



REPUBLIC OF ESTONIA
MINISTRY OF FINANCE

Corruption in Public Procurement

Triin Paljak

Lawyer

Public Procurement and State Aid Department

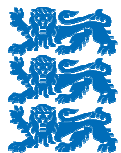
28.06.2017

Responsibilities of the Ministry of Finance

- Public Procurement and State Aid Department
 - ✓ Public procurement policy
 - ✓ Drafting the public procurement law
 - ✓ State supervision
 - ✓ Public procurement e-register (<http://riigihanked.riik.ee>)
 - ✓ Development
 - ✓ Management
 - ✓ Advising the users/Helpdesk
 - ✓ Provide user trainings
 - ✓ Advice on interpreting Public Procurement Act

Themes

- Accountability and transparency of the process of public procurement
- E-procurement in Estonia
- Corruption and directed public procurement
- Challenges and problems
- Cases



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Accountability and transparency of the process of public procurement

Estonian Public Procurement Act – sources of influence

- Government Procurement Agreement (GPA)
- Non-discrimination of tenderers established in countries that are parties to Government Procurement Agreement
- EU procurement directives & case law
- Estonian case law generated by decisions of:
 - ✓ Procurement Review Committee –pre-trial procedure
 - ✓ Courts – administrative law procedure (ca 1/3 cases further appealed to courts)

General principles of public procurement (§3)

Contracting authority is obliged to:

- Use public resources economically and efficiently
- Ensure transparency and verifiability of procurement
- Treat all persons equally
- Use existing competition effectively
- Avoid conflict of interest
- If possible, prefer green solutions

General principles are to be set to the procurement procedure of every contracting authority

Thresholds

- ✓ National thresholds (in force) simple procedure
 - services and supplies 10 000
 - construction works 30 000
- ✓ National thresholds (in force) defined procedure
 - services and supplies 40 000
 - construction works 250 000
- ✓ International thresholds
 - services and supplies 135 000
 - construction Works 5 225 000

All procurements over thresholds are to be announced in central Procurement Register

Purchases below thresholds should meet the criteria of general principles of public procurement (§3)

Responsibilities of contracting authorities

- Establish in-house procurement procedure for procurements below national threshold
- Follow basic principles (based on procurement procedure) with every purchase
- Follow the rules of the Public Procurement Act with purchases over national thresholds
- Allow state supervision to check the procurement practice

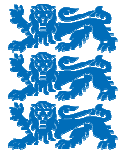
Contesting/appealing possibilities

- National supervision in Ministry of Finance
- Public Procurement Review Committee
 - ✓ Compulsory pre-trial body
- Three-level court system
 - I. County Courts and Administrative Courts
 - II. Circuit Courts or District Courts
 - III. Supreme Court

Accountability and transparency of public procurement

Ensured by:

- **The rules in the Public Procurement Act**
- **Announcement in Procurement Register**
- **Supervision of public procurement practice**
- **Appealing possibilities**



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E-procurement in Estonia

Public procurements – a lucrative business

- ✓ Public procurements in 2016 in Estonia:
- ✓ Cost ~ 2 billion euros;
- ✓ 10 343 public procurements;
- ✓ 90% of public procurements were organized using the public procurement register (e-procedure);

E-procurement as transparency tool

Contract notice and Contract Award notice to be published in Procurement Register from:

- ✓ 10 000 EUR (services, goods)
- ✓ 30 000 EUR (works)

Current framework:

- ✓ 50% of the annual budget to be procured as e-procedure

Future framework:

