

Public Procurement Liability System in Latvia

Inara Opmane

Abstract—Procurement as business process management object has significant economic impact in both the private sector and the public sector. It affects both production and service sector and public administration also. This article analyzes procurement as business process its management and related risks. Research on Public procurement cover both procurement problems in economic models generally. Over time procurement research changing according to specific economic models. Research is based on situation analysis and statistical data in Latvia. The main interest was devoted to public procurement processes related to infrastructure (constructions) development. Data about situation in Latvia approve that data are real, but processes are similar in others countries also.

Index Terms— infrastructure development, liability, project management, public procurement.

I. INTRODUCTION

Procurement as business process management has significant economic impact in both the private sector and the public sector. It affects both production and service sector and public administration also. Research on procurement management as supply chain management component is well known and there are lot of analytic work, methodical recommendations in national level, for implementing EU regulations and general considerations, for example, The Organization for Economic Co-operation and Development (OECD) recommendations. In recent research papers more and more are case studies where procurement is a tool for realizing more general aims, for example implementing EU single market strategy, fighting against corruption. There are different aspects of procurement in research papers: best practice in one country is comparable with similar solutions in other countries, recommendations for solving identified problems. In this section recommendations are mainly based on OECD research, documents and recommendations. OECD documents give general recommendations on public procurement processes. Interesting and very relevant was OECD document that was devoted to Effective Delivery of Large Infrastructure Projects: The Case of the New International Airport of Mexico City [1] and great attention (more than 100 pages) are devoted to public procurement problems. The paper analyses the international airport construction project, which I think would be comparable to that study the customer's planned work nature and extent. Public procurement regulations are designed first and foremost to increase competition, to obtain the best price, and to ensure the quality and timely delivery of products and services to public organizations. Prevention and detection of

corruption are not primary objectives of public procurement regulation.

Research, methodology and analysis of public procurement cover process as a whole [2] and as well as in certain aspects [3], [4], [5] of its importance, most popular aspects are as follows:

A. Economy.

Procurement is a purchasing activity whose purpose is to give the purchaser best value for money. For complex purchases, value may imply more than just price, for example, since quality issues also need to be addressed. Moreover, lowest initial price may not equate to lowest cost over the operating life of the item procured. However, the basic point is the same: the ultimate purpose of sound procurement is to obtain maximum value for money.

B. Efficiency.

The best public procurement is simple and swift, producing positive results without protracted delays. In addition, efficiency implies practicality, especially in terms of compatibility with the administrative resources and professional capabilities of the purchasing entity and its procurement personnel.

C. Fairness.

Good procurement is impartial, consistent, and therefore reliable. It offers all interested contractors, suppliers and consultants a level playing field on which to compete and thereby, directly expands the purchaser's options and opportunities.

D. Transparency.

Good procurement establishes and then maintains rules and procedures that are accessible and unambiguous. It is not only fair, but should be seen to be fair.

E. Accountability and Ethical Standards.

Good procurement holds its practitioners responsible for enforcing and obeying the rules.

Growing expectations of open and fair public decision-making has put mounting pressure on governments to ensure that official decisions do not adversely affected by private interests. In OECD member countries, practice shows that decision makers' disclosure of private interests is still an essential tool for managing conflicts of interest and ensuring the integrity of public decision-making [4].

Topical studies on Procurement are as follows:

Methodology reports and analytics:

- Methodology and internal regulations of banks and global auditors;
- EU working groups reports.

Research on procurement is branched in many research subjects - it could be in the context of economic models or as

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an important management tool in general or for solving any particular aspect of procurement implementation:

- Green procurement
- E-Procurement
- Procurement and partnering - public-private partnering
- Innovative procurement
- Public procurement as auction
- Core business, outsourcing and procurement
- Corruption
- Risk Management
- Case studies
- e.t.c.

II. PUBLIC (GOVERNMENT) PROCUREMENT LIABILITY

Public procurement liability system is a hierarchical and starting from each employee to procurement supervising institutions. Liability we will analyze from various aspects:

Liability scale:

- Personal responsibility;
- Institutional responsibility;
- National responsibility.

Nature of liability:

- Legal and Financial liability;
- Responsibility for achieving high procurement metrics;
- Liability for institutions positive image in society.

Liability mutually impact shown in Table 1.

Personnel have responsibility for carrying out qualitative work duty and it is linked to the employee Legal and Financial liability. Each employee individually can do little to influence achieving high procurement metrics; however, it forms institutions and national prestige in society.

