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**Raising the Institutional and Professional Capacity
of the Corruption Prevention and Combating Bureau
(Part B and C)**

(Identification No. KNAB 2005/12)

Procurement and lease component

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1. Tasks and introduction

1.1 Terms of Reference

The task of the consultants is described in the ToR, the offer from the consultants of 9 October 2005 and the Inception report of January 2006. According to the ToR, the consultants must meet the following objectives and deliver the following results:

“2.2 Specific objectives:

2.2.1 To acquire the experience of other countries in identification of risks and schemes of corruption in the field of state and municipal transactions.”

“2.2 Results to be achieved by the consultant:

“2.3.8 Detection of corruptive schemes in state and municipal transactions

2.3.11 Charging state officials in other EU Member States in connection with violations of procurement procedures for state or municipal needs;”

The ToR have been elaborated by the Corruption Prevention and Combating Bureau of Latvia (hereinafter referred to as the “KNAB”) in more detail in the detailed terms of reference, which was sent to the consultants.

According to the detailed ToR, the consultants shall perform the following analysis must:

“4.2.1.1. Analyses the laws, regulations and internal procedures with respect to possible schemes of corruption in state and municipal transactions and procurement.

“4.2.1.1. Analyses the laws, regulations and internal procedures with respect to charging state officials (liability) in other EU Member States in connection with violations of the procurement procedures for the needs of the state and municipalities.”

It is envisaged in the detailed ToR that the consultants must carry out the following activities in order to meet the expected results:

“In order to detect corruptive schemes in state and municipal transactions experts should examine:

- an issue of lease (legal and practical aspects),
- assess procurement risks (comparison of Latvian legislation with other countries (EU member states) legislation on this issue).”

1.2 Inception Report

The ToR has been expanded in the inception report and the joint meetings between the consultants and the KNAB as follows:

- The two bullets mentioned under the "Expected results" were expanded to include squandering of financial resources and alienation.
- The consultants initially suggested benchmarking the relevant legal frameworks against Denmark, Sweden, Germany, France and Ireland. The KNAB suggested that a post communistic country was included in the benchmark. An agreement was reached to perform the benchmark against Denmark, Germany, Poland and Ireland.
- The liability issue shall, if possible, include both criminal and administrative sanctions
- The consultants and KNAB agreed that the consultants should use an administrative approach in the legal part of the project and that it was crucial for the consultants to:
 - Examine if the necessary procurement legislation was in place
 - Examine if the practices deriving from legal requirements in public procurement are prudent

1.3 Outline of the report

The consultants have, in agreement with KNAB, divided the question of the possible schemes of corruption in state and municipal transactions into separate analyses one focusing on control of corruption and the other on the technical review of possible schemes of corruption the legal framework pertaining to state and municipal transactions.

This report addresses the problems related to possible corruption schemes in state and municipal transactions from a legal point of view, particularly in the fields of procurement and lease. The question of the internal and external control in state and municipal transaction has been addressed by the consultants in report no. 1 and 2 on internal anti-corruption control already submitted by the consultants.

The question of control and the analysis of the possible schemes of corruption in state and municipal transactions are clearly linked, and the this report should therefore be read in conjunction with report no. 1 and 2 on internal anti-corruption control.

This report is divided in to two subsections in line with the general division of the focus of this component between possible schemes of corruption in the procurement legislation and possible schemes of corruption in the lease (and related) legislation.

The main focus of this report is on possible schemes of corruption in the public procurement legislation, in the sense the Latvian procurement legislation is analysed both in a Latvian context and in the light of the EC Public Procurement Directives and the benchmark analysis of four selected Member States.

The issue of corruption pertaining to lease (and related) legislation are dealt with less thoroughly in the sense that the analysis is mainly focused on the international benchmark of the four selected Member States.

The focus on public procurement has been chosen mainly because a new legal framework on public procurement has been established with the new Latvian procurement law becoming effective as of 1 may 2006, whereas the legal framework pertaining to schemes of corruption in lease and related transaction is not fully in place (an example being that the Law on Lease of State and Municipal property only are still being drafted). Further, it may be added that the quite existence differences in the transactions in the area of lease and related legislation means that it would be a task beyond the context of this project to perform an in-depth analysis of the Latvian legislation.

However, it should also be kept in mind that procurement is widely acknowledged, throughout the world, as a major problem and a primary source of corruption.

The benchmarks to be concluded by the consultants are submitted as appendixes to this report. The results of the benchmarks are, as suggested above, included in the general legal analysis where applicable.

2. Summary of Recommendations

- *Recommendation no.1: The consultants recommend that it is considered whether the present Latvian procurement law might be simplified in relation to later amendments.*
- *Recommendation no. 2: The introduction of new electronic procurement systems should be monitored carefully by the PPSB in order to ensure that the systems comply with the requirements of the Directives.*
- *Recommendation no 3: The Cabinet Regulations pursuant to Article 8 should be issued as soon as possible in order to escape the legal vacuum created by the current provisions*
- *Recommendation no. 4: The question of whether a contract beneath the threshold value is unlawfully divided should be checked thoroughly by the PPSB, through introduction of monitoring systems.*
- *Recommendation no. 5: The PPSB should consult the Commission and check whether, in the opinion of the Commission, the present wording of Article 46 of the Latvian procurement law is compatible with the requirements of the Directive*
- *Recommendation no. 6: Restrict access for public entities to enter into contract with any bidder, other than the one having submitted the best bid.*
- *Recommendation no. 7: Capacity among civil servants to use the new rules is crucial for the correct use of the procurement process and thereby, in turn, for minimizing the risks of corruption. It is therefore strongly recommended that capacity building and dissemination of the new procurement framework is made key focus area of the PPSB.*
- *Recommendation no. 8: The use of framework contracts provides new schemes of corruption opportunities. It is therefore strongly recommended that the PPSB are given the powers to check whether misuse occur within framework contracts (for instance referring acquisitions under the framework contracts, even though they are not covered by the scope of the contract) although the contract has been duly signed.*
- *Recommendation no. 9: The PPSB and the KNAB should encourage the respect of the procedural requirement. This may be done, for instance, by demanding that the head-of-institution are responsible for addressing any disrespect of the procedural requirements.*
- *Recommendation no. 10: Model tender documents for goods, works, and services should be developed, and there should be, as a minimum, a set of standard and mandatory clauses that will help in the formulation of the tender documents*
- *Recommendation no. 11: The development of operational guidelines for public procurers is strongly encouraged, but it should be considered, in time, to develop a guideline aimed at private suppliers describing the various aspects and pitfalls of participation in public procurement.*

