



Strengthening Actions to Fight Frauds in Procurement

Private and public procurement procedures: some practical solutions for Paying Agencies to get more value for the money and reduce irregularity and fraud risks



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INTRODUCTION

The Treaty on the Functioning of the European Union calls on the Member States and the Union to promote an efficient allocation of resources (Art. 120 TFEU). Article 30(1) of the EU Financial Regulation (Reg. No 966/2012) defines “sound financial management” as a use of resources governed by the principles of economy, efficiency and effectiveness.

These principles are clearly implying operational needs which add to and complement the duty of the Union and the Member States to counter fraud and any other illegal activities affecting the financial interests of the Union (Article 325(1) TFEU).

Not only the financial interests of the Union “*should be protected through proportionate measures throughout the expenditure cycle, including the prevention, detection and investigation of irregularities, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, administrative and financial penalties*” (Preamble 18 to Reg. 250/2018 establishing the Hercule III programme) but the principle of efficiency requires EU funds managers at all levels to guarantee adequate “value for the money” in order to protect taxpayers’ sacrifices. It is therefore clear that Paying Agencies and their staff are directly responsible for adopting these principles and transforming them into reliable operating procedures.

The implementation of EU policies necessarily involves procurement activities to be carried by both public bodies and private beneficiaries, and the importance of procurement is demonstrated by several publications and reports released by various EU bodies, first and foremost the European Commission (EC) and the European Court of Auditors (ECA). Consequently, managing EU funds to get the right value for money while ensuring the legality and legitimacy of procedures is a challenging task shared by anyone handling EU resources, and public and private procurement should be the key instrument to achieve an efficient use of public funds.

However, the ECA Special Report 10/2015 states that failure to comply with **public procurement** rules has been a perennial and significant source of error: ECA’s investigations over the 2009-2013 period reported an error rate of 40% in the audited projects, 78% of which have been categorised as “significant” or “serious”. On the same ground, the OLAF 2016 report explains that a large part of the workload of its investigators relates to alleged fraud in public procurement; this issue appears to be



further exacerbated by the complexity of national procurement rules and by the poor administrative capacity, which sometimes stems from a lack of expertise in consistently applying these same rules.

Indeed, providing the “right things” at the “right price” goes beyond the realm of public procurement. ECA Special Report 22/2014 on rural development expenditure has found that *“Member States authorities have not sufficiently ensured that the project costs approved are reasonable”* (§17). Poor **value for the money** and, at the extreme, frauds are allegedly due to:

- distortion of real cost-benefit relationships giving incentives to “gold plating” and “overspecification” (§12);
- reduced incentive for the applicant to search for the best prices and possibly manipulation the bidding process (§13). Apparently, this is the case for rural development measures implemented through grants (§16).

EC DG AGRI’s *“Assessment of the risk of fraud and other irregularities to detriment of the CAP budget”*¹ confirms that investment projects under the EAFRD are under a higher fraud/irregularity risk than others and section 4.6 of that same paper reports several examples of schemes relating to the misuse of funding, the purchase of second hand equipment (presented as new), manipulations of the “three-offer-rule”, and the creation of artificial funding conditions. These issues relate to malfunctioning of the **private procurement** mechanism but the ECA also brings to light that where the beneficiaries were public bodies, almost 50% of the payments were affected by non-compliance with public procurement rules (§25).

Although the need to ensure regular procedures in the execution of procurement activities by public bodies and private beneficiaries in order to combat fraud risks and to ensure at the same time an efficient use of resources is a challenging duty shared by all those who in charge of the management of EU resources, it is not uncommon that each administration “does it on its own”. Indeed, this applies to Paying Agencies too. Consequently:

- other agencies’ experiences are not known outside and thus not adequately valued;

¹ Available in CircaBC



- solutions are implemented that are less efficient than those that would have been possible if the information flow had been efficient;
- the improvement of internal control systems is delayed.

In the last few years, the awareness of being confronted with common challenges and of the potential benefit deriving from the exchange of information, experiences and operational solutions among Paying Agencies has led AVEPA to take advantage of the possibilities offered by OLAF's Hercule III Programme.

In 2016 AVEPA benefited from contributions under the Programme for the project *A NEW LEAF (Agricultural Network Exchanging Witnesses and Leading Experiences Against Frauds)* which involved Paying Agencies from Poland, Romania, Malta, Croatia, Slovenia and Albania in the implementation of a series of training and technical activities. Main objectives were:

- developing methods and tools for preventing, auditing and combating fraud;
- comparing national fraud risk levels and actions taken to address and reduce them;
- raising awareness of Paying Agencies, technical partners and control bodies on the anti-fraud regulatory framework;
- establishing a network among the Paying Agencies involved in the project.

The positive experience of *A NEW LEAF* led the following year to the implementation of the *SAFENET project (Strengthen Anti-Fraud European Network)*, which significantly expanded the network by including the Paying Agencies of Finland, Estonia, Latvia, Lithuania, Czech Republic, Austria, Poland, Romania, Malta, Croatia, Slovenia as well as other regional Paying Agencies operating in Italy. Inter alia, the project aimed at:

- sharing best practices and solutions on critical areas (e.g. fraud risk management tools);
- defining and sharing internal control system activities to prevent and detect frauds (e.g. monitoring procedures);
- promoting a network to share training needs and opportunities offered by each participating Paying Agency.



The StAFF PRO project (Strengthening Actions to Fight Frauds in Procurement), which took place between mid-2018 and early 2019 and which was once again funded by Hercule III, came out of this sort of "market of training needs and opportunities" created in the framework of SAFENET. StAFF Pro aimed at actively contributing to the capacity building in the fight against fraud, corruption and other irregular activities related to the CAP and rural development expenditure managed through public and private procurement. More precisely, the project added value consisted of:

- Increased awareness among managers and professionals of the risks and solutions related to the implementation of rural development projects through public and private procurement;
- Development of the concept of "sound financial management" in terms of "more value for money";
- Exchange of effective and efficient practices with a view to their possible integration into the project partners' control systems.

The project concerned the national Paying Agencies of Austria, Estonia and Lithuania and that of the Italian Veneto Region, which played the role of lead partner, and consisted mainly of a series of staff exchange experiences which involved different professional figures in a multidisciplinary perspective.

The **first staff** exchange was hosted by the Lithuanian National Paying Agency (NPA) and took place in **Vilnius** on 26 and 27 June 2018. Among the topics discussed were an introduction to the Lithuanian legal basis for the management of public and private contracts, the system of "red flags" used by the NPA to identify possible irregularities and frauds in their public procurement assessments, an introduction to the relevant case-law, the system of e-procurement developed by the NPA, the policy of cooperation with other State bodies in the fight against corruption and for the enforcement of competition rules.

