



Estonia-Latvia Cross-Border Co-operation Programme 2014-2020

Project No:	Est-Lat 55
Project name:	ESTLAT harbours
Project Partners Name (LP/PP):	Kõiguste Marina MTÜ (PP)
Fund:	European Regional Development Fund
Target objective:	SO 3.1 An improved network of small harbours with good levels of service
Audit No:	ELP-8/2019
Audit organisation:	Ministry of Finance

Final audit report

28.10.2019



REPUBLIC OF ESTONIA
MINISTRY OF FINANCE

SUMMARY OF AUDIT RESULTS

Audit outcome:

Based on the audit work performed, the auditors have obtained reasonable assurance that the funding has generally been used in material aspects in the intended manner, in a reasonable and efficient way and in accordance with the objectives and requirements laid down in the subsidy contract and the programme manual. However, the project partner has not carried out public procurement in compliance with the Public Procurement Act paragraph 3. Simplified procurement contract notice with a reference no 194221 „Strengthening of the coast, construction of piers for Kõiguste Marina“ (*Kõiguste sadama maatudede ehitus, ujuvkaide tarne ja paigaldus*) published on 1st of March 2018 contains disproportionate selection criteria and in the technical specifications a specific manufacturer is mentioned – *Rolec Classic teeninduspost* and the reference is not accompanied by the words ‘or equivalent’.

Audit opinion¹: Significant findings

- **Finding No 4.1:** The project partner has not carried out a public procurement with a reference no 194221 in compliance with the Public Procurement Act paragraph 3. Total ineligible costs €8,798.65, within the audit scope €5,000.00 and outside the audit scope €3,798.65.

The project audit has been carried out in compliance with the International Standards for the Professional Practice of Internal Auditing.

We wish to thank the auditee for the assistance and cooperation provided during the audit.

We confirm that the final audit report consists of **9** pages.

¹ **Significant findings** are those that have or may have a financial impact (i.e. ineligible expenditure). **Non-significant findings** are those that have no financial impact but whose correction will help the beneficiary to lower risks while implementing the project.

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PART A

1. Audit object and audited expenses

1.1 GENERAL INFORMATION ABOUT THE AUDIT	
Project name:	ESTLAT harbours
Project number:	Est-Lat 55
Priority and target objective:	SO 3.1 An improved network of small harbours with good levels of service
Beneficiary (LP/PP):	Kõiguste Marina MTÜ (PP)
Contact person:	Küllli Akkermann
Date of subsidy contract:	13/10/2017
Audit scope and period:	Period 1: 01.06.2017 - 30.09.2017; €2,100.00 Period 3: 01.02.2018 - 31.05.2018; €101,500.00
1.2 INFORMATION ABOUT THE AUDIT	
Basis:	<ul style="list-style-type: none"> - Article 127(1) of the Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2103 - Audit Authority's work plan for 2019.
Objective:	<p>To provide an audit opinion that:</p> <ul style="list-style-type: none"> - the operation was selected in accordance with the selection criteria for the operational programme; - the expenditure declared to the Commission corresponds to the accounting records and that the required supporting documentation demonstrates an adequate audit trail; - for expenditure declared to the Commission, outputs and results underpinning payments to the beneficiary have been delivered.
Person(s) carrying out the audit:	Elis Kõrvek, Financial Control Department, Audit Unit I, auditor
Audit duration:	14/05/2019 – 17/09/2019
Methodology:	Audit manual of the Estonia-Latvia Programme
Audit procedures performed at the beneficiary:	<p>During the on-the-spot check, interviews were conducted with the persons involved in project implementation and analysis/evaluation was made of the following:</p> <ul style="list-style-type: none"> - project's actual implementation, - documentation related to project implementation, - eligibility of costs, - arrangement of book-keeping related to the project, - existence of co-financing, - use of the logos.
Sampling methodology (if applicable, then information shall be provided by the AA):	Not applicable

1.3 AUDITED EXPENSES				
Total amount of certified expenses subject to auditors' opinion on the basis of cost documents:	Period 1: 01.06.2017 - 30.09.2017; €2,100.00 Period 3: 01.02.2018 - 31.05.2018; €101,500.00			
Size of the sample (EUR; %) ² :	€103,600.00, 100%			
Ineligible expenditure identified (EUR): amount				
	EU contribution	National public contribution	Private sector contribution	Total
Ineligible amount (EUR):	4,250.00	0.00	750.00	5,000.00
Ineligible amount outside the audit scope (EUR):	3,228.85	0.00	569.80	3,798.65
Error rate (%) ³ :	8.49%			

2. Limitations

The audit procedures were carried out in compliance with internationally accepted auditing standards⁴ and the audit report was prepared using the principles of independence and objectivity.