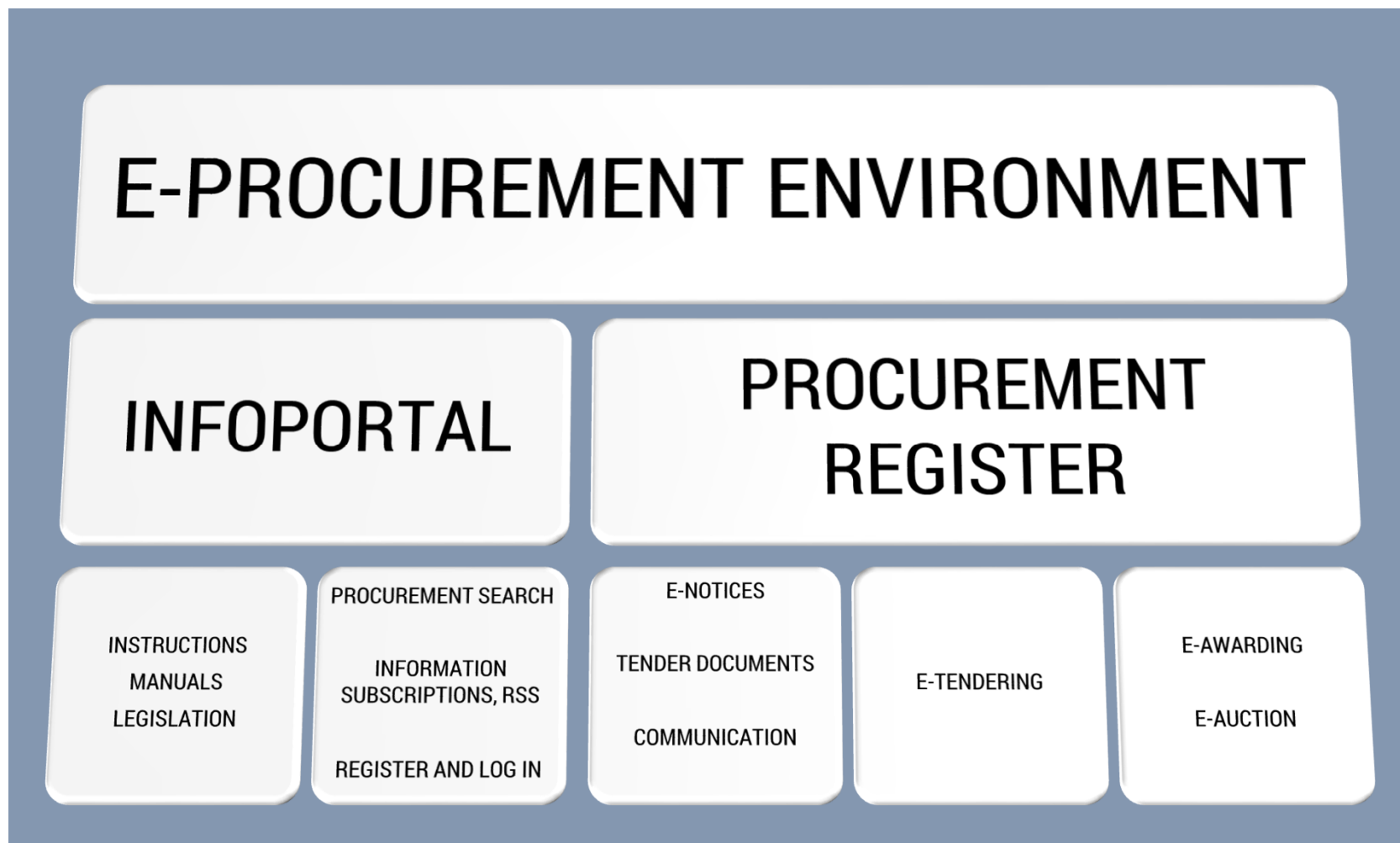
- ✓ 70% of published procurements as e-procedure from 2017
- ✓ All procurements (100%) fully electronic from **18.10.2018**
- ✓ Tresholds will rise
 - ✓ 30 000 EUR (services, goods)
 - ✓ 60 000 EUR (works)

Current features

- Single and mandatory environment
- Once-only principle followed
- ID-card based authentication and digital signing
- Connected to other state registries
 - ✓ Business Register
 - ✓ Tax Payment Register
 - ✓ Punishment Register
 - ✓ etc
- The whole procurement cycle is digitised, incl the eAward phase

E-procurement environment

<https://riigihanked.riik.ee>



Infoportal <https://riigihanked.riik.ee>

E-procurement environment

The e-procurement environment was launched on 2 February 2011 in order to provide innovative workspace for contracting authorities for organising public procurements and for tenderers for participating in public procurements.

The environment consists of an information portal where all relevant procurement information is gathered and of a Procurement Register through which contracting authorities can publish procurements and tenderers can participate therein.

[Read more](#)

▶ New Procurement Act underway

News

Riigikohus: kohus ei saa lahendada loovkonkurssidega seotud esteetilisi vaidlusi	8/9/16
Kohtulahendite kokkuvõtteid on 12. juulil täiendatud uemate lahenditega	7/12/16
Piiirüleste digikirjade tunnustamise kohustus alates 1.07.2016	7/7/16
Valitsus võttis vastu kaks keskse hankimisega seotud korraldust	7/1/16
Maksuvõlg ja heastamine uues riigihangete seaduse eelnõus	6/30/16
Täiendatud on korduma kippuvate küsimuste rubriiki	6/30/16
Kutse osalema energiateenuse tellimise turuuringus	6/27/16
Riigihangete järelevalve aitab tõsta hankekorralduse kvaliteeti	6/6/16
Valminud on 2015 aasta plaanilise järelevalve kokkuvõte	6/6/16