The **second staff** exchange was hosted by the Estonian Agricultural Registers and Information Board (ARIB) in **Tartu** on 18 and 19 September 2018. The topics analysed during the meeting mainly concerned the management of preliminary investigations ("red corridors") of aid applications involving private procurement - and, in particular, the use of risk assessment techniques to automatically differentiate between



applications based on their assessed riskiness - and new approaches to overcome the "three-offer rule", especially in relation to the purchase of agricultural machinery and in the construction sector.

The **third event** took place in **Vienna**, on 13 and 14 November 2018, under the organisation of Agrarmarkt Austria (AMA). The Viennese meeting favoured an auditing perspective, by sharing with the project partners the experience gained in the assessment of the agency's anti-fraud system as well as in the audit of public procurement, especially when delegated bodies are involved. Particular emphasis was placed on the lessons learned during a recent audit by the EC services focusing on public procurement management in EAFRD.

The **final meeting** took place in **Padua**, seat of the Venetian Agency for Payments in Agriculture (AVEPA), on February 5, 6 and 7, 2019. The fourth staff exchange was an opportunity to discuss, inter alia, some practices for overcoming the system of the three-offer-rule to control the reasonableness of prices in private procurement as well as to describe the how the agency public procurement control system and tools were developed. Since AVEPA also plays the roles of intermediate body in the management of the European Regional Development Fund Regional Operational Programme (ERDF ROP) as well as of audit authority of the Italy-Croatia territorial cooperation programme, the opportunity was taken to illustrate other approaches to the fight against fraud. The meeting in Padua also benefited from the presence of Alessandro Angelini, Team Leader at Intelligence Analyst at European Commission - Antifraud Office (OLAF), who illustrated recent statistics on irregularities and fraud, also through appropriate comparisons between CAP and cohesion policies, and provided examples of the modus operandi of fraudsters at the international level. Angelini also provided useful suggestions for improving the fight against fraud, highlighting the potential benefits of connecting databases and cooperating with law enforcement institutions. The final meeting was also an opportunity to finalise this volume.

The presentations were often followed - or sometimes even punctuated - by lively discussions. Project partners presented their own points of view and described what happens within their home agency in relation to the issue addressed, thus making the exchange of experiences more meaningful.

On the basis of the specific feedback obtained, each project partner selected among their presentation topics the ones that they considered most appropriate to



be developed into the written contributions collected in this volume. The aim is to open the discussion to other Paying Agencies that did not directly participate in the project, thus allowing them to assess whether the solutions presented may represent an effective response to their needs.

In order to ensure an as homogeneous an approach as possible, the papers prepared by each project partner have been structured according to a common template, with a logical linear development aimed at promoting conciseness. Each chapter opens with a section entitled: "*The Problem*", in which the author illustrates the issue addressed and explains why it is plausibly a topic of common interest for Paying Agencies. Ideally, the reader can identify with the situation described and be motivated to continue reading in the hope of finding a possible solution to an existing problem or making useful comparisons.

In the section "*Our Starting Point*", the author illustrates the state of the art of his agency at the time in which it was about to develop a solution to the problem previously described, giving account of the resources initially available in terms of specialized staff, skills, documentation, relevant assets, etc. This piece of information is essential to allow any reader interested in implementing the author's proposed solution to assess whether her Agency is adequately equipped or if preliminary investments are required: for example, during the meetings held by the project partners, it emerged that countries substantially diverge in the level of implementation of IT procedures, but above all in the availability and accessibility of interconnected databases, an issue that is generally - and unfortunately - beyond the direct control of Paying Agencies, as it depends on a variety of regulatory and institutional contexts.

The core of each chapter is the section entitled: "*Our Solution*". Here the author outlines the measures taken to address the critical issues identified, briefly describing their operational development and the resulting benefits deriving from their use. Far from being a comprehensive handbook-like presentation - which would certainly be beyond the scope of this volume - this section aims to provide an effective but brief insight into the measures taken. Readers who wish to delve deeper into the subject are invited to directly contact the author: hopefully, foundations for further collaboration can be laid this way.

The section "*Lesson learnt*" is meant to emphasize what has been learned in the process that led from the conception to the development and implementation of the



solution described, including any *faux pas* that, with hindsight, could have been avoided. Moreover, evaluations are made on inputs proven to be the most relevant, as well as considerations are presented on factors acquired – or that should have been acquired - in order to simplify the process.

Each contribution is closed by a section entitled "*Conclusions*", outlining, inter alia, possible scenarios for further developments.

In order to facilitate a targeted reading of the essays, the decision was made to organize the material by themes rather than to maintain a country-based order.

The first set of essays deals with private procurement issues: the topics covered are particularly focused on how to ensure the reasonableness of costs while reducing the administrative burden on beneficiaries and staff of agencies. Practical alternatives - applicable in certain specific cases - to the well-known three-offer-rule in different contexts are presented.

The papers elaborated by the Estonian ARIB illustrate a new multi-speed application management approach based on the segmenting of applications into green (low risk) and red (high risk) corridors. An operational risk assessment was prepared just after the conclusion of the call and before the granting decisions in order to react more carefully to applications with higher risk. One set of risk factors was dedicated to the identification of manipulation risks in private procurements. All in all, these papers introduce an efficient operational solution for the management of controls on private procurement procedures in EARDF-funded investment projects as well as some alternative approaches to the three-offer-rule in the evaluation of price reasonableness. In its first paper, ARIB highlights some weaknesses in the three-offer-rule comparison method for evaluating price reasonableness and illustrates how the results of the risk assessments have been used to automatically route aid applications in "**green**" and "**red**" corridors on the basis of their ex ante riskiness, so as to differentiate the intensity of the controls to be applied. The paper also provides an original interpretation of the irregularities and frauds in private procurement procedures of EARDF-funded projects in the light of the principal-agent economic theory.

The second ARIB document describes the introduction of a **catalogue price system for mobile agricultural machinery** started in 2014 as an alternative to the three-offer-rule, which aims to reduce the administrative burden for both beneficiaries and ARIB



staff and to ensure better compliance with the cost reasonableness principle. All interested parties (suppliers, dealers, applicants) can enter the data into the catalogue. Items are divided into subcategories and up to four different specification levels are used for each unique model. The Estonian Crop Research Institute, which had already developed a catalogue of agricultural machinery and equipment and a database of machine vendors for scientific purposes, was chosen as a validator. In cases where the price of the machine is higher than the price in the catalogue, the validated price will be used to calculate the financial support. In cases where the price is lower than the validated price, the actual price paid by the beneficiary is used to calculate the financial support. Thus, expense receipts are still submitted to and analysed by the ARIB during the procedures and these pieces of information are used to update the catalogue. ARIB remarks the price catalog system is not fully fraud-proof, and figures show that catalog prices tend to be validated at 15-20% above the actual market price.

