

## **Abstract**

### **The Flemish transport company De Lijn ignored public procurement regulations when purchasing trams**

*The Court of Audit examined the supply contract of thirteen low-floor trams to the amount of 32.6 million euros. It found that De Lijn has awarded the contract by a negotiated procedure without competition. Moreover, this award runs counter to the principle of equal treatment. The reason of the purchase was an inadequate preparation of alternative funding for investments in rolling stock for De Lijn.*

#### **Introduction**

To keep up with the required replacement pace of obsolete trams, De Lijn should have awarded a new supply contract (supply 261) no later than 2007 and ordered a first lot of trams of that supply. In accordance with a decision of the Flemish Government concerning alternative funding of rolling stock, De Lijn temporarily suspended the contract award procedure for supply 261 and began examining the legal and economic aspects of this supply's alternative funding. Supply 261 having suffered considerable delay as a consequence, a supplementary (eighth) lot of thirteen trams was added in 2009 to the concluded supply contract 255 and an order was placed for an estimated amount of 32, 6 millions euros.

#### **Direct award of low-floor trams**

The direct purchase of thirteen low-floor trams does not comply with public procurement regulations. The important extension of supply 255 without competition conflicts with the EU law as interpreted by the European Court of Justice. Such an extension without competition jeopardizes two fundamental principles of procurement law, the principles of equal treatment and of competition.

#### **Planning and preparation of Supply 261**

Neither the Flemish Government nor De Lijn carried a cost-benefit analysis of the choice for alternative funding prior to the decision of resorting to alternative funding for the rolling stock. Neither was there a risk analysis assessing the risks involved with this mode of financing. Finally, they didn't set up realistic planning and timing for the implementation of supply 261 with alternative funding. All these elements led to the criticized 'aggregated' direct purchase of thirteen low-floor trams, but also to additional revision costs and costs of maintenance for the obsolete PCC-trams that were not replaced in time. This in turn resulted in disadvantages to passengers as far as comfort, accessibility and vehicle capacity are concerned.

**Minister's response**

On 7 October 2011, the Flemish Minister for Mobility and Public Works stated that De Lijn has made economically sound use of the negotiated procedure without prior publication of a notice.

**The audit report on “The direct purchase of low-floor trams by The Flemish transport company - De Lijn” has been sent to the Flemish Parliament. The full version can be found on the Court's website ([www.ccrek.be](http://www.ccrek.be)).**

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