- *Recommendation no. 12: The introduction of new procurement process, including the possibility to use electronic means give rise to a number of more special problems and it should therefore be considered to issue separate guidelines for both public procurers and private suppliers explaining the correct use of the more complex new procurement processes.*
- *Recommendation no. 13: The PPSB should be made independent of the Ministry of Finance.*
- *Recommendation no. 14: The PPSB should be made capable of auditing all aspects of procurement of its own accord with a view to express public criticism of misprocurement. It might be considered to strengthen the present arrangement of publishing decisions on the Internet.*
- *Recommendation no. 15: It should be assessed in a separate analysis whether the PPSB has the necessary resources including staffing levels to perform its functions under the Latvian procurement legislation (including the Complaint Review Commission).*
- *Recommendation no. 16: It is carefully considered whether the PPSB/CRC should have more the possibility to examine complaints even after the conclusion of the contracts, including framework contracts.*
- *Recommendation no. 17: It should be considered to let the PPSB/CRC other remedies (sanctions) for misprocurement including for instance awarding damages to the complaining business if the contracting authority have neglected essential procurement rules and procedures. Such sanctions might have a deterrent effect towards misprocurement.*
- *Recommendation no. 18: It could be considered to issue a set of guidelines on squandering describing the interpretation of the rules in order to avoid the legal uncertainty that exists at the moment, and aid in prosecuting offenders.*

3. Methodology

The many differences between the possible corruptive schemes in the legal framework on public procurement and the legal framework on lease (and related) legislation has necessitated differentiated methodical approach in the two fields.

3.1 Methodology – procurement

The consultants have, as described under section 1.2, primarily 1) examined if the necessary procurement legislation is in place and 2) examined if the practices deriving from legal requirements in public procurement are prudent.

The consultants have further performed a cursory risk assessment of the legal environment concerning public procurement and corruption in Latvia. The assessment is divided into subsections covering:

- 1) The legal framework. The section will describe the current status of the relevant legal framework and the risks evolving from that framework
- 2) Procedures, practices and regulatory functions. The section will deal with the actual procedures and practices in the relevant areas, taking into account the limited field work of this project.

3) Enforcement. The section will describe the current status of enforcement of the relevant rules and the risks evolving from any lack of enforcement or oversight.

As concerns the analysis in the field of public procurement, the consultants and KNAB have agreed that the OECD/DAC World Bank Indicators for assessment of procurement systems (hereinafter referred to as the "WB indicators") should be used supplementary as a background check-list.

The WB indicators cover all the relevant aspects of the procurement system of a given country thoroughly. Consequently, some of the indicators touch themes that are regulated by the EC Procurement Directives¹ and that must be implemented in national law. An analysis of the indicators covering the same fields as the EC procurement Directives will to a large extent be fruitless, as Latvia will be obliged to follow the regulation of the Directives. Further, the Directives set forth rules equal to those required under the indicators and partly because of the approach leave better room for describing the Latvian legislation situation/context under each of the indicators. The analysis will therefore focus on the indicators covering areas that are not regulated by the procurement. The indicators covering areas regulated by the Directives will only be touched upon briefly.

The WB indicators are based on a scoring system ranging from 3 to 0 for each item (indicator). We have, however, chosen comment on the Latvian system under each of the indicators instead of scoring the indicator. We have chosen this approach partly because the Latvian legislation is based on the EC procurement Directives, as described above.

The legislation pertaining to lease (and related legislation) will be analysed in light of the outcomes of the benchmarks.

3.2 General observations on the legal framework pertaining to procurement and the disposal of public assets

The consultants have noted that the Latvian legislation pertaining to procurement and the disposal of public assets seems to be heavily influenced by the German tradition of civil law. Generally speaking, the ambition of the legislation is to deal thoroughly with any legal problem that may arise under the area regulated by the law.

Many of the respondents have, however, pointed out that the detailed legislation provides for a rather formalistic (strict) approach in relation to the general interpretation and use of the legislation. It also means that only actions that are expressly prohibited under the law is thought of as illegal, whereas other actions of a "shady" nature may not be sanctioned even though they of a clearly problematic nature. Examples of the latter may be found in many places in legislation pertaining to state and municipal transactions. A clear example identified by the consultants is the practice of not signing decisions of procurement commissions in order to avoid a placement of responsibility.

4. Procurement

4.1 Legislation

The consultants have primarily conducted a review of the following laws:

- Law on Procurement for State or Local Government Needs of 5 July 2001

- Law on Procurement for the Needs of Public Service Providers of 21 October 2004
- Cabinet Regulations no. 98 on Tendering and Competitions for Awarding State and Local Government Procurement of 18 March 1997.
- Cabinet Regulations no. 99 on awarding State and Local Government Contracts by the Request for Quotation Method of 18 March 1997.
- Cabinet Regulations no. 100 on Documentation for the State and Local Government Procurement Awarding Process of 18 March 1997.
- Cabinet Regulations no. 101 on Examination of Complaints in Relation to the Awarding of State and Local Government Contracts of 18 March 1997.
- Cabinet Regulations no. 742 on Regulations regarding Activities of a Procurement Commission
- Law on Prevention of Conflict of Interest in Activities of Public Officials of 25 April 2004
- Cabinet Regulations no. 531 on Regulations on Restricted Procedure of 8 June 2004.
- Cabinet Regulations no. 532 on Regulations on Open Procedure of 8 June 2004.
- Cabinet Regulations no. 602 on Regulations on Procurement Procedures and Application Thereof to Projects Funded by Contracting Authority of 13 July 2004.
- Law on public procurement of 25 April 2006

The review of procurement law was initially based on the 2001 and 2004 laws, but they have been superseded by the introduction of the new Law on Public Procurement, which was approved by the Saeima on 6 April 2006 and took effect from 1 May 2006. The introduction of the new Procurement law has also meant that a number of the mentioned cabinet regulations have become obsolete.

It has been agreed between KNAB and the consultants, that the analysis should be based on the new procurement law. The new law, however, became available in English translation to the consultants only in May 2006, which naturally caused some delay and reconsideration in the preparation of this report. It should also be noted that the comments of the consultants are based on the translated (and to the knowledge of the consultants) unofficial version of the law. Reservations must consequently be made in relation to any differences between the official Latvian text and the translated text.