Auditors conclude that all data presented during the audit and other oral and written information made available during the audit presents a true and fair view of the activities performed during the project implementation and are sufficient to provide an opinion about the project. In case of additional information that was not provided or was not known to auditors, the conclusions reached by auditors might have been different.

3. Audit follow-up activities

The beneficiary shall take into account the findings and recommendations made in Part B and the decisions made by the MA. The AA shall monitor the implementation of recommendations made by the auditors.

² If a sample was not used for auditing, the size of the sample is the total population in euros and the share of audited expenses to total population is 100%.

³ Share of ineligible expenses to audited expenses (%). If a sample was used for auditing, the share of ineligible expenses to the sample size shall be used.

⁴ The International Professional Practices Framework (IPPF) of the Institute of Internal Auditors.

PART B

AUDIT FINDINGS

1. Use of funding as intended

The funding has generally been used in material aspects in the intended manner, in a reasonable and efficient way and in accordance with the objectives and requirements laid down in the subsidy contract and the programme manual.

2. Accuracy of book-keeping records

The book-keeping records for the project are in all material aspects in compliance with the current legislation.

3. Amount and timing of funding

The granting of funding has in all material aspects been made available in the amount foreseen and on time, and the co-financing has been guaranteed.

4. Carrying out of public procurements

According to the programme manual project partners, who are not contracting authorities of public sector may award a contract for the purchase of works that are above the threshold of a simplified procurement procedure. The project partner has carried out a simplified procurement procedures with a reference numbers 194221 electronically in the e-procurement register.

Significant finding no 4.1 – The project partner has not carried out a public procurement with a reference no 194221 in compliance with the Public Procurement Act paragraph 3. Total ineligible costs €8,798.65, within the audit scope €5,000.00 and outside the audit scope €3,798.65.

The auditor has identified a noncompliance with the Estonian Public Procurement Act (passed 14.06.2017) § 3 subsection 1, the contracting authority or the contracting entity acts transparently, verifiably and proportionately upon carrying out public procurement. Public Procurement Act § 3 (2) specifies that all persons must be treated equally 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.

According to the Programme manual⁵ point 5.5.2 the project partners, who are not contracting authorities of public sector may award a contract for the purchase of works that are above the threshold of a simplified procurement procedure⁶ in accordance with the Public Procurement Act. To follow the rules, the programme manual specifies, that the procurements have to be carried out in using a simplified procurement procedure.

The project partner Kõiguste Marina MTÜ has carried out a simplified procedure with a reference no 194221 "Strengthening of the coast, construction of piers for Kõiguste Marina" (*Kõiguste sadama maatudede ehitus, ujuvkaide tarne ja paigaldus*)" electronically in the e-procurement register (published on 01.03.2018).

➤ The procurement contract notice with a reference no 194221 contains **disproportionate selection criteria**:

III.1.2) Economic and financial standing:

⁵ Cooperation Programme Interreg V-A — Estonia–Latvia for priority 3 Better network of harbours

⁶ Simplified procurement threshold for supplies and services is 30 000 euros, for works 60 000 euros.

1) Pakkuja riigihanke algamise ajaks lõppenud majandusaasta netokäive peab olema vähemalt 1,5 mln EUR igal aastal. Edukas pakkuja esitama viimase lõppenud majandusaasta aruande väljavõtte, millest selgub pakkuja majandusaasta netokäive.

The Public Procurement Act § 100 subsection 3 stipulates that the contracting authority or entity is not allowed to require the tenderer or candidate to have a net turnover exceeding the estimated value of the public contract more than twice. In case of the simplified procurement with a reference no 194221 the required net turnover exceeds the contract value 8 times. According to the signed contract on 19th of March 2018 the contract value is 175,973.09 euros.

- **In the technical specifications a specific manufacturer is mentioned – *Rolec Classic teeninduspost (4*16 amp, veekraan koos voolikuga 30 m)* and the reference is not accompanied by the words 'or equivalent'.** According to the Public Procurement Act § 88 subsection 6 the technical specifications should not refer to a specific source, process, trade mark, patent, type, origin or type of production with the effect of favouring or eliminating certain undertakings or certain products. Such reference is permitted, on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the public contract in accordance with subsections 1 and 2 of this section is not possible. Such reference is accompanied by the words 'or equivalent'.

The abovementioned requirements are restrictive and not proportionate to the subject matter of the contract, thus not ensuring equal access for tenderers and have the effect of creating unjustified obstacles to the opening up of public procurement to competition.

According to the Guidelines to Financial Corrections for the Interreg V-A Estonia-Latvia Chapter 2 and EC Guidelines 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 (Guidelines) Section 2 point 11 setting selection criteria not proportionate to the subject-matter of the contract and when in the technical specifications specific trademarks or brands are required could result with financial correction in amount of 5%, 10% or 25% of the expenditure of the contract, depending on the seriousness of the violation.

