



# SIGMA

## Support for Improvement in Governance and Management in Central and Eastern European Countries

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### LATVIA PUBLIC PROCUREMENT SYSTEM ASSESSMENT 2001<sup>1</sup>

#### Public Procurement Legislation

The Law on Government and Municipal Procurement (PPL) came into effect on 1 January 1997. It is largely based on the UNCITRAL Model Law. Many of its implementing rules are regulated in the Cabinet of Ministers Regulation No. 376 of October 2000 "Procedures for the Application of Methods for Selection of Tenderers and Choice of Tenders".

A new Law on "Procurement for Government and Municipal Needs" (NPPL) has been recently adopted (5 July 2001). It will come into force on 1 January 2002.

The NPPL is to cover all public entities including public agencies. It is to harmonise with the EC Directives the rules concerning estimated contract value, qualification criteria, technical standards, evaluation of abnormally low offers, tender procedures (only open, restricted and negotiated procedures will be allowed) and the circumstances when they can be used.

The PPL covers entities within central, regional and local government, funded by state or municipality funds. Utilities, both public and private, are covered by the recent Law on Construction Work, Supply, Leasing and Services for the Needs of Public Service Undertakings (PPL-Utilities from November 1999), that is applicable above the GPA thresholds.

Under the PPL contracting entity may apply domestic preference in the invitation to tender. This possibility has been eliminated in the NPPL.

Open Tendering is the basic method and other methods may be used if reasons are included in the record, as required by the PPL. The other methods are Request for Proposals, Request for Quotations and Single-Source Procurement.

Invitation for tenders and/or to pre-qualify are advertised in *Latvijas Vestnesis* "Official Journal of Latvia" (issued at least three times a week) plus in the Internet ([www.fm.gov.lv](http://www.fm.gov.lv)). The time limit for submission of tenders is 40 days (NPPL 52) days from publication in normal cases. In urgent cases, however, this period can be shortened to 10 days. The tender opening is public, and tenderers and/or their representatives may attend. A Tender Committee appointed by the contracting entity is responsible for the opening of tenders as well as the evaluation of the tenders and decisions on the award of contracts. Contracting entities are obliged to keep a record of the tender proceedings.

Members of the tendering commissions and procurement officials involved in fraud and corruption are liable to administrative and/or criminal prosecution.

*Once it has come into force, the NPPL will substantially strengthen the legislative framework.*

[1999 and 2000 Baselines partially achieved]

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1. At the request of the Commission, this assessment has been made on the basis of a rapid, desk review of information, especially of legal texts supplied by Candidate countries. Given the limited resources we did not have the opportunity systematically to corroborate the information independently *sur place* and can not reliably assess the extent of real implementation. For this reason we did not update the ratings, but for ease of reference we have provided the 2000 and 1999 ratings in brackets. *Pour mémoire*, the rating has four categories: baseline achieved; baseline substantially achieved; baseline partially achieved; baseline not achieved.

## Central Public Procurement Organisation

A Public Procurement Department (PPD), within the Ministry of Finance, is responsible for drafting procurement legislation, supporting policy development, providing procurement advice to contracting entities, training and capacity building, and monitoring procurement operations, including the collection of statistics. Its authority is not defined by the PPL. Only the Cabinet of Ministers has formal authority, under the PPL, to supervise procurement and provide support to contracting entities.

The PPD has only six (2000 — 5) employees, an insufficient number taking into account the scope of the PPD's responsibilities, the large number (over 2 000) of contracting entities to be served and the volume of procurement transactions.

The PPL-Utilities and now the NPPL includes provisions on the setting up of a new agency — the Procurement Supervision Bureau (PSB) — with about 20 staff. The PSB is to become operational in 2002. The PSB would be a subordinated body reporting to the Ministry of Finance, and would have responsibilities both for policy development and for carrying out complaint review procedures.

*Current central institutional capacity for the regulation and monitoring of public procurement and provision of assistance to contracting entities remains not sufficient.*

[1999 and 2000 Baselines partially achieved]

## Complaints Review Procedures

A complaint may be submitted in accordance with "Regulations on Review for Public Procurements" approved by the Cabinet of Ministers (March 1997). Certain activities of the procurement entity are not subject to review. The PPL does not provide for the suspension of an on-going tender procedure and for the imposition of special sanctions against a contracting entity in accordance with EC Remedy Directives. A Complaints Commission, composed of representatives of the Ministry of Finance, the Ministry of Economy and the Ministry of Justice, has been established. However, this body has no judicial power and consequently no authority to suspend a tender proceeding or invalidate an award recommendation made by a contracting entity. The Commission may only give an opinion, request a correction and report the case to the SAO. Once an award decision is reviewed by a contracting entity, a tenderer may seek judicial review.

The NPPL states that the Complaints Review Commission will be functioning within the PSB and will have up to a month to hear a complaint and take a decision. Suspension of the procedure will be automatic. The Commission's verdict shall be binding. This method of appeal will only be available up to the date on which the contract is signed.

*Current procedures for handling complaints do not fully meet recognised international standards.*

[1999 and 2000 Baselines partially achieved]

## Summary

The existing PPL, in many respects, did not meet international standards, in particular the principles of objective and fair evaluation of tenders and non-discrimination against suppliers. A system of domestic preferences was also in place. Most of these issues have been dealt with by the NPPL, which is a big step in the right direction and provides most of the elements required in a modern procurement system. However, substantial work will be required to upgrade the central administrative capacity and the systems for monitoring and controlling procurement activities (including the control and audit functions outside the procurement system itself). Continuing efforts to improve the efficiency of the public procurement system at the operational level are needed in order to ensure fair competition, professional handling of tenders, and to encourage the development of competition in the domestic market. The presence of corruption and fraud in the awarding of public contracts needs to be seriously addressed by the Government.