



Co-funded by the European Union

Estonian EU External Border Programme 2014-2020

Project No:	ER58
Project full name:	Increasing entrepreneurial culture and competitiveness among artisans and craftsmen in Võru and Pskov
Project acronym:	BestNest
Project Partner Name (LP)	Võru Town Government
Thematic objective:	TO 1 Business and SME development
Audit No:	EVP-13/2024
Audited organization:	Võru Town Government

Final audit report

13.09.2024

SUMMARY OF AUDIT RESULTS

Audit outcome:

Based on the audit work performed, the auditors have obtained reasonable assurance that the expenditure declared is in all material aspects legal and regular and in compliance with the programme rules apart several significant and non-significant findings related to non-compliance with national procurement laws.

Audit opinion¹:

- significant and non-significant findings

List of significant findings:

- 4.1.1 Non-significant finding – Eco friendliness criteria has not been met
- 4.1.2 Non-significant finding – Insufficient rules to ensure avoiding conflicts of interest
- 4.1.3 Non-significant finding – Not enough time was given for submission of tenders after modifying the basic documents through clarification
- 4.2.1 Non-significant finding – Tenderer warrant was not requested
- 4.2.2 Non-significant finding – The beneficiary has not requested evidence about the average salary the employees of the tenderer
- 4.2.3 Non-significant finding – Subcontractors absence of grounds for elimination was not verified
- 4.2.4 Non-significant finding – Insufficient rules to ensure avoiding conflicts of interest
- 4.2.5 Non-significant finding – Decision not to subdivide the procurement into parts within the proceedings was not stated in the procurement documents
- 4.2.6 Significant finding – Clarifications were not submitted within the timeframe set by law
- 4.2.7 Significant finding – Not enough time was given for submission of tenders after modifying the basic documents
- 4.2.8 Significant finding – The Beneficiary has not verified the successful tenderer's compliance
- 4.3.1 Non-significant finding – Tenderer warrant was not requested
- 4.3.2 Non-significant finding – Insufficient rules to ensure avoiding conflicts of interest

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.

- 4.3.3 Non-significant finding – Subcontractors absence of grounds for elimination was not verified
- 4.3.4 Non-significant finding – Procurement contract has been fulfilled in a different way from the original conditions
- 4.3.5 Non-significant finding – Decision not to subdivide the procurement into parts within the proceedings was not stated in the procurement documents

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 **17** pages.

TABLE OF CONTENTS

SUMMARY OF AUDIT RESULTS.....	2
TABLE OF CONTENTS.....	4
PART A.....	5
1. AUDIT OBJECT AND AUDITED EXPENSES.....	5
2. LIMITATIONS.....	6
3. AUDIT FOLLOW-UP ACTIVITIES.....	7
PART B.....	8
AUDIT FINDINGS.....	8
4.1 Public procurement 263351 findings.....	8
4.1.1 Non-significant finding – Eco friendliness criteria has not been met.....	8
4.1.2 Non-significant finding – Insufficient rules to ensure avoiding conflicts of interest.....	9
4.1.3 Non-significant finding – Not enough time was given for submission of tenders after modifying the basic documents through clarification.....	9
4.2 Public procurement 236205 findings.....	10
4.2.1 Non-significant finding – Tenderer warrant was not requested.....	10
4.2.2 Non-significant finding – The beneficiary has not requested evidence about the average salary of the employees of the tenderer.....	10
4.2.3 Non-significant finding – Subcontractors absence of grounds for elimination was not verified.....	11
4.2.4 Non-significant finding – Insufficient rules to ensure avoiding conflicts of interest.....	11
4.2.5 Non-significant finding – Decision not to subdivide the procurement into parts within the proceedings was not stated in the procurement documents.....	12
4.2.6 Significant finding – Clarifications were not submitted within the timeframe set by law.....	12
4.2.7 Significant finding – Not enough time was given for submission of tenders after modifying the basic documents.....	13
4.2.8 Significant finding – The Beneficiary has not verified the successful tenderer’s compliance.....	14
4.3 Public procurement 259004 findings.....	15
4.3.1 Non-significant finding – Tenderer warrant was not requested.....	15
4.3.2 Non-significant finding – Insufficient rules to ensure avoiding conflicts of interest.....	15
4.3.3 Non-significant finding – Subcontractors absence of grounds for elimination was not verified.....	15
4.3.4 Non-significant finding – Procurement contract has been fulfilled in a different way from the original conditions.....	16
4.3.5 Non-significant finding – Decision not to subdivide the procurement into parts within the proceedings was not stated in the procurement documents.....	16

