

Abstract

CONTROL OF PUBLIC CONTRACTS COVERING THE ROAD TRANSPORT INFRASTRUCTURE IN BRUSSELS

Following an audit on the awarding of public contracts for the road transport infrastructure in Brussels, managed by the regional administration, the Belgian Court of Audit has expressed two basic remarks concerning the use of the « stock » contract technique and the existence of major discrepancies between the services performed in practice and the forecast determined at the time of the award of these public contracts.

The "stock" contract technique

The public sector prefers to use the «stock» contract technique, which is not explicitly provided for in laws and regulations and does not give an accurate idea of what the contract covers or state with certainty what services are to be provided. This technique, which stems from the idea that needs cannot always be quantified at the time a contract procedure is launched allows the public department concerned to do without an accurate and realistic estimate of its needs. The estimate of cost is in some way a list of unit prices from which the administration chooses the headings it wants to see carried out as and when they need them. The Government department has thus chosen a building contractor to whom the contract has been awarded and who will receive order vouchers as and when needs have to be met. The issue is whether it is possible to set a fair price notwithstanding how large the quantities to be ordered are and without prior knowledge of the terms. Besides, the unclear definition of the basic components of the contract is also likely to question the validity of the contract award through opening to competition.

The Belgian Court of Auditors is aware of the advantages of the « stock » contract for decisions relating to roads in an urban setting and involving several public authorities and under the constraint of a growing demand for «mobility». It, however, is not of the opinion that by systematising unplanned, ill-defined and loosely enforced contracts, a Government department adequately takes up the challenge. Even if the «stock» contract technique allows for a quick decision, it departs from the objectives sought after in laws and regulations, which see the use of public contracts as an instrument of economic policy designed to uphold a web of efficient small and medium-sized companies.

The implementation of the contracts : major discrepancies with regard to the service to be provided when the contracts were awarded

There are major discrepancies between the services actually provided and the services to be provided as at the time of the contracts. The existence of a major discrepancy between the contract awarded and implemented resulted in depriving competitors of the opportunity to bid for the modifications introduced during the implementation ; this overrides all claims made at the time of the contract awarding that the principle of opening to competition and of equal treatment of the bidders would be complied with.