The auditors find that the 5% correction rate is appropriate, because a simplified procurement procedure with a reference no 194221 was carried out electronically in the procurement register by the project partner, who is not a contracting authority. Thus, the project partner has made the procurement documents electronically available to potential tenderers in order to open up the procurement to competition. Also the minimum level of competition was ensured – two economic operators submitted tenders that were accepted and fulfilled the selection criteria.

As the procurement contract's price is €175,973.09 euros, then the 5% correction rate results in total of ineligible costs €8,798.65, within the audit scope €5,000 and outside the audit scope €3,798,65.

Risk to the project implementation:

Non-compliance with the rules on public procurement, restrictive and not proportionate selection criteria to the subject matter of the contract, may result with financial correction in amount of 5% of the procurement contract's price.

Recommendation on the project implementation:

The project partner should pay back the ineligible expenditure in the amount of €8,798.65 euros, within the audit scope €5,000 and outside the audit scope €3,798,65.

The Managing Authority should start the procedure for reclaiming the ineligible amount.

Comments of the beneficiary:

As there is mentioned in audit report according to the programme manual project partners, who are not contracting authorities of public sector may award a contract for the purchase of works that are above the threshold of a simplified procurement procedure.

I can hereby confirm that we have been following the procedure and carried out simplified procurement procedure.

1) Estonian building contracts general terms standard (*Ehituse töövõtulepingute üldtingimused ETÜ 2013*) says p. 8.1.1 that contractor can make other suggestions and contractor can't refuse in case they are equivalent products or materials.

8.1.1. *Töövõtjal on õigus teha muudatusi tellija poolt või korraldusel koostatud ehitusprojektis või muudes lähteandmetes ja ehitises kasutatavates ehitustoodetes (sh viimistlusmaterjalides) üksnes tellija eelneval kirjalikul nõusolekul, arvestades punktis 3.1.3 sätestatud. Kui tegemist on tehniliselt samaväärsete ehitustoodete, projektilahenduste või seadmetega, siis tellijal ei ole õigust nende kooskõlastamisest keelduda. Samaväärsust peab tõendama töövõtja, esitades selleks vajalikud andmed või dokumendid.*

I do admit that there could have been mentioned or equivalent, but it also comes of general terms. All the tenderers had a chance to also make proposals or ask extra questions during procedure.

Another thing is that abovementioned product is nothing special, but most probably most common service point model used in this part of world and its only minor part of contract.

2) Requirements to turnover: we do find that building the pontoons and placing them is special work, it is the main facility of marina. First of all it was important to make sure it is built by specialists in time and with good quality (as the season is short we can't afford any failures during season and damages done to visiting boats).

We had 2 companies applying in this tender. All the interested parties were able to contact us on tender e-site. We haven't had any proposals or enquiries to decrease the amount of turnover. If there would have been any we would certainly have considered to make changes in our procurement document. As mentioned our aim has always been get good quality building with best price and not to leave any interested parties aside.

Comments of the Financial Control (FC):

The Public Procurement Act regulates the simple procedure only from Chapter 3 "Particular Procurement Regimes" in paragraph 125. According to the Public Procurement Act the contracting authority Kõiguste Marina MTÜ does not have to fulfil requirements in Chapter 2 and in § 88 and § 100. Therefore, the requirements stated in § 88 and § 100 cannot be brought out as grounds for infringement. According to paragraph 125 the contracting authority follows the general principles of carrying out public procurement provided for in § 3 of Procurement Act. However FC agrees, that the required net turnover is not proportional and reasonable in relation to the estimated value and purpose of this procurement. Required high net turnover as well as naming a specific manufacturer can be considered as disproportionate and restrictive selection criteria.

Comments of the MA:

Managing Authority agrees with the Audit Authority's recommendation.

Person responsible for implementation of the recommendation and date:

Ege Ello, Head of the Managing Authority, 30.12.2019.

Additional comment by the auditor

The references to the Public Procurement Act requirements § 88 and § 100 are brought out in the audit report for the purposes to illustrate the logic behind the noncompliance with the Public Procurement Act paragraph 3, what

kind of requirements are considered restrictive and not proportionate to the subject matter of the contract. Thus, the references to the Public Procurement Act § 88 and § 100 are not the grounds for infringement in the finding.

5. Granting of state aid

The state aid has been granted to the project and used by the beneficiary in correct manner, in accordance with the state aid rules.

6. Communication and publicity

When informing and disclosing the use of funding, the beneficiary has in all material aspects followed the current legislation.

We confirm that the final audit report has 9 pages.

Audit manager:

(Signed electronically)

Elis Kõrvek

Auditor of Audit Unit I

Financial Control Department

Audit supervisor:

(Signed electronically)

Kadi Peets

Head of Audit Unit II

Financial Control Department

Tallinn, 28/10/2019