PART A

1. Audit object and audited expenses

1.1 GENERAL INFORMATION ABOUT THE AUDIT	
Project name:	Increasing entrepreneurial culture and competitiveness among artisans and craftsmen in Võtu and Pskov
Project acronym:	BestNest
Project number:	ER58
Strategic and thematic objective:	TO 1 Business and SME development
Beneficiary audited (LP):	Võru Town Government
Contact person of the beneficiary:	Kait Kabun
Date of subsidy contract:	21.08.2020
Audit scope and period:	01.09.2020-31.08.2023
1.2 INFORMATION ABOUT THE AUDIT	
Basis:	<ul style="list-style-type: none"> - Agreement on financing and implementation of Cross-Border Cooperation Programme "Estonia-Russia" 2014-2020 - Audit Authority's work plan for 2024.
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 cross-border programme. - the expenditure declared to the participating nations and the Commission corresponds to the accounting records and that the required supporting documentation demonstrates an adequate audit trail. - for expenditure declared to the participating nations and the Commission, outputs and results underpinning payments to the beneficiary have been delivered.
Person(s) carrying out the audit:	<p>Indrek Alliksaar, KPMG Baltics OÜ, Auditor</p> <p>Tanel Kullison, KPMG Baltics OÜ, Auditor</p> <p>Liina Lember, KPMG Baltics OÜ, Auditor</p> <p>Maarja Mändmaa, KPMG Baltics OÜ, Auditor</p> <p>Kärt Kibus, KPMG Baltics OÜ, Auditor</p>
Audit duration:	21.06.2024 – 13.09.2024
Methodology:	Audit manual of the Estonia-Russia Programme

Audit procedures performed at the beneficiary audited:	During the on-the-spot check, interviews were conducted with the persons involved in project implementation and analysis/evaluation was made of the following: <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 Audit Authority):	<ul style="list-style-type: none">- population size: EUR 377 708,93- sampling method: Monetary Unit Sampling			
1.3 AUDITED EXPENSES				
Total amount of certified expenses subject to auditors' opinion on the basis of cost documents:	01.09.2020-31.08.2023, EUR 377 708,93			
Size of the sample (EUR; %)²:	EUR 353 015,99, 93,5%			
Ineligible expenditure identified (EUR): amount				
	EU contribution	National public contribution	Private sector contribution	Total
Ineligible amount (EUR):	0	0	0	0
Ineligible amount outside the audit scope (EUR):	0	0	0	0
Error rate (%)³:	0%			

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.

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.

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 Managing Authority. The Audit Authority shall monitor the implementation of recommendations made by the auditors.

PART B

AUDIT FINDINGS

1. Use of funding as intended

The funding has 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 apart from several findings related to non-compliance with national procurement laws.

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

The beneficiary has not carried out public procurements in compliance with the current legislation.

4.1 Public procurement 263351 findings

Võru Linnavalitsus launched an open procurement no 263351 "Loomekoja sisustuse ost" in the Public Procurement Registry on 13th April 2023. As a result of the procurement a contract no 321 was concluded with Saloni Büroomööbli AS (10289177) to buy furniture.

4.1.1 Non-significant finding – Eco friendliness criteria has not been met

According to § 77 section 6¹ of the Public Procurement Act criteria: Where eco friendliness criteria have been set to supplies or services that constitute the subject matter of the public contract, the procurement documents must contain terms and conditions that take into account the energy and environmental impact throughout the service life.

The eco friendliness criteria have been established for furniture by a regulation issued by the Minister of the Environment⁵.

The Beneficiary has not been in compliance with § 77 section 6¹ of the Public Procurement Act by failing to add mandatory environmentally friendly terms in procurement documents. Mandatory environmentally friendly terms are set out in Annex 1 to Regulation No 35 of the Minister for the Environment.

⁵ https://www.riigiteataja.ee/dynaamilised_linqid.html?dyn=123022023007&id=102072021013:121022023005

Risk to the project implementation: If the beneficiary does not comply with the laws and regulations it may result in ineligible costs to the project.

Recommendation on the project implementation: We recommend following regulation issued by the Minister of the Environment and Public Procurement Act.