The present legal framework comprises mainly of the law on public procurement². However, a number of other legislative acts are also relevant in relation to public procurement and especially misprocurement including for instance the criminal law and the law on squandering. A thorough review of the supporting acts are beyond the scope of this report, but some of the laws are analysed to some detail in report no. 1 and 2 on Internal anti-corruption control³. A number of the areas regulated by the supporting laws are, moreover, included in the benchmark see annex 1 to the report and in the previous reports submitted by the consultants.

4.1.1 The new public procurement law and the implementation of the Procurement Directives

One of the most important functions of the procurement legislation of the European Union is to ensure the proper functioning of the Internal Market for public contracts including the elimination of possible schemes of corruption in the laws of the Member States. It is therefore of great importance for both the European Union and the Member States that the new Procurement Directives are implemented correctly in national law.

² See the transitional rules of the new law

³ See, for instance, p. 10 of Report No. 1

It is, equally, of importance in the legal study of possible schemes of corruption in the Latvian procurement law to uncover whether the law implements the Directive(s) correctly⁴.

4.1.1.1 General remarks on the implementation

The aim of the new Procurement Directives is to simplify and modernise the public procurement Directives. The simplification consist of both making the texts clearer and more comprehensible and presenting the new provisions in a more user-friendly manner, namely to reflect the normal order of an award procedure. The new structure and the new provisions are designed to guide users through all the stages of the award procedure.

The Directive has been implemented in the Latvian legal framework by the adoption of a new Latvian law. The fact that a new law has been adapted might imply an inherent risk that less attention is given to the underlying Directive, which in turn might pose a risk in relation to the attention given to new decisions from the European Court of Justice and the Commission concerning the Directive by the stakeholders in public procurement in Latvia. It should be noted that the Procurement Monitoring Bureau under the Ministry of Finance (hereinafter referred to as the "PPSB") is responsible for the policy level of public procurement in Latvia including the dissemination of recent EC procurement practice⁵. The dissemination seems, however, more important when there is a slight risk the European Union ancestry of the Directive might fall in the background compared with the Latvian law.

The Latvian procurement law is organised somewhat different than the text of Directive 2004/18 as the Latvian Procurement Law does not follow the reflection of an award procure contained in the Directive. Further it should be noted that the Latvian procurement law seems to be quite unambiguously in line with the Latvian tradition of very detailed legislation and it might be argued that the text is somewhat complex in comparison with the Directive.

Some of the respondents, interviewed by the consultants, have also mentioned that they have found the procurement law overly complex and somewhat unfriendly to the users (the public procurers and suppliers). A couple of the respondents have even gone so far as to call the law "poorly drafted" from legal-technical point of view. They have further argued that the Public Procurement Supervision Bureau has presented the draft law too late and that the implementation deadlines contained in the EC Procurement Directives meant that there was insufficient time to redraft the proposed draft.

While the consultants can not have an opinion on the legislative process, it is our view that the procurement law might be considered overly complex, and that it might be worth noting the expressions of concern raised by the respondents in relation to possible future changes in the law.

One of the main purposes of the new Procurement Directive has been to simplify the framework and make the rules more use friendly. One of methods used to this aim has been to organise the Articles and Chapters of the Directive so that they follow the normal procurement process. The complexity of the Latvian Procurement Act can - to some extend - be illustrated by the fact that it has, only partly, followed the systematic presentation of the Articles in the new Procurement Directive.

Also, it could be noted that a number of the Articles of the Latvian Procurement Act differs in their wording from the text of the Directive, which may also in some in-

⁴ The Latvian procurement law implements Directive 2004/18

⁵ See section 4.3.1 below

stances reduce the readability of the Latvian text. An example might be Article 2 of the Latvian Procurement Act implementing Article 2 of the Directive. The Latvian Act addresses the "goal of the law" while Article of the Directive address the "principles of awarding contract". Another example could be the translation of "framework agreements" to "general contracts".

It must, however, be noted and underlined that the consultants do not consider the procurement procedures used in Latvia overly complex, as suggested in the question. The suggestion was merely to include an ambition to look at the issue of complexity in any forthcoming revisions of the Latvian Procurement Act that are being carried out for other reasons.

Finally it might be noted that other national procurement frameworks are considerably closer to the EU Directive. In Denmark, for instance, it has been chosen to implement the Directive by means of reference in a Danish Act. Basically, all the short Danish Procurement Act stipulates is that the Procurement Directives must be followed by Danish Procuring Entities.

This is especially true, as one of the core problems emanating from the implementation of the new law, is lack of capacity to understand and use the law amongst civil servants⁶.

- *Recommendation no. 1: The consultants recommend that it is considered whether the present Latvian procurement law might be simplified in relation to later amendments.*

One of the groundbreaking innovations contained in Directive 2004/18 is the introduction of a new legal framework on electronic public procurement. The rules of the Directive pertaining to electronic public procurement have been implemented in Articles 33 and 34 in the Latvian Procurement Law. While the implementation of the underlying rules of Directive 2004/18 seems to be correct, the consultants note that the introduction of electronic public procurement process might prove to be a new source of corruption. There seem to be few (or most likely no) electronic procurement systems in use by the government that satisfies the specific requirements (safeguards) for the receipt of bids etc. in electronic procurement (Annex 10 of the Directive and Article 34 of the procurement law). This increases the risk of misuse and possibly corruption, as it would be quite easy for civil servants to "cheat" without leaving traces when not adhering to the safeguards of the Directive and thereby misusing the rules on electronic public procurement.

It is correct that electronic procurement is more safe and transparent than regular procurement, but only to the extent that technical safeguards against tampering etc. is offered by the electronic procurement system.

As mentioned in the section above, the Directive requires a number of safeguards to be in place as precondition for electronic procurement. Without these safeguards cheating will be quite easy. A very crude example could be the unauthorized opening of a bid document received by the procuring entity that is opened before the deadline for the submission of the bids and then marked as "unread" again by the person opening the document. If the electronic procurement system does not have the necessary safeguards it might be very difficult to discover that the bid had been opened before the deadline for the submission of the bids.

The problem mentioned in text relates to the actual electronic procurement system, were no present electronic system – to our knowledge - offers all the legal safeguards required under the Directive (a recent report prepared by Rambøll Management for DG Internal Market addresses this problem - see

⁶ See section 4.2 for details

http://ec.europa.eu/internal_market/publicprocurement/docs/eprocurement/2004-12-impact-external-vol1_en.pdf).

