



# Co-funded by the European Union

## Estonian EU External Border Programme 2014-2020

<b>Project No:</b>	ER3
<b>Project full name:</b>	Development of the unique Narva-Ivangorod trans-border fortresses ensemble as a single cultural and tourist object. 2nd stage.
<b>Project acronym:</b>	Narva-Ivangorod Castles 2
<b>Project Partner Name (LP):</b>	Foundation Narva Museum
<b>Thematic objective:</b>	TO 1 Business and SME development
<b>Audit No:</b>	EVP-12/2024
<b>Audited organization:</b>	Foundation Narva Museum

## Audit report

01.10.2024

## SUMMARY OF AUDIT RESULTS

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### Audit outcome:

Based on the audit work carried out, the auditors have obtained reasonable assurance that the expenditure declared is mostly legal and regular and in compliance with the programme rules apart from some non-compliance with public procurement rules.

### Audit opinion<sup>1</sup>:

- Significant findings.
- Non-significant findings.

### List of findings:

**4.1.** Significant finding - The beneficiary committed a serious breach of the public procurement rules in the conduct of the procurement procedure.

**4.2.** Non-significant finding - The beneficiary did not fulfill its obligations to the required extent when conducting public procurements.

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 **15** pages.

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<sup>1</sup> **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:	Development of the unique Narva-Ivangorod trans-border fortresses ensemble as a single cultural and tourist object. 2nd stage.
Project acronym:	Narva-Ivangorod Castles 2
Project number:	EVP-12/2024
Strategic and thematic objective:	TO 1 Business and SME development
Beneficiary audited (LP):	Foundation Narva Museum
Contact person of the beneficiary:	Marika Mäekivi
Date of subsidy contract:	21.06.2019
Audit scope	Report 4.1, 04.03.2021 - 03.09.2021, 18 217,48€. Report 5.1, 04.09.2021 - 03.03.2022, 263 785,96€. Report 6.1, 04.03.2022 - 03.09.2022, 676 788,99€. Report 7.1, 04.09.2022 - 03.03.2023, 633 059,59€. Report 8.1, 04.03.2023 - 03.09.2023, 666 184,41€. Report 9.1, 04.09.2023 - 31.12.2023, 1 435 547,52€.
1.2 INFORMATION ABOUT THE AUDIT	
Basis:	<ul style="list-style-type: none"> <li>- Agreement on financing and implementation of Cross-Border Cooperation Programme "Estonia-Russia" 2014-2020.</li> <li>- Audit Authority's work plan for 2024.</li> </ul>
Objective:	<p>To provide an audit opinion that:</p> <ul style="list-style-type: none"> <li>- The operation was selected in accordance with the selection criteria for the cross-border programme.</li> <li>- 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.</li> <li>- For expenditure declared to the participating nations and the Commission, outputs and results underpinning payments to the beneficiary have been delivered.</li> </ul>
Person carrying out the audit:	Henry Kibin, Lead auditor of the Financial Control Department
Audit duration:	21.05.2024 - 01.10.2024
Methodology:	Audit manual of the Estonia-Russia Programme
Audit procedures performed at the beneficiary audited:	During the desk-based check, interviews were conducted with the people involved in project implementation and analysis/evaluation were made of the following:

	<ul style="list-style-type: none"><li>- project's actual implementation.</li><li>- documentation related to project implementation.</li><li>- eligibility of costs.</li><li>- arrangement of bookkeeping related to the project.</li><li>- existence of co-financing.</li><li>- use of the logos.</li></ul>		
Sampling methodology	<ul style="list-style-type: none"><li>- population size 3 708 759.84€</li><li>- monetary unit sampling</li><li>- sample size 2 760 038.50€ (no sample expansion used)</li></ul>		
1.3 AUDITED EXPENSES			
Total amount of certified expenses subject to auditors' opinion based on cost documents:	2 760 038.50€		
Size of the sample (%) <sup>2</sup> :	74.42%		
Ineligible expenditure identified (EUR): 122 510.64 €			
	EU contribution	National public contribution	Total
Ineligible amount (EUR):	47 614.29€	7 335.84€	54 950.13€
Ineligible amount outside the audit scope (EUR):	58 541.18€	9 019.33€	67 560.51€
Error rate (%) <sup>3</sup> :	1.48%		
Audit Authority notes that State Shared Service Center has already drawn up a financial correction decision and applied the 25% correction rate. AA agrees with the applied correction rate and finds that SSSC's decision is fully justified. According to AA, SSSC's financial correction decision covers all identified violations with financial impact. AA does not recommend a new separate correction. The beneficiary has contested the financial correction decision in court, the procedure is currently suspended, and the costs have been restored to the project as eligible, the case is ongoing, and the financial correction decision has not been annulled.			

