

AUDIT OF OPERATION REPORT

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

AUDIT NUMBER: CB-21/2020	
Date of audit report	28/12/2020
Contradictory procedure	N/A
Accounting period	01/07/2019 - 30/06/2020
Audit scope	<i>Progress report No. 2.1 in the amount of 19,699.65 EUR, audited 100 % Progress report No. 3.1 in the amount of 23,302.75 EUR, audited 100 %</i>
Auditor(s)	Elis Kõrvek, <i>Audit Leader</i> , Lead Auditor of II Audit Unit, Financial Control Department of Ministry of Finance of Estonia Suur-Ameerika 1, 10129 Tallinn, Estonia Kadi Peets, <i>Audit Supervisor</i> , Head of the II Audit Unit, Financial Control Department of Ministry of Finance of Estonia Suur-Ameerika 1, 10129 Tallinn, Estonia
Audited organisation & contact information	<i>Tallinn University Centre for Landscapes and culture Narva mnt 25, 10120 Tallinn Mirjam Uuskari +372 619 9575, mirjam.uuskari@tlu.ee</i>
Place of the audit	<i>Tallinn University</i>
Persons present during the audit	Mirjam Uuskari, project coordinator
Date of on-the-spot checks	N/A ¹
Full project name	<i>Visionary, Participatory Planning and Integrated Management for Resilient Cities</i>
Project Number & Acronym	<i>CB604 - Augmented Urbans</i>
Priority Axis	2. Sustainable use of common resources
Specific Objective	SO 2.3 Better urban planning in the Central Baltic region
Reporting Period	01/09/2018 - 31/08/2019
Name of the Lead Partner	Metropolia University of Applied Sciences
Project duration (start and end dates)	01/03/2018 - 30/04/2021
AUDIT CONCLUSION	<i>Based on the audit work performed we have obtained reasonable assurance that the expenditure declared under the audited operation CB604 - Augmented Urbans within priority axis 2 in the reference year 2020 is, in most material aspects, legal and regular. 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>

¹ Due to the Covid-19 public health crisis of the year 2020, no on-the-spot checks were conducted during audit.



Number of findings	Total Financial Impact	Total Financial Impact ERDF	Nature of the finding(s)
1	€509.90 within the audit scope	€433.40 within the audit scope	The project partner has not carried out the procurement with a reference no 183651 in compliance with the Public Procurement Act (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.

No on-the-spot checks were conducted during the audit due to the Covid-19 public health crisis of the year 2020. The auditor has obtained sufficient assurance in other ways, no follow-up on-the-spot check is necessary.

PART 1.2 - AUDIT METHODOLOGY

The audit is carried out in compliance with internationally accepted auditing standards and the audit strategy, which is approved by the audit authority and group of auditors 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 which were 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.

The assurance about the achievement of the project's objectives was attained via documentation uploaded to the programme's information system (eMS), e-mail conversation with the project partner and photos of the project outputs.

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: 30.11.2020

Final report: 28.12.2020

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 2.1	%	Payments included in the payment claim 3.1	%
ERDF	€ 138,415.17	85%	€ 16,744.70	85%	€ 19,807.34	85%
Public funding (total)	€ 24,426.21	15%	€ 2,954.95	15%	€ 3,495.41	15%
Private funding	€ 0.00		€ 0.00		€ 0.00	
Income	€ 0.00		€ 0.00		€ 0.00	
TOTAL PARTNER BUDGET	€162,841.38	100%	€ 19,699.65	100%	€ 23,302.75	100%

Audited expenditure (according to the Sample, report 2.1) ²			
Budget Line		Total amount audited (combining milestones)	Ineligible detected in audit scope
1.	Staff costs	€ 14,321.46	€ 0.00
2.	Office and administration	€ 2,148.21	€ 0.00
3.	Travel and accommodation	€ 829.40	€ 138.77
4.	External expertise and services	€ 1,210.11	€ 0.00
5.	Equipment	€ 1,190.47	€ 0.00
6.	Infrastructure and works	€ 0.00	€ 0.00
Total amount audited		€ 19,699.65	€ 0.00

² Costs outside the sample were not audited and may include costs related to procurement no 183651, the costs should be deducted from the eligible expenditure.



Audited expenditure (according to the Sample, report 3.1) ³		
Budget Line	Total amount audited (combining milestones)	Ineligible
1. Staff costs	€ 18,070.73	€ 0.00
2. Office and administration	€ 2,710.60	€ 0.00
3. Travel and accommodation	€ 2,082.90	€ 308.34
4. External expertise and services	€ 438.52	€ 62.80
5. Equipment	€ 0.00	€ 0.00
6. Infrastructure and works	€ 0.00	€ 0.00
Total amount audited	€ 23,302.75	€ 0.00

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.