Our concern is that if procuring entities are lured into thinking that electronic procurement is safer than regular procurement, then that is only the case if the specific electronic safeguards are offered in the electronic procurement system. Since most electronic procurement systems, at present, fail to offer the required safeguards, special precaution should be given in relation to electronic procurement.

The implications of this problem are significant, because the detection compliance problems in the existing systems will be difficult and require thorough scrutiny of existing systems that might be considered inappropriate and unnecessary cumbersome for the contracting authorities.

If a given electronic procurement system do not meet the requirement of the directives, use of that system will be a violation of the directives. Depending on the type of violations, it can be hard for the relevant actors (the government agency responsible for the implementation of the directive, the contracting authority it self, and businesses) to detect and address the violation. This would especially be the case with the requirements relating to the devices used by contracting authorities in the electronic procurement process.

- *Recommendation no. 2: The introduction of new electronic procurement systems should be monitored carefully by the PPSB in order to ensure that the systems comply with the requirements of the Directives.*

4.1.2 Specific problem areas in the implementation

4.1.2.1.1 Principles of the Directive and procurement beneath the Thresholds

The Procurement Directives is accompanied by the preamble (recitals) that set forth a number of general principles, which shall be abided to in procurement, and which may serve as contributions to the understanding of the legal questions that arises under the law. Among others, the principles of the Procurement Directive generally require that adequate competition, equality among bidders and transparency is ensured even for competition beneath the thresholds. The Latvian legislation has not incorporated the general principles of the Procurement Directives. This entails a risk that procurement is conducted solely under the "words" of the new procurement law, and not with a view to the ever-so important principles behind the rules of the Directives.

The new Latvian procurement legislation applies (according to Article 8), where the price of the procurement is LVL 10.000 or higher. Article 8(9) has some supplementary rules on procurement beneath 1.000 and 10.000 LVL.

It could be argued that procurement beneath 10.000 LVL is subjected to a procedure that does not fully respect the general principles of the Procurement Directives, which in turn, may increase the risk of corruptive practices being employed in the procurements.

This risk is all the more real, as the Procurement Supervision Bureau does not check whether a contract has been divided into lots (below the threshold of 10.000 LVL) to avoid the obligation to follow the normal procurement procedures.

The Law specifically states (Article 8(10)) that the Cabinet of Ministers is to issue "procedures" related to procurements between 1.000 and 10.000 LVL. The mentioned "procedures" will be a secondary legislation that is binding for public authorities. However, the "procedures" are not expected to be issued together with the new law. The Public Procurement Supervision Bureau is responsible for the drafting of the new pro-

cedures, and they have informed the consultants that the procedures will be issued in the months to come (no later than after the summer vacation). However, in the meantime there will be legal uncertainty in relation procurement between 1.000 and 10.000 LVL. It could be noted that the strict civil law tradition of Latvia might lead corruptive prone individuals to interpret the legal framework such that there are no regulation at all for procurement beneath the thresholds.

- *Recommendation no 3: The Cabinet Regulations pursuant to Article 8 should be issued as possible in order to escape the legal vacuum created by the current provisions*

For contracts not being covered by the EC directives the detailed procedures of the directives do not apply. However, the **EC-Treaty** provisions on free movement and the treaty-based principles of equal treatment, transparency, proportionality and mutual recognition do apply.

It might be added that, some respondent have informed the consultants that misprocurement beneath the threshold is not subject to criminal liability. The consultants have been unable to verify whether this assumption is correct, but find it prudent, never the less, to notify KNAB of the comments

One of the major problems in the Latvian procurement is the lack of strict enforcement of the procurement legislation⁷. While the enforcement is generally a problematic area, some special areas of concern exist in relation to procurement beneath the threshold, as these a generally not checked by the PPSB.

Division of contracts is a violation under the new law. Article 9 (4): Construction projects, deliveries and services may not be split up into sections with the aim of avoiding the relevant procurement procedure. In defining the anticipated contract price, no method shall be applied that is aimed at ignoring the procurement procedures that are defined by law.

Even though the Latvian procurement law prohibits the division of contracts in relation to the calculation of the contracts, unlawful divisions might go unchecked increasing the risk of corruption, if the PPSB does not examine and react on complaints or suspicions of unlawful divisions of contracts.

- *Recommendation no. 4: The question of whether a contract beneath the threshold values is unlawfully divided should be checked thoroughly by the PPSB.*

4.1.2.2 Article 46

Article 46 describes the allowed criterions for the economic most advantageous bid. The exact wording of the Article is as follows:

“(1) In comparing and assessing bids, the procurer shall select one of the following criteria:

1) The bid which is economically most advantage, one in which considered factors include the deadline for delivery or implementation of the terms of the contract, usage costs and other costs, effectiveness of costs, the quality of construction work, goods or services, aesthetic and functional considerations, observance of environmental requirements, technical advantages, availability of spare parts, security of deliveries, price, and other factors related to the object of the contract, also taking into account the average social contribution per employee;”

[Underline of the consultants]

⁷ See section 4.3 below

Social contributions per employee is an allowed criterion under Article 46, meaning that the authorities may include the extend to which the bidder pays social contribution in their assessment of the economically most advantageous bid.

The rules governing the contract award criteria concerning the most economically advantageous bid are contained in Article 53 of Directive 2004/18:

Article 53

“Contract award criteria

1. Without prejudice to national laws, regulations or administrative provisions concerning the remuneration of certain services, the criteria on which the contracting authorities shall base the award of public contracts shall be either:

(a) when the award is made to the tender most economically advantageous from the point of view of the contracting authority, various criteria linked to the subject-matter of the public contract in question, for example, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion”

It is clearly stated in Article 53 that the award criteria must be linked to the subject-matter of the public contract.

The European Commission has drafted an INTERPRETATIVE COMMUNICATION on the Community law applicable to public procurement and the possibilities for integrating social considerations into public procurement (Official Journal C 333, 28/11/2001 P. 0027 – 0041). It is stated in section 1.4.1 of the document:

“[that] Social criteria are not included among the various criteria given as examples in the public procurement directives. However, if the term "social criterion" is construed as a criterion that makes it possible to evaluate, for example, the quality of a service intended for a given category of disadvantaged persons, such a criterion may legitimately be used if it assists in the choice of the most economically advantageous tender within the meaning of the directives.