AVEPA has addressed the problem of overcoming, when possible, the three-offer-rule comparison method to verify the **reasonableness of prices in EARDF private procurement**. This method, in fact, entails substantial administrative burdens both for the beneficiary and for the agency, with no guarantee of achieving the goal set. The problems of the three-offer-rule are well known: possible collusion, quotation manipulation, improper use of derogations, non-comparability of quotations, etc. For this reason, limited to the hypothesis of purchase of agricultural machinery and equipment by private beneficiaries, AVEPA has developed an alternative system for the assessment of the reasonableness of the prices based on an e-pricelist. This e-pricelist was developed using technical assistance funds and the actual work was contracted out. The e-pricelist has allowed a significant reduction of the administrative burden for all stakeholders, but the need to provide for updates in order to track the market of reference immediately emerged.

In its first contribution, Lithuanian NPA notes that infringements of public procurement rules in Lithuania are more or less the same as in other countries and caused by the frequent amendment and complexity of the public procurement law. On the other hand, in the case of private beneficiaries, there are frequent cases of violation of private procurement rules, caused mainly by a lack of understanding of those rules and by a certain superficiality - when not opacity – in their conduct. Precisely the pursuit of a greater transparency and the reduction of irregularities in



private procurement procedures has induced NPA to the creation of a system of **e-procurement** which has already proven its effectiveness.

The third paper submitted by ARIB elaborates on the steps taken for **mitigating manipulation risks in construction projects**. In Estonia, a share 40-50% (2016-2017) of the amount of EAFRD supported projects include construction works. The control system focused on the comparability of prices of offers from different suppliers, but ARIB found it difficult to compare them due to the variability of the structures of the quotes submitted. Moreover, ARIB 2017 risk analysis confirmed that construction area projects had the highest risk of three-offer-rule manipulation. ARIB solution consists of three steps. The first one is the introduction of standardised modules for technical descriptions and quotations. The second step consisted in using data available to ARIB to calculate the average indicative cost for different types of buildings: the model was calibrated on market data and verified by experts in the field. Moreover, in 2018 ARIB started a collaboration with Tallinn University of Technology. The third step, the most important one in terms of transparency of the procedures, is still ongoing and consists in the obligation for beneficiaries to carry out private procurement in the Public Procurement Register. In summary, ARIB's approach to risk mitigation in construction projects consisted of a series of coordinated actions rather than a single solution. The results in terms of transparency and reduction of bureaucratic burden for the various actors seem encouraging.

The **second set of papers covers public procurement issues**, the application of which is generally made difficult by extensive legislation requiring highly specialised knowledge. A first subset of papers deals with the process of defining appropriate control tools and the training necessary for their daily use.

A first essay by AVEPA outlines the process that led to the **development and adoption of control tools for public procurement procedures**. AVEPA's experience shows that public procurement is generally not affected by frauds but rather by frequent irregularities, often resulting from insufficient knowledge of the complex legislation or from its lax application, especially in the case of "below threshold" contracts. AVEPA's strategy consisted in training internal "experts" with the help of external tutors. They focused on the real operational needs of the agency, allowing the subsequent development of checklists and report templates to be used by staff in charge of the controls. Subsequently, AVEPA invested heavily in training the control staff, in order to clarify any possible doubts on the use of these tools. Moreover,



specific training campaigns have been directed to the outside world, for the benefit of public bodies required to apply public procurement rules for the implementation of their projects.

AMA elaborates on the issue of assuring a **compliant implementation of public procurement obligations** in Rural Development in case of **decentralised administrations**. Due to the extended funding opportunities in the EAFRD regime, the possibility of applying for funds is open to new beneficiaries. This implies that more applications are submitted by contracting authorities falling under the scope of public procurement law. In the beginning of the programming period, the administrative control documentation used by the delegated bodies was not consistent, so that AMA had to guarantee measures for a uniform administrative process. AMA organised the work of delegated bodies by means of written instructions and for the current Rural Development period, two new documents have been shared, on the administrative control of RD project measures and on fraud prevention respectively. Furthermore, procurement training was provided to the Paying Agency's staff and to the delegated bodies' one. One of the main advantages of the new guidance documents is the documentation of the process legal correctness: Based on the current checklists, it is now possible to quickly and easily understand what has been assessed in terms of procurement law and to trace back what has been checked in the administrative process.

AMA addresses the issue of the **audit of public procurement procedures in Rural Development measures** by describing the steps taken to ensure better assurance in the event that certain functions (e.g. payment authorisation) are delegated to external bodies. The initial idea came after a specific audit carried out in 2017 by the EC services, which led AMA to review its audit universe in order to increase the coverage of public procurement. As a result of this review, AMA now addresses the issue of the assurance on public procurement from different angles: coordination between the operational department and the legal expert; compliance with the relevant regulations; supervisory activities of the agency on the delegated bodies; sample audits on the delegated bodies; etc. AMA stresses that this variety of approaches does not simplify audit activities since it calls for new training requirements.

Some special topics in public procurement are also presented. A further AVEPA paper on public procurement elaborates the peculiar approach of the Italian



legislator to **subcontracting in public procurement**. Subcontracting, although widespread and accepted, is perceived negatively because it dilutes the relationship between the client and the enterprise actually performing the work. In other words, it is perceived as a possible "trojan horse" for businesses linked to organized crime, which can indirectly access public funds in this way. Precisely on public order grounds, the Italian legislator has provided for the possibility of limiting the use of such an instrument, although these constraints are not present in European Directives and there are indeed doubts as to their legitimacy. The paper explains how AVEPA concretely addresses the problem and the possible effects on verifications of Rural Development measures.

NPA then examines the principle of “**value for the money**” within the framework of Lithuania’s experience in public procurement. Even when a public procurement procedure does exhibit no evident irregularities, once the investment is done, it may turn out that the value for the money is poor. In these cases, NPA may resort to independent experts, request opinions from other institutions and then follow all necessary steps to secure EU financial interests. At this point, NPA must provide adequate evidence to substantiate its final decision and prove that the investment does not meet the principle of good value for the money. The essential aspects specified in the case law concern the characteristics that must underlie such a decision: the general circumstances, the consistency of the decision, the completeness of the evidence to be provided and its link with the legal acts.

The **third and final set of contributions concerns cross-cutting issues** applicable not only to public and private procurement but relevant in the fight against fraud in general.

AMA addressed the more general issue of how to conduct an **audit of the anti-fraud management system (AFMS)**. AMA recalls that it has become necessary to build a systematic framework around the existing anti-fraud measures by following the specific EC Guidance Note (26/02/2014). AMA Internal Audit elaborated an individual audit concept fitted to the actual needs of the agency which considers two main aspects: the evaluation of the organisation-specific AFMS requirements and the audit of the AFMS measures and processes based on these same requirements. Auditing the AFMS proved to be a good tool to raise the awareness of the staff and management on the threats of irregularities and fraud.



