

AUDIT OF OPERATION REPORT

Central Baltic INTERREG V A Cross-border Co-operation Programme 2014 - 2020

AUDIT NUMBER:	
Date of final audit report	10/01/2020
Contradictory procedure	09/09/2019 - 10/01/2020
Accounting period	01.07.2018 - 30.06.2019
Audit scope	Progress report No 5.1 in the amount of 73,624.93 € 100 %
Auditor(s)	Mart Pechter, Lead Auditor of II Audit Unit Financial Control Department of Ministry of Finance of Estonia Suur-Ameerika 1, 10129 Tallinn, Estonia
Audited organisation & contact information	Viimsi Municipality Nelgi 1, Viimsi Municipality, Harju County Ms. Esta Tamm Phone: +372 5149 259 Email: elfosg@gmail.com
Place of the audit	Viimsi Municipality
Persons present during the audit	Esta Tamm, project manager, Elfos Group OÜ Igor Ligema, senior expert, Viimsi Municipality
Date of on-the-spot checks	28/06/2019
Full project name	Small port every 30 miles apart - Development of services for lively water tourism in the Eastern Gulf of Finland
Project Number & Acronym	CB94 - 30MILES
Priority Axis	3. Well-connected Central Baltic region
Specific Objective	SO 3.2 Improved services of existing small ports to improve local and regional mobility and contribute to tourism development
Reporting Period	01/09/2017 - 28/02/2018
Name of the Lead Partner	Kotka Maritime Research Center
Project duration (start and end dates)	01/09/2015 - 30/11/2018
AUDIT CONCLUSION	<i>Based on the audit work performed we have obtained reasonable assurance that the expenditure declared under the audited operation „30MILES“ No. CB94 within priority axis 3 in the reference year 2019 is, in most material aspects, legal and regular and the objectives of the project have been achieved. However, the auditor made one major finding with a financial impact in regard to carrying out public procurements. The summarized list of findings identified during the audit is presented in the following table and report.</i>



Number of findings	Total Financial Impact	Total Financial Impact ERDF	Nature of the finding(s)
1	€583.50, within the audit scope and €165.00 outside the audit scope	€495.98, within the audit scope and €140.25 outside the audit scope	Public Procurement No. 181303 qualification conditions do not comply with the principles of equal treatment, proportionality and fair competition. (Major finding, with financial impact)



PART 1 - AUDIT SCOPE

According to Article 127 of Regulation (EU) No 1303/2013 the audit authority is responsible to carry out audits of operations on the basis of supporting documents constituting the audit trail and verify the legality and regularity of expenditure declared to the Commission, including the following aspects:

- a) that the operation was selected in accordance with the selection criteria for the Operational Programme, was not physically completed or fully implemented before the beneficiary submitted the application for funding under the Operational Programme, has been implemented in accordance with the approval decision and fulfilled any conditions applicable at the time of the audit concerning its functionality, use, and objectives to be attained;
- b) that the expenditure declared to the Commission corresponds to the accounting records and that the required supporting documentation demonstrates an adequate audit trail;
- c) that for expenditure declared to the Commission determined in accordance with Articles 67(1)(b) and (c) and 109 of Regulation (EU) No 1303/2013 and Article 14(1) of Regulation (EU) No 1304/2013, outputs and results underpinning payments to the beneficiary have been delivered, participant data or other records related to outputs and results are consistent with the information submitted to the Commission and that the required supporting documentation demonstrates an adequate audit trail.

PART 1.1 - LIMITATION OF SCOPE

The conclusions of the audit are based on the analysis of the procedure in place, information and documents gathered and interviews conducted in the audited bodies as well as the tests performed in the course of the audit following the checklist for the audit areas.

There were no limitations of the scope.

PART 1.2 - AUDIT METHODOLOGY

The audit is carried out in compliance with international accepted auditing standards and the audit strategy, which is approved by the audit authority and group of auditor representing each Central Baltic INTERREG VA Programme Member State.

The audit process comprises of three stages:

a) Preparation and planning of the audit

In this stage legal regulations and other documentation, including from the management verification ex Regulation (EU) No 1299/2013, Article 23(4), needed for familiarising with the selected operations were collected and analysed. Also, interviews or checklists sent if needed for the planning of the audit, familiarising with the functioning of the system, project files structure, the objectives and the status of implementation of the operations, the risk encountered during the implementation as well as those inherent to the type of operations.

b) Fieldwork

At this stage a whole range of interviews with responsible staff were conducted, documents were gathered and testing was performed. In order to attain the audit objectives during the audit we tested all applicable audit areas. We performed the audit using the checklists for the several audit areas which enabled us to verify the requirements laid down in European and national legislation.