4.1.2 Non-significant finding – Insufficient rules to ensure avoiding conflicts of interest

According to § 3 clause 4 of the Public Procurement Act criteria: the authority or the entity avoids a competition-distorting conflict of interest.

The internal rules for procurement are not sufficient to ensure substantive measures to avoid conflicts of interest set out in Public Procurement Act § 3 clause 4, as the members of the procurement committee are not required to confirm the absence of conflicts of interest in writing forms or in document management system, which is contrary to the transparency and verifiability principles set out in § 3 clause 1.

According to the audit's assessment this is a non-significant finding, as an indirect measure to prevent conflicts of interest is established in clause 22 of the procurement regulations, and no connections between the members of the procurement committee and the tenderers were identified.

Risk to the project implementation: If the beneficiary does not ensure sufficient measures to avoid conflicts of interest in internal procurement rules it may result in ineligible costs to the project.

Recommendation on the project implementation: We recommend establishing a rule in procurement regulation or another internal document, requiring members of the procurement committee to confirm the absence of conflicts of interest in writing, either in the document management system, through a separate confirmation letter, or in the Public Procurement Register.

4.1.3 Non-significant finding – Not enough time was given for submission of tenders after modifying the basic documents through clarification

According to § 46 section 3 of the Public Procurement Act criteria: Clarifications or documents allowing for clarification submitted regarding procurement documents must not contain new information without which it is not possible to submit tenders or without which the submitted tenders would become non-compliant with the procurement documents or their content would change. It is prohibited to modify the procurement documents based on the clarifications and documents allowing for clarification.

The Beneficiary has not been in compliance with § 46 section 3 of the Public Procurement Act by submitting clarifications which contained more detailed information without following the procedure established in the Public Procurement Act § 81. The Beneficiary has given more detailed information by answering questions ID736811ja ID737710.

According to the audit's assessment this is a non-significant finding. The State Shared Service Centre has explained it with following arguments we agree with:

The information contained in the response ID 736811 given by the contracting authority, that Teraslehte tööpinna peal ei tuleja infoleti fassaad on sile Toronto Elm, is presented in the drawing "Ruum 113 infolett". Since the written notes on the drawing and the drawing itself have been ambiguous, the contracting authority has explained which requirement should be considered more precisely. Therefore, it is not a question of the contracting authority providing new substantive information that was not included in the procurement documents, but a clarification, which the tenderers had to use in case of differences in the procurement documents.

This is also the case with response ID 737710, where the information provided by the contracting authority was included in various drawings ("RUUM 101 SEINAKAPP RIIULITE ja TEHNIKA", "RUUM 112 SEINAKAPP", "RUUM 113 VITRIINKAPP" and "RUUM 113 INFOLETT") and in the text notes of these drawings. Since the written notes and the

drawings itself were somewhat ambiguous, the contracting authority explained which information should prevail, thus not providing new information. At this point, it must also be emphasized that the subsection 3 of section 46 of Public Procurement Act prohibits the provision of such new information, 1) without which it is not possible to submit tenders or 2) without which the submitted tenders would become non-compliant with the procurement documents or 3) their content would change. The contracting authority has merely explained in subsection 4 of response ID 737710 his preferences regarding the content of the box. However, the tenderer's offer would have been equivalent in any case if he had offered any set of sockets Simon Ofiblock Line K45. In addition, it is not possible to claim that the contents of the box would change the cost of the tenders.

This finding was changed from significant to non-significant after additional relevant information and explanations were provided by the auditee and Programme authorities.

Risk to the project implementation: If the competition is not effectively used, it may result in the project's goals not being achieved at the best possible price.

Recommendation on the project implementation: We recommend following Public Procurement Act so that any indirect conflict with § 46 section 3 be avoided in the future.

4.2 Public procurement 236205 findings

Võru Linnavalitsus launched an open procurement no 236205 "Loomekoja ehitamine" in the Public Procurement Registry on 14th May 2021. As a result of the procurement a contract no 447 was concluded with Lasten Ehitus OÜ (14048507) to reconstruct the existing manufactory suitable for the activities of Loomekoda.

4.2.1 Non-significant finding – Tenderer warrant was not requested

According to § 122 section 3 of the Public Procurement Act criteria: In the case of a public works contract or works concession, the contracting authority or entity requires in the procurement documents that the tenderer warrant in their tender that they will not enlist, in the performance of the contract, a subcontractor who would be subject to replacement under subsection 7 of this section.

