

## ***Public Procurement: Public Spending and Transparency***

### ***Introduction***

*Public spending and procurement are areas particularly sensitive for corruption. According to different calculations, European countries spend 16-18% of their GDP for public procurement annually.<sup>1</sup> In Lithuania the value of public procurement is equal to one-tenth of the national GDP and one-third of the national budget.<sup>2</sup> Corruption in the public procurement induces the risk of inefficient spending, reduced benefit of public competitions (best value for money, efficient distribution of national resources), price inflation and inefficient work.<sup>3</sup> According to the sociological research “Lithuanian Map of Corruption, 2011” procurement (“receiving governmental orders for services/goods”) is one of the most corrupt procedures (“very corrupt” - 30% of the surveyed businesses). The research also revealed that civil servants have a similar opinion – according to this part of the respondents it is the third most corrupt procedure.<sup>4</sup> Concern about corruption in the public procurement is clearly visible in the whole region: currently, the review of EU public procurement directive is in progress and transparency is in the focus.*

*In general, corruption is the abuse of entrusted power for private gain.<sup>5</sup> It is widely recognized that if the areas of public life that are most sensitive to corruption are not identified, it is more complicated to choose the most effective methods and measures to fight it.<sup>6</sup> In 2010, the Lithuanian integrity system study was started to develop as part of the regional project “National Integrity Systems” (NIS.) A National Integrity System assessment evaluates the principal institutions and actors that form a state, including all branches of government, the media, the public and private sectors, and civil society. The purpose of such a study is to identify the risk factors in a given country that foster corruption as well as medium and long term solutions to help reduce those risks. Lithuanian study covered thirteen most relevant areas of the public life including, among others, public procurement.*

---

<sup>1</sup> OECD. *Fighting Corruption in the Public Sector: Integrity in public procurement*, 2006.

<http://www.oecd.org/gov/ethics/integrityinpublicprocurement.htm> [retrieved 2012-12-15].

European Commission Press Release on Modernizing European public procurement to support growth and employment.

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/1580&format=HTML&aged=0&language=EN&guiLanguage=en> [retrieved 2012-12-15]

<sup>2</sup> The National Audit Office of Lithuania. Report of preliminary research: the review of public procurement. 2011 November 25<sup>th</sup> IT-P-20-1-14. Vilnius

<sup>3</sup> More on this: Rose-Ackerman, S. *Corruption: A study in Political Economy*. Academic Press: 1978, New York. Lien, D. *Corruption and allocation efficiency*. Journal of Development Economics, Vol. 33 (1): 153-64. (1990)

<sup>4</sup> Research “Lithuanian Map of Corruption 2011”, [http://www.stt.lt/documents/soc\\_tyrimai/Korupecijos\\_zemelapis.pdf](http://www.stt.lt/documents/soc_tyrimai/Korupecijos_zemelapis.pdf) [retrieved 2012-12-15]

<sup>5</sup> “Transparency International”. *Transparency International Plain Language Guide*. P. 14, 2009,

[http://www.transparency.org/whatwedo/pub/the\\_anti\\_corruption\\_plain\\_language\\_guide](http://www.transparency.org/whatwedo/pub/the_anti_corruption_plain_language_guide) [retrieved 2012-12-15]

<sup>6</sup> Fletcher C, Herrmann D, *Corruption: an international interdisciplinary and multi-sectoral reader*, 2012, p.16;

## ***I. Public Procurement Environment in Lithuania: Risks and Control***

Public procurement in Lithuania is regulated by the Law on Public Procurement<sup>7</sup> and the Law on Public Procurement in the Defense and Security Sectors (*lex specialis*). National public procurement policy is implemented by the budgetary institution Public Procurement Office which also supervises the legal framework; the national public procurement policy is formed by the Ministry of Economy.

Generally speaking, the legal framework regulating public procurement is sufficient enough and matches the EU legal regulations. However, problems persist in practice especially when it comes to supervising the contracting authorities. Based on the Law on Public Procurement, contracting authorities have to ensure the principle of transparency in all procurement. The law also provides more detailed safeguards to ensure that the contracting authority would choose the supplier transparently and reasonably.