## 2. Limitations

The audit procedures were carried out in compliance with internationally accepted auditing standards<sup>4</sup> and the audit report was prepared using the principles of independence and objectivity.

<sup>2</sup> 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%.

<sup>3</sup> 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.

<sup>4</sup> The International Professional Practices Framework (IPPF) of the Institute of Internal Auditors.

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 is sufficient to provide an opinion about the project. In the 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**

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The beneficiary shall consider 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

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### 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. However, several violations of public procurement rules were detected. Please see point 4 for details.

### 2. Accuracy of bookkeeping records

The bookkeeping 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.

#### **Significant finding 4.1 – The beneficiary committed a serious breach of the public procurement rules in the conduct of the procurement procedure (ineligible expense identified by the State Shared Service Center, 122 510.64 EUR)**

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To achieve the goals of the project, the beneficiary carried out public procurement No. 221239 for public works. During the audit, the Audit Authority (hereinafter AA) identified a serious breach of procurement rules with financial implication - the contracting authority substantially modified the contract.

Public Procurement Act (hereinafter RHS)<sup>5</sup> § 123 stipulates the grounds for lawful amendment of the public contract and the prohibition of substantial modifications. The purpose of the paragraph is to indicate under which circumstances the contracting authority is entitled to make modifications to the contract with the agreement of the other party, and when a new public procurement procedure must be carried out instead of a modification, when the need arises.

Although clause 11.1.1 of the contract of public procurement No. 221239 obliged the contractor to provide the contracting authority with a bank guarantee (for the construction work period from a bank or an insurance company registered in the Republic of Estonia within 14 days from the date of the award of the contract, and valid until the signature of the acceptance report for the construction), the contracting authority allowed the guarantee to be replaced by withholding monthly payments.

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<sup>5</sup> Public Procurement Act (RT I, 01.07.2017): <https://www.riigiteataja.ee/en/eli/508072024001/consolide>.

This was an amendment which would have widened the range of potential participants in a public contract. If the contracting authority had provided the possibility of using a 10% deposit on the construction work as an alternative to a bank guarantee in the original terms and conditions of the procurement contract, then tenderers who did not have the possibility of providing a bank guarantee would also have been able to participate in the procurement process.

Since this is an amendment to the public contract, which would have extended the number of potential participants in the public procurement and the balance of contractual obligations have changed in favor of the tenderer in the course of performing the public contract has been substantially modified within the meaning of RHS § 123 section 2 p 1 and 2. According to p 23 of the European Commission Guidelines (hereinafter Guidelines)<sup>6</sup> such an irregularity will result in a financial correction of 25%. As the State Shared Service Center (hereinafter SSSC) also assessed that it was an irregularity with financial impact, a financial correction decision No. 4 with a 25% rate was issued to the beneficiary on 28.06.2022.

The AA agrees with the irregularity found and the 25% correction rate applied. The AA considers the SSSC's decision reasoned and lawful. The AA specifies that although the contracting authority has challenged the SSSC's decision in court, the procedure is currently suspended and the costs have been reinstated as eligible, the case is still pending, and Decision No. 4 has not been annulled.

In addition, the AA adds that there may have been an infringement in the wording of the guaranteed requirement, as only bank guarantees from a bank or an insurance company registered in the Republic of Estonia were accepted as a guarantee. The AA observes that, although the wording of the requirement would appear to have provided for two possibilities, the contracting authority limited the scope of the issuers of the guarantee to 'bank guarantees'. If unreasonably restrictive conditions have been set in connection with the execution of the procurement contract, such a situation must be a breach of RHS § 3 p 2.