Another AMA paper deals with the **verification of costs in public and private procurement**, thus distinguishing between the concepts of price adequacy to be applied by public bodies in public procurement procedures - and reasonableness of costs, which concerns private beneficiaries. Controlling the former requires indeed more effort, due to the legal provisions laid down in the public procurement law. One of the main differences between the two principles is that they do not occur at the same step of the private or public procurement process: the reasonableness of the costs has its focus on the incurred costs (verification of invoices); while adequacy is checked before awarding the contract through tender procedures complying with public procurement provisions. AMA has invested heavily in the preparation of appropriate documentation and training for all stakeholders: instructions provided by AMA and the checklist support users in achieving accuracy and completeness. Applications of higher quality and including all necessary documentation support the authorising body in implementing the required administrative controls, thus increasing legal certainty. Unfortunately, administrative burdens are also increased.

The third chapter presents the NPA's **"Trust line"**, an anti-corruption tool set up as additional source of information to ensure the transparent use of EU resources. Via the "Trust line", the NPA can be informed about potential cases of frauds and irregularities regarding the EU and the Lithuanian State support for agriculture, rural development and fisheries. Each report received via the "Trust line" is equally important to the NPA, so all messages are verified without exception. All reports are examined on the day of reception, if received on working days, or on the next working day in other cases. The "Trust line" guarantees anonymity. The "Trust line" can be used to report possible non-transparent conduct of NPA's employees. From 2005 to 2018 almost 9000 messages were received. Relying on the information received by the "Trust line", NPA was able to identify several irregularities and thus to secure EU financial interests. It turns that this tool works properly in Lithuania and it might be useful for other Member States as well.



THE PROJECT PARTNERS AT A GLANCE



National/regional	National	National	National	Regional
Delegated bodies	Yes: collecting applications (partly), import-export licenses, consulting services, control on delegated matters (forestry, farm animals, etc.)	Yes 1. Agricultural Research Centre (management of the applications and payment claims and controlling of Land improvement support schemes) 2. Estonian Private Forest Centre (management of the applications and payment claims and controlling of forestry related support schemes)	Yes: EAFRD non-IACS measures	Yes. AGEA for remote sensing eligibility checks on surface measures. Agricultural Assistance Centers (AAC) for the reception of some applications (not all the measures)
No of staff	862	345	850 (total)	435 FTE (about 185 on PA's competences, about 165 on functions delegated by the Veneto Region, 85 on support and administrative functions for the whole agency)
Budget EAFRD (no IACS measures) 16/10/2017-15/10/2018	116 mln	91,4 mln	176 mln	160 mln (105,8 of which are investments)
Average age of staff	39	41	41,6	50,33
No of applicants in RD 16/10/2017-15/10/2018	103.142	3.035 EAFRD altogether 15629 incl investments and area measures. 3.035 only investments 6.5408 all applications	14.700 applicants (non-IACS) 28.500 applications	11.639 applicants (1.345 non IACS)
ISO 27001 certification	Yes	No	Yes	Yes
ISO 9001 certification	Yes	No	Yes	No



Access to external data sources	Yes: registers of Farms, Legal Entities, Property and Encumbrances, etc.	Yes: Eight external data sources: 1. National business register: e.g. data from annual business report (sales revenue), bankruptcy/liquidation, shareholders; 2. Land register: ownership controls; 3. Building register: building permits; 4. Population register; 5. Occupational qualifications register; 6. Organic farming register; 7. State Aid register 8. Additionally, public tax data regarding turnover, and paid taxes. and internal data sources	No	Yes: 1. Chamber of Commerce register; 2. Land register; 3. National social security register (only some data available); 4. Animal register; 5. Organic farming registers
Centralised/de-centralised responsibility for AFMS (Centralised (Financial crime investigation centre is responsible for creating a strategy on the national level)	Centralized	Centralised	Centralised
Main topics delivered for the project	E-procurement system on NPA website, Ensurance of the principle value for money in public procurement, Anti-corruption and "Trust line" tool,	1. Risk-based proceeding before granting decision (red corridor) 2. Catalogue price system for agricultural mobile machinery 3. Steps taken of mitigating manipulation risk in the construction sector projects (Standardized price offers and creation of reference price model for construction sector projects)	Internal Audit; Public Procurement; Private Procurement; Audit universe; • Rural Development; Decentralised Administration; Delegated bodies; Legal certainty; Principle of proportionality; Anti-Fraud-Management-System; Reasonableness of Costs; Adequacy of Costs	Public Procurement: development of control tools and training in RD and ERDF measures a; dealing with subcontracting in public procurement Private procurement: overcoming the three-offers-rule in RD projects AF and anticorruption strategy AF Audit approach



The National Paying Agency under the Ministry of Agriculture of the Republic of Lithuania is the only accredited institution managing the measures of support for agriculture, rural development and fisheries.

The **main tasks** of the Agency are as follows: To manage state and European Union (EU) support for agriculture, rural development and fisheries as well as ensure the control of their use; To implement agricultural, rural development and fisheries support measures; To ensure the development of a system for the management of EU support for agriculture, rural development and fisheries; To participate in the implementation of an integrated management and control system; To participate in the introduction and implementation of a system for the management of EU Common Agricultural Policy measures; To prepare reports on EU funds used and submit these reports to the European Commission (EC), the Ministry of Agriculture of the Republic of Lithuania, and other institutions.

The **main activities** of the Agency are as follows: Management of support (acceptance and evaluation of documents, support payments and use of funds control); Publicity of support (TV broadcasts, press, events, seminars, conferences, training); Participation in the legislative process; Development of electronic services; Performance reports; Participation in the European Commission Meetings analysing information and proposals made by the Commission regarding development of e-services and possibilities to reduce administrative burden for the applicants; Active cooperation with the social partners.

Programmes/measures administered by the Agency: Direct payments; Rural development measures; Fisheries sector measures; National support schemes; Beekeeping sector support; Support schemes for fruits and vegetables growers' groups.

The Agency manages over 200 support measures and activities. Its customers are more than 150,000 applicants and beneficiaries who receive over EUR 800 million of support each year.



Estonian Agricultural Registers and Information Board (ARIB) is a government agency under the Ministry of Rural Affairs of the Republic of Estonia, established in the summer of 2000. ARIB is a Paying Agency accredited by the European Union, which is responsible for organising the granting of national and EU aid for agricultural and rural development, subsidies from the European Maritime and Fisheries Fund (as an intermediary body) and support for the organisation of the market. ARIB is the administrator of the national agricultural registers (the register of farm animals and the register of agricultural aid and agricultural parcels) and other databases, as well as the administrator and analyser of the data contained in these registers and databases.