And:

“The use of quotas to reserve contracts for a given category of supplier or the use of price preferences would, however, be incompatible with the current public procurement directives. This would also be the case for criteria relating to whether tenderers employ a certain category of person or have set up a programme for the promotion of equal opportunities, as they would be considered criteria which are unrelated to the subject-matter of a given contract or to the manner in which the contract is executed. Such criteria, which do not assist in the choice of the most economically advantageous tender, are not permitted under the public procurement directives, given the objective of the directives, which is to allow the intrinsic qualities of a product or service to be assessed. Moreover, such criteria would be considered incompatible with the commitments entered into by the Member States under the Agreement on Government Procurement concluded under the auspices of the WTO.”

It is the view of the consultants that the criterion "social contribution" may not, generally, be considered a subject matter of public procurement contracts. Similarly it is, in our view, quite likely that the criterion will be considered unlawful under the Procurement Directive.

An example can perhaps be used to illustrate the point:

A contracting authority decides to purchase IT-hardware. To companies submits a bid, one both a hardware and software supplier and the other a plain supplier of hardware. The company providing both hardware and software would, most likely, have both workers and programmers in their staff, whereas the company supplying only hardware would – predominantly – have workers in their staff. As the salaries of the programmers would probably be higher than that of the workers, the company supplying both hardware and software would pay more salary pr. employee and therefore, as a main rule, a higher social contribution. It seems quite absurd in the example that the hardware and software company should have an advantage in the competition solely on the grounds that they also employ programmers. The same would be true for a Danish Company competing against a Latvian company, as the average level of salaries is higher in Denmark.

None of the respondents interviewed by the consultants could confirm that the Commission has been notified of the problematic part of Article 46 of the Latvian Procurement Law. In order to avoid a future infringement case, we therefore propose that:

- *Recommendation no. 5: The PPSB should consult the Commission and check whether the present wording of Article 46 of the Latvian procurement law is compatible with the requirements of the Directive*

4.1.2.3 Choice of new bidder

Article 56 (5) of the Latvian Procurement law contains rules allowing the contracting authority to conclude a contract with the second best bidder if the first bidder withdraws his bid. Generally speaking, such a general right seems to entail some risks of corruption. If the first bidder withdraws his bid, a new competition should be held. A contract should, in the views of the consultants, only be concluded with the second better under special circumstances (requiring the procurement to be carried through hastily) and only if observing the rules related to these special procedures.

- *Restrict access for public entities to enter into contract with any bidder, other than the one having submitted the best bid.*

4.1.3 WB indicators pertaining to the legal framework

4.1.3.1 Sub-indicator 1(a) Scope of application and coverage of the legislative and regulatory framework.

The new Latvian procurement legislation is adequately recorded and organized hierarchically (laws, decrees, regulations, procedures,). The precedence of different legal instruments is established clearly in the law and the laws and regulations are published and easily accessible by the public at no cost. It covers universally all goods, works, and services (including consulting services) for all procurement using national budget funds

Fractioning of contracts to limit competition is prohibited. However, the consultants have noted that the PPSB have been reluctant to examine whether contracts have been unlawfully divided⁸

⁸ See section 4.1.2.1.1

4.1.3.2 Sub-indicator 1(b) Procurement methods.

The new Latvian procurement legislation requires public competitive tendering is used as the default method. The allowable procurement methods are generally established unambiguously in line with the requirements of the EC Procurement Directives.

It should be noted, however, The Latvian procurement law [title] specifically states (Article 8(10)) that the Cabinet of Ministers are to issue "procedures" related to procurements between 1.000 and 10.000 LVL. The mentioned "procedures" will be a secondary legislation that is binding for public authorities. However, the "procedures" are not issued together with the new law.

The Public Procurement Supervision Bureau is responsible for the drafting of the new procedures, and they have informed the consultants that the procedures will be issued in the months to come (no later than after the summer vacation). However, in the meantime there will be legal uncertainty in relation procurement between 1.000 and 10.000 LVL. It might be added that, as we have understood the rules, there further is the problem that misconduct beneath the threshold is not subject to punishment (fines etc.)

4.2 Procedures and practices

The procurement procedures and practices used in Latvia are generally in line with the standards used in other Member States of the Union. However, the introduction of the new procurement framework has given rise to the question of whether the civil servants conducting procurement and working with procurement on a policy level have the adequate and necessary knowledge about the new legal framework.

User adoption is also a general challenge. Behavior and competences on the organizational and personal level need to be changed both in the public sector entities and in the suppliers companies. Lack of legal competences can be a significant barrier for the correct use of the new procurement legislation. For instance, suppliers may lack the resource and skills to use the procurement legislation, including the possibilities of electronic public procurement. This means that suppliers do not have the ability to access public procurement contracts. This barrier can be significant for especially smaller firms. According to a recent report the access of SMEs to public procurement contracts is relatively low and three out of four Finnish and British SMEs think that external help and training would help them to an easier access to public contracts⁹.

The respondents have almost unanimously stated that there a quite significant differences in the understanding of the new procurement legislation in among the various public entities of Latvia. It is therefore quite evident that there is a profound need for training and guidelines at least for some contracting authorities.

Training courses are beginning to emerge, especially for civil servants belonging to the state-level for whom the participation in the procurement training courses are free of charge. Civil servants belonging to the local level have to pay to attend the courses.

- *Recommendation no. 7: Capacity among civil servants to use the new rules is crucial for the correct use of the procurement process and thereby, in turn, for minimizing the risks of corruption. It is therefore strongly recommended that capacity building and dissemination of the new procurement framework is made key focus area of the PPSB.*

⁹ EIM Business and Policy Research "The access of SMEs to public procurement contracts; Final report", The Netherlands 2003 (p. 113).

4.2.1 Framework agreements

The new Procurement Directives stipulates that the national shall allow the contracting authorities to enter into framework agreements with either a single supplier, where all "individual" agreements under the framework agreement must be concluded within the terms laid down in the framework contract or several suppliers (at least three). Where a framework contract has several suppliers, the contract must be awarded either by application of the terms laid down in the framework agreement without reopening the competition, or by a reopening of the competition where the term when the parties are again in competition on the basis of the general terms of the framework agreement.

The Latvian procurement law stipulates, similarly, in Article 65 of the law that the contracting authority may enter into "general agreements" (which are in fact framework agreements).

Framework agreements have been widely used through out the old Member States and the represent a cost-effective method of procuring. However, the conclusion of the specific contracts under the framework agreements require a strict discipline among the civil servants in charge of the framework agreement, as it is somewhat easier to employ corruptive behaviour in a framework agreement, when one supplier is selected for period of up till four years. This will be very much true in the Latvian context, as the PPSB are only authorised under law to review procurement problems in unsigned contracts. Hence, once a framework contract is signed, the only way of challenging (mis)conduct under the framework contract by other suppliers will be to bring the given questionable award of a specific contract to the courts.