The potential ineligible total cost would be 122 510.64€, including the EU contribution 106 155.47€. As SSSC's financial correction No. 4 would in any case cover the amount of the recovery to be applied to the irregularity, the AA does not analyze the financial impact of the irregularity detail and does not recommend applying a separate correction.

***Risk to the project implementation:*** Failure to comply with the requirements arising from the RHS may result in partial or full recovery of the support.

***Recommendation on the project implementation:*** On 28.06.2022, SSSC prepared financial correction decision No. 4 and applied for a 25% recovery rate. AA agrees with this decision. AA does not recommend applying for a new correction. The AA recommends that the beneficiary should ensure compliance with the obligations arising from the RHS in the future.

***Comments from the Financial Control / Managing Authority/Joint Technical Secretariat:*** We agree with the finding.

***Comments of the beneficiary audited:*** Hankija on seisukohal, et oluline tähelepanek 4.1 ei ole põhjendatud – RHSi ei ole rikutud ning isegi kui oleks, puudub finantsmõju. Hankija on esitanud detailsed igakülgseid põhjendused pooleliolevas haldusasjas nr 3-22-2137 ning on seisukohal, et samadel põhjendustel on alusetu oluline tähelepanek 4.1. Kuivõrd olulise tähelepaneku 4.1 alusel ei kavandata FKOd, siis ei asu Hankija siinkohal detailselt kordama haldusasjas nr 3-22-2137 esitatud põhjendusi ega edastama audiitoritele neid kinnitavaid dokumente. Hankija toob kõige olulisemana esile, et puudub audiitorite seisukoht muudatuse väärtuse osas. Hankija on seisukohal, et muudatuse väärtus ei ületa mingil juhul 10% hankelepingu maksumusest. Kahtlemata ei ole olulise tähelepaneku 4.1 objektiks oleva muudatusega

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<sup>6</sup> Annex to the Commission Decision C(2019) 3452 of 14.5.2019 laying down the guidelines for determining financial corrections to be made to expenditure financed by the Union for non-compliance with the applicable rules on public procurement.



*muudetud hankelepingu üldist olemust. Seega lähtudes mh Riigikohtu seisukohtadest 30.05.2022. a otsuses haldusasjas nr 3-20-1150, ei ole olulises tähelepanekus 4.1 viidatud RHS § 123 lg 2 p-d 1 ja 2 asjasse puutuvad. Hankija seisukohtade õigsust kinnitab mh analoogses küsimuses tehtud Tallinna Halduskohtu 03.03.2023. a otsus haldusasjas nr 3-22-203, milles kohus asus seisukohale, et muudatus, millega hankelepingu maksumusest 10% suuruse garantii andmisele lisati alternatiivina igakuiselt 10% ulatuses kinnipidamine akteeritavate tööde maksumusest, on lubatav RHS § 123 lg 1 p 1 alusel.*

**AA's additional comment:**

*All important facts have been presented in sufficient detail. The observation clearly shows AA's views regarding irregularity, its financial impact and the financial correction decision by SSSC. AA is not going to duplicate its arguments. AA's position has not changed - the beneficiary has committed a serious breach of the public procurement rules in the conduct of the procurement procedure. AA does not, however, recommend a separate correction.*

## **Non-significant finding 4.2 – The beneficiary did not fulfill its obligations to the required extent when conducting public procurements**

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To achieve the goals of the project, the beneficiary carried out public procurements for public works No. 221239 and 238605 and public procurements for services No. 239447 and 165950. During the audit, the AA identified several formal breaches of procurement rules.

### **1. The contracting authority did not allow contractors to rely on equivalent standards.**

Pursuant to RHS § 88 section 3, every reference that the contracting authority makes in the technical specifications to any basis mentioned in RHS § 88 section 2 (including standards) is accompanied by the words **“or equivalent”**.