Ongoing tenders

- ▶ Services
- ▶ Supplies
- ▶ Works

Useful links

- ▶ Procurement search
- ▶ Notice search
- ▶ Statistics
- ▶ Appeal search
- ▶ Green procurement
- ▶ Innovation procurements
- ▶ Thresholds and timelimits
- ▶ CPV code
- ▶ TED
- ▶ e-CERTIS
- ▶ SIMAP

Helpdesk

- ▶ register@riigihanked.riik.ee
611 3693, 611 3703
- Mo-Th 9:00-17:00, Fr 9:00 - 16:00

Advice on Public Procurement Act

- ▶ riigihanked@fin.ee
+ 372 611 3701

Procurement register

<https://riigihanked.riik.ee/register>

EST

E-PROCUREMENT ESTONIA
Portal Procurement Register
Log in

Register
Statistics
Settings
Archive

Procurement search

Reference number

Contract type

Procurement status

E-procurement Ei Jah Kõik

Procurement title

Procedure

CPV

E-auction Ei Jah Kõik

Contracting authority

Published -

Submission deadline -

Additional search criteria

Search
Clear fields
Restore default settings

Procurements CSV

No	Ref no	Title	Contracting authority	Contract type	Procedure	Published	Submission deadline	CPV	EU	Status		
1	172442	Elektrotermilise aatomabsorptsioon-spektromeetri ostmine koos reaktiivide ja tarvikutega	sihtasutus Põhja-Eesti Regionaalhaigla - Helen Kressa	A	A	29.08.2016	14.09.2016	33114000-2		alustatud		
2	177276	Majandustegevuse registri arendus- ja tugiteenus	Majandus- ja Kommunikatsiooniministeerium - Marju Kivisoo	T	A	29.08.2016	14.10.2016	72262000-9		alustatud		
3	177803	Üld- ja lokaalanesteetikumide ostmine	sihtasutus Tartu Ülikooli Kliinikum - Jane Lepik	A	A	29.08.2016	10.10.2016	33661100-2		alustatud		
4	177783	Harjumaa, Raasiku-Pikavere 10 kVF automatiseerimine, IP2325.	Elektrilevi OÜ - Taimi Ostrat	E	LM	29.08.2016	06.09.2016	45311000-0		alustatud		
5	177736	Talvine teehoidlus 15.10.2016-30.04.2019	Kohtla Vallavalitsus - HILLAR RAAG	T	A	29.08.2016	14.09.2016	90620000-9		alustatud		
6	177781	Teadmussirde pikaajaline programm toiduohutuse tegevusvaldkonnas II	Põllumajanduse Registreite ja Informatsiooni Amet - JAANUS HÄMMAL	T	A	29.08.2016	10.10.2016	79951000-5		alustatud		
7	177785	Noortele suunatud seminar-arutelude korraldamine	Integratsiooni ja Migratsiooni Sihtasutus Meie Inimesed - Marina Fanfora	T	LT	29.08.2016	19.09.2016	80310000-0		alustatud		
8	177790	Illuka 110/6 kV alajaama laiendustööde projekteerimine ja ehitamine	Enefit Kaevandused AS - Arno Ahu	A	A	29.08.2016	17.10.2016	31682540-7		alustatud		
9	177815	Türi valla 2016 ja 2017 aasta konsolideeritud raamatupidamise	Türi Vallavalitsus - Üllar Vahtramäe	T	LM	29.08.2016	19.09.2016	79200000-6		alustatud		

Tender submission (sample)

EST
Koolituskeskkond
Test Pakkuja | Log out
Tenderer: Aktsiaselts Datel | Change

E-PROCUREMENT ESTONIA
Portal Procurement Register

My worktable | Register | Statistics | Settings | Archive

Procurement title: Sample e-tender Open procedure
Reference number: 126022
Status: alustatud
Published: 29.08.2014
Submission deadline: 16.04.2018 13:45
Contracting authority: Rahandusministeerium (70000272)

- General information
- Tender documents
- Notices
- Participants
- Communication
- Tenders
- Contracts
- Appeals

Tender

Tenderer: **Aktsiaselts Datel (10324057)** | Reference number: **3101** | Status: **koostatud** | Submitted: **NOT SUBMITTED** | Submission deadline: **3 years from now (16.04.2018 13:45)**

[Back](#)