The Beneficiary has not been in compliance with § 122 section 3 of the Public Procurement Act by failing to request tenderer warrant in their tender.

Risk to the project implementation: If the beneficiary does not comply with the laws and regulations it may result in ineligible costs to the project.

Recommendation on the project implementation: We recommend following Public Procurement Act.

4.2.2 Non-significant finding – The beneficiary has not requested evidence about the average salary of the employees of the tenderer

According to § 115 section 2 clause 2 of the Public Procurement Act criteria: In the case of a public works contract or a works concession whose estimated value equals or exceeds the public procurement threshold, the contracting authority or entity is required to ask the tenderer whose tender it intends to declare suitable for a clarification specified in subsection 1 of this section where: 2) the average salary of the employees of the tenderer or the subcontractors specified in its tender was during the reference period less than 70 per cent of the average salary in the same period in the field corresponding to the subject-matter of the public contract.

According to § 115 section 3 of the Public Procurement Act criteria: In order to identify the circumstances provided for in clause 2 of subsection 2 of this section, the contracting authority or entity requires the tenderer to submit within a reasonable time limit set by the contracting authority or entity such a certificate issued by the competent authority of the country where the tenderer and the subcontractor specified in the tender is established, which contains the following information:

- 1) the average salary paid by the tenderer during the reference period;
- 2) the average salary of each subcontractor specified in the tender during the reference period;
- 3) the average salary during the reference period in the field corresponding to the subject-matter of the public contract in the country where the tenderer and the subcontractor specified in the tender are established.

The Beneficiary has not requested the evidence specified in § 115 section 3 from the successful tenderer in the public procurement no 236205, thereby preventing the procurer from verifying whether the tenderer is not in the situation referred in § 115 section 2 and seeking clarification thereon.

Risk to the project implementation: If the beneficiary does not comply with the laws and regulations it may result in ineligible costs to the project.

Recommendation on the project implementation: We recommend following Public Procurement Act.

4.2.3 Non-significant finding – Subcontractors absence of grounds for elimination was not verified

According to § 122 section 5 of the Public Procurement Act criteria: In the case of a public works contract or works concession, the contracting authority or entity verifies, during procurement proceedings, the inapplicability of grounds for exclusion mentioned in subsection 1 of § 95 of this Act – or, in the fields of defense and security, in clauses 1, 4 or 5 of that subsection – regarding the subcontractors mentioned in the successful tenderer's tender and, following the award of the contract, regarding any subcontractor who is added in the course of its performance. Such verification is not required in a negotiated procedure without prior publication or during performance of the contract awarded as a result of that procedure. The Beneficiary has not been in compliance with § 122 section 3 of the Public Procurement Act by failing to require tenderer warrant in their tender.

There is no evidence to ascertain whether the contracting authority has verified all the absence of grounds for elimination of the subcontractors added after the conclusion of the procurement contract based on § 122 section 5 of the Public Procurement Act.

Risk to the project implementation: If the beneficiary does not comply with the laws and regulations it may result in ineligible costs to the project.

Recommendation on the project implementation: We recommend following Public Procurement Act.

4.2.4 Non-significant finding – Insufficient rules to ensure avoiding conflicts of interest

According to § 3 clause 4 of the Public Procurement Act criteria: the authority or the entity avoids a competition-distorting conflict of interest.

The internal rules for procurement are not sufficient to ensure substantive measures to avoid conflicts of interest set out in Public Procurement Act § 3 clause 4, as the members of the procurement committee are not required to confirm the absence of conflicts of interest in writing forms or in document management system, which is contrary to the transparency and verifiability principles set out in § 3 clause 1.

According to the audit's assessment this is a non-significant finding, as an indirect measure to prevent conflicts of interest is established in clause 22 of the procurement regulations, and no connections between the members of the procurement committee and the tenderers were identify.

Risk to the project implementation: If the beneficiary does not ensure sufficient measures to avoid conflicts of interest in internal procurement rules it may result in ineligible costs to the project.

Recommendation on the project implementation: We recommend establishing a rule in procurement regulation or another internal document, requiring members of the procurement committee to confirm the absence of conflicts of interest in writing, either in the document management system, through a separate confirmation letter, or in the Public Procurement Register.

