as an institution.

## **5. Central Institutional Capacity**

### **a. Training**

As mentioned above, the PMB itself organises some training sessions. More training sessions are provided by other institutions specializing in training for public servants: the School of Public Administration, which operates at State level; and the Local Government Training Centre, which operates at the local level. Both offer only short basic courses on public procurement procedures. Neither of these institutions offers long-term, thorough training programs in the area. The result is that there is no stable systematic system of training aimed at training highly qualified specialists; and many staff responsible for procurement operations in contracting authorities have received no training in procurement.

There are some basic guidelines on procurement procedures, elaborated in cooperation with twinning partners; but still there is a need to increase the efforts and prepare more guidelines and manuals.

#### **Commentary:**

Although there are some evident achievements in the area of training, the situation still requires attention and improvement. There is a need for more training activity on the part of the PMB — this need was expressed at all meetings with SIGMA. There is a need for more guidelines and other explanatory materials, similar to those prepared together with the twinning partners. Many of the problems in the public procurement system, identified during the mission, come not from incorrect law but rather from inadequate implementation. Such problems could be resolved simply by intensive training activity.

### **b. Standard Tender Documents**

For the contracts for construction works, there is a Latvian Standard LVS 283:2000 — General Regulations for Government Procurement Construction Work Contracts, prepared and published by the Standardisation Technical Committee of Latvia. The standard was adopted on 18 September 2000. The standard contains the general conditions for contracts, terms for execution and approval or termination of contracts, regulations of payment, insurance, and possible compensation. The standard extensively and precisely regulates rights and obligations for both parties to the contract. The use of the standard is mandatory for all public institutions. There is no such standard for services and supply contracts.

There are only a limited number of standard tender documents drafted by the PMB for mandatory use for all contracting authorities. These standard tender documents for mandatory use are:

- standard model forms for notices — to be published for open, restricted and negotiated procedures;
- standard model forms for notices on the results of procedure (on contract award);
- standard model forms for statistical reports;
- standard model forms for protocol (record) of the conduct of procurement procedures (separately for open, restricted and negotiated procedures).

The PMB has issued no other standard tender documents for common use. Some contracting authorities have prepared some standard tender documents for their subordinate entities, but without any central coordination. For example, the Ministry of Defence has developed for its subordinate entities a whole set of model tender documents, which include among others:

- technical specifications;
- invitations to tender;
- models for tender and instructions on how tenders should be elaborated;
- evaluation schemes;
- standard models for letters and communications concerning the procurement procedures;
- standard contracts and conditions of contract.

Some municipalities have also prepared a similar set of tender documents for their entities.

**Commentary:**

The eager demand, addressed to the PMB, to prepare and publish a set of standard tender documents, uniform for all contacting entities, was expressed during many meetings with SIGMA.

The lack of standard tender documents is a serious problem and an obstacle to the uniform implementation of public procurement rules within the country. This may increase the costs and efforts that all contracting authorities must invest in the proper implementation of the procurement legislation. Provision of such support from the PMB would be of great importance for the efficiency of the public procurement system. The provision of such documents may improve the procurement process and overcome any criticism of the lack of professionalism of procuring entities. Failure to undertake such efforts may undermine the actual functioning of the public procurement regime.

Clearly it is not possible to design a single document to cover all types of works, goods and services, especially in terms of technical specifications and precise contract documents; but, given the similarities in the procedures, it is a fairly simple matter to provide models and standard form documents for such things as instructions to tenderers, tender documents, tender forms, general conditions of contract, etc.

**6. Procurement Dissemination**

The key element of all procurement systems is an obligation to guarantee transparency in procedures. The observance of the transparency principle in all stages of procurement procedure is a precondition for the principle of equal treatment and non-discrimination of tenderers, which underlies each sound procurement system.

In order to satisfy the principle of transparency, the Latvian procurement regulations require publication of the basic information regarding each procurement, except for low contract values and in the cases of price quotations.