General information ✔

Qualification terms

Compliance terms

Price

[Help](#)

Numerical criteria

	Nr	Criteria	Number evaluation	* Value
🚩	2	Delivery time in calendar days	lowest is best	<input style="width: 50px;" type="text" value="30"/>
🚩	3	Guarantee period in months	highest is best	<input style="width: 50px;" type="text"/>

[Save](#)

Tender price form

Currency: EUR

	No	Name	Description	Quantity	Unit	* Unit price	Without VAT	VAT %	With VAT	Remarks	Does not sum up to total cost
🚩	1	Table		100	tk	<input style="width: 50px;" type="text" value="85"/>		<input style="width: 30px;" type="text" value="20"/>		<input style="width: 50px;" type="text"/>	
🚩	2	Chair		50	tk	<input style="width: 50px;" type="text"/>		<input style="width: 30px;" type="text" value="20"/>		<input style="width: 50px;" type="text"/>	
									Total price without VAT:	0,00	
									Total price with VAT:	0,00	

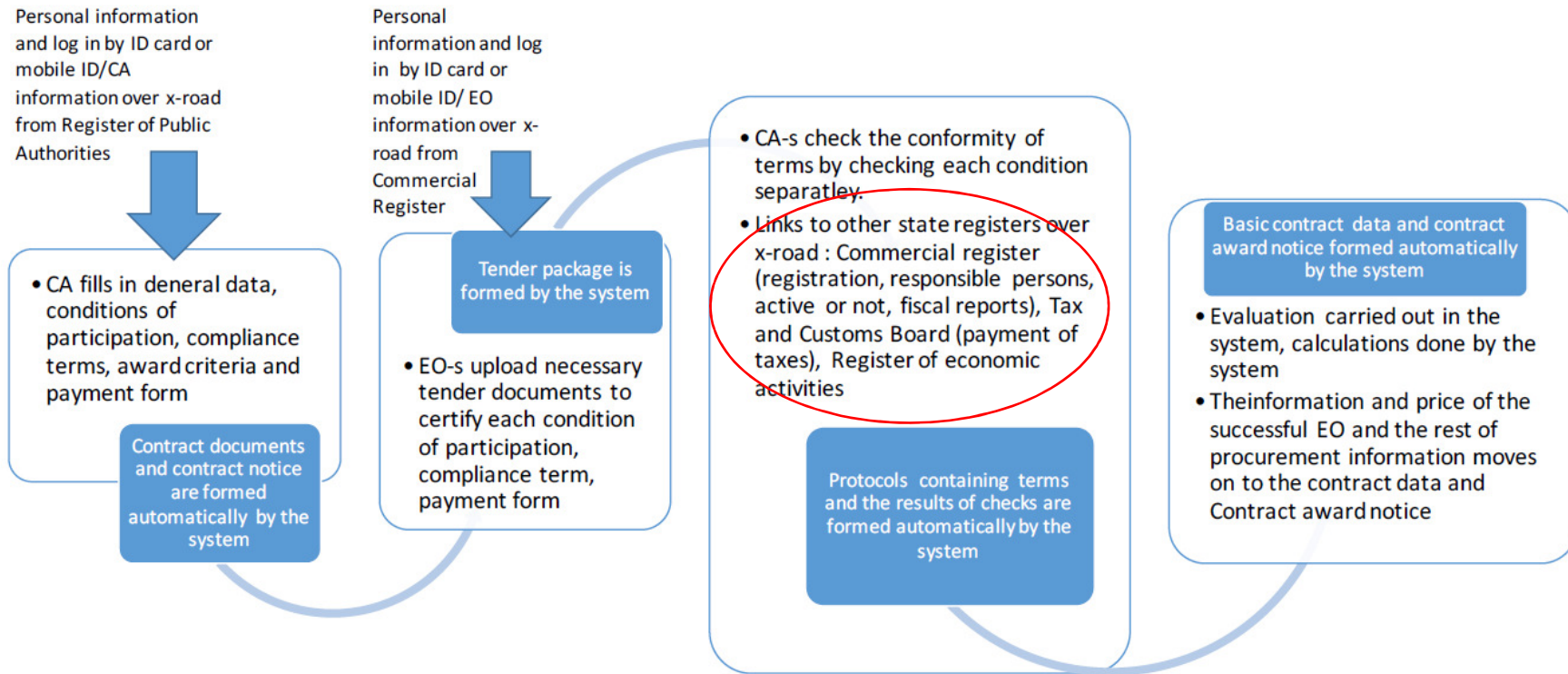
[Save](#)