- *Recommendation no. 8: The use of framework contracts provides new schemes of corruption opportunities. It is therefore strongly recommended that the PPSB are given the powers to check whether misuse occur within framework contracts (for instance referring acquisitions under the framework contracts, even though they are not covered by the scope of the contract) although the contract has been duly signed.*

It must be stressed that the expressed concern covers all the new (more advanced) procurement method offered under the Procurement Directives, and not only framework agreements. However, as framework agreements seem to be the most problematic of the new procurement methods, it is the one used as an example in this context.

The problems of capacity, described above under section 4.2, are very true in relation to framework agreements, as this type of contract have been quite scarcely used under the old procurement framework. On the local level, especially, the use of framework contracts has been very seldom.

4.2.2 Liability for civil servants¹⁰

[See below]

The question of how civil servants are held responsible for (mis)procurement has relation to the legislation, enforcement and procedures and practices.

The legal framework is generally in place to deal with misprocurement, but it seems to be a prevalent problem in Latvia that civil servants are seldom made liable for misprocurement. It could be argued that the issue of liability should be covered under the

¹⁰ See also the country profiles of the benchmarks submitted by the consultants

topic of enforcement, but the consultants have found it more correct to address the issue under the issue practices and procedures as the main problem often seem to be related to lack of willingness among civil servants to follow the legislation on the practical level rather than the question of whether the rules are enforced by the PPSB.

The issue of the practical handling of misprocurement, and in particularly neglect of procedural procurement requirement, has been identified as a prime area of concern in relation to possible schemes of corruption. Many of the respondents interview by the experts have pointed out that there seem to be a general conception among many civil servants that it is more or less without consequence to disregard some or many of the formal procedural requirements in a given procurement. Examples of the widespread disregard of the formal procedural requirements are abundant, but to illustrate the point, the consultants might mention the practice among members of procurement commission of not signing the documents produced by the commission and thereby avoiding responsibility of the breach of the formal procurement rules. Another, and even more problematic practice, could be the many examples where contracts are signed before the end of the "cool-off period"¹¹ in order to leave the PPSB without juridical competence to review the procurement.

In relation to the issue of responsibility for administering the liability the consultants suggest a two-tier system to be introduced placing the monitoring role on the PPSB and the responsibility for administering liability on the institution employing the civil servant(s) that have conducted misprocurement.

It is suggested that when the PPSB becomes aware of any (major) misprocurement the PPSB shall be granted the right to recommend the institution employing the civil servants having conducted the misprocurement to take administrative action, This may include a right for the PPSB to recommend specific actions to be taken (warning, dismissal etc.) by the given institution. The head of the misprocuring institution shall be obliged to furnish the PPSB with information about the measures taken against the misprocuring civil servants and in particular state whether the recommendation of the PPSB was followed.

- *Recommendation no. 9: The PPSB and the KNAB should encourage the respect of the procedural requirement. This may be done, for instance, by demanding that the head-of-institution are responsible for addressing any disrespect of the procedural requirements.*

4.2.3 WB indicators pertaining to procedures and practices

4.2.3.1 Sub-indicator 2(b) - Model tender documents for goods, works, and services

The existence and extent of use of model documents of good quality promotes competition and increases confidence in the system. Potential contractors or suppliers are more willing to participate when they are familiar with the documents and their interpretation. Model documents should contain the basic required clauses that will be incorporated into contracts in order to enable the participants to value the cost and risk or mandatory clauses when performing a contract for the government.

¹¹ See also section 4.3.3.1 below

Model tender documents are, to the knowledge of the consultants, non existing under the new legal framework.

- *Recommendation no. 10: Model tender documents for goods, works, and services should be developed, and there should be, as a minimum, a set of standard and mandatory clauses that will help in the formulation of the tender documents.*

4.2.3.2 Sub-indicator 2(e) - User's guide or manual for contracting entities¹²

The road for the new procurement law has not been paved by any guidelines. On the contrary, it has become effective with little or no assistance to the procurers in the public authorities that are to use the procurement processes of the law. The PPSB has at present engaged itself in a project with the Danish Association of Municipalities with the purpose of developing a guideline to the Latvian procurers on the new procurement law.

- *Recommendation no. 11: The development of operational guidelines for public procurers is strongly encouraged, but it should be considered, in time, to develop a guideline aimed at private suppliers describing the various aspects and pitfalls of participation in public procurement.*
- *Recommendation no. 12: The introduction of new procurement process, including the possibility to use electronic means give rise to a number of more special problems and it should therefore be considered to issue separate guidelines for both public procurers and private suppliers explaining the correct use of the more complex new procurement processes.*

4.2.3.3 Sub-indicator 2(f) - General Conditions of Contracts (GCC) for public sector contracts covering goods, works and services consistent with national requirements and, when applicable, international requirements

The GCC are based on the laws in the country and generally reflect the commercial codes that deal with contracts between parties. The use of GCC in procurement is quite seldom in Latvia. The only GCC identified by the consultants during their missions relates to works (LV S NO 238/2000).

It is important to participants in a procurement that they know the specific conditions under which they will perform a contract before they submit a price for performing the contract since conditions of contract will often have an impact on pricing. The use of GCC can provide information that enables participants to understand the allocation of risk between parties to a contract as well as other obligations that the signatories to the contract will incur.

4.3 Enforcement

The institution primarily responsible for the enforcement of the Procurement law in Latvia is the PPSB. The PPSB performs a number of functions in relation to the enforcement of the procurement system described in Chapter 10 of the Latvian Procurement Law including:

- 1) To oversee procurement procedures so as to ascertain that they are in compliance with the requirements of the law;
- 2) Work with relevant foreign institutions in the area of its competence;
- 3) At any state of a procurement procedure, demand and receive, at no charge to itself, full information about the procurement;

➤ ¹² See also report no. 2 on Internal control section 7.7

- 4) Bring in independent procurement specialists and experts;
- 5) Correlate and analyse statistical information about procurements in Latvia and to prepare reports about same;
- 6) Offer methodological assistant, consultations and training for procurers, sellers and renters of products, providers of construction services and other services;
- 7) Review complaints about violations of procurement procedures;
- 8) Publish reports referred to in this law on the Internet homepage of the Procurement Monitoring Bureau, submit them for publication in the Official Herald of the European Union, and send to the European Commission all information that it requests;
- 9) Handle other functions as defined in the relevant normative acts.