The contracting authority has to publish notices at the beginning of each open and restricted procedure. The contracting authority is also obliged to publish the notice informing about the result of each procedure — for open, restricted and negotiated procedures. Latvian procurement legislation does not provide for any other type of procurement notice: such as the prior indicative notice, published at the beginning of the fiscal year, concerning procurements planned during the year. Such a type of notice, mandatory in the EU Directives, has been introduced by recent amendments.

Each procurement notice has to be published in three places: on the Internet, in the *Latvijas Vestnesis* (the Official Gazette of the Government of Latvia), and in the commercial newspaper.

The contracting authority has to send the procurement notice to the Procurement Monitoring Bureau. The PMB checks the notice for correctness and conformity with the requirements of the Law. If the notice does not comply with the formal requirements of the Law, the PMB will refuse publication. If the notice complies with the formal requirements, the PMB publishes the notice on the Internet-based web site. The publication of notices on the web site hosted by the PMB is free for all contracting authorities. All notices published by the PMB on the web site constitute a publicly accessible database. The database is accessible for all interested persons, free of charge, without the need for any registration.

Within three working days of sending the notice to the PMB, the contracting authority will publish the notice in the *Latvijas Vestnesis* — the Official Gazette of the Government of Latvia. Publication of the notice in the Official Gazette is not free and costs 50 Latvian Lats (approximately €75). The contracting authority also has to publish the procurement notice in at least one other newspaper (commercial). Publication in the commercial newspaper costs approximately 150 Latvian Lats (approximately €225). In addition to publishing the procurement notices in the media, the contracting authority may also send the invitation to tender to all interested persons known to it. The invitation shall only include the information already published in the Official Gazette.

The contracting authority in preparing procurement notices for publication has to use standard forms, elaborated by the PMB. The notices use the European Common Procurement Vocabulary nomenclature — the CPV has been already translated and implemented into the Latvian legal system.

The preparation for harmonisation of the Latvian system of publication of procurement notices with the requirements of the European law has already started. The new standard forms for notices are being devised. It has been decided that the procurement notices for publication in the Official Journal of the European Communities will be dispatched centrally via the PMB.

**Commentary:**

The system of dissemination of information concerning procurement opportunities is well developed and provides potential tenderers with fast, easy and inexpensive access to the necessary information.

In respect to the contracting authorities the system might be assessed as a bit costly and burdensome (all notices need to be published at least three times). The system might be simplified without really undermining transparency.

**7. Procurement Operations and Practice Standard**

The contracting authority has to establish a Procurement Commission (tender committee) for the evaluation of submitted tenders. The obligation to establish a Procurement Commission applies equally to all proceedings, irrespective of their value and the chosen procedure. The Commission may have a permanent or ad hoc character for each individual procedure. The Commission should be comprised of at least three members (when the value of the contract is greater than 10 000 Latvian Lats (€15 000), having sufficient professional experience. If the procedure concerns construction works with a value higher than 500 000 Latvian Lats (approximately €750 000), the Commission should include one civil engineer from the list approved by the Ministry of Environmental Protection and Regional Development. During the tendering process the composition of the Commission shall not be altered, except in special circumstances like permanent absence, death, illness or partial involvement on the side of a particular tenderer. The members of the Commission may not be removed from the Commission during the procedure without a serious reason. The Commission is responsible for the preparation of tender documentation, the verification of the qualifications of candidates, the selection of best tender and the preparation of tender records. The Commission makes decisions by the simple majority vote. The Commission should prepare and keep the minutes of its meetings. The decisions of the procurement Commission are binding for the contracting authority.

The knowledge and expertise of procurement specialists in the contracting authorities is perceived as problematic in many cases. It appears that knowledge is less advanced among smaller contracting entities, in particular within local authorities.

**8. Procurement Market Functioning**

According to reports published by the PMB, in 2001, 559 million Latvian Lats (about €850 million) were spent for central and local government needs — which is about 12% of GDP.

The table attached in the Annex presents the basic statistical data about the Latvian procurement market over the last few years.

As demonstrated in the table, only two procedures are actually used: open and negotiated procedures. The restricted procedure is very seldom employed, according to data provided by Latvian counterparts (only 4 times during the first six months of 2002).

