## The procurement of expert and research services at the Ministry for Foreign Affairs

This audit focused on the procurement of expert and research services using funds appropriated to the Ministry for Foreign Affairs for operating expenses. Similar procurements have been made using funds appropriated to the ministry for development cooperation, but the audit did not examine these as individual procurements. Consequently the National Audit Office's findings and conclusions concerning individual procurements apply to only part of the ministry's procurements of expert and research services. The audit covered the organisation, steering and implementation of procurements up to 2006.

On the basis of the audit, in the management of procurements by the Ministry for Foreign Affairs, there is a clear distinction between procurements made with development cooperation funds and procurements made with funds appropriated for operating expenses. The Development Cooperation Department, which made the most procurements, has had centralised procurement expertise, while the other departments have lacked such expertise as a rule.

The audit's main finding was that numerous errors were observed in the procurements that were examined. Of the 17 procurements that were audited, errors were found in 14. The audited procurements had been made by ten different units at the Ministry for Foreign Affairs. In the opinion of the National Audit Office, the decentralisation of procurements is one reason for the prevalence of errors. In most cases errors resulted from the failure to follow existing guidelines. The National Audit Office also drew attention to the fact that, after the period covered by the audit, on 1 June 2007 a new Act on Public Contracts entered into force and this has increased demands regarding procurement matters. The Ministry for Foreign Affairs has focused attention on procurement matters by preparing a procurement strategy in 2006 and revising procurement guidelines in 2007, among other things.

The audit also drew attention to procurements made by one state authority from another state authority and examined the relation between this kind of internal service production in the state organisation and procurement legislation. In addition to their own activities, state agencies can participate in the implementation of development cooperation according to the Act on the Participation of State Agencies in Development Cooperation (382/1989). The Government proposal for this Act nevertheless can be considered to have required tendering and the fair treatment of bidders whenever more than one organisation is capable of implementing a project. Act 382/1989 is mainly an authorising act that allows state agencies to engage in activities that are broader than their normal remits. It does not contain provisions concerning procurement procedures. Since 1989 the number of potential suppliers of evaluation services, for example, has increased, especially after Finland joined the European Economic Area (EEA).

The new Act on Public Contracts specifies the contracting entities that are covered by the Act. These include state authorities, for example. The new Act does not apply to procurements that a contracting entity makes from an entity that is formally separate and independent with regard to decision-making if the contracting entity alone or together with other contracting entities monitors the entity in the same way as it monitors its own organs and if the entity conducts most of its activities together with the contracting entities under whose authority it comes. This provision is not based on the EU public contracts directive, which does not deal with this type of procurements, but on the case practice of the Court of Justice of the European Communities. The preamble of the public contracts directive notes that Member States should ensure that the participation of a body governed by public law as a tenderer in a procedure for the award of a public contract does not cause any distortion of competition in relation to private tenderers. The preamble also mentions that for public contracts above a certain value, it is advisable to guarantee the opening-up of public procurement to competition and that the award of public contracts should respect the principle of non-discrimination and the principle of freedom to provide services.

In the opinion of the National Audit Office, in legislation and related preparatory documents, legal practice and different official

positions and the legal literature, the state is considered as a legal person in legal relationships under the law of property and in the field of public commercial law. Services that are produced by state agencies for one another in this case constitute internal service production within the state group, which is not subject to tendering obligations. The state's internal service production may not be arranged in a way that discriminates against outside tenderers or potential tenderers, however. Internal service production within the state group should in general be arranged in the most economical way possible, and it should not compete with or set limits on private service supply.