Additional documents (freely uploaded documents)

[Add a document](#)

No	Comment	Document

E-procurement process

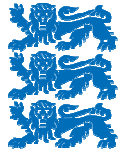


Challenges

- Electronic identification and digital signing for cross-border tenderers
- New browser versions versus Estonian ID-card software versus users' computer settings
- Intuitive and user-friendly result
- Legal aspects versus IT solutions
- Efficient IT support

Future plans

- New Public Procurement Register - 2018
- 100% e-procurement level
- Continue regular trainings
- Improve user-friendliness
- Open-data approach
- Introduce new features
 - ✓ e-Catalogues
 - ✓ e-invoices
 - ✓ contract management
 - ✓ procurement planning features
 - ✓ market research
 - ✓ etc



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MINISTRY OF FINANCE

Corruption and directed public procurement

Corruption

- Corruption is a form of dishonest or unethical conduct by a person entrusted with a position of authority, often to acquire personal benefit.
- Corruption = monopoly of power + (freedom of) decision + motivation – accountability – transparency – lack of control

Corruption formula

- ✓ Corruption is fueled by motivation (need/pressure), opportunity and rationalization of ones behaviour (the fraud triangle theory).

Fraud Triangle

THE FRAUD TRIANGLE

Pressure
Motivation or Incentive to
Commit Fraud

Rationalization
Justification of Dishonest
Actions



Opportunity
The Knowledge and Ability
to Carry Out Fraud

The Fraud Triangle by Donald R. Cressey

Motivation for corruption?



Corruption or directed procurement?

- Corruption – dishonest or unethical conduct by a person in a position of authority, often to acquire personal benefit.
- Is it still corruption if a person (representative of the contracting authority) does not receive any personal benefits?

Directed public procurement

- Directed public procurement – a public procurement that is designed with a specific tenderer or product in mind with the goal of excluding other tenderers or products.

Estonian Penal Code § 300 subsection 1

- Violation of the requirements for public procurement proceedings with the intention of granting an advantage to a party to the proceeding, as well as entry into a procurement contract without the public procurement proceedings required according to law with the intention of granting an advantage is punishable by a pecuniary punishment or up to one year's imprisonment.

Corruption versus directed procurement

- Corrupt public procurement is therefore always linked with dishonest or unethical conduct by a person in a position of authority and often with a goal of acquiring personal benefit.
- A directed public procurement may or may not be linked with dishonest or unethical conduct with the goal of acquiring personal benefit.

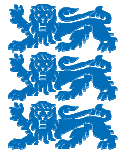
Corruption versus directed procurement

- A corrupt public procurement is carried by the intent of granting an advantage to a certain tenderer with the goal of acquiring personal benefit.
- A directed public procurement may be corrupt, but does not need to be.
- The line between corruption and directed procurement is thin at best.

Thin line



'It's a thin dividing line, Johnson. Let's just ignore it.'



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Challenges and problems

Main problems we encounter during supervisions

- Failure to organize procurement procedure or a simplified procedure (direct contracting)
- Failure (or unwillingness) to define oneself as a contracting authority
- Failure to exclude a candidate or tenderer from procurement procedure

Main problems we encounter during supervisions

- Using preconditions of negotiated procedure without prior publication of contract notice
- Amendment of public contracts
- Using technical specifications, award criteria or verification of admissibility of tenders to limit the number of tenderers.

Failure to organize procurement procedure or a simplified procedure or direct contracting

- One or several contracts between the contracting authority and a another party
- The contract price or the sum of contract prices exceeds the threshold for organizing a simplified procedure or a procurement procedure

Failure (or unwillingness) to define oneself as a contracting authority

- Who is a Contracting Authority?
- Definition Public Procurement Act § 10 subsections 1 and 2
- Contracting Authority – who says someone is a contracting authority?
- Reaction to being told that one is a contracting authority?