³ Costs outside the sample were not audited and may include costs related to procurement no 183651, the costs should be deducted from the eligible expenditure.



E. Procurement procedures

Audit Finding No. 1 - The project partner Tallinn University has not carried out the procurement with a reference no 183651 in compliance with the Public Procurement Act. Ineligible costs € 509.90 within the audit scope (Major finding, with financial impact)

According to the Central Baltic Programme manual point 3.7 public procurements should be done according to national rules or following EU rules, depending on the thresholds.

The project partner Tallinn University has carried out an open procurement above international threshold with a reference no 183651 "Travel agency and similar services (*Reisiteenused ja reisiteenustega kaasnevad teenused*)" electronically in the e-procurement register (published on 28.02.2017). Service contract no 4.4-1/27 was awarded to a single tenderer Aktsiaselts ESTRAVEL on 15.05.2017.

Auditors have identified a noncompliance with the Estonian Public Procurement Act:

1. § 3 subsection 3: all persons 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, must be treated equally and without discrimination by the contracting authority and 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;
2. § 39 subsection 1: the contracting authority will verify whether the financial and economic standing and the technical and professional ability of a tenderer or candidate comply with the award criteria specified in the contract notice.

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.

As a result of the audit procedures, the auditors identified the following risks:

1. The procurement contract notice contains **restrictive selection criteria**: III.2.3) technical and professional ability of a tenderer:

Tenderer must be a member of the International Air Transport Association for at least 3 years from the date the contract notice has been published in the state procurement register. Tenderer must submit a copy of IATA certificate.

The contracting authority must make certain that the selection criteria established in the contract notice are proportional, relevant, non-discriminatory and reasoned in relation to the purpose of the public procurement, must not distort the competition by excluding companies, who have been operating in the market less than 3 years and can prove their ability to fulfill the contract according to the requirements. Thus, the requirement to be a member of the International Air Transport Association for at least 3 years is not proportional, distorts the competition and does not show the ability of the tenderer to fulfill the contract.



2. Significant modification of contract no 4.4-1/27 – contract duration has been extended and initial value of the contract exceeded by 48%.

A service contract no 4.4-1/27 was awarded on 15.05.2017 for € 2 million following an open procedure. According to the contract point 12.1, contract entered into force 01.07.2017 and is valid 24 months or until initial contract value of € 2 million (excl. VAT) is reached. On 23rd of April 2019 an amendment no 2 to the initial contract was concluded, entered into force from 01.07.2019 and was valid until 20.08.2019. Final value of the contract is € 2 968 140 (excl. VAT).

A modification of a contract during its term shall be considered to be substantial, where it renders the contract materially different in character from the one initially concluded. (Article 72(4) of Directive 2014/24/EU)

Although according to the contracting authority, modification to the contract was justified by unforeseen circumstances, the auditors are of the opinion that the modification does not comply with the requirements set out in § 123 (1) 4) of the Public Procurement Act, in particular with the notion of unforeseen circumstances. Auditors find that modification leading to an increase of the contract price of 48% was caused by insufficient planning by the contracting authority and could have been avoided by timely preparation of a new tender.

CONCLUSION AND RECOMMENDATIONS:

In auditors opinion the abovementioned requirements are restrictive, thus not ensuring equal access for tenderers and have the effect of creating unjustified obstacles to the opening up of public procurement to competition. Contracting authority has made a significant modification to contract no 4.4-1/27, contract duration has been extended and initial value of the contract exceeded by 48%.

The above findings will result in a financial correction of 25% of the certified expenditure due to a substantial contract modification according to point 23 (2) of the Guidance on financial corrections (C(2019) 3452 final dated 14/05/2019).

1) Recommendation to the auditee:

It is recommended to the beneficiary to make a refund in amount of the ERDF funding € 433.39 (85%) and to deduct the ineligible co-financing € 76.47 (15%) from the project's overall eligible expenditure.

2) Recommendation to the First Level Control

It is recommended to pay attention to the travel and accommodation costs of Tallinn University in this project and in other projects where Tallinn University is one of the partners. Those costs may be affected by the same error. If similar cases are found, the costs should be deducted where possible and the Managing Authority should be notified.

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 € 433.39 and deduct the ineligible co-financing of € 76.47 from the partner budget.



The Managing Authority should identify all projects containing ineligible costs resulting from the procurement with a reference no 183651 and apply financial correction of 25% to the certified expenditure.

