

## **Tender document for outsourcing assessment of the proportionality of financial correction of public procurement**

Tallinn, Estonia

Dear tenderer,

State Shared Service Centre (SSSC), a governmental authority where the managing authority (hereinafter MA) of the Structural Funds of EU is located, invites you to submit your tender for the assignment **“Assessment of the proportionality of financial correction”** and to submit your offer.

### **1. Short description of the contracting authority**

The MA is responsible for the implementation of EU Structural Funds (hereinafter SF) in Estonia and has a responsibility to coordinate the daily administration of SF activities in Estonia. This includes applying and interpreting EU-level respective legal acts and providing ongoing assistance to implementing bodies throughout project life cycle. The MA is also responsible for ensuring the financial and legal certainty of activities carried out by other organisations entrusted with delegated tasks.

### **2. Responsible person of the contracting authority**

Urmo Merila  
Head of Managing Authority  
State Shared Service Centre  
Urmo.Merila@rtk.ee

### **3. Brief description of the procurement object**

The beneficiary drew up an amendment of the public procurement contract citing the national public procurement law and Article 72 par. (1) point (c) of Directive 2014/24/EU of the European Parliament and of the Council. During the project audit on national level, the Audit Authority (hereinafter AA) found that the beneficiary did not comply with the public procurement law when amending the procurement contract related to project No 2014-2020.10.01.20-0051 *‘Construction of Võõbu-Mäo road section of State Road No 2 Tallinn-Tartu-Võru-Luhamäe’*. The AA found that the amendment of the public procurement contract was not allowed due to the failure to use mass stabilization technology and replacing it with peat mass technology during the contract performance and it should have been foreseeable. Therefore 25% financial correction rate outlined in point 2.3(23) of the European Commission Decision No C (2019) 3452 of 14 May 2019 must be applied.

The Managing Authority (MA) finds that:

- Amendment of the public procurement contract was allowed as it is not caused by factors within the contractor's or the contracting authority's control but rather by natural conditions beyond human influence.
- The beneficiary took all necessary steps, including preparatory work, studies, and tests, before publishing the procurement notice to ensure that the use of mass stabilization technology in the planned works was feasible. This demonstrates that the contracting authority diligently prepared for the procurement. As a result, the failure to use mass stabilization technology during the contract performance was unforeseeable
- If the amendment of the contract was still not permissible, the MA believes that applying a financial correction rate higher than 5% would not be proportionate given the nature and complexity of the infringement and the potential financial impact.

Due to the disagreement between the MA and the AA, we would like to assess the circumstances before the hearing procedure in Article 145 of Regulation (EU) No 1303/2013 (CPR). Therefore, the MA requests the opinion of independent auditor on the proportionality of the amendment to the public procurement contract in the light of Article 72 par. (1) point (c) of Directive 2014/24/EU of the European Parliament and of the Council and Judgement of the European Court in case C-175/23.

#### **4. The background information**

- [Common Provision Regulation 1303/2013](#)
- [2014-2020 Structural Assistance Act](#)
- [Perioodi 2014–2020 struktuuritoetusest hüvitatavate kulude abikõlblikuks lugemise, toetuse maksmise ning finantskorrektsioonide tegemise tingimused ja kord](#)
- [European Commission decision 14.05.2019 „Guidelines on the calculation of the financial corrections in the framework of the conformity and financial clearance of accounts procedures „](#)
- [Preliminary ruling, Judgement of the European Court, case C-175/23](#)
- Ühtekuuluvusfondi projekti 2014-20230.10.01.20-0051 "Riigitee nr 2 Tallinn-Tartu-Võru-Luhamaa Võõbu-Mäo teelõigu ehitus" [projekti audit](#)
- [The Supreme Court's Constitutional Review Chamber's judgment of 28.06.2023, no. 5-23-2](#)
- [Supreme Court's Administrative Chamber's judgment of 20.11.2024, no. 3-21-2607](#)

All other relevant documentation for the perspective contractor will be made available during the assessment.

#### **5. Task of the experts**

The experts of the contractor will provide their professional assessment on the proportionality of financial correction in relation to the following indicative questions:

- Assess the margin of discretion of the national Managing Authority concerning Article 143 of the Common Provisions Regulation 1303/2013 and the European Commission's decision of 14.05.2019, "Guidelines on the calculation of financial corrections in the framework of the conformity and financial clearance of

accounts procedures", considering the preliminary ruling, the Judgment of the European Court in case C-175/23, and other relevant rulings.

- Does this case qualify as an irregularity within the meaning of the Public Procurement Directive?
- If the case qualifies as an irregularity, then, considering its impact, can the 25% correction rate imposed based on the EC guidelines be considered proportionate?

## **6. Requirements to the tenderer**

Tenderer must have sound professional knowledge of the field of expertise in legal framework of public procurement at EU level. The detailed knowledge about the rules and requirements about SF programmes is not required, the SSSC as Contracting Authority provides guidance and instructions about the assessment before the assignment. However, knowledge of irregularities related to structural funds in the context of public procurement and the associated financial corrections is necessary.

Proficient (C level) written English is required, and tenderer must be able to provide the assessment result in a form of an assessment in English.

Please submit the CVs of the experts giving the assessments, along with a list of their work in the relevant field, with the tender.

## **7. Time limit and other conditions**

The successful tenderer must be ready to start work in May 2025 and provide an assessment of the proportionality of the financial correction within two weeks of signing the contract. Please submit your tender (including price offer and CV-s of the experts) by 14th May at the latest. We will evaluate the submitted tenders and proceed with the selection of the most advantageous tender as soon as possible.