4.2.5 Non-significant finding – Decision not to subdivide the procurement into parts within the proceedings was not stated in the procurement documents

According to § 27 section 2 of the Public Procurement Act criteria: Where a public procurement, which has not been divided into parts within the proceedings and whose estimated value equals or exceeds the public procurement threshold – or the international threshold, where this Act does not provide a threshold for such a procurement – the contracting authority or entity states, in the procurement documents, the reasons for its decision not to subdivide the procurement into parts within the proceedings. The duty to state the reasons does not apply if the public contract is awarded under a framework agreement or based on a dynamic purchasing system.

The Beneficiary has not stated in procurement documents the reasons for its decision not to subdivide the procurement into parts within the proceedings. The Beneficiary has stated the reasons in the protocol of approval of basic documents which is not publicly available on Public Procurement nor in the public procurer's document management register.

According to the audit's assessment this is a non-significant finding. The State Shared Service Centre has explained it with following arguments we agree with:

According to the explanatory letter of the Public Procurement Act, the contracting authority can only be criticized if his justification is not substantial. However, whether the reasons are expedient and relevant cannot be contested. Therefore, there are no specific rules regarding the possible content and scope of justifications. In the commented edition of the Public Procurement Act, it has been found regarding subsection 2 of section 27 of the Public Procurement Act, that such a reason may consist in the fact that the subdivision of the public procurement into lots makes the performance of the contract excessively complicated or costly, or the need to coordinate the activities of the contractors of the different parts may seriously threaten the proper performance of the contract (Directive 2014/24/EU recital 78). According to the explanatory letter of the Public Procurement Act, the subdivision of the public procurement into lots in construction comes into question only if the separate lots are functioning independently and the building can be used even if the construction of some parts is stuck. In this particular case, one "creative house" was established, that is, one building, which means that the contracting authority ordered one complete solution. If the public procurement was divided into lots, several contractors would have had to operate on one work site at the same time, and the contracting authority himself would have had to take on the role of project manager. The existence of such competence, however, cannot be expected from the contracting authority, which is why it is justified to order the entire construction work of the building from one contractor.

Summing up all of the above, making a financial correction is not justified. This finding was changed from significant to non-significant after additional relevant information and explanations were provided by the auditee and Programme authorities.

Risk to the project implementation: If the beneficiary does not comply with the laws and regulations it may result in ineligible costs to the project. The State Shared Service Centre has applied financial corrections to the maximum extent (25%), which covers the identified deficiencies. Additional corrections are not recommended as a result of procurement verification.

Recommendation on the project implementation: We recommend following Public Procurement Act.

4.2.6 Significant finding – Clarifications were not submitted within the timeframe set by law

According to § 46 section 1 of the Public Procurement Act criteria: The contracting authority or entity makes clarifications pertaining to procurement documents, or documents that allow for clarification, electronically available within three working days following receipt of a corresponding request for clarification. Where the entire public procurement communication and information exchange does not take place electronically, the authority or entity submits clarifications or documents allowing for clarification within the same time limit to all of the economic operators interested in the public procurement, which are known to the authority or entity, in a form reproducible in writing.

The Beneficiary has not been in compliance with § 46 section 1 of the Public Procurement Act by submitting clarifications later than three working days in seven cases and not answering clarification at all in one case.

In our opinion answering questions ID 594122, ID 592884, ID 592873, ID 592717, ID 592625, ID 592622, ID 592377 does not constitute as significant violation as there were more than 6 days remaining before the deadline for submitting tenders after the contracting authority's response.

A significant violation is not answering clarification ID 593062 at all and answering timely submitted clarification ID 595581 with delay and only 3 days remained before the deadline for submitting offers.

In accordance with Annex 1 p. 2.1 subsection 4 of the European Commission's 14.05.2019 violation guide No. C(2019) 3452, a 10 percent financial correction rate must be applied if the tender receipt deadline is not extended and the procurement documents are significantly changed.

Risk to the project implementation: Competition was not effectively used, resulting in the project's goals not being achieved at the best possible price. The State Shared Service Centre has applied financial corrections to the maximum extent (25%), which covers the identified deficiencies. Additional corrections are not recommended as a result of procurement verification.

Recommendation on the project implementation: We recommend following Public Procurement Act.

Comments of the beneficiary audited: Jääme teiste tähelepanekute puhul oma varasemalt antud seisukohtade juurde. Me ei pidanud vajalikuks nende kohta esitada oma seisukohta põhjusel, et isegi kui asuda seisukohale rikkumise esinemise osas, on need rikkumised kaetud varasemalt meile määratud finantskorrektsiooniga.