The enforcement of the procurement system is, naturally, of paramount importance for the compliance environment in a given country and the integrity of the public procurement system. It is therefore of great importance whether the PPSB is able to perform the functions required under the Procurement law.

The PPSB has established detailed regulations specifically for the procurement of goods, works and services in accordance with the EC Procurement Directive. These regulations are based on open, competitive tendering with pre-disclosed evaluation and selection criteria. The controls lie in following of the laid down procedures, failure of which may result in bad-procurements, fraud and corruption. The PPSB is therefore a means of enforcement through the bidder complaints mechanism.

4.3.1 Legislative setup and cooperation with other authorities

The PPSB is a state institution with its own legal personality and its own separate budget under the control of the Ministry of Finance. In a sense, the Minister of Finance exercises a supervisory control over the PPSB, in respect of administrative procedure.

Several of the interviewed respondents stated that it was problematic that the PPSB is located under the ministry of finance, and that they Bureau is therefore – not clearly – independent of political influence. Several persons noted that they have seen decisions which may have been (clearly) affected by undue political influence. The consultants have not reviewed the particular cases where the respondents have expressed the suspicion of undue influence from the ministry of Finance, but note never the less that the very potential for undue influence should be eliminated by making the PPSB an independent administrative body with its own budget.

The regulatory body needs to have a high level and authoritative standing in Government to be effective, including a degree of independence to enable it to carry out its responsibilities without interference.

- *Recommendation no. 13: The PPSB should be made independent of the Ministry of Finance.*

The PPSB may require the procurement documents of a given procurement, but may not conduct true investigation.

The PPSB cooperates with a number of other Latvian authorities including in particular the KNAB and the State Audits Office. However, a huge part of the cooperation is situated around a notification procedure, where the PPSN notify the State Audit Office and the KNAB of incidents of misprocurement. It is then left to the State Audits Office and the KNAB to decide whether to investigate the cases further. The consultants have come to understand that is rather seldom that a review of the cases by KNAB personal leads to proper investigation of corruption. This would also be expected as the mere misprocurement is not a proof of corruption in it self.

Apparently PPSB does not check specifically for corruption. There has been a correspondence between the KNAB and the PPSB concerning the delimitation of responsibilities between the two authorities. However, so far, nothing has happened and it could be considered to develop an actual strategy for the future cooperation between the PPSB and KNAB.

Considering the role as an enforcer of the procurement legislation, it should be noted, that it is not possible for the PPSB to punish public employees for misprocurement. Instead, the PPSB notify the KNAB and State Audit Office of any malpractice. Other public authorities are notified if the subject matter of given case relates to their given area of competence. As described under section 4.2.2., the consultants suggest that the question of the administrative reaction to misprocurement is addressed in guidelines requiring the head of unit/department to react with administrative sanctions when misprocurement is conducted within the authority¹³.

However it should also be possible for the PPSB to address the matters of misprocurement in the public and thereby increasing the pressure from the press etc. for correct procurement. This recommendation would have the highest impact if the PPSB became an independent body separated from political interest¹⁴.

- *Recommendation no. 14: The PPSB should be made capable of auditing all aspects of procurement of its own accord with a view to express public criticism of misprocurement. It might be considered to strengthen the present arrangement of publishing decisions on the Internet.*

4.3.2 General capacity assessment

The PSSB employ app. 30 employees to carry out the functions required under the procurement law including the enforcement of the procurement legislation.

To illustrate the work burden associated with the compliant solving alone, the consultants may point to information received from the PSSB. During the reporting period 337 complaints about the activities of the contracting authority while organising procurement were received, including 9 complaints about the procurement organised by the providers of public utilities. During the reporting period 265 complaints were reviewed, including also the complaints received in December 2004 (including 23 cases when the complaints have been joined in one case). 61 complaints were recalled before the review process started, and 15 complaints were not examined, because the contracting authority had signed a procurement contract. On December 31, 2005 out of the complaints that were received during the reporting period 27 complaints had not been reviewed.

Considering the fact that the people of PPSB have also been involved in the legislative drafting of the new law and has the responsibility of drafting the new guidelines and administrative orders under the law, and further must train the civil servants in the rules, as well as cooperate with foreign institution and gather statistical data, it seems rather evident that the human resources of the PPSB is stretched to the limits. The number of the staff is in other words inadequate to fulfil the mandate of the PPSB.

The consultants have not performed a review of whether the skills of the employees of the PPSB are adequate for the performance of the functions of the institution a task going beyond this project, but notes that there seems to be a problem of a high turnover as the more senior staff tends to seek out better paid jobs in the private sector. This, naturally, implies a risk of knowledge drain that should be addressed. Adequate

¹³ The country profiles describe how the benchmarked countries have solved the liability issue.

¹⁴ See recommendation nr. 13

funding is necessary to ensure proper staffing and resources to keep the services at the level of quality required.

- *Recommendation no. 15: It should be assessed in a separate analysis whether the PPSB has the necessary resources including staffing levels to perform its functions under the Latvian procurement legislation (including the Complaint Review Commission).*

4.3.3 Complaints

4.3.3.1 The complaint mechanism

The presence of a well-functioning complaint mechanism is of vital importance for the enforcement and respect of procurement rules amongst both the contracting authorities and the private suppliers. The success of complaint mechanism stands and falls, however, with whether the complaint mechanism works independent of political pressure, offers a thorough review based on low-cost and adequate remedies for a bidder that feels treated wrongly under a given procurement process. If the complaint mechanism is influenced by undue political pressure, offers little or no remedies in relation to misprocurement or is too lengthy or costly, it seems evident that many business will not spent the time pursuing a complaint.

The new procurement framework is generally enforced by the Complaint Review Commission (hereinafter referred to as the "CRC") under the PPSB. The consultants have identified the complaint mechanism as a prime area of concern.

The CRC shall, under article 83(2) of the Latvian Procurement Law only examine contracts that are not signed. If the contract is signed the complaints must be brought before the courts. The remedy offered by the law is generally that CRC may prohibit the contracting authority entering into the contracts (Article 84(2)).

Considering the option of appealing a bringing a case before the courts, it should be noted that almost all the respondents interviewed by the consultants have agreed that it would be very costly and lengthy for a company to bring a case before the courts, and that most companies would abstain from entering into the courts even though they are sure that they have been exerted to undue influence or misprocurement. It is, naturally, of equal high importance that the complaint mechanism offered by the CRC works in practice.