In 2001 (data for 2002 were not available) 155 awarded contracts exceeded the EU thresholds. The total value of contracts above the EU thresholds amounted to about €300 million. The value of the average international contract is less than €2 million. More than one hundred of them were awarded

in the open procedures, while almost fifty were awarded in the negotiated procedures. The proportion has been more or less stable over the last few years.

Below the EU threshold, the dominant method (by number of contracts) under the previous 1996 procurement law was the negotiated procedure. In 2001 about 300 000 contracts were awarded in the negotiated procedure, while only 1 585 were awarded in the open procedure. The old procurement law gave more opportunities for application of the negotiated procedure, which, in addition, was commonly overused. Under the new procurement Law (in force since the beginning of 2002) in the first half of 2002, only 118 contracts were awarded in the negotiated procedure; whilst at the same time 425 contracts were awarded in the open procedure. The proportions have been dramatically changed. The reason for the change is that possibilities for the application of the negotiated procedure are much stricter now than before. Most of the contracts below the thresholds are awarded in simplified procedures (request for price quotation). The total sum of contracts below the EU thresholds amounts to about €450 million (data for 2001).

Foreign participation (in number of contracts awarded to foreign companies) is extremely low (more than 12 000 contracts were awarded to national companies, while only 150 were awarded to foreign firms — data for 1<sup>st</sup> half of 2002).

The precise information on participation rate (number of tenders submitted on average) was not provided by the Latvian PMB. But as SIGMA was told during the mission, participation is generally sufficient.

## **9. External Audit**

The State Audit Office (SAO) is the Supreme Audit Institution of the Republic of Latvia. It was established by article 87 of the Latvian Constitution of 1922, amended in 1998. The SAO is defined by its law, adopted on 9 May 2002, as an “independent collegial supreme audit institution”. It consists of the Auditor-General, the Council of the SAO the audit departments, and the secretariat. The Council is comprised of the Auditor-General and six SAO Council members appointed by Parliament. The Council decides on the most important issues concerning the management of audit work. The SAO Act does not bring substantial changes to the previous set-up, but generally clarifies the mandate and procedures applicable to the SAO.

The SAO's mandate is wide and covers all public bodies, with some exceptions. It is also competent to audit the use of funds allocated to Latvia by the European Union as well as by other international donors.

The SAO can audit the use of public funds, assets and resources directly to all end-users, without exception. The SAO is required by law to produce a report on the execution of the state and local government budgets. It provides an annual opinion on the accuracy of the financial statements of ministries, central state institutions and local governments.

Public procurement procedures are subject to audit by the SAO.

The SAO have the power to audit all entities spending public money in Latvia. All public procurement procedures are monitored by auditors from the State Audit Office. Financial audit however focuses on procedural compliance, the legality of procedures and the correctness and accuracy of account systems.

### ***Commentary:***

Current financial audit gives assurance, as part of the attestation process, that the organisation spends public funds in compliance with the procurement regulations.

External audit procedures need progressively also to include the performance aspect, not only the formal compliance with the legal procedural requirements. SIGMA considers that the performance aspect of auditing clearly requires attention.

## 10. Complaints and Remedies

Under the PPL economic operators may contest the decisions made by the contracting authority during the procurement proceeding. They have the right to contest all decisions taken during the open or restricted or negotiated procedure (the request for price quotations cannot be contested) irrespective of the value of contracts. The PPL does not enumerate the types of decisions that may be contested; therefore all the decisions taken by the contracting authority may be the subject of complaint. The Law expressly stipulates, that the decision on the selection of best tender and the award of contract might be efficiently contested – therefore the contract cannot be signed earlier than ten working days after the decision on selection of best tender has been made and communicated to tenderers. If the complaint relates to the tender documentation, it can be submitted only before the final date for the submission of tenders.

The complaint will be submitted directly to the PMB. The complaint may be submitted only before the contract is signed. Since the contract entered into force, the procedure might be contested only in a normal court, on the general principles of civil law.