Comments of the Financial Control and Managing Authority/Joint Technical Secretariat: We agree with the finding, and we have also drawn the beneficiary's attention to said deficiencies during the procurement inspection and according financial correction has been applied.

4.2.7 Significant finding – Not enough time was given for submission of tenders after modifying the basic documents

According to § 46 section 3 of the Public Procurement Act criteria: Clarifications or documents allowing for clarification submitted regarding procurement documents must not contain new information without which it is not possible to submit tenders or without which the submitted tenders would become non-compliant with the procurement documents or their content would change. It is prohibited to modify the procurement documents based on the clarifications and documents allowing for clarification.

The Beneficiary has not been in compliance with § 46 section 3 of the Public Procurement Act by submitting clarifications which contained new information without following the procedure established in the Public Procurement Act § 81. The Beneficiary has given new information by answering questions ID 597046, 595665, 595581, 594858, 594702, 594692, 594237, 593897, 593026, 592575, 592421.

In our opinion, this is a significant violation, as the last answers changing the basic documents of tender No. 236205 were given by the beneficiary on 7.06.2021. The deadline for submitting offers was 10.06.2021. Providing new information 3 days before the submission of tenders is disproportionate within the meaning of § 3 clause 1 of the Public Procurement Act, which could have affected the final results of the procurement. Modifying public procurement documents through explanations is not allowed, because interested parties are not obligated to review the information contained in the communication section of Public Procurement Register.

In accordance with Annex 1 p. 2.1 subsection 4 of the European Commission's 14.05.2019 violation guide No. C(2019) 3452, a 10 percent financial correction rate must be applied if the tender receipt deadline is not extended and the procurement documents are significantly changed.

Risk to the project implementation: Competition was not effectively used, resulting in the project's goals not being achieved at the best possible price. The State Shared Service Centre has applied financial corrections to the

maximum extent (25%), which covers the identified deficiencies. Additional corrections are not recommended as a result of procurement verification.

Recommendation on the project implementation: We recommend following Public Procurement Act.

Comments of the beneficiary audited: Jääme teiste tähelepanekute puhul oma varasemalt antud seisukohtade juurde. Me ei pidanud vajalikuks nende kohta esitada oma seisukohta põhjusel, et isegi kui asuda seisukohale rikkumise esinemise osas, on need rikkumised kaetud varasemalt meile määratud finantskorrektsiooniga.

Comments of the Financial Control and Managing Authority/Joint Technical Secretariat: We agree with the finding, and we have also drawn the beneficiary's attention to said deficiencies during the procurement inspection and according financial correction has been applied.

4.2.8 Significant finding – The Beneficiary has not verified the successful tenderer's compliance

According to § 120 section 1 of the Public Procurement Act criteria: A public contract is awarded on the terms and conditions set out in the procurement documents and in accordance with the tender that has been declared successful.

The Beneficiary has not verified the successful tenderer's compliance with the terms of the procurement contract or lacks evidence regarding the verification of compliance with the conditions set out in contract clauses 11, 17 and 28. The procurer has failed to fulfil of contract clause 33.

In our opinion significant violation is the failure to fulfill the requirements of clause 17 of the contract. According to clause 6.1.1 of the contract, the contractor was required to provide a performance guarantee to the client in the amount specified in clause 17 of the contract, before entering the contract. Thus, the contracting authority included a special condition in the procurement contract, which in essence served as a selection criterion for the successful tenderer, as it required the fulfillment of the condition before the contract was signed. During the audit such evidence was not submitted.

In accordance with Annex 1 p. 2.2 subsection 14 of the European Commission's 14.05.2019 violation guide No. C(2019) 3452, it is a violation with a financial impact, according to which the rate of financial correction is 25%.

Risk to the project implementation: If the beneficiary does not comply with the laws and regulations it may result in ineligible costs to the project. The State Shared Service Centre has applied financial corrections to the maximum extent (25%), which covers the identified deficiencies. Additional corrections are not recommended as a result of procurement verification.

Recommendation on the project implementation: We recommend following Public Procurement Act and to follow conditions set out in procurement documents.