The National Audit Program 2011 identified public procurement as priority area for national audit planning and implementation. Among the most urgent Lithuanian public procurement system problems the following issues were defined: lack of transparency and information; the application of lowest price criteria; unreasonable, protectionist provisions in procurement documents; complex regulations; lengthy procedures; insufficient system of public procurement control; low level of public procurement centralization; impunity for violations of public procurement procedures; insufficient control of executed public procurement; poor quality/no cost and benefit analysis; constant amendments in the legal framework that regulates public procurement leading to dissatisfaction of procurement participants and increasing the risk of mistakes; inefficient dispute resolution system of public procurement (especially in the last stage – dispute resolution in courts).<sup>8</sup>

The results of a sociological survey on transparency in public procurement conducted by the Special Investigation Service in October 2008<sup>9</sup> reveal that corrupt agreements are most likely to occur during the stage of drafting the qualification requirements and technical specifications or when evaluating the offers and announcing the winner. This study (the latest representative sociological survey on public procurement transparency to date) highlights similar problems to the ones defined in the above mentioned program. According to the opinion of business representatives, corrupt agreements are most likely to happen when drafting the technical specifications and qualification requirements. When asked to name three most urgent problems in public procurement, they identified large amount of paperwork, corruption, bureaucracy and the fact that the winner was determined in advance.

Judging by these sources, it is important to pay attention to the stage when technical specifications and qualification requirements are drafted. According to the current regulations, the contracting organizations have to prepare and confirm plans of public

---

<sup>7</sup> Lithuanian Law of Public Procurement, Žin., 1996, Nr. 84-2000, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc?p\\_id=442231](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc?p_id=442231) [retrieved 2012-12-15]

<sup>8</sup> National Audit Office of Lithuania, Programme 2011 approved by the 2011-01-03 order of the State Auditor No. V-1. When drafting the annual program, National Audit Office selects the priority public sector area according to previous results of audits, regular collection and evaluation of information about concrete public sector areas and changes in it, the questionnaires of the committees of the Parliament and other state institutions, and evaluation of practice. According to this selected priority public sector area and keeping in mind the criteria laid out, the audit objects are chosen.

<sup>9</sup> UAB RAIT “Study of Public Procurement Transparency”, 2008 m. <http://www.stt.lt/lt/menu/sociologiniai-tyrimai/> [retrieved 2012-12-15]

procurement planned for the year in advance and announce the summary of all public procurement planned for that year until the 15<sup>th</sup> of March. This summary consists of the name of the contracting organization, its address, name and code of the object of procurement, prospective amount or size (if possible), the foreseen procurement date and type, foreseen agreement duration as well as the draft technical specification (except for small value procurement). Technical specifications and qualification requirements of specific procurement are publicly announced in the Central Public Procurement website. However, it does not make it any easier to determine whether the winner was indeed the best choice since the proposals of all suppliers are not published (except for the cases when participants and the proposals are revealed to them). The National Audit Office of Lithuania also identifies another risk in the way the contracting organizations plan their public procurement ahead; there is a lack of cost - benefit analysis and adequate planning. One of potential solutions to this problem could be the preparation and announcement of adequate procuring plans before the deadline.

It is equally important to ensure efficient monitoring and responsibility mechanism. The Code of Administrative Infringements provides the sanctions for violations of public procurement regulations and the responsibility for such violations. The oversight function is designated for the Public Procurement Office (PPO). Based on the annual activity report, the Public Procurement Office shut out not transparent tenders of a total value of 602 million LTL in year 2011 alone and issued orders to cancel 39 tenders were cancelled after identifying violations of procurement procedures. In total, 56 contracting authorities were sanctioned for various violations of procedures. In 2011, the total value of procurement that was evaluated by the Public Procurement Office was 2,860.3 million LTL which amounted 22.3 % of all public procurement in 2011 (12,822.0 million LTL).<sup>10</sup> The question whether the Public Procurement Office has enough resources for efficient control and monitoring remains open, but it should be mentioned that in 2011, the Office received 4.35 million and 820 thousand LTL of technical aid from the state budget and had 72 employees<sup>11</sup>. This number of employees has remained stable since May 2009, even though the number of functions designated to the PPO is increasing.

Another important aspect is the execution of public procurement contracts. According to the legal regulations, it is necessary to evaluate the result of procurement contract execution. However, it is a rare practice because of the lack of human resources and financing. Currently, the results of contracts execution are evaluated by authorized persons from the contracting authorities who can sometimes be partial or not have the relevant competence.