6 Stages of Grief

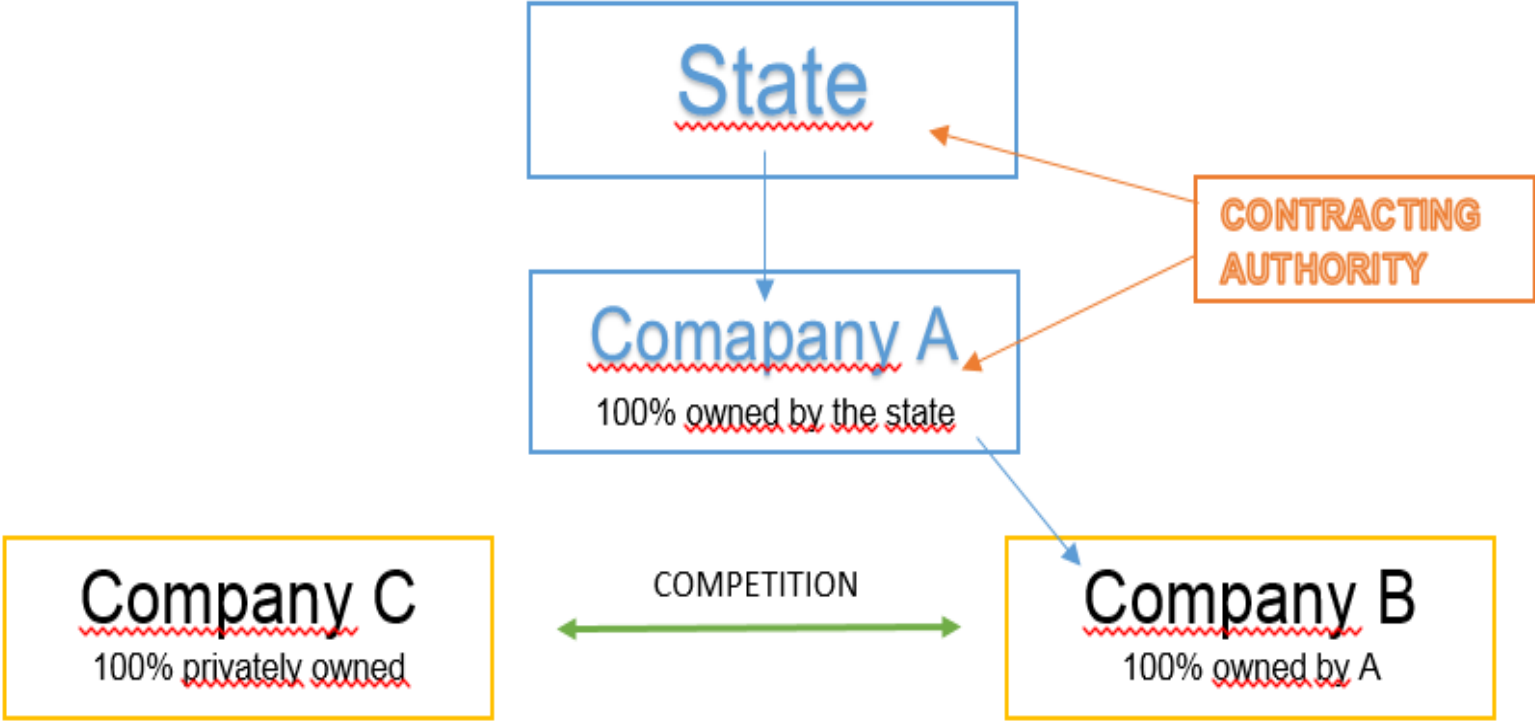


Contracting authorities

De-centralized system

- Contracting authorities are
 - State or state authorities
 - Local authorities and agencies
 - Other legal persons governed by public law
 - Foundations and non-profit organisations owned or appointed by other contracting authority(ies)
 - Other legal persons governed by private law, if:
 - Has public interest and no commercial character
 - Mainly financed by contracting authorities
- Contracting entities are
 - Authorities or persons operating in utilities field

Case no 1 – defining as a contracting authority



Case no 1 – defining as a contracting authority

- Is B a contracting authority if B:
- provides a service that is used by the public;
- is founded with the purpose of making a profit;
- is 100% owned by A who is a contracting authority;
- is in a situation of competition.

Case no 1 – defining as a contracting authority

- Company B's main business area is the transportation of passengers
- B needed new buses, but B did not organize a procurement procedure
- B does not define as a contracting authority because according to B the conditions in PPA § 10 subsection 1 clause 6 and subsection 2 clauses 1 and 2 are not met.

Case no 1 - defining as a contracting authority

- B relied on the European Court of Justice Case 393/06 where the court said that „it is important to check, *inter alia*, whether the body in question carries on its activities in a situation of competition.“
- Since the company carried out its activities in a supposed state of free competition, they did not define as a contracting authority.

Case no 1 – defining as a contracting authority

- B ended up paying approximately 10 billion more for the buses
- It also turned out that the leaders of Company A had lined their pockets with a hefty sum.
- If B had been defined a contract authority, then B would have had to organize a tendering process as opposed to concluding a direct contract.