Comments of the beneficiary audited: Olete asunud punktis 4.2.8 seisukohale, et hankija ei ole kontrollinud pakkuja vastavust nõutule. Viidatud seisukohale olete jõudnud meile arusaamatul moel. Nimelt ei ole viidatud nõude näol tegemist küsimusega pakkuja vastavuse kohta vaid sõlmitud hankelepingu täitmise osas. Hankija oli riigihanke alusdokumentide hulka kuuluva hankelepingu punktis 2 „2. ÜLDTINGIMUSTE TÄIENDUSED, MUUDATUSED VÕI MITTE-KOHALDAMINE“ alapunktis 4 muutnud ETÜ 2013 tingimust ja kohustanud töövõtjat esitama tellijale 7 päeva jooksul peale lepingu allkirjastamist tähtsajaga tagatise eritingimuste punktis 17 toodud suuruses ehk tegemist on nõuet üle kandva tingimusega pakkuja kontrollimise faasist lepingu täitmise faasi. Eelnevast tulenevalt olete lõppjärel duses ekslikult asunud seisukohale, et täitmistagatis tuleb esitada enne hankelepingu sõlmimist.

Additional comments of the auditors: The auditors stand by their opinion but have explained more thoroughly the circumstances of violations.

Comments of the Financial Control and Managing Authority/Joint Technical Secretariat: We agree with the finding regarding the non-submission of performance bond, and according financial correction has been drawn up.

4.3 Public procurement 259004 findings

Võru Linnavalitsus launched an open procurement no 259004 “Loomekoja ehitamine” in the Public Procurement Registry on 6th January 2023. As a result of the procurement a contract no 144 was concluded with OÜ Kagukatus (12884910) to complete the construction work of the Loomekoja building.

4.3.1 Non-significant finding – Tenderer warrant was not requested

According to § 122 section 3 of the Public Procurement Act criteria: In the case of a public works contract or works concession, the contracting authority or entity requires in the procurement documents that the tenderer warrant in their tender that they will not enlist, in the performance of the contract, a subcontractor who would be subject to replacement under subsection 7 of this section.

The Beneficiary has not been in compliance with § 122 section 3 of the Public Procurement Act by failing to request tenderer warrant in their tender.

Risk to the project implementation: If the beneficiary does not comply with the laws and regulations it may result in ineligible costs to the project.

Recommendation on the project implementation: We recommend following Public Procurement Act.

4.3.2 Non-significant finding – Insufficient rules to ensure avoiding conflicts of interest

According to § 3 clause 4 of the Public Procurement Act criteria: the authority or the entity avoids a competition-distorting conflict of interest.

The internal rules for procurement are not sufficient to ensure substantive measures to avoid conflicts of interest set out in Public Procurement Act § 3 clause 4, as the members of the procurement committee are not required to confirm the absence of conflicts of interest in writing forms or in document management system, which is contrary to the transparency and verifiability principles set out in § 3 clause 1.

According to the audit's assessment this is a non-significant finding, as an indirect measure to prevent conflicts of interest is established in clause 22 of the procurement regulations, and no connections between the members of the procurement committee and the tenderers were identified.

Risk to the project implementation: If the beneficiary does not ensure sufficient measures to avoid conflicts of interest in internal procurement rules it may result in ineligible costs to the project.

Recommendation on the project implementation: We recommend establishing a rule in procurement regulation or another internal document, requiring members of the procurement committee to confirm the absence of conflicts of interest in writing, either in the document management system, through a separate confirmation letter, or in the Public Procurement Register.

4.3.3 Non-significant finding – Subcontractors absence of grounds for elimination was not verified

According to § 122 section 5 of the Public Procurement Act criteria: In the case of a public works contract or works concession, the contracting authority or entity verifies, during procurement proceedings, the inapplicability of grounds for exclusion mentioned in subsection 1 of § 95 of this Act – or, in the fields of defense and security, in clauses 1, 4 or 5 of that subsection – regarding the subcontractors mentioned in the successful tenderer's tender and, following the award of the contract, regarding any subcontractor who is added in the course of its performance. Such verification is not required in a negotiated procedure without prior publication or during performance of the contract awarded as a result of that procedure. The Beneficiary has not been in compliance with § 122 section 3 of the Public Procurement Act by failing to require tenderer warrant in their tender.

The beneficiary has failed to verify the absence of grounds for elimination of the subcontractors added after the conclusion of the procurement contract based on § 122 section 5 of the Public Procurement Act.

Risk to the project implementation: If the beneficiary does not comply with the laws and regulations it may result in ineligible costs to the project.

Recommendation on the project implementation: We recommend following Public Procurement Act.