Personal obligation of Chief executive officer is defined in the employment contract and the job description. Traditionally Chief executive manager is responsible for the functioning of the institution as a whole, the institution's strategy, procurement harmonization of the strategic plan with the authorities in the strategic plan, pre-procurement and post-procurement processes. Responsibility for performance of procurement procedure is of the procurement commission which members are public officials. At Procurement Commission work may be invited experts.

All members of the procurement commission have contracts of employment and job descriptions where liability should be defined. Each employee in respect of violations at work may be applied to legal and financial liability, it may be applied by the institutions chief executive manager, Procurement monitoring bureau, the court.

TABLE 1. LIABILITY MUTUALLY IMPACT

RESPONSIBILITIES	LEGAL AND FINANCIAL LIABILITY	HIGH METRICS RESPONSIBILITY	SOCIETY DISPOSITION
Personal responsibility	high	low	low
Institutional responsibility	high	medium	high
National responsibility	low	high	low

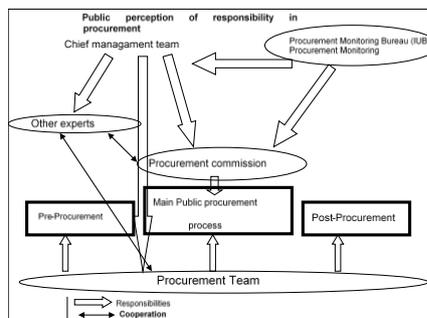


Figure 1. Initiated administrative violation number in Latvia according to Latvian Administrative Violations Code.

Procurement process as a whole is organized by Procurement Team that consists of all personnel involved in process, see Fig.1. Procurement Team performs all procurement – related work in accordance with Public Procurement Law, it is beyond the competence of the Procurement Commission. Employees' responsibilities are defined in employment contracts and job descriptions. However, the liability specified here and work tasks are in general, - creating a Procurement Team in accordance with international best practice models suggest that job descriptions and job tasks to develop a detailed, for example.

The procurement process in accordance with the Public Procurement Law ensures that decisions are taken by the Procurement Commission. Procurement's Commission operate in accordance with by-law, it may invite experts. Procurement Team does not participate in the Procurement Commission work.

In Public Procurement process experts are involved in different phases: the procurement documentation (Regulations, technical specifications, requirements development, market evaluation process) preparation and pre-procurement process and procurement process and post-procurement process. Before each procedure, members of the procurement Commission (body) must certify that they have no personal interest in the outcome of the competition.

The most effective advice is normally communicated in short readable reports. An advisory report for policy-makers and open publications should be written in a scientifically accurate manner and, at the same time, be understandable to those expected to consider the advice. There is a balance to be achieved between oversimplification and the incomprehensibility of science language.

It is recommended that experts certify that they have no personal interest in the outcome of the competition if work is performed by Procurement Team apart from procurement Commission direct obligations. Similarly, the experts shall be invited to review cases of disputes at Procurement Monitoring Bureau and the courts.

Authority Chief management team is interested in purchasing the work of external experts with high professional knowledge, and if purchasing product theme is geared to the licensing or other forms of professional competence identification document, we recommend to invite experts with relevant professional experience.

In order to prevent conflicts of interest, Procurement Commission members have been required to be registered as state officials. State officials have liability for conflicts of interest and are subject to criminal law in cases of passive

bribery. The Law on Prevention of Conflict of Interest in Activities of State Officials prohibits state officials from awarding a procurement contracts to an applicant for whom they work.

Persons, who are not Procurement Commission members (Procurement Team staff), may still exercise influence over procurement decisions. This is very difficult to ascertain. For example, the opinion of a director of an institution may influence decisions of the commission.

Preventive measures such as efforts to improve the skills and awareness of personnel assigned to carry out procurement within public institution.

The use of information technology can help secure procedures and reduce the risk of manipulating documents.

Some suggestions for experts taken from Latvia Procurement monitoring bureau dispute resolution decisions:

- Expert assessment may include advantages and disadvantages of the description; it does not coincide with the Commission's evaluation form;
- The law does not foresee to invite experts for a design competition;
- Expert's competence depends not only on certificates, but also of professional activities;
- The independence of the expert evaluation is attributed to his independence from the tenderer, rather than from a commissioning party;
- Applicants are not limited rights to invite an expert on the examination of the application;
- The procurement commission shall be competent in the field of procurement for which the contract is concluded, but not always the [commission] need expertise.

Institutional responsibility in the procurement process may apply for violations; the institution is responsible for the positive image of the community. Institution is responsible for achieving high procurement metrics, in particular in the EU registries fixed metrics. Institution penalties may determine the Procurement monitoring bureau, the court and the EU public procurement control system.

National responsibility of the state has the main responsibility for the procurement process framework for achieving high Procurement metrics, in particular the EU registries defined metric results.