Submission of complaints is entirely free of charge for the complaining tenderer, who does not bear any costs for it.

As soon as it has received the complaint, the PMB immediately publishes information about it on Internet.

The complaint is reviewed in the PMB by the Complaints Examination Commission. Such a Commission is composed of staff from the PMB and external experts. The Commission will take a decision within a month; in more complicated cases, the term might be extended.

The Commission will organise a meeting for examination of the complaint, to which it should invite the complaining tenderer, the contracting authority and all other tenderers or candidates whose interests might be affected by its decisions. After hearing all participants the Commission shall take its decision. The Commission may allow the contract to be entered into — if the complaint was unfounded or infringements were insignificant or without influence on the outcome of the procedure. Accepting the complaint the Commission may prohibit the signing of the contract or order some corrective measures.

The decision (including all details) is immediately published on the Internet.

The Participant may appeal the decision in the normal court.

During 2002 the PMB has received 172 complaints. In relation to the total number of procedures launched the number of complaints is relatively small.

The Complaints Examination Commission of the PMB has reviewed 121 complaints. In 61 cases the Commission decided to allow the contract to be entered into (it has rejected the complaint). In 44 cases the Commission accepted the complaint and did not allow the signing of the contract. In other cases the Commission ordered other corrective measures to be taken. Nine of the Commission's decisions are subject to judicial review.

The procurement Law does not directly address the issue of the amount of damages, which the successfully complaining supplier might possibly request from the contracting authority — this is a decision to be taken by the sovereign court.

### **Commentary:**

Generally the system of appeals seems to work properly. No objections or claims regarding the quality and impartiality of the examination procedure were raised during the meetings with SIGMA.

The system appears to be in line with the requirements of the Directives; although there is no doubt that the European Commission will carefully consider the problem of the independence of the body examining the complaints. It is clear that the procedures of conciliation and attestation provided in the

Remedies Directive for the utilities sector (92/13/EEC) are not transposed into the Latvian legislation in any form.

## **11. Ethics in Procurement**

A widely held view, expressed by many interlocutors including the State Audit Office, is that in Latvia corruption in public procurement continues to be a serious and widespread problem. Bribes amounting to 10-20% of contract value have been mentioned as a common practice. Transparency International assessed the Republic of Latvia rather critically in the 2002 Corruption Perception Index with the score 3.7, which gives the country 52<sup>nd</sup> position in the ranking (while for 8 acceding countries the average score is 4.55 and the average position 41). Latvia's ranking in the TI has improved during the last 2 years.

There are no provisions in the public procurement regulations addressing the problem of corruption directly. A special governmental agency has been created to combat corruption — the Bureau for the Prevention and Combating of Corruption. The Procurement Monitoring Bureau has to notify this Bureau of all cases where the possibility of infringement exists — the PMB has to send copies of all submitted complaints, and decisions on the complaints.

Officially, until now, not one case of corruption during procurement proceedings has been discovered and no one has been sentenced.

There is a special code of ethics for civil servants, but it does not specifically address the issues of public procurement. In any case, the overall quality of civil servants seems to be a serious problem in Latvia, mostly because of the low level of salaries in the public sector.

## **PART II — FINAL CONCLUSIONS AND RECOMMENDATIONS**

### **12. Recommendations to the European Commission**

- a. SIGMA would recommend the Commission to consider the following actions as a result of the Procurement Review of Latvia.

The Commission may wish to express an opinion to Latvia on the importance of implementing procurement legislation that allows public purchasers to operate efficiently and effectively in order to contribute to sustainable growth in accordance with the fundamental objectives of the European Union; thus, if in agreement, express concurrence with the findings and recommendations for amendments to the public procurement law proposed by SIGMA.

- b. The Commission may wish to raise an opinion to Latvia on the importance of possessing adequate central procurement organisation and institutional capacity to support effectively the implementation of public procurement legislation in accordance with EU legislation and with a view to operating in the Single Market; thereby mentioning the concerns raised on the issue of a conflict of interest with respect to the PPO, the need to prepare effectively the procurement community to operate in the Single Market, and to organise its central advisory and review functions for the purposes of efficiency and credibility.
- c. The Commission is recommended to ask for clarifications on the status of preparations for the management of the pre-and post accession funds.