With the aim to attain the audit objectives, the fieldwork was carried out including on the spot visits on **28/06/2019**.



c) Reporting

This stage encompassed activities related to the preparation of the Draft Report and the contradictory procedure where auditee has been granted 10 working days to reflect on the audit report, the inclusion of their replies and comments and the submission of the Final Report.

Provide the actual schedule of the contradictory procedure as following

Preliminary report: 09/09/2019

Final report: 10/01/2020

PART 2 - FINANCIAL DATA OF OPERATION

Financial data of audited partner must be listed

PART 2.1 - BUDGET (€)				
Audited Partners approved budget	Granted in total for the partner	%	Payments included in the payment claim 5.1	%
ERDF	€ 276 080.00	85%	€ 62 581.19	85%
Public funding (total)	€ 48 720.00	15%	€ 11 043.74	15%
Private funding	€ 0.00		€ 0.00	
Income	€ 0.00		€ 0.00	
TOTAL PARTNER BUDGET	€ 324 800.00	100%	€ 73 624.93	100%

Audited expenditure (according to the Sample, report 5.1)			
Budget Line		Total amount audited (combining milestones)	Ineligible detected in audit scope
1.	Staff costs	€ 11 678.38	€ 0.00
2.	Office and administration	€ 1 751.75	€ 0.00
3.	Travel and accommodation	€ 0.00	€ 0.00
4.	External expertise and services	€ 60 194.80	€ 583.50
5.	Equipment	€ 0.00	€ 0.00
6.	Infrastructure and works	€ 0.00	€ 0.00
Total amount audited		€ 73 624.93	€ 583.50

Audited expenditure (outside the Sample)			
Budget Line		Total amount audited (combining milestones)	Ineligible
1.	Staff costs	€ 60 246.06	€ 0.00
2.	Office and administration	€ 10 788.63	€ 0.00
3.	Travel and accommodation	€ 0.00	€ 0.00
4.	External expertise and services	€ 660.00	€ 165.00
5.	Equipment	€ 0.00	€ 0.00
6.	Infrastructure and works	€ 0.00	€ 0.00
Total amount audited		€ 60 246.06	€ 165.00



PART 3 - FINDINGS AND RECOMMENDATIONS

PART 3.1 GENERAL

During the audit we identify and document audit findings. We categorise these findings by reference to the level of importance. The categories which we use to classify our findings are as follows:

Major	Findings which have a financial impact above EUR 250 (ERDF) or any other high-risk deficiencies.
Minor	Findings for which action should be taken to ensure full compliance but have a limited financial impact (below EUR 250 (ERDF)), no financial consequences or no high-risk character.

All audit findings are reported in the final audit report, even if the Member States participating in the Programme may decide that neither the lead beneficiary nor the Programme's MA is obliged to recover an amount unduly paid which does not exceed EUR 250, per operation and accounting year, not including interest, in contribution from the Funds and the EMFF, as all the irregular amounts detected are to be taken into account for the calculation of the annual Total Error Rate of the Programme.

PART 3.2 FINDINGS AND RECOMMENDATIONS PER BUDGET LINE

In this paragraph the findings and recommendations per audit area are included.



E. Procurement procedures

Audit Finding No. 1 - Public Procurement No. 181303 qualification conditions do not comply with the principles of equal treatment, proportionality and fair competition. Ineligible costs are €583.50 within the audit scope and €165.00 outside the audit scope (Major finding, with financial impact)

The beneficiary is required to follow the principles set out in Public Procurement Act¹ § 3 (3) stating that all persons² must be treated equally and without discrimination by the contracting authority and that the contracting authority must make certain that all restrictions and criteria established for the persons are proportional, relevant and justified in relation to the purpose of the public procurement.

According to Public Procurement Act § 39 (1), the award criteria must be sufficient for proving the tenderer's or candidate's ability to duly perform the public contract; and relevant and proportional to the nature, quantity and purpose of the supplies, services or public works that constitute the object of the public contract.

The beneficiary and project partners Ida-Viru Enterprise Centre, Non-Profit Organisation of Eisma Harbour, Viimsi Municipality, Estonian Maritime Museum and Narva-Jõesuu Municipality organized public procurement No. 181303 to implement 30Miles project marketing plan. Estonian Maritime Museum was authorized by project partners to carry out the public procurement No. 181303.

The procurement was carried out to implement the marketing plan already created to introduce the project and the harbours in Estonia and on the neighbouring markets (Finland, Sweden). Among others, the following qualification conditions were set in contract notice:

- 1) During the last three (2013-2015) years the tenderer must have properly implemented at least five marketing projects in five different markets.
- 2) During the last three (2013-2015) years the tenderer must have had experience in marketing harbours.
- 3) Tenderer must provide a project manager, who has professional experience of at least 15 years in marketing management.
- 4) Required linguistic skills for project manager: Estonian and English (level C1), Finnish, Swedish and Russian (level B1).

