

Contact:
Jānis Veide
Janis.Veide@delna.lv
+371 67285585
www.delna.lv

DELNA'S MONITORING REPORT OF THE LOW FLOOR TRAM PROCUREMENT

Report summary:

1. Feasibility studies of large-scale projects should justify evidence of the included technical parameters. A more thorough assessment of large-scale projects at the level of the European Commission (amounting to EUR 100 million) could reduce the risks of corruption.
2. In the course of the procurement, Delna drew attention to a number of specific requirements, which, in the opinion of Delna, were restrictive and too specific. The procurement commission did not provide a scientifically substantiated justification for the necessity of all technical specifications.
3. After discussions in the procurement commission, Delna was not convinced of the validity of the criteria for the evaluation of the technical offer and the proportionality of the award. (The commission did not approve the evaluation criteria table until the termination of the procurement.)
4. Delna experts monitored if the procurement commission applies fair and equal treatment of bidders and ensures fair competition. There were cases where Riga Traffic did not take into account Delna's proposals, which were not explicitly prescribed by law.

Riga, 26th February 2019 - Since 2016, the European Commission is implementing a project, within which the *Integrity Pact* is being tested in 11 EU countries at the same time as a monitoring tool for projects funded with support from EU funds. *Integrity Pact* is essentially an agreement between a representative of the state (such as the institution organising the procurement) and the companies participating in the tender. Transparency International Latvia (Delna) is conducting monitoring of one such project in Latvia - we monitor the project of Rīgas satiksme “Development of Riga tram infrastructure”, which is more widely known as the Skanstes tram project.

Experts of Delna are following all project procurement processes starting from the establishment of the procurement commission to entering into and performance of the

contract. If necessary, Delna attracts additional experts on construction, finance, legal or other issues.

The procurement of low floor trams was the second procurement launched within the project, which was monitored by Delna. In July 2018, Delna provided information about the progress of the first procurement, “The development of a construction project for the construction of a new tram infrastructure section and the reconstruction of an existing tram line”, and approaching the law enforcement institutions to ensure that the procurement did not impose particularly specific requirements that could restrict competition. Thanks to the efforts of Delna, competition was ensured in the low floor tram procurement as well, thus permitting avoiding a single bidder situation.

PROBLEMS IN THE LOW FLOOR TRAM PROCUREMENT PROCESS

According to the publicly available information, in November 2018 the Corruption Prevention and Combating Bureau (KNAB) started criminal proceedings in connection with the procurements of the municipal company Rīgas satiksme (RS). The investigation of KNAB is related to an agreement between Polish and Czech companies with representatives of Riga City Council and a municipal transport company regarding the transfer of bribes and involving persons in money laundering. The case features three procurements and concluded contracts: regarding the delivery of trams, trolleybuses and buses. Six persons in Latvia and two more in Poland have been detained in connection with this case.

The media reported that an average of 5%-7% was paid in bribes for every trolleybus, bus and tram delivered to Riga. The total sum of the three procurements exceeds EUR 270 million. It is estimated that between 13 and 20 million euros could be paid in bribes.

After KNAB initiated the RS bribery criminal case, the media reported¹ that the technical parameters were probably used as a restrictive mechanism in the procurement of trams (especially technical parameter like 'bogies').

Delna observed similarities (like 'bogie' episode) in the Skanste tram project as well. The project provided for the purchase of 12 energy-efficient low floor trams. Only two bidders had applied in the procurement, which RS announced on 11 April 2018 but stopped on 18 January 2019. One of them is *Škoda Transportation*, whose possible involvement in large-scale bribery is currently being investigated by KNAB.

Prior to the detentions by KNAB in December 2018, the attention of Delna was attracted to the RS requirements for tram suppliers. First, we noticed such in the project documentation, which contains the feasibility study of the project and was submitted to the European Commission to obtain funding from the Cohesion Fund. Second, the Rules of Procurement included several technical parameters, about the need for which, in Delna's opinion, the Procurement Commission failed to provide sufficiently reasoned justification. Until the moment of termination of the procurement, RS did not consider Delna's recommendation to delete these parameters.

