



SIGMA

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

A joint initiative of the Organisation for Economic Co-operation and Development and the European Union, principally financed by the European Union.

ESTONIA PUBLIC PROCUREMENT SYSTEM ASSESSMENT 2001¹

Public Procurement Legislation

A new Public Procurement Law (NPPL) was passed on 19 October 2000 (State Gazette RT 2000, 84, 534 and replaced the 1995 PPL (with amendments), The NPPL entered into force on 1 April 2001 together with an amendment of 21 March 2001 (State Gazette RT I 2001, 34, 189). The NPPL largely follows the EC public Procurement Directives.

The NPPL covers all public authorities and institutions (including associations) at all levels of government, legal persons under public law, legal persons under private law financed by at least 50 per cent by the state/local government or subject to management supervision by these bodies. Legal entities (both public and private) operating in the utilities sector are also covered, as long as they hold a monopoly position or have been granted special or exclusive rights.

NPPL's main features:

- Open Tendering is the basic procurement procedure. Restricted Procedures and the Negotiated Procedures (with or without prior publication) may be only used under clearly defined circumstances. Precise definitions of coverage exemptions;
- The requirement for written documentation and records;
- Clear definitions for selection and award criteria;
- Minimum time limits for submission of tenders;
- Maximum time limits for offer validity;
- Clear rules on value estimations and technical standards.

The new law has eliminated all national preference provisions.

The NPPL meets to a very large extent international standards for procurement legislation, including the EC Directives, and complies with the principles of objective and fair procedures. Together with the secondary legislation, including standard forms, it is the basis of a solid legislative framework.

[1999 and 2000 Baselines substantially achieved]

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

The Public Procurement Office (PPO) (www.rha.gov.ee) under the Ministry of Economic Affairs received a new statute on 3 April 2001 replacing the one from 1997. The PPO has 19 staff members and the following responsibilities: developing draft rules, instructions and other documentation; supervising and monitoring compliance with the PPL; implementing an information system; organising and conducting training; and issuing a Public Procurement Register/Bulletin including notices of invitation for tender and reviewing protests.

The PPO appears, in general, to perform adequately the tasks required of it by the PPL. However, further development and training of staff members of the PPO will be needed in order to prepare standard documents and procedures in accordance with the NPPL. Information on the activities of the procuring entities will need to be refined, collected more regularly and more widely disseminated, possibly using electronic means.

[1999 and 2000 Baselines substantially achieved]

Complaints Review Procedures

The NPPL provides for two methods of reviewing complaints: 1) filing a protest with the PPO, or 2) an appeal to an administrative court.

Protests to the PPO must be filed before acceptance of the successful tender by the contracting authority. They must be filed within seven working days after the date the person becomes aware of the violation of his rights or damage to his interests. The law defines the requirements for the contents of a complaint and requires the PPO to refuse to review protests which, *inter alia*, are not filed on time or are incomplete in their contents. The contracting entity will suspend a tendering procedure upon receipt of a notice from the PPO on the filing of a protest.

The PPO must arrange a review of a complaint within ten (earlier five) working days. Complaints are resolved on the basis of mutual agreement between the person who filed the protest and the contracting entity. If the agreement is not resolved, or if the person making the protest fails to appear at the review, the PPO can decide to terminate the review.

An appeal may be filed with an administrative court against a protest resolution decision or a decision not to take up a protest made by the PPO.

The complaints review procedures has been brought in line with the EC Directives.

[1999 and 2000 Baselines partially achieved]

Summary

The public procurement system in most respects meets EU requirements and other aspects required in a modern procurement system. However, further work will be required to upgrade 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.