The auditor came to a position that those qualification conditions (1-4) are not proportionate to the subject matter of the contract and could also be considered as discriminatory, thereby creating an unjustified barrier for potential tenderers. According to that, there is a conflict with the Public Procurement Act § 3 (3) rules relating to equal treatment and proportionality and therefore this might have affected the effectiveness of competition.

The Estonian Maritime Museum has explained that:

- The procurement No. 181303 involved six different partners, meaning implementation of six marketing projects with different nuances in different markets. To ensure smooth collaboration between six project partners and to achieve the goals, it was appropriate to set the qualification conditions (1-4) for the tenderer and the project manager.
- Previous marketing experience in different markets gives assurance that the procurement goals will be achieved.
- The success of the procurement depends on the project manager's ability to effectively meet various challenges and long experience (15 years) ensures that.

¹ RT I, 23.03.2015, 24

² whose place of residence or seat is in Estonia, in another Member State of the European Union, in another contracting party to the EEA Agreement or in a state that has joined the Government Procurement Agreement (GPA) of the WTO



- The five language speaking requirement was appropriate and proportionate, because project manager had to communicate with partners in five different languages. The language requirement cannot be replaced by the involvement of an interpreter, since communication through an interpreter significantly complicates work processes and the involvement of a qualified interpreter requires significant additional resources.

Auditor disagree with Estonian Maritime Museum explanations. Unnecessary restrictions on bidders may eliminate companies otherwise qualified for the implementation of the contract. Auditor' opinion is based on following conclusions:

- The procurement No. 181303 involved six partners, but there was only one marketing project for all partners and the works done for all partners were similar³ (updating website information, preparing and printing marketing materials etc.)
- The contract between contracting authority and tenderer lasted for 1 year and 4 months, meaning that marketing on an international market can be time consuming and the number of providers who have completed other five marketing projects in five markets during three years, is narrow or is clearly focusing on bigger marketing agencies.
- Harbour marketing doesn't differ from marketing any other similar object (e.g. an airport).
- The requirement of 15 years of work experience in marketing management is restrictive, as the project manager's ability to perform his duties would have been proven also by a lighter condition.
- Linguistic skills requirement can be a barrier, since there is an opportunity to involve other team member or interpreter to help translate materials into appropriate language and use English in official communication.
- The contracting authority stipulated that the project manager must speak Estonian, English, Finnish, Swedish and Russian, but asked proof of proficiency only for Estonian and English. Thus the contracting authority set a condition that was not checked.
- There were four interested persons, but only one of them actually submitted tender.
- One interested person asked if it's required that one project manager meets all required conditions or may be involved multiple project managers with different technical, professional and linguistic skills. The contracting authority answered that just one project manager must meet the requirements.

The purpose of the qualification procedure is to identify those economic operators who are capable of performing and completing the contract to be awarded. Those conditions in this case, as the auditor argue, aren't proportionate to the object of the procurement. Setting such restricted qualification criteria will not help achieve the project goal as effectively as possible and do not comply with the principles of Public Procurement Act § 3.

Auditor note that Estonian Maritime Museum had previously procured the set-up of the marketing plan (public procurement No. 176666), which results were the basis for procurement No. 181303. The same restrictive criteria (1-4) were used also in the public procurement No. 176666 and the same tenderer was contracted to provide the services. The public procurement No. 176666 is not in audit scope, but the costs have been co-financed from the budget of "30Miles" project in regard to three project partners (Estonian Maritime Museum, Viimsi Municipality and Narva-Jõesuu Municipality).

In addition, the auditor found another error in complying with Public Procurement Act § 3. Some of the works⁴ listed in the procurement No. 181303 document had to be completed by 28.02.2017, however, the contract was signed on 23.03.2017. Therefore, some works had to be completed before the contract was signed. In the auditor' opinion, the contracting authority's estimations are possibly mistaken in terms of

³ See D4-8-8 P 3.5 (Actions to implement the marketing plan) and D4-8-16

⁴ Procurement document (D4-8-8) p 3.5.1, 3.5.4, 3.5.5 and 3.5.9



the time-limits for the execution of the contract and this could distort competition because potential bidders did possibly not make a tender due to an unreasonably short deadline.

Procurement No. 181303 qualification conditions are not proportionate to the subject matter of the contract and the minimum level of competition was not ensured. Therefore, looking all the procurement errors in the gathering, the auditor came to conclusion that contracting authority wanted the same company (Turundusproff OÜ) who developed the marketing plan, to also implement the marketing plan. To accomplish this, restrictive qualification conditions were set, so only one tenderer was able to submit a tender. According to EC Guidelines⁵ Section 2 point 11 financial correction 25% is applied when exclusion, selection and/or award criteria or conditions for performance of contracts led to a situation where only one economic operator could submit a tender and this outcome cannot be justified by the technical specificity of the contract in question.