During the procurement execution period, another risk appears. The general rule states that if the supplier submits justifications, the contract can be amended. After the amendments of the Lithuanian Law on Public Procurement introduced in June, 2012, it is now provided that the conditions of the contract cannot be changed except for the cases where such changes would not violate the general principles of the law (Art. 3) and the Public Procurement Office gives a permission. The consent of Public Procurement Office is not necessary when the value of simplified procurement contract is less than 10 000 LTL or when the contract is made in a low value procurement. However, in practice, lower value procurement contracts are changed quite often potentially causing large damage altogether, despite of the fact that theoretically corruption is more likely to occur in procurement of large value. Having in mind that neither

---

<sup>10</sup> Annual report of The Public Procurement Office, 2011.

<http://www.vpt.lt/admin/uploaded/2012/VP%20Ataskaita%202012.pdf> [retrieved 2012-12-15]

<sup>11</sup> Ibid.

the contracts nor their changes are announced publicly, there is a risk of unofficial agreements between suppliers and contracting authorities that would allow to win the contest with a concrete offer changing some of the conditions afterwards (thus subsequently turning the offer into one that would not have objectively won the tender in the first place).

Another risk highlighted by the experts is the lack of sufficient whistleblowers' protection in the country.<sup>12</sup> Due to the complex nature of public procurement, high level of technical and legal knowledge and/or direct access to procurement documents or process is usually needed in order to notice potential corruption cases. Therefore, employees of the supplying organizations of contracting authorities usually have the highest potential to notice violations. However, a whistleblowers' protection system, which would allow people to safely report on potential corruption cases does not exist in Lithuania yet.<sup>13</sup>

## ***II. How Public is the Public Procurement?***

According to current regulations, the supplies, services or works contracts may be awarded by means of the following procedures: open or restricted procedure; competitive dialogue procedure and negotiated procedure with or without publication of a contract notice.

Information about procurement results is provided to participants of the competition who have expressed their interest. The contracting authorities are obliged to publish procurement procedure reports and the Public Procurement Office is obliged to publish information about the foreseen and ongoing tenders, contracts signed and the results of the contracts. This information is published in separate information publications, and the reports of procurement procedures are uploaded into the central procurement website. However, it is impossible to see all the offers that were submitted by all suppliers. The Law on Public Procurement strictly indicates that suppliers, when preparing the offers are allowed to determine which information is confidential, therefore it is not clear whether publication of all offers would also mean the risk of disclosure of commercial secrets or create excessive administrative burden. For example, signed contracts are not published in Lithuania, while in Slovakia all the procurement contracts are publicly available.

Furthermore, the law provides rather broad regulations for the definition of confidential information. On one hand, it is due to protection of the suppliers' interests, but from the public perspective it raises a lot of questions. First of all, it is unclear how many confidential conditions can a contract have (i.e. to what extent it can be confidential). This poses potential threats as, for example, a supplier can indicate certain provisions as confidential in order to hide part of the proposal. According to current practice, if a contracting authority is not sure why certain pieces of information is indicated as confidential, it can submit the request for justification. However, that kind of communication is usually very formal and does not explain anything.

Another risk in procurement is the practice of undisclosed procurement. Analysis of national and EU legal framework and interpretation of the EU Court of Justice jurisprudence reveals that the procedure

---

<sup>12</sup> Edited by Juozapavičius, R. "How to make public procurement transparent?". Vilnius: Eugrimas, 2006, P.41-42

<sup>13</sup> More about legal acts on whistleblowers' protection here: "Recommended principles of regulation for the whistleblower's protection law" <[http://www.transparency.lt/new/images/praneseju\\_principai.pdf](http://www.transparency.lt/new/images/praneseju_principai.pdf)> [retrieved 2012-12-15]