As the contracting authority mentioned standards in the tender documents for procurement No. 221239, compliance with the above-mentioned requirements of the RHS should have been ensured. Section 7 of the technical specifications of the tender only stipulated that: ***The construction work shall be carried out in compliance with all applicable legislation, standards, technical norms and quality requirements. Regarding quality requirements, the requirements of the RYL and RT specifications, instructions and product specifications or other documents laying down equivalent quality requirements shall be complied with.***

Consequently, the contracting authority infringed the requirements under the provisions of RHS § 88. In the AA's view, the technical specifications should be drafted in such a way as not to artificially reduce competition by imposing requirements favoring a particular economic operator. Where reference is made to a standard, contracting authorities must also consider tenders based on other equivalent systems. In cases where no mandatory indication of equivalence is provided for in the contract documents, where the irregularity is of a pervasive nature and concerns a substantial part of the contract, there are reasonable grounds for financial correction.

However, the AA recognizes that in this case the irregularity may not be of a financial nature, as the nature of the infringement was rather formal. Even though the contracting authority has not correctly indicated equivalence for the standards, it has nevertheless used a reference to equivalent quality requirements in the basic documents of the contract, from which it can be presumed that the admission of equivalence also extends to the standards. In other words, despite shortcomings in the wording, it must be stated that there was a certain substantive compliance with the requirements. If non-compliance should have a financial impact, which is not considered by the AA, the financial correction of SSSC No. 4 would in any case cover the required amount.

In addition to the above, the contracting authority also listed several standards in the technical specifications of the call for tender No. 165950 without adding an equivalence clause. The procurement was carried out based on the old version of the RHS. The AA notes that since the procurement was a negotiated procedure without prior publication of a contract notice for a specific service, which in turn was carried out on the basis of the derogation in RHS § 28

section 6 (the award of the contract was already envisaged with the winner of the design contest and only one entrepreneur received the invitation to tender), the failure to comply with the requirement under RHS § 33 cannot lead to a finding with financial implications. Nevertheless, a negotiated procedure without prior publication of a contract notice is also a public procurement procedure within the meaning of the RHS, in the context of which the mandatory provisions of the RHS must be complied with. In the AA's point of view, the exceptional nature of the procurement procedure cannot be a reason not to comply with the RHS requirements.

The AA recommends that the contracting authority should always include the words "*or equivalent*" in reference to standards in the public procurement documents.

## **2. Measures taken by the contracting authority to avoid competition-distorting conflicts of interest are not sufficient.**

Pursuant to RHS § 3 section 4, the contracting authority is obliged to avoid a competition-distorting conflict of interest.

According to the contracting authority, the project manager J.M., the member of the management board I.P. and the employee A.M. were directly involved in procurement No. 221239. The contracting authority explained that the measures taken by its authority to avoid conflicts of interest were solely the result of the procurement rules and various legal provisions.

The AA notes that the measures resulting from the procurement rules and the legislation are important, but rather indirect and general in nature. These measures help to formally confirm the avoidance of conflicts of interest of the persons involved in the procurement. The information provided by the beneficiary shows that no personalized written confirmations or signed declarations were required from the project leader, board member or staff. Nor were the declarations given in the Public Procurement register (hereinafter RHR). The declaration of no conflict of interest for the board member I.P. was made retrospectively at the time of the audit.

The AA considers that those involved in procurement may not be sufficiently aware of the true nature of the conflict of interest, the risks and the required actions, solely through indirect measures. The AA considers that the contracting authority should adopt some more direct measures in addition to those of an indirect nature.

The AA recommends that the beneficiary should in future impose a requirement for people directly involved in procurement to sign a declaration of independence or a declaration of absence of conflict of interest in due time. In practice, the simplest equivalent alternative is to provide a declaration in the RHR.