Auditee response:

1. The auditor has identified the following risk in relation to the open procurement no. 183651: The procurement contract notice contains restrictive selection criteria: III.2.3) technical and professional ability of a tenderer: *Tenderer must be a member of the International Air Transport Association for at least 3 years from the date the contract notice has been published in the state procurement register. Tenderer must submit a copy of IATA certificate.*

In relation to this risk, the auditee would like draw the auditor's attention to the fact that an adjustment of 5% has been made in the project periods 1, 2 and 3 for services ordered via Aktsiaselts ESTRAVEL, a tenderer that was awarded a contract following the open procurement with a reference no 183651 "Travel agency and similar services (*Reisiteenused ja reisiteenustega kaasnevad teenused*)". In project periods 1, 2 and 3, services in the total amount of EUR 3303.51 were ordered via Aktsiaselts Estravel. During a periodical control of project costs by Riigi Tugiteenuste Keskus the decision, which is fixed in the FLC Certificate for period 5 01.03.2020 - 31.08.2020, was made to make an adjustment in the reports for periods 1, 2 and 3 and, thus, the following reductions were made of the invoices:

1) Period 1

- I3282275-01 22,70EUR
- I3300331-01 12,90 EUR
- I3293176-01 27,61 EUR

2) Period 2

- I3390598-01 25,14 EUR
- I3488533-01 2,60 EUR

3) Period 3

- I3520731-01 15,88 EUR
- I3547583-01 9,65 EUR
- I3547583-04 9,80 EUR
- I3520731-02 23,80 EUR
- I3570865 -01 12,56 EUR
- I352073101;I35273102 20,03
- I356385701 2,54 EUR

Thus, the total reduction that was made was EUR 185.21. The ineligible costs were removed from the project following the decision of Riigi Tugiteenuste Keskus. Upon second check of the reductions from invoices, the auditee found that a double correction was made to invoices I3520731-01 and I352731-02. Riigi Tugiteenuste Keskus has been notified of this on 10 December 2020. The total correction should be EUR 165.21, which corresponds to 5% of the total services that had been ordered through the tenderer. The reduction from the invoices related to the procurement in the project periods 1, 2 and 3 were accepted by the auditee and the indicated sums removed from project finances. Riigi Tugiteenuste Keskus made no recommendations for refunds to the financier. Thus, the auditee finds that since the 5% reduction



of costs were accepted and removed from the project costs, the financial correction of 25% of the certified expenditure is not a proportional and valid recommendation.

2. The auditor has also identified the following risk in relation to the open procurement no. 183651: Significant modification of contract no 4.4-1/27 – contract duration has been extended and initial value of the contract exceeded by 48%.

Amendment to the Authorization Agreement “Travel Services and Services Associated with Travel Services” No. 4.4-1 / 27, which has been formalized as Annex 2 to the respective agreement, entered into force on 01.06.2019. Pursuant to Annex 1, the parties agreed to amend the contract on the basis of § 123 (1) 4) of the Public Procurement Act and clause 12.3 of the Contract. The amendment agreement was conditioned by the occurrence of unforeseen circumstances for the diligent contracting authority, more precisely the unpredictable increase in the need for the services used by the university.

In the present case, the increase in unforeseen need means that it was not foreseeable that the financial volume of travel services ordered by the various units of the university would increase to the extent that it in reality did. Both the estimated value of the framework contract and the deadline for performance (which is also linked to the estimated cost) can only be determined on the basis of the previous volume of services with the same content over a given period. The university used the volumes of the previous framework agreement, also concluded through public procurement, as a basis and also took into account the increase of certain volumes. However, the forecast made on this basis turned out to be too modest.

In the case of the framework agreement at issue, the monthly volume at the beginning of the contract was more or less the same as in the case of the previous framework agreement, but over time it began to increase due to both increased prices and higher travel volumes. When the framework agreement was concluded, it was not foreseeable that ticket prices and the number of trips would increase this quickly and by that much. However, this was not foreseen when concluding the framework agreement, the corresponding increase was not normal or expected by periods (which was also taken into account when forecasting the total volume of the framework agreement), but significantly higher.

After concluding the contract, from May 2017 until the end of the year, the volume of the service was approximately EUR 87,000 per month, which was in line with the volume expected before the organization of the public procurement. The jump took place in the 4th quarter of 2018, where the average volume of procured services per month was approximately EUR 121,000, and by the end of the 1st quarter of 2019, it had increased to approximately EUR 128,000 per month. This represents an increase of almost 50% from the initially forecast, which is not normally foreseeable.

This was not a foreseeable event for a diligent contracting authority which could have been foreseen with sufficient precision. The preparation of the new public procurement started earlier than usual, but due to the monetary value of the procurement (university's largest public procurement excluding construction), it took time to prepare and it was not possible to conclude a new framework contract without amending the existing framework contract. Interruption of the service in the meantime would not have been conceivable, and it would also have been very problematic from a legal point of view to use the negotiated procedure without prior publication of a contract notice.

In the opinion of Tallinn University, the amendment of the framework agreement was justified and necessary and in accordance with the conditions specified in clause 123 (1) 4) of the Public Procurement Act.

First Level Control response:



FLC asks to take into account the reductions of 5% already made for the same procurement infringement in the fifth period FLC report.