of undisclosed negotiations can only be used in exceptional cases because it has extremely limited provisions for transparency generally applied for public procurement.<sup>14</sup> After the amendments of the Law on Public Procurement introduced in 2011, the contracting authorities that choose this procedure have to either publish a voluntary *ex ante* transparency declaration or receive permission from the PPO. However, not only undisclosed negotiations pose corruption risks due to the limited numbers of bidders and the relatively small amount of public information. In cases of undisclosed simplified tenders, there also is no publication of the contract notice. Such tenders are implemented according to the internal regulations of a contracting authority; the PPO provides for a draft frame for such regulations, but they are only recommendatory in nature. In both cases the risk of corruption is high and not in all cases it finds justification as economic efficiency.<sup>15</sup> Meanwhile, a public procurement analysis conducted by Transparency International Lithuanian Chapter reveals that the undisclosed procedures of procurement (undisclosed negotiations or undisclosed simplified procurement) constitute a relatively big share of all procurement. The 2012 analysis showed that undisclosed procurement made up to 14% of all municipal procurement in 2006-2011. Municipalities spent 1.6 billion LTL for undisclosed procurement in these 6 years.<sup>16</sup> However, undisclosed procurement constituted only 5% of all procurement in 2011 which is 25% less than in the period of 2006-2010 together.<sup>17</sup> In spite of that, in 2011 the value of procurement made using undisclosed negotiations was 543.5 million LTL and 403.8 million LTL by using undisclosed simplified procurement procedures.<sup>18</sup> These are quite illustrative figures bearing in mind the fact findings of the National Audit Office often reveal potential infringements in undisclosed negotiations procedures in particular.<sup>19</sup>

## ***Recommendations***

- Ensuring that information about procurement is easily accessible and reviewing the current policy of publishing it. Also, it is recommended to start considering the plausibility of publishing additional information about all stages of the procurement, including information about the length and conditions of the contracts, changes in the contracts (except for the confidential information) and all the proposals submitted during the bid.
- Ensuring that undisclosed negotiations would only constitute of reasonably justified exceptional cases and all the other procedures of procurement would be executed by open competition. Aiming that as many procurement in undisclosed simplified procedures as possible would be conducted according to the recommendatory rules drafted by the Public Procurement Office.
- Pursuing that execution of the contracts is effectively and impartially monitored: evaluating the current PPO resources in this area and assessing the effectiveness of the monitoring process.

---

<sup>14</sup> Editor – Arrowsmith, Sue. *EU Public Procurement Law: An Introduction*. University of Nottingham. 2011 P. 198-200

<sup>15</sup> Price Water House Cooper. *A study on procurement Regulation prepared for the European Commission: Public procurement in Europe. Cost and effectiveness, 2011*. P.7-9

<sup>16</sup> Trends of undisclosed municipal procurement in 2006-2011, Transparency International Lithuanian Chapter, [http://www.transparency.lt/new/images/savivaldybiu\\_neskelbiami\\_pirkimai\\_2006-2011.pdf](http://www.transparency.lt/new/images/savivaldybiu_neskelbiami_pirkimai_2006-2011.pdf)

<sup>17</sup> Trends of undisclosed municipal procurement in 2011, Transparency International Lithuanian Chapter, [http://www.transparency.lt/new/images/tils\\_neskelbiami\\_ministeriju\\_pirkimai\\_analize\\_2011m.pdf](http://www.transparency.lt/new/images/tils_neskelbiami_ministeriju_pirkimai_analize_2011m.pdf)

<sup>18</sup> Annual report of the Public Procurement Office, 2011

<http://www.vpt.lt/admin/uploaded/2012/VP%20Ataskaita%202012.pdf> [retrieved 2012-12-15]

<sup>19</sup> *Public procurement – the biggest channel for corruption?* ELTA information, ekonomika.lt website.

<http://www.ekonomika.lt/naujiena/viesieji-pirkimai-didziausias-korupcijos-kanalas-3891.html> [retrieved 2012-12-15]

- Analyzing whether adequate financial and human resources are allocated to the Public Procurement Office to sufficiently execute its functions.
- Assessing whether the current definition of confidential information is not too broad and does not create environment for abuse.
- Ensuring that the contracting authorities use the cost - benefit analysis when planning the public procurement and ensuring that the annual plans would be drafted more carefully.
- Ensuring that the reports on violations would be published and ensuring whistleblowers protection as well as safe reporting channels.