The technical characteristics of trams were described in the feasibility study of the Skanstes tram project. One of the parameters is the 'bogie' and it is set forth that the regular capacity

¹ Why do you need a motor at each wheel? *Aizliegtais paņēmiens* investigates the procurement of Riga trams <https://www.lsm.lv/raksts/zinas/ekonomika/kapec-vajag-motoru-pie-katra-ritena-aizliegtais-panemiens-peta-rigas-tramvaju-iepirkumu.a307550/>

trams must have 'four swivel bogies (three of which are motor bogies with direct drive to each wheel)'. The included technical parameters are important because, based on them, RS calculates and justifies the average estimated price of one tram included in the project application cost estimate.

Calculations are a commercial secret that Delna is not allowed to disclose publicly, but we can see whether the costs are reasonable and commensurate. The actual price might change slightly as a result of the procurement, however, the parameters accepted by the European Commission are substantial because the purchaser can incorporate the requirements in the Rules corresponding to the trams of relevant category and determine the appropriate price range. In the opinion of Delna, the need for bogies and other parameters should already be justified in the feasibility study. Given that one of the objectives of the project was to achieve GHG (greenhouse gas) emission reductions, upon research of the feasibility study, Delna does not understand how the technical parameters discussed above help to achieve this objective. Perhaps, if a more detailed assessment of projects approaching the amount of EUR 100 million were to be carried out at the level of the European Commission, it would reduce the risks of corruption.

The procurement was organised as a negotiated procedure. This means a two-tier procurement, where the bidders are initially selected based on the competence and other parameters, and the technical offers are evaluated afterwards. Two bidders applied in the first round: *Škoda Transportation* (Czech Republic) and *Stadler* (Poland), both qualified for the second round.

After research of the first version of the technical specifications developed by RS, according to which the trams should be manufactured, Delna sent its recommendations. Most of them were accepted by RS, but several initial requirements were maintained. However, the Procurement Commission did not provide a scientifically reasoned justification for the need for all technical specifications. After discussions in the procurement commission, Delna was not convinced of the validity of the criteria for the evaluation of the technical offer and the proportionality in scoring. Until the termination of the procurement, the commission did not approve the scoring table. Delna draws the attention to the new Procurement Commission and Riga Traffic Interim Board to the need to provide reasonable, objective evaluation criteria in future project procurements that would ensure the selection of the most cost-effective supplier.

WORK OF THE PROCUREMENT COMMISSION

The head of the Procurement Commission was Igors Volkinšteins, former Director of the Infrastructure and Maintenance and Development Department of RS - one of the persons detained by KNAB in the RS criminal case on 12 December. He was released on 10 February 2019 against bail of EUR 100,000 and with a ban on the performance of his job duties.

The task of Delna was to ask questions and make recommendations to the Procurement Commission. Experts of Delna ensured that the Procurement Commission would treat all bidders fairly and equally, thus ensuring fair competition. There were cases where RS did not take into account the proposals of Delna that were not explicitly defined by law. For example, one of the applicants submitted a request for an extension of the application deadline, which was refused by RS. When the same request was made by another candidate,

the claim was granted. Delna saw the problem that the candidate who first applied for an extension of the application deadline and received a negative reply was not personally informed of the extension. In order to avoid potential competition narrowing, Delna sent information about application deadline extension directly to potential candidate who earlier requested the extension and was refused by RS.

The Procurement Commission mostly adopted its decisions unanimously in support of the opinion of the Chairman of the Commission. In the discussions at the Procurement Commission, the requirements restricting competition as viewed by Delna were justified by both passenger safety and tram efficiency and the level of passenger comfort; however, Delna did not receive convincing evidence and data to support these statements. There was no discussion on the latest innovations in the field, most of the commission members did not ask questions about the procurement specifications. The discussions in the Procurement Commission were mainly between Delna and RS representatives or the invited experts. Delna believes that the discussions held should be assessed as formal.

The Procurement Monitoring Bureau (IUB) conducted a pre-inspection of procurement documentation according to the procedure. In accordance with the pre-inspection procedure, in January 2019, after the termination of the procurement, the IUB sent letters to RS that the commenced procurement pre-inspections were terminated.