Agrarmarkt Austria (AMA) was created under the AMA Act 1992 as a legal entity under public law and established as an EU-agricultural Paying Agency in 1993. It started to operate after EU accession in 1995. Now it carries out all EAGF and EAFRD measures.

AMA has its central office in Vienna and 7 regional offices with the task of on-the-spot control. In the field of EAFRD non-IACS measures, AMA is supported by several delegated bodies, who are responsible for the authorisation of claims.

AMA holds several ISO certifications, which include ISO 9001, ISO 27001 and ISO 14000. These certifications help us to operate compliant with all EU rules and ensure effective and efficient operations.



Agenzia Veneta per i Pagamenti in Agricoltura (AVEPA) is an instrumental body set up by the Veneto Region to act as a regional Paying Agency in the agricultural sector.

AVEPA is a public-law body with administrative, organisational, accounting and financial autonomy within the limits laid down by the instituting law (Regional Law No 31 of 9 November 2001); as such, the Agency is subject to the powers of guidance and control conferred on the Regional Government, in compliance with the forms of autonomy it enjoys

AVEPA's main activity is to act as the Paying Agency for the Veneto Region for EU aid, contributions and grants provided for by EU legislation and financed, in whole or in part, by the European agricultural funds EAGF (European Agricultural Guarantee Fund) and EAFRD (European Agricultural Fund for Rural Development), as well as by the State and the Region.

In addition to its functions as a regional Paying Agency, AVEPA manages many other technical and administrative activities in the field of agriculture and rural development based on specific delegations for the Veneto Region.

AVEPA also carries out, always based on specific delegation agreements:

- function of Intermediate Body, pursuant to art. 123 par. 7 of Regulation (EU) no. 1303/2013, for the management of part of the Regional Operational Programme (ROP) ERDF 2014-2020 of the Veneto Region (Resolution of the Regional Council no. 226 of 28 February 2017);
- function of Audit Authority (Audit Authority) of the Italy-Croatia Cross-Border Cooperation Programme for the 2014-2020 programming period.

KEYWORDS

Paying Agency

Title of the paper

Keywords



Internal Audit Coverage of Public and Private Procurement in EAFRD using complementary approaches	#Internal_Audit	#Private_Procurement	#Public_Procurement	#Audit_Universe	#Coverage	
Public Procurement obligations in Rural Development – Assuring an EU compliant implementation in a decentralised administration	#Private_Procurement	#Rural_Development	#Decentralised_Administration	#Delegated_Bodies	#Legal_Certainty	#Proportionality
Auditing the Anti-Fraud-Management-System	#Internal_Audit	#AFMS	#Fraud_Prevention	#Audit_Concept		
The verification of the reasonableness of costs in public and private procurement	#Private_Procurement	#Public_Procurement	#Cost_Reasonableness	#Cost_Adequacy	#Proportionality	#Training
Detecting risky applications (red corridor) and implementation of risk-based proceeding before granting decision	#Private_Procurement	#Smart_Proceeding	#Red_Red_Corridors	#Risk_Analysis	#Prevention	#Principal_Agent
Introducing the catalogue price system for agricultural mobile machinery	#Private_Procurement	#3_Offers_Rule	#Cost_Reasonableness	#Price_Validation	#Prevention	#Efficiency
Introducing steps taken of mitigating manipulation risk in the construction sector projects	#Private_Procurement	#Collusion	#Cost_Reasonableness	#Building_Costs	#Shadow_Companies	#Risk_Analysis
E-procurement system on NPA website	#E_procurement	#Private_Procurement	#3_Offers_Rule			
Ensuring the principle value for money in public procurement	#Public_Procurement	#Value_for_the_money	#Independent_Experts	#Proofs	#Final_Decision	
Anti-corruption and “Trust line” tool	#Corruption	#Trust_line	#Whistleblowing	#Transparency		
Improving the cost efficiency of private beneficiaries’ EAFRD funded purchase of machinery and equipment	#Private_Procurement	#3_Offers_Rule	#Cost_Reasonableness	#Pricelist	#Simplification	#Price_Validation
Improving public procurement monitoring procedures of EAFRD funded projects – AVEPA’s experience	#Public_Procurement	#Training	#Tools	#Monitoring	#Prevention	#Smart_Proceeding
Subcontracting as a possible fraud risk factor in public procurement and distinctive features of Italian law	#Public_Procurement	#Subcontracting	#Criminal_Infiltration	#Prevention	#Corruption	

LIST OF ACRONYMS

AFM	Anti-Fraud Management
AFMS	Anti-Fraud Management System
AMA	Agrarmarkt Austria - Austria's Paying Agency
ARIB	Agricultural Register and Information Board - Estonia's Paying Agency
AVEPA	Agenzia Veneta per i Pagamenti in Agricoltura - Veneto Region's Paying Agency
CAP	Common Agricultural Policy
CF	Cohesion Fund
DG	European Commission's Directorate General
EAGF	European Agricultural Guarantee Fund
EARDF	European Agricultural Fund for Rural Development
EC	European Commission
ECA	European Court of Auditors
ESF	European Social Fund
EU	European Union
MEUR	Millions of euro
mln	Million
NMA	Nacionalinė mokėjimo agentūra - Lithuania's National Paying Agency
NPA	Lithuania's National Paying Agency
OLAF	European Anti-Fraud Office (<i>Office européen de lutte antifraude</i>)
OP	Operative Programme
PA	Paying Agency
PRIA	Põllumajanduse Registrite ja Informatsiooni Amet - Estonia's Paying Agency
RD	Rural Development
ROP	Regional Operative Programme



DETECTING RISKY APPLICATIONS (RED CORRIDOR) AND IMPLEMENTATION OF RISK-BASED PROCEDURES BEFORE GRANTING DECISION.

THIS CHAPTER:

- IMPROVES **PAS** **STAFF** **AWARENESS** OF THE USEFULNESS OF HORIZONTAL RISK ANALYSIS TO INVESTIGATE PRIVATE PROCUREMENT MANIPULATION RISKS IN EAFRD INVESTMENT PROJECTS.
- BUILDS ON THE IDEA OF “**VALUE FOR THE MONEY**” BY INTRODUCING SMART PROCEDURES BASED ON RISK ANALYSIS TO PROVIDE FASTER AND SMOOTHER PROCESSING OF LOW-RISK PROJECTS AND DEEPER SCRUTINY MEASURES FOR HIGH-RISK PROJECTS.
- SHARES TESTED **SOLUTIONS** CONCERNING RISK - BASED PROCEDURES BEFORE THE GRANTING DECISION (RED CORRIDOR)

The problem

Until 2012-2013, and with particular reference to CAP investment measures, Estonian practice required the application of the so-called "three-offer-rule" in private procurement procedures, with the aim of identifying "reasonable" investment costs by putting into competition at least three independent bidders. Therefore, regulations provided for formal conditions stipulating that winning bids had to be chosen from three comparable price offers. The lowest price was

usually expected to win. Nonetheless, formal comparability does not always imply that bidders are truly independent nor that the best price has emerged from fair competition.