Initially, it must be noted that the authority of the CRC is limited to cases were the contracts have not been signed. The new law contains a 14 days cool-off period between the choice of the winner and the conclusion of the contract. This helps the CRC to be able to engage in a procedure before the contract is concluded. However, it is seen that the authority concludes the contract without adhering to the cool-off period rendering the CRC and as such the PPSB helpless to address in the problems in the procedure and award of the given contract.

The fact that the contracts may only be stopped before they entered into means, in the view of the consultants, that the the complaint review system does not have the capacity to handle complaints efficiently and the necessary means to enforce a remedy. The consultants have presented recommendations pertaining to the complaint mechanism above¹⁵. In continuation of these recommendations, the consultants suggest:

- *Recommendation no. 16: It is carefully considered whether the PPSB/CRC should have more the possibility to examine complaints even after the conclusion of the contracts, including framework contracts.*

¹⁵ See, for instance, recommendation 8

- Recommendation no. 17: It should be considered to let the PPSB/CRC other remedies (sanctions) for misprocurement including for instance awarding damages to the complaining business if the contracting authority have neglected essential procurement rules and procedures. Such sanctions might have a deterrent effect towards misprocurement.

5. Squandering of public assets including lease

This component analyses the laws, regulations on possible schemes of corruption in other state and municipal transactions than procurement including in particular lease.

5.1 Legislation

The consultants have primarily conducted a review of the following laws:

- Freedom of Information Law of 6 November 1998
- State Civil Service Law of 7 September 2000
- Law on Prevention of Interest in Activities of Public Officials of 25 April 2002
- Annotation to the draft law on Lease of State and Municipal Property
- Draft law on Lease of State and Local Government Property
- Law on Prevention of Squandering of the Financial Resources and Property of the State and Local Governments

The consultants and the KNAB have discussed, quite extensively, the extend to which state and municipal transactions pertaining to lease and related legislation should be included in the report.

On one hand, it is clear that the KNAB are faced with quite widespread use of corruption in the area of lease and related legislation making the area important from an anti-corruption point of view. On the other hand, it is equally clear that the task of analyzing the possible schemes of corruption in all kinds of state and municipal transaction would be very huge indeed and clearly beyond the scope of this project.

The area of lease and related legislation differs from the procurement legislation in the sense that the some transactions are unregulated as for now. This is, for instance, the case in relation to lease agreements, where a draft law is currently being debated in parliament. The possibility of analyzing the legislation for possible schemes of corruption is comparably smaller than for analyzing the procurement legislation.

5.2 Squandering and alienation

The law on Prevention of Squandering of the Financial Resources and Property of the State and Local Governments contains the regulation pertaining to squandering of public resources.

The law contains only one paragraph divided into a number of subsections dealing with various types of squandering including squandering pertaining to alienation.

Comparing among the benchmarked countries, the explicit regulation of squandering including alienation is quite unique for Latvia. In the other jurisdictions included in the survey, squandering is regulated primarily in the criminal codes and guidelines on the disposal of public assets. On the very general level, this fact could be seen as an example of the difference between the quite formalistic use of thorough legislation in Latvia and other legislative systems in the Member States.

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Many of the respondents in the interviews have expressed concern as to the Latvian regulation of squandering. The concerns have been, in particular, in practice is a legal norm without much content and positive regulation of squandering makes it difficult to address squandering like transaction that are not specifically covered by the provisions of the law.

Recommendation no. 18: It could be considered to issue a set of guidelines on squandering describing the interpretation of the rules in order to avoid the legal uncertainty that exists at the moment, and aid in prosecuting offenders.

5.3 Lease

The question of lease is central element in the benchmark conducted by the consultants. This section of the report should therefore be read in conjunction with the benchmark.

Squandering in lease is, at present, governed by the law general squandering legislation, but a new law relating to lease of public property is currently being drafted.

The lease of state and municipal property has been an area where corruption has flourished in the recent years in Latvia. Many of the respondents interviewed by the consultants have been able to describe cases, where it has been more or less evident that the lease agreement has been subjected to corruption. As a matter of fact, most of the respondents interviewed by the consultants could readily mention several cases where it seemed reasonable to suspect that a given lease agreement had been the result of corruptive activities. The majority of cases seemed to be emanating from the municipal sector.

Indeed, one of the major problems in the current legislation seems to be the fact that the municipalities are capable of claiming that lease agreements that contain elements of squandering might be justified by a municipal interest. This could be the case, for instance, in relation to the building of new privately owned infrastructure needed by the municipality, where the property housing the new infrastructure is leased below the market price to a private party in order to attract the private investment. The consultants have been informed by some of the respondents that the Ministry of the interior has the authority to check whether a genuine municipal interest exists, but the ministry has generally been quite reluctant to use the instrument. As the legal basis for such checks exist, the introduction of a more systematic approach with prior approvals could be considered.

Another problem in the current legislation is the fact that the practices for leasing out state and municipal property differs. Indeed, there seem to a quite prevalent practice of "trading" the information as to coming offers of lease, so that "buyer" if the information might submit his or hers lease offer prior to other offers in order to ensure that they are the ones obtaining the lease. The new lease legislation introduces a number of requirements in relation to the transparency of lease transaction that seems clearly capable of solving the present problem of "information selling". The reported misuse of long term leased is also addressed through the new legislation.

The introduction of the new lease law would, in the view of the consultants, be a clear improvement in relation to the present legislation.

In our opinion, the basic principles to be applied in lease of public property are to a high extend the same as are used in relation to public procurement, hereunder:

Publicity: The contracting authority must publish its intention to lease out a given property so that all interested parties may be allowed to submit their bids for the given lease. Exceptions may be relevant in relation to specific leases of a public nature (as Article 3 of the draft law). The information shall be published in national newspapers if the lease involves a substantial amount or local newspapers for smaller leases.

Equality of bidders: No bidder may have access to information that is not made available to all bidders.

Best evaluated bid: The best evaluated bid shall win. The best price shall generally be used as the criteria. Other criteria's than best price may only be used if they are objective and impartial.

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Complaints: Bidders shall be granted a complaint option, for instance in the body responsible for the local authorities.

Time limitations: Time limitations for the lease shall be set to ensure that the lease is not a disguised (concealed) sale of the property.

These principles are generally included in the draft law.