III. LEGAL AND FINANCIAL LIABILITY (NATIONAL ASPECTS)

According to Latvian Civil law, a person (physical or juridical) is legally liable when he/she is financially and legally responsible for something (for example, the execution of works according to the job description or statute compliance). Legal liability concerns both civil law and criminal law. Legal liability can arise from various areas of law.

Financial liability is defined as the future sacrifices of economic benefits that the entity is obliged to make to other entities.

In procurement process selected contractor may have limited liability as Latvian Civil law foresee protect public authorities from arbitrary. Liability can be insured to protect employees or authority.



Figure 2. Initiated administrative violation number in Latvia according to Latvian Administrative Violations Code.

Offenses in public procurement can be punished by Procurement monitoring bureau. Detailed overview of Procurement monitoring bureau functions of administrative Violations is given in [5] for overview, a total number of administrative violations shown in Fig.2.

Disputes and penalties in the procurement process, as well as the procurement contracts are addressed to the court.

IV. PROCUREMENT LIABILITY CONTROL SYSTEM

Liability assurance system has reciprocal effect. In Procurement process employees, institutions and the state is trying to move duties and responsibilities in more and more positive direction and evaluation and conversely, in hierarchical procurement control system, supervising authorities checks and require accountability by providing for penalties of infringements.

In Latvia The Ministry of Finance (MoF) has primary responsibility for procurement policy making and drafting legislation. The Procurement Monitoring Bureau is a State direct administration institution that is supervised by the MoF and is responsible for monitoring procurement compliance with legal requirements and for conflicts of interest, preparing guidelines and instructions, and drafting standardized tender and contract documents. The Procurement Monitoring Bureau also prepares annual reports to the Latvian government on the monitoring and functioning of public procurement. In addition, the Procurement Monitoring Bureau acts as a first instance review body for complaints regarding public procurement. It also carries out ex-ante controls before the start of procurement procedures in cases of projects co-financed by EU funds. The data obtained from PMB homepage (iub.gov.lv) shows that 30% of public procurements are related to constructions sector, statistic data in Fig3, Fig4.

The State Regional Development Agency (VRAA) is responsible for promoting harmonized and comprehensive public purchases nationwide through the management of e-procurement and the conclusion of framework agreements types of goods and services.

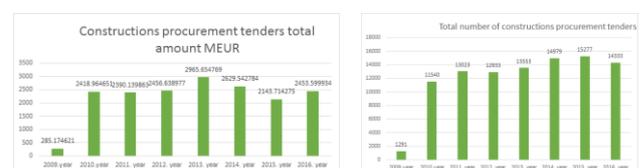


Figure 3. In Latvia total number of constructions procurement tenders, total amount MEUR

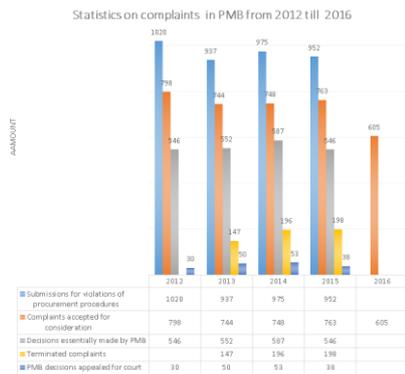


Figure 4. Statistics on complaints in PMB (Latvia) from 2012 till 2016

For central government institutions, purchasing from the e-catalogues based on these framework agreements is mandatory.

The main external supervision body in public procurement is the State Audit Office (SAO). The SAO is an independent collegial supreme audit institution. It performs audits in order to ascertain whether resources of central and local public bodies are used in a lawful, economical and efficient manner, and to provide recommendations for the reduction of deficiencies. One of its tasks is to audit public procurement activities and to control the implementation of EU co-funded programmes. The SAO reports its findings to the Procurement Monitoring Bureau which can consequently impose fines to contracting authorities for violation of the Public procurement law.

The Corruption Prevention and Combating Bureau (KNAB), as the leading specialised anti-corruption authority of Latvia, play a supporting role in the public procurement system. Its aim is to fight corruption in a coordinated and comprehensive way through prevention, investigation and education. In particular, it detects corruption in public procurement procedures in collaboration with the Procurement Monitoring Bureau and is responsible for prosecuting cases of corruption and other criminal offences in public procurement cases.

Ultimately, there are judicial review procedures applicable to public procurement complaints. Aggrieved parties may request the administrative court to annul, terminate, amend or reduce the contractual terms of a tender procedure, even if it is already executed. An appeal to the administrative court does not suspend the public procurement processes, but may result in the annulment of the process and/or the award of damages.