### **Input to the Monitoring Report**

For the specific inclusion of wordings into the Monitoring Report, the Commission may wish to consider certain conclusions and recommendations made by SIGMA in the section of country recommendations. However, for the purpose of facilitating this input, SIGMA would propose the following recommendations with regard to the position of Latvia.

It is found that the public procurement system of Latvia overall maintains a good standard. The institutional arrangements now in place would provide the prerequisites for a successful establishment of an effective public procurement system and to implement EC legislation effectively. However, there are a number of weaknesses identified which should be addressed and the Government of the Latvia is therefore recommended to consider the following actions with a view to improving the public procurement system:

- Legal alignment is almost complete and a fully compliant PPL is seen to be adopted in due time, however, the PPL needs further revision in the interests of simplification, user-friendliness and recognized international good practice.
- Institutional arrangements appear now be satisfactory, but the potential conflict of interest within PPO needs attention. Efforts should be devoted to the strengthening of good practice support for public purchasers and economic operators, and to focus stronger than being the case today external audit towards economic outcomes rather than strict regulatory compliance.

### **13. Recommendations to the Country**

In brief, the SIGMA Review of Latvia indicates the following main findings and conclusions on the state of the public procurement system:

#### ***Strengths***

- The legal framework is almost fully aligned with the EC Directives and the on-going reform process will most likely result in the adoption of a fully aligned PPL in due time.
- Low national thresholds for the application of the PPL.
- Simplified procedure allowed up to fairly high thresholds.

- A capable and experienced Public Procurement Office, fully informed about the main purchasers.
- An excellent procurement dissemination and statistical system.
- A procurement market that is functioning well, with satisfactory participation rates and market competition.
- Contracting entities as well as economic operators appear to be well familiarised with the public procurement legislation.
- An effective and credible complaints and remedies system, although there are some doubts about its independence.

### **Weaknesses**

- More or less identical procedures apply above as well below the EC thresholds, although a simplified procedure is allowed in the range 1 000-10 000 Lats for goods contracts.
- The restrictive and unclear implementation of the restricted procedure.
- Formalistic application of the qualification and eligibility rules.
- Excessive use of negotiated procedures and direct contracting.
- The use of the two-envelope system for submission of tenders.
- The mandatory use of lowest price criterion, only for goods and works contracts.
- The practice of tender securities.
- Tender commissions are making binding decisions.
- That design and works have to be procured in two separate contracts depriving the contracting entity of the possibility of a turn-key contract if so deemed appropriate.
- The potential conflict of interest within the public procurement office as a result of the mixture of advisory and review functions.
- The *ex ante* control by the PMB on certain procurement decisions.
- Insufficient central support in the areas of training and capacity building.
- Insufficient central support for the provision of operational tools, such as guidelines and model tender and contract documents.
- The focus on compliance audit rather than performance audit in the context of external audit.
- That corruption is perceived to be such a serious problem in public procurement.

### **Recommendations**

In general, SIGMA has a good appreciation of the public procurement system of Latvia. However, for the purposes of future improvement of the system, SIGMA would recommend Latvia to consider the following actions.

#### *The Legal Framework*

SIGMA has discussed a number of critical elements in current legislation that in its opinion need to be addressed by the Government of Latvia either as part of the on-going legal reform process or on a separate occasion in the near future.

A revision of the PPL should be initiated with the aim of providing a strong legal basis, built on the Directives and good international practice, which optimally promotes efficient and sound public procurement in accordance with the principles of the EC Treaty. SIGMA would recommend the following main amendments:

- Make a clear distinction between contracts governed by the EC Directives and other national procedures.
- Introduce simplified competitive procedures below EC thresholds.

- Remove certain provisions or practices adversely affecting market access and competition, such as tender securities and the rigid application of qualification and eligibility rules.
- Remove provisions and conditions that adversely affect the operational efficiency of contracting entities, such as the two-envelope system, and the lowest price criterion.
- Introduce procedure and rules that promote efficient procurement taking into account modern practice and new technologies, such as framework agreements and collaborative arrangements.