OTHER NARROWING REQUIREMENTS

In the course of the procurement, Delna drew attention to a number of other requirements imposed on the bidders, which, in the opinion of Delna, were unreasonably restrictive and too specific. In the first round of the negotiated procedure, the bidders were subject to proportionately high and unreasonable requirements to certify a turnover of EUR 50 million, although the average amount of procurement was estimated at EUR 42 million. Also, in the first round of the negotiated procedure the bidders were already subject to the requirement that by the moment of filing the application there must be at least one low floor tram manufactured and delivered, which is intended for 1524 mm wide rails, as in Eastern European countries. Delna called for providing the bidders with the opportunity to evaluate and calculate their capacity to produce a product that would fit the infrastructure of Riga and that would be accepted according to the EU standards themselves, regardless of how many mm wide trams they had produced earlier.

The criteria for assessing the technical specifications of the procurement included the item Availability of Repair and Repair Convenience, and it was set forth that new trams must fit the existing RS infrastructure. Currently, the RS depots are adapted to *Škoda* trams. Contrary to Delna's recommendations, the possibility of adapting the infrastructure to other suppliers was not assessed at all. The abolition of these and other requirements would certainly create more competition, which would result in lower price and better service.

RENEWAL OF THE WORK

In order to avoid the use of technical parameters in the technical specification for procurement redrafted by the new Procurement Commission, on 6 February 2019 Delna sent RS its questions about various technical parameters included in the feasibility study of the project, such as admissible tram length and Riga tram infrastructure in general. Delna also asked for an answer to the question of whether Rīgas satiksme had issued recommendation

letters to the company *Škoda Transportation* regarding successful previous cooperation during the period from 2013 to 2018. Answers to the questions asked have not yet been received. It follows from the published information that under the previously concluded procurement contracts *Škoda* has delayed and continues to delay the delivery of means of transportation to Riga, some units for even more than a year.

AUTHORITY OF DELNA AS A SUPERVISOR

The involvement of Delna experts in monitoring the tram procurement process ensured that the situation where one bidder would participate in the procurement was prevented and the technical specifications of the Rules of procurement was improved. However, the tram procurement was suspended before the RS Procurement Commission approved the final version of the Rules. With this monitoring report, Delna draws the attention of the new RS interim Board to the need to strengthen the standards of procurement processes.

The main task of Delna is to achieve maximum openness on procurement and project implementation in general. Delna does not investigate corruption schemes, but seeks to promote fair competition through recommendations and proactive action.

If the procurement had not been suspended, Delna would publish its review of the procurement process and would definitely point out the risks arising when including narrowing requirements in the procurement.

Delna has drawn significant conclusions about the shortcomings in the regulatory framework with respect to the prevention of risks of corruption in public procurement. Therefore, one of the objectives of Delna for 2019 is to approach the legislator with a legislative initiative to adjust regulation of the public procurement so as to make the procurement process more efficient, more open in the future, and to raise public awareness and trust in public authorities.

Ends:

- More about the monitoring work of Delna within the *Integrity Pact*:
https://delna.lv/en/intergritates_pakts_2016/
- Delna's article on restricting competition in public procurement:
<https://delna.lv/lv/2019/01/09/uzvaret-bez-konkurences-publisko-iepirkumu-ligumi-un-skersli-konkurencei-latvija/>
- Delna's report on the first procurement enclosed within the project “Development of Riga Infrastructure” for the development of the construction project for the construction and reconstruction of a new tram section:
<https://delna.lv/lv/2018/07/03/sarunu-proceduras-par-buvprojekta-izstradi-jaunas-tramvaju-infrastrukturam-posma-izbuvei-un-esosas-tramvaju-linijas-parbuvei-gaita/>

About Transparency International Latvia/Delna

Transparency International Latvia (Delna) is a non-governmental organization that was founded in 1998 as a Latvian chapter of the international anti-corruption organization Transparency International. Its aim is to foster a democratic society that is free from corruption in politics, business and mutual relations. For more information visit:
www.delna.lv