## **3. The wording set by the contracting authority in relation to the possibility of interpretation is bad practice.**

P 7 of the award criteria of public procurement No. 221239 provided as follows: *In the case of solutions/formulations/works that are open to different interpretations, unless clarifying questions are raised during the procurement procedure, the interpretation of the contracting authority shall be given priority during the performance of the contract.*

AA notes that the Tallinn Administrative Court in its decision<sup>7</sup> has admonished the contracting authority for having created the possibility for itself in the technical specifications of the contract to choose the more appropriate interpretation in case of inconsistencies in the documents. The Court stressed that the more appropriate interpretation must be based on the rules laid down by the contracting authority itself and not on the discretionary decision of the contracting authority following the opening of the tender. Choosing the most appropriate interpretation for the contracting authority is contrary to the requirement of transparency and verifiability, which in

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<sup>7</sup> TLHK, 05.08.2013 decision No. 3-13-1510.

turn is inconsistent with the RHS § 3 section 1. Consequently, the basic tender documents must provide full and well-thought-out information on the procurement procedure, leaving no room for discretionary ambiguities.

The AA recommends that the beneficiary refrain from such wording in the future and opt for a more transparent way of expressing the contracting authority's intention.

#### **4. The initial deadline set by the contracting authority for the execution of the works could have been longer.**

The deadline for the construction works of procurement No. 221239 was 8 months. The contracting authority confirmed in a notice sent to tenderers in the RHR that the contract term was 8 months from the signature of the contract, in accordance with the contract documents, and that the contracting authority would not change it.

In practice, however, there was a need to extend the time limit for the construction work based on the RHS § 123 section 1 p 4 and to fix the time limit at approximately 36 months. Even though the AA did not prove that an extension of 353.90% would have been unacceptable or that the principles of equal treatment or transparency would have been infringed, the contracting authority should nevertheless draw conclusions from this situation in the future.

Considering the nature of the project, the subject matter of the procurement and the best practices in the field, the contracting authority should recognize that the need for a longer time limit may be necessary in the future. Also, more thorough preparatory work in the form of various studies may be necessary. A prudent contracting authority, acting with reasonable diligence and considering the elements involved in such a specific procurement, should realize in the future that a longer initial deadline may lead to a larger pool of tenderers and potentially a different outcome.

The AA recommends that the contracting authority should in the future carry out a more in-depth study of the subject matter of the procurement or immediately set a longer deadline for the execution of the work.

#### **5. The contracting authority did not keep all the documents and did not ensure the existence of an audit trail.**

The AA asked the contracting authority for different information over several months. However, in some cases, the AA received the following answers: *"There is no answer to this question because the ER3 project manager and the ER3 project accountant are no longer employed by the Narva Museum SA"; "We do not know, because the ER3 project manager is no longer employed by the Narva Museum SA"; "The preparation of the public procurement was carried out by a project manager who is currently not involved in the museum and we have no possibility to ask him further questions"*.

As a second example, the AA asked the contracting authority for the protocols of the negotiations as regulated in the tender guide. First, the contracting authority asked for clarification of what the AA meant by negotiation protocols. The contracting authority then confirmed that there were no such documents. However, in the end, the requested protocols were provided.

As a third example, the contracting authority stated that they are unable to answer some questions because the successful contractor did not reply to the contracting authority's enquiries. As no replies were received from the contractor, it was not possible to forward them to the AA.

As a fourth example, the AA asked for information on the differentiation of invoice No. 2012351 in the accounts over several months. The beneficiary finally replied that the accounting program had been closed and needed to be restored.

Consequently, the AA notes that for projects financed from EU funds, the beneficiary has some extended obligations compared to its usual practice. Firstly, the beneficiary has an obligation to act in a verifiable and transparent manner

and to respect the principles of good governance. Secondly, the beneficiary is obliged to provide the AA with all the necessary assistance and to ensure access to documents relating to the use of EU financing. In AA's view, it is not good practice for a beneficiary to fail to keep the necessary written evidence and to fail to ensure an audit trail.

The AA recommends that in future, the beneficiary should keep comprehensive supporting documentation for all procurements and other project nuances, complete the foundations procurement rules in this respect or otherwise ensure that an adequate audit trail is maintained.