Therefore, additional restrictions were introduced to guarantee fair competition among bidders. Unfortunately, these restrictions were often merely formal and easily avoidable. As a general condition, independency implied that cross holding was not permitted, i.e. the applicant and the bidder- as well as their partner, shareholder or member - shall not hold shares in the each other's companies, nor be part of the management or supervisory boards of the other company. Nonetheless, ARIB still faced situations of "artificial" competition, where all agreements and conditions were settled in advance: as a matter of fact, competition was only on papers and "staged" for the PA. In practice, even if the PA had discovered breaches of fair competition rules, it would have been hard to question the legitimacy of the award in presence of a "reasonable" price. Whenever the price did not seem to be correct, the PA tried to



detect the correct project value with the help of experts. What should be done, then, if the correct price has been identified with the help of the expert and at there is evidence of deliberate manipulation of the “three-offer-rule”? Should the financial support be completely suppressed or reduced in proportion to the “correct” price?

Sometimes ARIB discovered situations where the “three-offer-rule” was formally respected but the “subcontractor” performing all activities and works was the real beneficiary, while the winning bidder was a mere middleman in the chain of the transactions, someone who obtained a “commission fee” for his “service”. There could be several more examples of “artificial” private procurement. All of this confronts us with the need to clarify the reasons behind such a behaviour as well as to reassess its correctness. It is especially challenging but cost-effective (from the point of view of the protection of EU financial interests) to detect and possibly eliminate risky applications before the grant decisions are taken.

Our starting point

Since 2012, ARIB anti-fraud system has been developing and improving significantly. Increased staff awareness of fraud schemes and improved investigative skills of our special control unit have contributed to improving ARIB's overall fraud detection capacity. Most of the detected fraud cases which later were subject to criminal investigation exhibited private procurement manipulation problems. This confirmed the doubts we had while carrying out the respective administrative procedures. This is a known problem, widely communicated by the EC and OLAF through various initiatives like international anti-fraud seminars. Some examples:

- „*Information Note on Fraud Indicators for ERDF, ESF and CF*“ (2009), which included very good overview of both red flags for private procurement contracts and Public procurement fraud schemes.
- “*Detection of forged documents in the field of structural actions. A practical guide for managing authorities*” (2013).
- “*Identifying conflicts of interests in the Agricultural Sector. A practical guide for funds managers*” (2015). This guide provides an enhanced approach and explanation to the meaning of conflict of interest.
- Anti-Fraud seminars by DG AGRI anti-fraud adviser (P. Baader), who put a remarkable effort in his 2014 tour of the Member States to increase



awareness of different fraud schemes and the reasons behind (including breaches of the “three-offer rule”)

- *“Assessment of Risk of Fraud and other Serious Irregularities to the detriment of the CAP budget” (2016)*

In order to not rely exclusively on our experiences and subjective assumptions, we involved our risk management system to find out and analyse the real volume and impact of the problem. The first risk analyses results became available in 2017.

In the beginning of the programming period 2014-2020, we estimated that a total amount of RD support of 341 MEUR - consisting of approximately from 10.000 applications – would have been paid on the basis of the three-offer-rule (figures exclude agricultural machinery investments, where price catalogue must be used in place of the three-offer-rule). In October 2017, we calculated that 6.000 applications amounting to 239 MEUR support (total investments 597 MEUR) had been submitted since the beginning of the current programming period. We concluded that 41% of the applications to CAP RD support schemes – corresponding to 77% of the amount of the support - had been paid through private procurement. Considering that private procurement manipulations - along with the creation of artificial funding conditions - is one of the two major CAP RD risk areas, we wanted to analyse the possible amount and percentage of projects at risk by using “red flags”.

Our solution

Since 2017, annual risk analysis results and improved risk management abilities have inspired us to make practical use of risk assessment techniques to support our everyday fraud prevention procedures. Of course, we decided to use the new approach for the most problematic measures – 2nd call of the diversification measure in autumn of 2016, 4th call for investments into agricultural holdings in spring 2017 and 5th call in spring 2017. In 2017, ARIB started to implement its new multi-speed application management approach based on the segmentation of applications into green (low risk) and red (high risk) corridors. An operational risk assessment was prepared just after the conclusion the call and before the granting decision in order to process more prudently applications with higher risk. The aim was to avoid providing financial support to possible fraudsters or alternatively to collect further data if there were no sufficient grounds to immediately reject suspicious applications. One set of risk factors aimed at detecting possible private procurements manipulation. The preparatory horizontal risk analyses already confirmed our initial suspicion that the manipulation of private procurement is a significant problem. For



instance, in 2017 our risk analysis found that 14 companies having altogether a 2017 turnover of 200 euros submitted (losing) bids for 20.000.000 euros. Tax authorities confirmed later that those companies were fake/shadow companies with no real business activity. Another horizontal analysis revealed that 18% of construction area projects were at risk of being “settled in advance”, i.e. there could be cases of fake competition and manipulated procurement. Our risk analysis detected what we called the “golden trios”, i.e. a recurrent pattern of offers from the same bidders.

Our research was carried out to better understand how private procurement principles should be implemented in CAP RD measures to comply with both EU guidelines and case law of the European Court of Justice. Using a principal-agent theory perspective, we concluded that conflicts of interests are caused by the abstract nature of the principal (the EU) as well by confusing principal-agent relations, where agents (the beneficiaries) do not feel compelled to represent the interests of such an abstract principal nor even perceive the existence of such a conflict of interest. We found that private procurement manipulation is the clear sign of the existence conflict of interests from a new perspective. Avoiding conflict of interest helps to achieve transparent, purposeful and reasonable use of public finances, since fair and open competition is essential to ensure compliance with the fundamental principles of the EU (free movement of goods and services, equal treatment, proportionality and transparency of decisions, mutual respect etc.). According to EU public procurement directives, compliance with the above-mentioned principles must be ensured and conflict of interest in above-threshold public procurement procedures must be avoided, yet this is often not what happens in the case of below-threshold procedures. Relevant case law of the European Court of Justice makes it clear that it is compulsory to comply with EU fundamental principles even in case of below-threshold public procurements procedures. EU horizontal law for the management of the EU funds has not clearly defined the concept of conflict of interest, nor the obligation to avoid it or the scope of the actors whose interests may conflict. In the light of the EAFRD, the legal loophole relating to the conflict of interest has been highlighted, as there is no legal obligation to respect the rules and principles of public procurement - i.e. the obligation to avoid conflicts of interest - for contracts financed by the EU below the threshold. The main conclusion is that private procurement rules are not in place to ensure the reasonableness of the value of the project only, but also to safeguard other EU principles.