The procurement no 183651 „Travel agency and similar services (Reisiteenused ja reisiteenustega kaasnevad teenused)” was verified by SSSC (Riigi Tugiteenuste Keskus), the error of restrictive selection criteria (IATA) was detected and accordingly the FLC has applied 5% correction to travel costs purchased via AS Estravel under the procurement 183651 from fifth period report retroactively from the 1, 2 and 3 period reports 5% from following invoices:

Report number and BL	Cost document presented by	Number of invoice	Full cost of the Document EUR	5% deduction EUR
1.1 BL3	Estravel AS	I3282275-01	454,05	22,70
1.1 BL3	Estravel AS	I3300331-01	258,02	12,90
1.1 BL3	Estravel AS	I3293176-01	552,11	27,61
1.2 BL3	Estravel AS	I3390589-01	502,79	25,14
1.2 BL3	Estravel AS	I3488533-01	52,01	2,60
1.3 BL3	Estravel AS	I3520731-01	317,63	15,88
1.3 BL3	Estravel AS	I3547583-01	192,3	9,65
1.3 BL3	Estravel AS	I3547583-04	196	9,80
1.3 BL3	Estravel AS	I3520731-02	476	23,80
1.3 BL3	Estravel AS	I3570865 -01	251,18	12,56
1.3 BL3	Estravel AS	I352073101; I35273102	155; 238; 7,55	20,03
1.3 BL4	Estravel AS	I356385701	50,82	2,54

* An additional check has identified a double deduction. The correct deduction from Estravel 's bills is 165.21 eur. The corresponding adjustment 20,03 eur will be made by FLC in the 6 period report.

During the inspection of reports 1, 2 and 3 the FLC did not identify the irregularity in those costs as by the end of the third period, travel services were purchased for the implementation of project on the basis of framework agreement no 4.4-1/27 and the total amount were 3303,51 EUR. The CB Program Manual 2014-2020 stipulates the procurement obligation in accordance with the applicable thresholds, and it is not required to take price comparison for costs under EUR 5.000 EUR. Therefore, the procurement was not checked during inspection of reports 1, 2 and 3.

Unfortunately, FLC does not have enough information to assess the purchase of travel services used at the entire Tallinn University during cost checks to assess the fulfilment of the contract. Therefore, the overrun of framework contracts can be unseen by FLC.



FLC agrees that the overrun of the agreement is quite high and it indicates irregularity. However, SSSC will look into it in more detail and analyse the extent of the infringement.

Managing Authority response:

The MA response will be limited to general programme requirements; this is the main role and expertise of the MA.

The MA would require all controls to follow the Programme Manual (such as the audit trail on travel costs and the thresholds of the bid-at-three or procurements). In addition, the MA relies on the FLC work and in particular highlights that the Estonian FLC has access to public procurement expertise. The MA highlights further, that an FLC correction has been made, at least partially covering the SLA finding. Thus, if the finding remains, the already made cut should be taken into consideration to avoid a double penalty.

The MA furthermore wishes to highlight the comment made by the FLC regarding the availability of documents and the consequences that has for what can be checked at different levels, and what furthermore can be considered a fair finding on the programme level.

For this the MA wishes for general principles to be harmonised among the Second Level Auditors and the Audit Authority. If any feedback is needed from the FLC's, the MA is willing to help with providing contacts or asking for relevant information. Once the conclusions are in place, the MA is willing to share any further guidance and expectations with the FLC's and project partners to clarify what should be the scope of the First Level checks.

Final conclusion by the auditor:

Auditors note that the reductions of 5% have been made for the procurement no 183651 „Travel agency and similar services (Reisiteenused ja reisiteenustega kaasnevad teenused)” in the fifth period FLC report due to restrictive selection criteria (IATA). The FLC and MA should also take into account that the contracting authority has made a significant modification to contract no 4.4-1/27, contract duration has been extended and initial value of the contract exceeded by 48%. The auditors find that the errors made in the procurement process are substantial and require a financial correction of 25% of the certified expenditure due to a substantial contract modification according to point 23 (2) of the Guidance on financial corrections (C(2019) 3452 final dated 14/05/2019). Thus, further corrections should be applied.

The auditors would like to point out that estimated costs for travel and accommodation exceeded 5000 euros in the project application (Partner budget (TLU) - breakdown per budget line: WP 1 - 900 euros, WP 2 - 4000 euros, WP 3 - 6200 euros), thus public procurement no 183651 should have been checked by FLC.

As the findings may impact other projects where Tallinn University is one of the partners, the FLC should pay attention to the travel and accommodation costs of Tallinn University. The costs should be deducted where possible and the Managing Authority should be notified.

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: Elis Kõrvek

Signed electronically

Audit Supervisor: Kadi Peets

Signed electronically