Award criteria (verification)

- **Public Procurement Act § 39 section 1:** award criteria must be sufficient for proving the tenderer's or candidate's ability to duly perform the public contract and relevant and proportional to the nature, quantity and purpose of the supplies, services or public works that constitute the object of the public contract.

Award criteria (verification)

- **Award criteria should be:**

1) sufficient for proving the tenderer's or candidate's ability to duly perform the public contract;

and

2) relevant and proportional to the nature, quantity and purpose of the object of the public contract.

Case no 2



Case no 2 - facts

- small local authority
- street-cleaning and sweeping services, road-maintenance works, street-cleaning services, horticultural services, parks maintenance services and traffic-signal maintenance services
- friend with a company that offers all those services

Case no 2 – tender process

- Every service by itself is under the international threshold, but all together they are over the international threshold
- public tender process
- all tender documents are online
- you cannot see the cost (or other details) of tenders before the tenders are opened

Case no 2

How would you navigate this situation?

a) conclude a direct contract with your friends company?

b) build up the tender process so you can be sure that your friends company gets to provide these services?

Case no 2 – direct contract

- Former Estonian Armed Forces Navy Commander was found guilty of violation of procedural restrictions under § 300.1 subsection 1 of the Penal Code.
- He ordered different services for the navy in the sum of 90 450, 09 € from two companies linking to him.
- Pecuniary punishment of 3 525 €

Case no 2 – how did they do it?

- How did this local authority do it?
 - 1) They grouped the services together.
 - 2) They set very high economic and financial criteria to which no other tenderer could verify their standing.
 - 3) They demanded that the tenderer employ experts from all the different areas.

Different types of public procurement

- open procedure
- restricted procedure
- competitive dialogue
- negotiated procedure with prior publication of contract notice
- negotiated procedure without prior publication of contract notice.

Negotiated procedure without prior publication of contract notice

- a tender process which can only be chosen if specific criteria has been met
- urgent award of a public contract is necessary due to extreme urgency brought about by unforeseeable events independent of the contracting authority (PPA § 28 s 2 p 3).

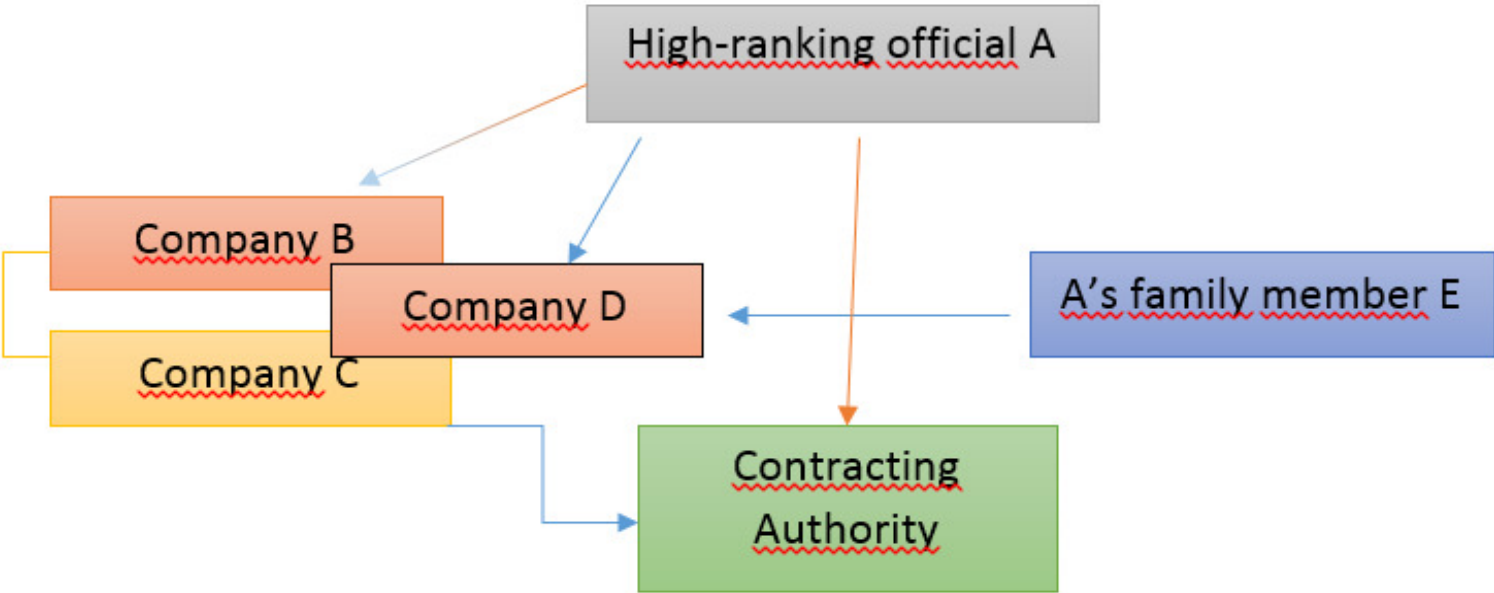
Case no 3 - facts

- local authority (P)
- waste transport services
- an official in a high place (A), who has direct power over P;
- A also owns company D;
- D is run by A's close relative E;
- A wants a piece of the waste transport service business;