A risk analysis was carried out in late 2017 to determine the manipulation risk of approved applications involving private procurements awarded on the basis of three-offer-rule. The analysis was based on 1.000 bidders who submitted 4.300 bids in



amount of 913 MEUR. The first result of the analysis revealed that 7% of the bidders submitted bids for a value exceeding at least ten times their yearly turnover. Average cost of the project (i.e. bid) was 303.000 euros and average yearly turnover 8.600 euros. Usually such bidders also do not have workforce and do not pay taxes: those companies can be described as shadow companies and are used only to meet the condition of submitting three price offers. The second result of the analysis revealed that at least 18 % of the bids were not submitted as a result of actual competition but rather as a result of preliminary agreements. We found out so called “golden trio” bids which always were submitted by the same set of companies and the winning bid, in those cases, was almost always predictable.

Lessons learnt

It is important to keep in mind that most of the cases detected through a risk analysis are just “red flags” and not confirmed irregularities or frauds.

A more advanced risk analysis could identify more complex risks, which are difficult to detect using only the strict ordinary procedures. For instance, the so-called “golden trio” are obvious manipulations of the three-offer-rule which are very hard to prove under ordinary administrative procedures within a limited timeframe. It turns out that the more advanced the use of risk analysis becomes, the more advanced the anti-fraud system must be. It determines the need to develop anti-fraud units acting within the framework of the administrative investigation focusing on the fight against complex high-risk cases and in support of teams dealing with ordinary proceedings.

Even in cases where risks cannot be completely eliminated, it is useful to set up this new additional layer of anti-fraud activities. This is the red flag system, which could be useful for the completion of the risk analysis database for the extraction of control samples and other future risk analyses or for the creation of a system for which residual risks are controlled again in the subsequent stages of the application verification procedure. The creation of a risk analysis system classifying high and low risk cases effectively offers the opportunity to develop an approach for which low risk cases could be handled more quickly and smoothly, thus enabling a faster decision-making. Such an approach should promote fair behaviour of applicants and beneficiaries, and the Paying Agency should actively try to shape the public opinion in that direction.

Conclusions

Old wisdom is that the solution of a problem begins with recognizing it.



Developing and updating the risk analysis have led us to the awareness that knowledge of data on risks can contribute to the prevention and mitigation of fraud risks even before granting decisions or final payments are made. The prerequisite is the development of smart procedures, i.e. the implementation of risk analyses into standard procedures.

A smart anti-fraud tool should always be based on modern data management and on command of risk assessment techniques. This is useful for wisely using resources so that deeper controls must be suffered only by those who intentionally try to manipulate the system. Overall, this smart system contributes to increasing the trustworthiness of the Paying Agency and of the EU support system as a whole.

As the Estonian example shows, the risk-based approach has helped us to reduce the overall time taken to process most low-risk cases and to increase the precision of the rejection of high-risk applications. Finally, this approach is perfectly in line with the objective of safeguarding the financial interests of the European Union.

Conscious risk assessment and research of manipulation risk of the three-offers-rule in private procurement have revealed at least one aspect that was not known before. This is a so-called "golden trios" pattern of bids submitted in different projects by the same group of suppliers and where the winner is almost always predictable. According to our risk assessment, 18% of cases are subject to this risk.



INTRODUCING THE CATALOGUE PRICE SYSTEM FOR AGRICULTURAL MOBILE MACHINERY

THIS CHAPTER:

- IMPROVES **PAS STAFF AWARENESS** OF PROS AND CONS OF THE REFERENCE PRICE CATALOGUE AS A POSSIBLE ALTERNATIVE TO THE CLASSIC “THREE-OFFER-RULE” TO CHECK THE REASONABLENESS OF INVESTMENT PROJECTS COSTS.
- BUILDS ON THE IDEA OF “**VALUE FOR THE MONEY**” BY MINIMIZING COLLUSION RISK IN PRIVATE PROCUREMENT AND REDUCING ADMINISTRATIVE BURDENS FOR BOTH THE AGENCY AND THE APPLICANTS
- SHARES TESTED **SOLUTIONS** ON THE DEVELOPMENT OF NON-DISCRIMINATORY REFERENCE PRICE CATALOGUE SYSTEM

The problem

The problem at stake is threefold and embraces the perspectives of the PA, of the beneficiaries and of the legislator respectively.

From the PA's perspective, assessing the reasonableness of costs and ensuring that offers are comparable were too labour-intensive tasks. Moreover, the methods in place did not ensure that expenditures claimed by the applicants were in line with market prices.

Analogously, beneficiaries perceived the duty to comply with the “three-offer” private procurement principle as an administrative burden. Moreover, the three-offer-rule did not

adequately take into account beneficiaries' preferences for the purchase of those types and models of machinery mostly suited to their farming process. Submitting three independent offers was also difficult if only one vendor was available in the region.

Moreover, audits by European Commission revealed the weakness of this control procedure. In particular, verifications were considered weak since the three quotes submitted could not be compared on an objective basis and thus be objectively evaluated in the selection process.

ARIB staff also carried out study visits to the Hungarian payment agency (MVH) in 2012 to study the Hungarian price catalogue system.



Our starting point

It is well known that the “three-offer-rule” in private procurement has its weaknesses: despite its simplicity, it requires the utmost honesty on the part of the beneficiaries - who are required to carry out these procedures on their own - in order for it to work flawlessly. ARIB was experiencing a situation where the three-offer-rule used until then was showing clear shortcomings. Therefore, in the beginning of 2014, ARIB, in cooperation with the Ministry of Rural Affairs, started the introduction of the catalogue as an alternative for the “three-offer-rule”.

Since the beginning, the idea was to allow to apply for support only for the purchase of agricultural machinery and equipment included in the catalogue, the price of which had already been certified as reasonable.

A segregation of duties was introduced, according to which the Ministry started to develop and amend the necessary legal framework, while ARIB's task was to develop and implement the technical solution and to sign the contract with the body in charge of price validation.

The Estonian Crop Research Institute was chosen as a validator, mainly because it was already maintaining an agricultural machinery and equipment catalogue as well as a machine vendors database for scientific purposes.

The project started in the beginning of 2014 and the catalogue was made public in the end of the same year for the applications to measure 4. This was also the first occasion where only the machinery and equipment listed in the catalogue became eligible for support.

Our solution

The catalogue is used only for agricultural mobile machinery and equipment. For certain schemes, only items in the catalogue are eligible for support.