#### *Central Institutional Set-up and Capacity*

Following the recent restructuring of the PMB, Latvia has now a very good central procurement organisation that surely will have the potential to contribute to the successful establishment of an effective public procurement system in the country. It has in general the experience and capacity to implement procurement legislation effectively. SIGMA has identified, however, a number of problems that need to be tackled. SIGMA would in particular recommend the following actions to be taken in the short or medium-term perspective:

- Latvia, due to the potential risk for a conflict of interest as perceived, may consider separating the advisory and review functions of the PPOs, preferably into two separate bodies.
- Upon separation of the review function, organise and build the future PPO with the objective of establishing a “Centre of Excellence” in public procurement. This would mean a shift of direction from control to monitoring the effectiveness of the policy and legal framework and investing more in areas such as capacity building, the procurement information function, the provision of efficient operational tools and, more generally, the development of a modern public procurement system as skills develop.
- Organise the PPO taking into account its new role in an Internal Market context, including the need to establish a point of first call with the European Commission.
- Take measures on the organisation and employment of EU funds after accession.
- Adopt a strategy and action plan on public procurement with the following main ingredients:
  - the creation of a nationwide training and information programme for the procurement community — contracting entities and the private sector — on the new EC based procurement legislation and how to operate in the Single Market;
  - increased operational support to contracting entities through the provision of operational guidelines, model tender documents, and general conditions of contracts using international models;
  - the creation of a quality assurance system for contracting entities, including systems for accreditation of procurement professionals;
  - plans for how to support long-term capacity building in procurement, in particular on how to strengthen the operational competence and capacity of contracting entities;
  - plans and measures on how to organise systems for coordinated and centralised purchasing, including the use of framework agreements;
  - plans and measures on the implementation of electronic procurement.

#### *Procurement Practice and Market Functioning*

SIGMA finds that contracting entities and economic operators overall have a good understanding and knowledge of applying public procurement legislation. However, the commercial and operational side of public procurement needs to be enhanced in the future and some of the most important and urgent measures proposed therefore are outlined above. The state of competition appeared to be satisfactory in Latvia, although it was not possible to get the statistical data.

SIGMA would recommend the following actions to be taken in order to improve these areas of the public procurement system:

- Initiatives should be taken to support contracting entities in their efforts to enhance the efficiency of their procurement operations by providing models and guidance on how to organise the procurement function and decision-making processes in a rational and cost-effective manner.
- Initiatives should be taken with the purpose of supporting the economic operators to enable them to operate efficiently and with integrity in the public procurement market, domestically as well as in the context of the single market.
- Take measures to strengthen the position of SMEs in public procurement without compromising efficiency, such as the removal of obstacles to participation and facilitation for forming joint ventures and allowing subcontracting.

*The Areas of External Audit, Complaints and Remedies, and Ethics in Procurement*

SIGMA has noticed a relatively high number of complaints, and the existence of control and audit functions that mainly appear to focus on procedural compliance. On the other hand the complaints system is considered effective and credible, but indicatively the presence of corruption in public procurement is regarded as a major problem.

SIGMA would recommend Latvia to take the following actions:

- The Supreme Audit Office should take appropriate initiatives and measures in their operations. As a first step:
  - To analyse the quality of the financial management and control, including the internal audit in the contracting entities;

Progressively as the system develops, the following actions should also be considered:

- With the first step as a base gradually shift the approach in the public sector external audit from a transaction towards a system approach focusing on efficiency and effectiveness in the management operations;
  - To analyse the possibilities to carry out thematic audits of the entire public procurement system with the objective to support the capacity building in the system;
  - To assess the programming and project design capacity in the public administration, including capacity of financial planning for big investment projects; and
  - To progressively develop their capacity to audit procurements and procurement policies from a performance point of view.
- The current level of complaints is costly for all parties involved and various measures should be taken to improve the situation. Some measures are associated with the simplification of the PPLs and capacity building, as discussed earlier, but other measures should also be considered.
- As the further restrictiveness of procurement legislation is seen to be inappropriate, Latvia is recommended to take other more constructive measures to prevent corruption and to ensure integrity in the procurement processes. Such measures may focus on changing attitudes, perceptions and behaviour, including the removal of the underlying reasons for corrupt behaviour — with both short and long-term perspectives — in order to establish a commercial culture significantly free from such practices and capable of contributing to economic growth. (Please see the Consolidated Version for a list of proposed measures)

**14. Final Remark**

SIGMA wishes to express its warm thanks to the Government of Latvia for all the support given during the entire Review process and to the Commission for all its contributions towards facilitating the work of the SIGMA Project Team.

***Appendices***

- Annex 1: Procurement Statistics.
- Annex 2: Complaints Data.

## Annex 1

## PROCUREMENT STATISTICS

Country: Latvia

Item	2000		2001		2002 (1 <sup>st</sup> half)	
Total number of contracting entities	630		606		965*	
of which:						
Central Government	20		21		310*	
Regional and local authorities	610		585		655*	
Utilities	-		-		-	
Other Bodies	-		-		-	
<b>A. Awarded Contracts/Contracting Entities</b>	<b>Value (€Mil.)</b>	<b>Number</b>	<b>Value (€Mil.)</b>	<b>Number</b>	<b>Value (€Mil.)</b>	<b>Number</b>
Central Government	449	148 370	474	144 153	220*	12 260*
Regional and Local Authorities	277	530 610	266	550 753	117*	7 845*
Utilities						
Other Bodies						
<b>TOTAL</b>	<b>726</b>	<b>678 980</b>	<b>740</b>	<b>694 906</b>	<b>337*</b>	<b>20 105*</b>
<b>B. Procurement Methods</b>						
<i>Above EC Thresholds</i>	291	136	297	155	17*	22*
Open Procedure		104		107	17*	22*
Restricted Procedure						
Negotiated Procedure		32		49		
<i>Below EC Thresholds</i>	435	678 844	443	694 751	320*	12 238*
State applicable procedures						
e.g. — Open Tendering		1 571		1 585		425*
Restricted Tendering						4*
Negotiated Proceedings		304 212		289 472		118*
Low-value Procurement		373 083		403 795		11 691*
<b>C. Nationality</b>						
Contracts awarded to national contracts		578 581		581 198		12 981*
Contracts awarded to EU firms						150*
Contracts awarded to candidate country firms						
Other countries		17 660		23 354		
<b>D. Participation Rate</b> (estimate average number of tenders on tender invitations)		NA		NA		NA
Works						
Goods						
Services						

\* Value for 1<sup>st</sup> half of 2002.

## COMPLAINTS DATA

### Administrative Review

#### A. Background Data

Name of Central Review Body: Procurement Monitoring Bureau  
 Year of establishment: 2002  
 Number of Members: 20

#### B. Number of Complaints

- Procurement Monitoring Bureau during 2002 has received 172 complaints.

- *Contracting entity:*

Central government: 56  
 Regional authorities: 43  
 Other: 73

- *Category of complaints:*

Works: 46  
 Goods: 82  
 Services: 44

#### C. Nature of Complaints

The most common types of complaints in order of importance (percentage):

Construction Works: 47 complaints (27%)  
 IT& T: 34 complaints (20%)  
 Other: 91 complaints (53 %)

#### D. Outcome of Review Process

Complaints Examination Commission of Procurement Monitoring Bureau has reviewed 121 complaints:

- in 61 cases the Commission decided to permit entering into a contract;
- in 44 cases the Commission has taken a decision not to permit entering into a contract;
- in other cases the Commission decided about regarding measures to be performed by the contracting authority to rectify the causes of the complaint.

### Judicial Review

#### E. Number of cases and outcome of judicial reviews

Nine decisions of Complaints Examination Commission of Procurement Monitoring Bureau are subject to judicial review. In four cases the claim has been abjured.

Three judgments of court have been appealed.