4.3.4 Non-significant finding – Procurement contract has been fulfilled in a different way from the original conditions

Pursuant to Section 123 (1) point 7 of the Public Procurement Act, it is possible to change the procurement contract if such a change is not significant. According to Section 123 (2) of the Public Procurement Act, the amendment is significant especially if 1) the amendment adds a condition that would have expanded the number of possible participants in the public procurement if the basic documents of the public procurement had contained such a condition; 2) the amendment results in a change in the ratio of contractual obligations arising from the procurement contract in favor of the entrepreneur in a manner not stipulated in the procurement contract.

Procurement contract has been fulfilled in a different way from the original conditions set out in contract clause 17.

According to the audit's assessment this is a non-significant finding. The State Shared Service Centre has explained it with following arguments we agree with:

The validity of the guarantee was to be 6 months, the guarantee provided by the contractor was valid for 5 months. We consider that the requirement for a guarantee of a shorter validity period of 1 month would not have affected the circle of bidders in such a way that more bidders could participate in the tender. The bidder who received a letter of guarantee from the bank with validity period of 5 months would have also received it for 6 months. Also, the balance of contractual obligations has not changed in favor of the entrepreneur, as despite the length of the guarantee's validity, he still had to provide the guarantee. Consequently, it is an insignificant change.

Even if it is admitted that by accepting the submission of a guarantee with a shorter validity period that is one month shorter the Beneficiary has violated the principles of equal treatment of persons, procurement transparency and effective use of competition, in a situation where the change has no impact on the circle of bidders, there is consequently no possible financial impact on the EC budget.

This finding was changed from significant to non-significant after additional relevant information and explanations were provided by the auditee and Programme authorities.

Risk to the project implementation: If the beneficiary does not comply with the laws and regulations it may result in ineligible costs to the project.

Recommendation on the project implementation: We recommend following Public Procurement Act and to follow conditions set out in procurement documents.

4.3.5 Non-significant finding – Decision not to subdivide the procurement into parts within the proceedings was not stated in the procurement documents

According to § 27 section 2 of the Public Procurement Act criteria: Where a public procurement, which has not been divided into parts within the proceedings and whose estimated value equals or exceeds the public procurement threshold – or the international threshold, where this Act does not provide a threshold for such a procurement – the contracting authority or entity states, in the procurement documents, the reasons for its decision not to subdivide the procurement into parts within the proceedings. The duty to state the reasons does not apply if the public contract is awarded under a framework agreement or based on a dynamic purchasing system.

The Beneficiary has not stated in procurement documents the reasons for its decision not to subdivide the procurement into parts within the proceedings. The Beneficiary has stated the reasons in the protocol of approval

of basic documents which is not publicly available on eHR nor in the public procurer's document management register.

According to the audit's assessment this is a non-significant finding. The State Shared Service Centre has explained it with following arguments we agree with:

According to the explanatory letter of the Public Procurement Act, the contracting authority can only be criticized if his justification is not substantial. However, whether the reasons are expedient and relevant cannot be contested. Therefore, there are no specific rules regarding the possible content and scope of justifications. In the commented edition of the Public Procurement Act, it has been found regarding subsection 2 of section 27 of the Public Procurement Act, that such a reason may consist in the fact that the subdivision of the public procurement into lots makes the performance of the contract excessively complicated or costly, or the need to coordinate the activities of the contractors of the different parts may seriously threaten the proper performance of the contract (Directive 2014/24/EU recital 78). According to the explanatory letter of the Public Procurement Act, the subdivision of the public procurement into lots in construction comes into question only if the separate lots are functioning independently and the building can be used even if the construction of some parts is stuck. In this particular case, one "creative house" was established, that is, one building, which means that the contracting authority ordered one complete solution. If the public procurement was divided into lots, several contractors would have had to operate on one work site at the same time, and the contracting authority himself would have had to take on the role of project manager. The existence of such competence, however, cannot be expected from the contracting authority, which is why it is justified to order the entire construction work of the building from one contractor.

Summing up all of the above, making a financial correction is not justified.

This finding was changed from significant to non-significant after additional relevant information and explanations were provided by the auditee and Programme authorities.

Risk to the project implementation: If the beneficiary does not comply with the laws and regulations it may result in ineligible costs to the project.

Recommendation on the project implementation: We recommend following Public Procurement Act.

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 17 pages.

Audit manager:

Tanel Kullison

Auditor

Audit supervisor:

Indrek Alliksaar

Auditor

Tallinn, 13.09.2024