Conclusion:

Procurement No. 181303 documents include qualification criteria, which are not proportionate to the subject matter of the contract, restrict competition and there is a risk that effective use of the existing competition is not ensured. Following from that, there is also a risk that these costs may be considered ineligible which may lead to a partial recovery of this expenditure.

Recommendations:

1) Recommendation to the auditee:

It is recommended to refund any ineligible costs as per the finding and the Managing Authority decision thereof.

2) Recommendation to the First Level Control

It is recommended to always ascertain that procurement rules laid down in Public Procurement Act are followed and that the effective use of the existing competition is ensured. It is also recommended to review procurement control measures.

3) Recommendation to the Managing Authority

It is recommended to begin a procedure to recover the ineligible amounts. Concerning the amount in audit scope, the auditor recommends to reclaim the ineligible ERDF funding of €495.98 and deduct the ineligible co-financing of €87.53 from the partner budget. Concerning the amount outside the audit scope, the auditor recommends to reclaim the ineligible ERDF funding of €140.25 and deduct the ineligible co-financing of €24.75 from the partner budget. Since the affected costs in reporting period 6.1 are not yet paid out to the beneficiary, the Managing Authority may also choose to deduct amounts from those costs instead of reclaiming them. For details, please see the Annex 1 of this report.

It is also recommended to carry out additional checks on public procurement No. 176666 to make sure whether the similar restrictive conditions noticed by the auditor may have an effect on the eligibility of those costs.

Auditee response: The auditee agrees with the finding and has no comments concerning this.

First Level Control response: FLC takes into account the Audit recommendation and will pay more attention that the requirements laid down in Public Procurement ACT are followed by project partner and will assess more precisely the principles of equal treatment, proportionality and fair competition.

The procurement control measures were reviewed and since beginning from 2019 project procurements will be verified by RTK Procurement Specialists.

⁵ Guideline for determining financial corrections to be made to expenditure financed by the Union under shared management, for non-compliance with the rules on public procurement.



Managing Authority response: The MA agrees with the SLA finding regarding the restrictive nature of the public procurement audited. Thus, the MA also agrees with the recommended correction and will implement it.

The MA has already taken steps to improve the understanding of public procurement rules and principles among the partners. For example, an official MA letter was sent to all lead partners and project partners, clearly spelling out the rules to be followed as well as consequences if they are not followed. Public procurements have also been, and will be, a topic at recent or upcoming Project Implementation Seminars and there will be dedicated video tutorials about public procurements. Finally, the MA refers to the recent AA additional sample on public procurements, which did not reveal any major issues.

Regarding the Estonian FLC system, the MA notes that since January 2019 the FLC has been complemented with national public procurements experts. Public procurements are as of now checked by these experts. This gives the MA additional assurance that the FLC system in Estonia is working and able to identify public procurement related issues.

Final conclusion by the auditor: The auditor stands by the finding and has no additional comments.

The cost documents of this finding are:

Report number	Date of cost document	Number of cost document	Cost document presented by	Eligible cost of the document	Including eligible VAT	Ineligible costs in total	Including EU funding	Including co-financing
Period 5.1	14.12.2017	171114	Turundusproff OÜ	2334.00	389.00	583.50	495.98	87.53
Period 6.1	08.08.2018	180765	Turundusproff OÜ	660.00	105.00	165.00	140.25	24.75

PART 4 - FOLLOW-UP

This audit report is compiled for use of the Audit Authority of the Central Baltic INTERREG VA 2014-2020 Programme and will be used to draw conclusions about the functioning of the Management and Control Systems of the above-mentioned Programme. Information in the report will be disclosed to relevant parties involved of management of the EU funds, including Commission services.

Parties responsible of audit finding follow-up:

1. Findings with Financial impact - The Audit Authority (AA) will inform the Managing Authority (MA) to take necessary actions to correct shortcomings in the system;
 - a. Deductions will be made by the MA;
 - b. Confirmation of deductions will be made by the AA;
 - c. If needed follow-up audit will be done by Group of Auditor (GoA) members.



2. Findings without the Financial impact

- a. The MA will be informed and evaluation will be done if further actions are needed;
- b. Confirmation of actions will be followed-up by the AA and if needed by the GoA members.

Upon request from the MA the Auditee is responsible to implement the recommendations and deliver the proof to the MA.

Audit manager: Mart Pechter

Signed electronically

Audit supervisor: Kadi Peets

Signed electronically

