



Public Procurement Control at district and local levels

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Presentation outline

- An Overview of Lower Saxony
- Legal Framework of Public Procurement
 - European law
 - German Federal law
 - German State law
- Auditing Systems and Concepts
- Audit Findings
 - At state level
 - At local level
- Utilisation of Findings
 - At state level
 - At local level



Overview of Lower Saxony



- Area: approx. 47,600 km²
- Population: approx. 7.8 million.
- GDP: 230 billion. € (9 % of German GDP)

Per: February 2014
Source: LSN

Overview of Lower Saxony - Administrative Units -



38 Administrative districts
with ...

→ 1,100 municipalities
(approx.)

consisting of ...

→ 8 independent urban
municipalities

→ 287 communal
municipalities

→ 129 integrated
municipalities

→ 713 member
municipalities

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Legal Framework of Public Procurement

European Law

Public Procurement Guidelines and Regulations which will be integrated into national law or which can be directly implemented

EU – Public Procurement Thresholds

- | | |
|--|-------------|
| - Construction contracts | 5,186,000 € |
| - Delivery and service contracts | 207,000 € |
| - Delivery and service contracts for sector contracting entities | 414, 000 € |



Legal Framework of Public Procurement

■ German Federal Law

- ❑ Act against Restraints on Competition (GWB), especially Section Four: §§ 98 – 129b GWB
- ❑ Public Procurement Regulation (VgV)
- ❑ Sector Ordinance (SektVO)
- ❑ Regulatory Tendering and Contract Award Procedures for Construction (VOB)
- ❑ Regulatory Tendering and Contract Award Procedures for Supplies and Services (VOL)
- ❑ Regulatory Tendering and Contract Award Procedures for Freelance Services (VOF)

Regulatory Tendering and Contract Award Procedures for Defence and Security (VSVgV)

- ❑ Adaptation to EU guidelines as from 2016: special provision for the awarding of concessions and the amendment of norms

German State Law: Lower Saxony

- **Lower Saxony Wage Compliance and Public Procurement Law (NTVergG)**
 - Applicable to order values from 10,000 €
 - Includes criteria not covered by the conditions of tender
 - Compliant with collective salary scale and minimum wage
 - Environmental and socially relevant criteria
 - Regulation of Public Procurement Thresholds for Lower Saxony (NWertVO)

- Also to be noted:
Budget law requirements, administrative rulings, case law

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Position and Function of the State Court of Audit

- The highest state authority, independent of the German state government and subject only to the law
- The State Court of Audit **audits**...
 - ... Budgetary and financial management of the state
 - ... Corporate bodies of public law that are under local state supervision
 - ... Positions outside state administration, in the case that they receive financial means from the regional state or when state assets are at their disposal
- The State Court of Audit **advises**...
 - ... the auditees and the state parliament, among others, on financially important individual measures and legislative proposals.
- The State Court of Audit **reports**...
 - ... to the State Parliament and the Federal Government on economic aberrations



Regional and supra-regional municipal audit

- Regional municipal audit by the courts of audit of the municipal districts
 - Directly overseen by elected authority
 - Annual audit of annual financial statements
 - Annual cash audit
- Supra-regional audit by the President of the RCA
 - All districts, municipal institutions, special purpose associations, municipal investments, etc. on
 - Compliance and
 - Profitability of budgetary and cash management
 - Comparing municipalities
 - With advisory purpose

Auditing Systems and concepts

- Outline of Checking Public Procurement Compliance:
 - Federal State and Federal State College Construction Projects
 - Funding initiatives, especially development of commercial estates and investment in port facilities
- Inspection and control of public contract awards
 - As part of efficiency audits
 - As compliance audit
 - or where there are grounds for a specific audit
 - Indication by a third party of manipulation/corruption
 - Participation of investors
 - (Purported) time pressure in execution
 - Contracts awarded repeatedly to certain parties

Auditing Systems and Concepts

1. Preparatory phase

- Planning, Creation of tender documents, Documentation

2. Tendering Phase

- Notification of invitation to tender, Preparation of tender and submission of tender, Opening of tenders

3. Vetting and Evaluation Phase

- Tender vetting and evaluation, Awarding of tender or possible withdrawal/closure, Information to the submitters of tenders/bidders, Review procedure where necessary

4. Award of Tender/Commission/Possible Withdrawal

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Audit Findings at State Level