## *Sources*

OECD. *Fighting Corruption in the Public Sector: Integrity in public procurement*, 2006. <http://www.oecd.org/gov/ethics/integrityinpublicprocurement.htm> [retrieved 2012-12-15]

European Commission Press Release on Modernizing European public procurement to support growth and employment  
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/1580&format=HTML&aged=0&language=EN&guiLanguage=en> [retrieved 2012-12-15]

The National Audit Office of Lithuania. *Report of preliminary research: the review of public procurement*. 2011 November 25<sup>th</sup> IT-P-20-1-14. Vilnius  
Rose-Ackerman, S. *Corruption: A study in Political Economy*. Academic Press: 1978, New York.

Lien, D. *Corruption and allocation efficiency*. Journal of Development Economics, Vol. 33 (1): 153-64. (1990)

Sociological research “Lithuanian Map of Corruption 2011”,  
[http://www.stt.lt/documents/soc\\_tyrimai/Korupcijos\\_zemelapis.pdf](http://www.stt.lt/documents/soc_tyrimai/Korupcijos_zemelapis.pdf) [retrieved 2012-12-15]

"Transparency International". *Transparency International Plain Language Guide*. P. 14, 2009,  
[http://www.transparency.org/whatwedo/pub/the\\_anti\\_corruption\\_plain\\_language\\_guide](http://www.transparency.org/whatwedo/pub/the_anti_corruption_plain_language_guide)  
[retrieved 2012-12-15]

Fletcher C, Herrmann D, *Corruption: an international interdisciplinary and multi-sectoral reader*, 2012, p.16

Lithuanian Law on Public Procurement, Žin., 1996, Nr. 84-2000,  
[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=442231](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=442231) [retrieved 2012-12-15]

National Audit Office of Lithuania, Programme 2011 approved by the 2011-01-03 order of the State Auditor No. V-1

RAIT “Research of Public Procurement Transparency”, 2008 m.  
<http://www.stt.lt/lt/menu/sociologiniai-tyrimai/> [retrieved 2012-12-15]

Annual report of the Public Procurement Office, 2011  
<http://www.vpt.lt/admin/uploaded/2012/VP%20Ataskaita%202012.pdf> [retrieved 2012-12-15]

Editor - Juozapavičius, R. “*How to make public procurement transparent?*”. Vilnius: Eugrimas, 2006,P.41-42

Transparency International. *Recommended principles of regulation for the whistleblower’s protection law* <[http://www.transparency.lt/new/images/praneseju\\_principai.pdf](http://www.transparency.lt/new/images/praneseju_principai.pdf) > [retrieved 2012-12-15]

Editor – Arrowsmith, Sue. *EU Public Procurement Law: An Introduction*. University of Nottingham. 2011 P. 198-200

Price Water House Cooper. *A study on procurement Regulation prepared for the European Commission: Public procurement in Europe. Cost and effectiveness, 2011*. P.7-9

Trends of undisclosed municipal procurement in 2006-2011, Transparency International Lithuanian Chapter,  
[http://www.transparency.lt/new/images/savivaldybiu\\_neskelbiami\\_pirkimai\\_2006-2011.pdf](http://www.transparency.lt/new/images/savivaldybiu_neskelbiami_pirkimai_2006-2011.pdf)

Trends of undisclosed ministerial procurement in 2011, Transparency International Lithuanian Chapter,  
[http://www.transparency.lt/new/images/tils\\_neskelbiami\\_ministeriju\\_pirkimai\\_analize\\_2011m.pdf](http://www.transparency.lt/new/images/tils_neskelbiami_ministeriju_pirkimai_analize_2011m.pdf)

*Public procurement – the biggest channel for corruption?* ELTA information, ekonomika.lt website. <http://www.ekonomika.lt/naujiena/viesieji-pirkimai-didziausias-korupcijos-kanalas-3891.html> [retrieved 2012-12-15]

***This policy paper was drafted by Transparency International Lithuanian Chapter. This is a part of publications prepared in the framework of the project „Evidence based fight against corruption: National integrity systems“. Integrity systems of 25 European countries were assessed during this project, the full online copy of the „Lithuanian Integrity Study“ can be downloaded here: [http://media.transparency.org/nis/cogs/assets/lt/pdf/Lietuva\\_NIS.pdf](http://media.transparency.org/nis/cogs/assets/lt/pdf/Lietuva_NIS.pdf)***



With the financial support from the Prevention of and Fight against Crime Programme of the European Union  
European Commission - Directorate-General Home Affairs