Case no 3 - facts

- D is publicly linked to A, so D cannot be a tenderer;
- a shadow company of company D is created (B);
- B is owned by A's close friend (X) and its business address is X's home address;

Case no 3 explained



Case no 3

- Still A has two problems –
- 1) B has no experience in waste management and does not own the trucks needed to provide the service
- 2) eliminating competition – how does A make sure B wins?
- Bearing in mind what we have discussed previously, what do you think A could do so that B would win in the event P should organize an open public procurement?
- What should the verification criteria be like?

Case no 3

- A found C that had the experience B lacked
- B and C - joint tenderers B+C
- A influenced P to tailor the verification criteria to accomodate B+C.
- B+C ended up securing 5 public contracts using this scheme.

Case no 3 - negotiated procedure without prior publication of contract notice

- P claimed the service would not be provided in a free market situation;
- P used negotiated procedure without prior publication of contract notice and negotiated with only one tenderer (B+C);
- the public procurement was contested and P terminated the procedure.

Case no 3

- A voluntarily left his position and according to the information provided by the police and State Prosecutor's Office is currently being investigated for violation of procedural restrictions and various other corruptive acts.

Negotiated procedure without prior publication of contract notice

- a tender process which can only be chosen if specific criteria has been met
- (PPA § 28 s 2 p 2).
- for technical or artistic reasons or for reasons relating to the protection of exclusive rights, a public contract may be awarded only to a particular tenderer;

Case no 4 – using negotiated procedure

- A is a contracting authority (legal person governed by private law, but has the characteristics set out in § 10 s 1 p 6 and s 2 p-s 1 and 2)
- A organized a negotiated procedure with prior publication of contract notice for a preliminary design on a building (procurement X)

Case no 4 – using negotiated procedure

- In the procurement documents A states that the one that is awarded the public contract in procurement X, cannot participate in a future public procurement (procurement Z)
- B is awarded the contract in procurement X
- A organizes a negotiated procedure without prior publication of contract notice (procurement Z)

Case no 4 – using negotiated procedure

- Although A has stated in procurement X, that he who was awarded the contract in procurement X could not participate in procurement Z, A starts negotiating with B
- A explains this behaviour by saying that the original architects of the building have given the rights to alter the building to B and would not agree to an open procedure;

Case no 4 – using negotiated procedure

- A has a licence agreement signed by A, B and the original architects;
- A claims that he cannot infringe copyright
- Original architects say they chose to give copyright to B, because B drew up the preliminary plans (procurement X);
- The public/other architects are outraged, B submits its tender;

Case no 4 – using negotiated procedure

- B's tender is 3 million euros higher than A had estimated (the expected value was 6,5 million €);
- What happened as a result of A-s actions?
- How did it affect the competition, if at all?
- What, if anything did A do wrong?

Case no 4 – using negotiated procedure

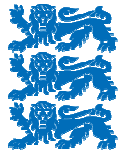
- A created an unjust notion that others could participate in procurement Z;
- All potential tenderers that could have contested the condition in procurement X, did not do so, because they did not foresee A's future actions;
- Potential tenderers cannot contest the condition set out in procurement X, because the public contract X has already been signed and fulfilled;

Case no 4 – using negotiated procedure

- A has a licencing (copyright) agreement so A had a basis for choosing negotiated procedure without prior publication of contract notice;
- A-s purpose was to give B an advantage so B could draw up preliminary design for the reconstruction of the building and also be able to do the design project and the technical plans
- A's mistake? The technical plans are not protected under copyright law.

Case no 4 – using negotiated procedure

- We informed A that according to our analysis the procurement proceeding were not in accordance with the PPA
- The result?
- A terminated the procurement procedure
- A-s board member handed in his notice and council member was let go
- There was a police investigation into the board and council members and the vice head of the local authority, but nothing was proven.



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Thank you!

Triin Paljak

Lawyer

Public Procurement and State Aid Department

triin.paljak@fin.ee