#### **6. The contracting authority made time-limited concessions in relation to insurance.**

According to p 22a of the specific conditions of the public procurement No. 238605 contract, the CAR insurance had to be submitted at the latest by 29.10.2021. However, the audit revealed that the contractor submitted the CAR insurance documents to the contracting authority 16 working days later.

According to p 6.1.8 of the general conditions of the procurement contract, the contractor undertook to ensure that the insurance cover provided by the insurance contracts would remain valid throughout the execution period. According to p 11a of the specific conditions, the work started on 12.11.2021. The audit revealed that the contractor submitted CAR insurance documents valid from 06.12.2021 to 22.12.2022. Consequently, the insurance was valid for 24 days less than stipulated.

During the audit it became known that a) the CAR insurance was submitted later mainly for reasons attributable to the insurer and b) the shorter period was linked to the fact that other works, not construction works, were started on 12.11.2021.

In the AA's view, there is no irregularity with a financial impact. However, the AA recommends that the contracting authority should be more diligent in the future in respecting the deadlines set out in the procurement contract and should require the contractor to provide all insurance documents strictly in accordance with the terms of the contract. Otherwise, the contracting authority will not have sufficient certainty that the object is insured to the extent and in the manner required by the provisions of the procurement contract.

#### **7. The contracting authority did not publish the data on modifications to the procurement contract in the Public Procurement Register due time.**

Pursuant to RHS § 123 section 5, regarding a modification made under p 3 or 4 of section of the same §, the contracting authority files a public contract modification notice with the register within ten days following the making of the modification. Pursuant to RHS § 181 section 3, the contracting authority and the beneficiary are responsible for the correctness of the information that they file with the register.

In the case of public procurement No. 238605, the last modification entered into force on these legal grounds on 30.11.2023 and in the case of public procurement No. 221239 on 05.07.2023. The corresponding notices in the RHR were published for procurement No. 238605 during the audit, following a request from the AA on 08.2024. For procurement No. 221239, the notices have not been provided.

The AA notes that the contracting authority must comply with its general duty of care when using the register. According to the Tallinn Administrative Court's decision No. 3-20-1289, the contracting authority's due diligence includes the obligation to ensure that the information in the register is lawful and relevant.

The AA recommends that in the future the relevant notifications are made public in due course.

## 8. The contracting authority set a requirement for ambiguous professional experience.

As a tender suitability criteria for public procurement No. 239447, the tenderer was required to include in the execution of the work to be carried out by the contracting authority a responsible specialist who meets the following requirements: 1. at least three years of professional experience in carrying out archaeological investigations of medieval fortifications and 2. at least three years of professional experience in carrying out archaeological monitoring or supervision of a medieval fortification.

In the framework of the audit, the contracting authority clarified that they expected the specialist to have experience *"within three years"*. In the AA's view, it is not correct to interpret the condition *"at least three years of experience"* as *"work experience at least three different years"*.

Since the audit showed that the specialist in question had the required length of experience, irrespective of the wording of the condition, there is no irregularity with a financial impact. However, the AA recommends that in the future the contracting authority formulates more clearly the professional experience requirements to be fulfilled by the professionals to avoid situations where the professionals' experience does not match the content or form of the requirements set by the contracting authority. In cases where the length of the experience was not important for the contracting authority, it should have formulated the requirement differently and made this clear in the procurement contract documents. In the present case, the wording of the condition was too ambiguous for the average tenderer.

## 9. The contracting authority modified the procurement documents with clarifications.

Pursuant to RHS § 46 of section 3, 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.

RHR shows, in relation to public procurement No. 221239, the question of 28.05.2020 (ID 520281) and the question of 29.05.2020 (ID 520299) to the contracting authority - *what to do with the building on the wall?*

The contracting authority answered both questions in the same way on 30.05.2020: *"The wooden building located on the wall must be completely repaired (including the structures) based on the existing one. The necessary drawings must be drawn up by the contractor and agreed with the National Heritage Board. Replacement of the cornice cladding in this area as per the tender documents"*. The AA notes that the tender documents did not provide this information in detail.