■ **Typical Non-Compliance when awarding Public Contracts:**

- Ignorance of public procurement law applicable in given case
- Erroneous or incomplete performance specifications
- Wrong or incomplete documentation
- Non-compliant contract award (no public offer of tender)
- Non-compliant /too many / too high additional orders
- Impermissible splitting of contracts

■ **Examples:**

- Port of Emden– Site remediation
- Snow Dome Bispingen

Site Remediation in the Port of Emden



Bildquelle: <http://www.matthaei.de>

Site Remediation in the Port of Emden

cf. Annual RCA Report 2014, p. 127

See under: www.lrh.niedersachsen.de → Themen → Jahresberichte

■ Cause for Examination

New companies are due to come to the Port of Emden and already existing businesses are due to be able to expand.

The areas required for this purpose are already contaminated

NPorts remediates these areas in accordance with the needs of the businesses concerned

Site Remediation in the Port of Emden

- Order Volume: approx. 17 million € by the end of 2013
- further approx. 3 million € by the end of 2015

■ Nature of Non-Compliance

- 80 % of the orders/ additional orders were issued directly by contracting authority, and not put up for public tender
- Wrong or incomplete documentation of the award procedure in the award notices
- Contracts were split intentionally in order not to overstep thresholds

Snow Dome Bispingen



Bildquelle: <http://www.kn-online.de/Schleswig-Holstein/Aus-dem-Land/Snow-Dome-zum-letzten-Mal-geoeffnet>

Snow Dome Bispingen

cf. Annual RCA Report 2011, p. 37

See under: www.lrh.niedersachsen.de → Themen → Jahresberichte

- The NBank of Lower Saxony, which is federal state owned, also promotes infrastructure projects, such as the development of commercial estates

- Promotion of a project in the municipality of Bispingen amounting to approx. 5 million € from NBank

- Aim: Development of commercial estate including the planned "Snow Dome" indoor ski slope

Snow Dome Bisingen

■ Non-compliance

- ❑ Infringement of public procurement regulations in respect of the principle of equal treatment owing to incomplete tender specifications
- ❑ Result: Only one tenderer submitted an offer
- ❑ RCA called for a consideration of the legal consequences under the funding provisions (reclamation) –to date there has been no response to that request

Audit Findings at Municipality Level

■ Typical Cases of Non-compliance:

- Impermissible award procedure (no official invitation to tender)
- Erroneous or incomplete performance specifications
- Wrong or incomplete documentation
- Ignorance of public procurement law applicable in given case
- Non-compliant awarding of in-house business without public invitation to tender

■ Examples:

- Subsidising school transport
- Lünenburg

Focussed Audit Subsidised School Transport

cf. Municipal audit report 2012, p. 46

www.lrh.niedersachsen.de → Themen → Kommunalberichte

- Verification audit of the award of contracts for subsidised school transport
 - Three of the six administrative districts awarded contracts directly, even though the EU threshold for invitation to public tender had been overstepped
 - No transparent documentation of the decision to award contract
 - Findings of previous supra-regional audits had been ignored

Luneburg

- The city as partner in the Luneburg Housing Association (LüWoBau GmbH)
 - In-house contract: rental lease awarded by housing association to fire services and day nursery
 - Design and construction by Luneburg Housing Association

- Non-compliance
 - Criteria for in-house contract awards were not fulfilled, as
 - Principle business of the Luneburg Housing Association is the letting of residential property to third parties,
 - Private shareholder in the Luneburg Housing Association

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Utilisation of Findings at State Level

cf. Annual RCA Report 2013, p. 116

See under: www.lrh.niedersachsen.de → Themen → Jahresberichte

- ❑ **Lack of a Federal State Issuing Authority**

- ❑ Many mistakes repeatedly committed by parties awarding contracts

- ❑ The Regional Court of Audit calls for central issuing bodies to be set up as part of the federal state administration for the purpose of:
 - Pooling of knowledge of public procurement law
 - Prompt and comprehensive advice from specialists
 - Higher level of legal compliance
 - More economic and cost effective disposal of financial resources: less costly commissioning of expertise from external consultants

- ❑ To date the above recommendation from the Regional Court of Audit has not been taken up by the federal state administration



Utilisation of Findings at Local Level

- ❑ Sensibilisation of local authorities to the legal complexities of Public Procurement Law
- ❑ Changes in procedure at local level as a result of the supra-regional verification audit
- ❑ Human resources and organizational steps to centralise competence to award contracts, e.g. by the creation of central issuing authorities



Thank you for your Attention