While European Union member state carry out the first-level control and audit activities, the European Commission bears the responsibility for the protection of the financial interest of the EU and the correct implementation of its co-financed projects. In this respect, it performs audit work on its own, which is primarily targeted at verifying the functioning of national control systems. Furthermore, the European Commission approves the audit strategy of national audit authorities and monitors the information on irregularities provided by member state (MS).

Audits by the European Court of Auditors (ECA) acts as the external auditor of the EU. As part of its work, it provides the Parliament and the Council with an Annual Statement of Assurance on the legality and regularity of the EU budget [7].

In addition to the audit bodies listed above, another organization conducting oversight of procurement is the European Anti-Fraud Office (OLAF). OLAF is charged with reducing fraud affecting the EU budget, including corrupt practices, poor management and lack of transparency. Although it is an integral part of the Commission is fully independent in terms of investigative capacity.

OLAF conducts both internal investigations of EU institutions and external investigations of MS managing EU funds. These investigations may lead to recommendations for improvements, hearings by national authorities, administrative penalties, financial sanctions, disciplinary proceedings, or changes in legislation.

V. LIABILITY FOR INSTITUTION’S POSITIVE IMAGE IN SOCIETY

Public liability is a part of the law that focuses on civil wrongs. The use of best practice methodologies prevents uncertainty operations in procurement process and as a result, there will be a positive body image in society.

The term "best practices" is that public procurement processes are uniform enough so that a "best practice" can be identified and then adopted more or less "as is" by another contracting authority. A best practice standardizes the most efficient and effective way to accomplish a desired outcome in procurement process. A best practice generally consists of a technique, method, or process. The concept implies that if an organization follows best practices, a delivered outcome with minimal problems or complications will be ensured. Best practices are often used for benchmarking and represent an outcome of repeated and contextual user actions[8, 9].

One of the primary purposes of public procurement legislation is to eliminate existing barriers and prevent the erection of new barriers. It does so by applying the basic principles flowing through the legislation [9].

VI. LIABILITY FOR INSTITUTION’S POSITIVE IMAGE IN SOCIETY

Performance measurement (monitoring, statistic collections) is conducted at various levels:

- National level - Assessing the performance of the national public procurement system as a whole;
- Contracting authority level - assessing the performance of the contracting authority's operations;
- Contract management level - addressing the issue of delivery of an individual contract.

OECD documents are aimed to assist OECD countries in setting appropriate benchmarks for measuring performance in procurement systems and operations at different stage of the procurement cycle, from needs assessment throughout tendering until the contract management and payment, for implementing the OECD principles for integrity in public procurement progress.

VII. CONCLUSION

1. Legal cases can be brought against either individual experts or their institutions (or both), and can involve either

civil or criminal (penal) liability. Experiences in different national juridical systems suggest that, in general, the Government itself is responsible for decisions based on the findings of Government-appointed expert advisory groups, but this is not universally the case.

2. Individual experts may be sued both under civil and criminal law when it can be demonstrated that they did not conduct their activity according to normal professional standards and/or if their behavior neglected existing guidelines.

3. Persons, who are not Procurement Commission members (Procurement Team staff), may still exercise influence over procurement decisions. This is very difficult to ascertain. The use of information technology can help secure procedures and reduce the risk of manipulating documents.

4. Preventive measure to prevent corruption such as efforts to improve the skills and awareness of personnel assigned to carry out procurement within public institution. Providing and promoting the needed skills and training: training personnel in both public institutions as well as in the private sector is fundamental to integrity in public procurement, specialized training on rules and regulations, ethics and accounting to facilitate the detection of corruption. A conclusion section is not required. Although a conclusion may review the main points of the paper, do not replicate the abstract as the conclusion. A conclusion might elaborate on the importance of the work or suggest applications and extensions.

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- ICT research infrastructure (e-infrastructure), mainly Cloud Computing architecture with High Performance Computing (HPC) component for natural language processing, deep learning, social and physical data modelling, Big Data processing. (Research projects - National and EU, Research publications).

- Networking in European Research Area: GRID and GEANT networks and online data streaming. (Research projects - National and EU, Research publications).

- History of ICT: articles about data center development, software development and Museum at the IMCS UL, convergence of computing and communication technologies. (Research publications).

Participation in National, European Union Research working groups and in several European Union Framework 6 and 7 and Horizon 2020 projects. Led of Scientific Cloud development project 2012-2016 in Institute of Mathematics and Computer Science, University of Latvia which includes virtualization possibilities, 10/40 gbps core switching, IBM Storwize accessing, fast data exchange with data flash system, GPU Computational Accelerator and "in memory computing" solutions. Practical experience of assembling Scientific Cloud from computing base components using e-procurement system and purchasing necessary goods and installation services according to government procurement law.

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