The contracting authority explained: *The structure in question was visible, for example, in the photograph (technical specification, Annex 2a, p. 4, photo 3). The detailed tender cost table (Annex 1, Form 6, Remarks, p. 3) states that: "Additional elements of structures, coatings, utility networks, etc., not listed in the list of quantities, but described in the explanatory notes or shown in the drawings or in the documents referred to in the project (standards, quality requirements, etc.), shall be considered as part of the corresponding structure, coating, utility network, etc., for the purposes of the quantity of work". Pursuant to section 7 p 1 of the technical specifications, the contract documents had to be taken as a whole.*

The AA agrees with the contracting authorities' explanations that the bidders should have understood the circumstances surrounding the building. The volume of the building in question was small, and the information requested with RHR explanations was not that important. The AA analyzed the amounts of contract affected by clarifications and was assured that the amounts were not significant. Also, the information provided with the final offer shows that the amounts were not described in detail but rather included in the offer as is. From this, it is possible to conclude that the amounts were not significant from the contractors' point of view.

However, the AA notes that if this “*complete repairing (including the structures) on the basis of the existing one*” had been very clearly included in the original tender documents, the two tenderers would not have raised the questions. Consequently, the procurement documents were not sufficiently clearly worded.

The AA recommends that procurement documents be prepared more clearly in the future. References to pictures and drawings may not always be exhaustive.

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

**Risk to the project implementation:** *Failure to comply with the requirements arising from the RHS may result in partial or full recovery of the support.*

**Recommendation on the project implementation:** *The AA recommends that the beneficiary should ensure compliance with the obligations arising from the RHS in the future.*

**Comments from the Financial Control / Managing Authority/Joint Technical Secretariat:** *We agree with the finding, and we have already drawn the beneficiary’s attention to many said deficiencies during the procurement inspection.*

**Comments from the beneficiary audited:** *Hankija jääb audiitoritele varasemalt esitatud selgituste juurde ning on nendele tuginedes seisukohal, et RHSi rikkumised puuduvad.*

Väheoluline tähelepanek 4.2.3: Tehnilise kirjelduse (AD lisa 2a) p 7: „Mitmeti tõlgendatavate lahenduste/formuleeringute/tööde suhtes, kui nende kohta ei ole esitatud hankemenetluse ajal täpsustavaid küsimusi, loetakse hankelepingu täitmise ajal prioriteetseks Hankija tõlgendus“. Hankijale ei ole arusaadav, kuidas seostub antud tingimus Auditis viidatud menetluspraktikat puudutava pakkumuste vastavuse hindamisega. RHS § 3 lg 1 käsitleb hankemenetlust ning hankemenetlus lõpeb hankelepingu sõlmimisega (RHS § 29 lg 3 p 1).

Väheolulised tähelepanekud 4.2.5 ja 4.2.6: Hankija möönab raskusi andmete ja dokumentide esitamisel, mis paraku on Hankija (kui organisatsiooni) jaoks objektiivselt sõltuvuses inimeste kogemustest ja teadmistest, personali ja andmesüsteemide vahetumisest jmt. Kuid Hankija kogemus suureneb n-ö iga päevaga ja seeläbi ka oskus probleeme, küsitavusi jne ennetada. Mõistame, et Hankija organisatsiooni väiksus, kogenematus niivõrd pikaajaliste ja suurte projektide elluviimise käigus kõikvõimalike nüanssidega erinevates aspektides tegelemisel, sõltuvus ajaliselt ja sisuliselt välistest, mh õigusnõustajatest, ei ole audiitorite jaoks oluline, kuid Hankija jaoks objektiivselt paratamatu.

**AA's additional comment:** *AA fully stands by the positions expressed in observation 4.2. In relation to subsection 3, the AA removed one irrelevant sentence from the reasoning of the court's decision. AA's position has not changed - the beneficiary did not fulfill its obligations to the required extent when conducting public procurements.*

## 5. Granting of state aid

State aid has been granted to the project and used by the beneficiary in the 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 15 (fifteen) pages.

**Audit manager:**

Henry Kibin

Lead auditor

**Audit supervisor:**

Mart Pechter

Head of the II Audit Unit

Tallinn, 01.10.2024