

Projects & Procurement - Estonia

Euro information campaign reveals shortcomings in public procurement reform

Contributed by [Luiga Mody Hääl Borenius](#)

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[Introduction](#)
[Euro information campaign](#)
[Comment](#)

Introduction

On July 1 2010 several amendments to the Public Procurement Law came into force. Most of them resulted from the implementation of the Remedies Directive into national law. Independently, the locus of supervisory powers was moved so that, as of July 1, the independent Public Procurement Agency ceased to exist. Rather, supervisory tasks are now carried out by a public procurement unit within the Ministry of Finance. Due to this amendment, the ministry has to supervise and, if necessary, impose penalties on procurements it conducts. As past practice has shown, this may not be the best solution.

Euro information campaign

A case in point is the ministry's Eurozone information campaign. As is almost certain at this point, Estonia will join the Eurozone in 2011. To inform the public of respective changes, approximately €300,000 was to be allocated to an information campaign. The ministry drafted the tender documents, describing the object of the tender in rather unclear terms as "idea solutions" and "project management services". This resulted in offers which diverged dramatically. As the ministry later confirmed, the cheapest offers generated suspicions of dumping and feasibility. In addition to price, the quality of the campaign project was evaluated by ministry officials using subjective grading. In the end, the ministry selected the cheapest offer and provided unsubstantiated explanations on the grading.

Several companies disputed the ministry's decision before the respective dispute commission and requested that supervisory proceedings be commenced. The companies succeeded in the dispute, with the commission agreeing that the ministry's decision was unclear and lacking in transparency. In contrast with the dispute proceedings, which took less than one month from commencement to a final decision (this is the norm in Estonia, as the deadlines are short in procurement disputes), the decision on whether to commence supervisory proceedings was taken more than one month after the request was submitted. By that time, the ministry had already decided to annul the procurement.

Comment

Although this time the disputing companies successfully prevented a potentially unlawful tender contract from being signed, several big-picture questions remain.

First, is there effective public procurement supervision in Estonia? Who can guarantee that the ministry is objective in supervising its own tenders?

Second, is there a clear method for conducting advertising-related procurements? How can transparency and equal treatment of competitors be guaranteed in cases where the object of procurement is described as vaguely as "procurement of an advertising campaign"?

At this point, it appears that neither of these questions is being addressed in a meaningful manner.

Finally, would more harmonization within public procurements not be beneficial?

Author

[Maria Peterson](#)



For further information on this topic please contact [Maria Peterson](#) at [Luiga Mody Hääl Borenius](#) by telephone (+372 665 1888), fax (+372 665 1899) or email (maria.peterson@lmh.ee).

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