The legal force of the catalogue was given by the amended European Union Common Agricultural Policy Implementation Act and it was established as a part of register of agricultural subsidies and agricultural parcels. Moreover, a separate statute of the reference price catalogue was established.

The statute describes the basic principles of the catalogue, which are the following:

- Only data of mobile agricultural machinery and equipment are transferred into the catalogue;



- The equipment limit prices are checked and validated before that piece of equipment becomes eligible for support;
- The validation is carried out by a designated body, the Estonian Crop Research Institute, a State authority under the Ministry of Rural Affairs.

All interested parties (suppliers, dealers, applicants) can enter the data into the catalogue. Items are divided into subcategories and up to four different specification levels are used for each unique model.

If the data entered by the supplier is correct and the price is consistent with the market price, then the object is validated by endowing it with a unique code. The expert opinion is based on:

- Manufacturer's selling price;
- Price of the item in Estonia;
- Price of the item in neighbouring countries (taking account of transport costs);
- Prices of similar goods;
- Information on the same or similar goods already in the catalogue.

Prices are valid up to 24 months, and only after 6 months a price can be changed by its original submitter. To be eligible, items must be validated before the submission of the applications.

The catalogue is public and published on the PA website².

During the submission of her application, each applicant selects an item from the catalogue and enters its unique equipment code and the expected price. This means that the purchase does not have to be finalised immediately. It is important to notice that the expected price can differ from the validated catalogue price. That means that when the machine price is higher than the catalogue price, the validated price will be used to calculate the amount of financial support. If the price is lower than the validated price, the actual price paid by the beneficiary is used to calculate the support. The example above shows an important feature of the catalogue: invoices are still submitted to and analysed by the PA during the procedure. This information is also used to update the catalogue.

² <https://epria.pria.ee/epria2/hinnakataloog/#/valideeritud>



Lessons learnt

Three are the main lessons learnt from the catalogue implementation experience.

Firstly, machinery vendors and dealers initially opposed to entering data into the catalogue. This issue was tackled by introducing specific obligations in the measure specific legislation, stipulating that eligibility for support is limited to the equipment in the catalogue. Furthermore, it was clarified that the catalogue is anonymous, meaning that catalogue items are not linked to specific vendors and the applicant has still to carry on the procurement procedure and find the vendor.

Secondly, there are approximately 7.000 different items in the catalogue, of which only about 1.700 have been actually requested. This leads to the situation where more or less 75% of the catalogue must be kept up-to-date and running despite of the fact that there is no demand for these items.

Thirdly, it is important to notice that there can be no 100% fraud-proof system, and this holds also for the price catalogue system. The European Court of Auditors also states that comparing the prices of goods for which a request is made with independent price data can provide assurance that prices are reasonable, but this approach may be difficult to implement, and reference price databases and lists are useful only if the prices included are sufficiently close to known actual market prices³.

As an example, despite having this price catalogue system, we still have found some cases where the price of the purchased goods was manipulated by the farmer beneficiary of the support. There was a case where the actual price for the agricultural machinery on the original vendor invoice was 15.600 €, but the buyer (beneficiary) falsified the price on the invoice to 27.600€, i.e. the maximum allowed price for this type of machinery according to price catalogue. Additionally, all payment documents were falsified accordingly.

Conclusions

The introduction of a price catalog as an alternative to private procurement procedures based on the three-offer rule – which is at high risk of manipulation -has certainly been a correct and necessary development.

In addition to reducing administrative burdens and simplifying the application procedure, the greatest added value is the freedom of the beneficiary to choose an adequate agricultural machine, a fact which significantly reduces the incentive to

³ https://www.eca.europa.eu/Lists/ECADocuments/SR14_22/SR14_22_EN.pdf , remarks 64-73



manipulate the procurement through agreements with a particular machinery importer or service provider with whom he has long-term links.

At the same time, the biggest challenge is to provide a sufficiently flexible validation system so that the prices in the catalog are as close as possible to the actual market situation. It should definitely be taken into account that the price catalog system is not fully fraud-proof, and general statistics show that catalog prices sometimes tend to be validated at 15-20% above the actual market price

IMPROVING THE COST EFFICIENCY EAFRD FUNDED PURCHASE OF MACHINERY AND EQUIPMENT (BY MARCO TREVISAN)

Overcoming the “three-offer” system to achieve simplification and transparency in EAFRD funded purchases of machinery and equipment

THIS CHAPTER:

- IMPROVES **PAs** **STAFF AWARENESS** OF THE IMPORTANCE OF CORRECTLY MANAGING AND RECORDING CONTROL DATA THAT CAN BE SUBSEQUENTLY USED FOR MORE ADVANCED APPLICATIONS
- BUILDS ON THE IDEA OF “**VALUE FOR THE MONEY**” BY LINKING THE AMOUNT OF FINANCIAL SUPPORT FOR THE PURCHASE OF MACHINERY AND EQUIPMENT TO REAL MARKET PRICES
- SHARES TESTED **SOLUTIONS** ON REDUCING BUREAUCRATIC BURDENS ON BOTH APPLICANTS AND CONTROLLERS

The problem

Administrative verifications on applications for support relating to the purchase of machinery and equipment by private parties must include an assessment of the reasonableness of the costs, a task that should be carried out according to appropriate procedures. AVEPA, as recommended by the Managing Authority of RD Programme established in the Veneto Region, carries out such an assessment by comparing three different quotes relating to the same item (i.e. the “three-offer-rule”).

These quotes must come from independent suppliers, be comparable and competitive with respect not merely to “official” price-lists but to actual market prices, i.e. those prices reflecting the real market situation for the specific item to be financed and with reference to the time at which the quotes were issued.

Although AVEPA has been able over the years to develop adequate tools for tracking the assessments carried out on the reasonableness of costs - thanks to the constantly updated checklists and template minutes attached to each RD measure-specific manual - assessing compliance with the above-mentioned requirements of independence, comparability and relevance to the real market situation is still complicated.

The assessment of these aspects is increasingly carried out by requiring the beneficiary - a private party – to considerably integrate the documentation to be submitted. On the one hand, this practice constitutes a bureaucratic burden on the beneficiary, who could decide to forego access to EAFRD funding; on the other hand, this verification is also a slowing-down burden on AVEPA's own investigation process, given that the Agency must commit a large part of its staff to the assessment of the reasonableness of costs. Even so, in some cases, not all the doubts raised can be fully cleared.

Even if an in-depth investigation were to lead to the suspicion of "ad hoc" manipulations of the quotes aimed at specifically selecting one of the three bids submitted, as long as the winning bid is adequate and consistent with the real market situation, it would not be possible to prove that an irregular behaviour (or even a fraud) was being perpetrated to the detriment of the EU budget.

Such a control system, besides being neither particularly efficient nor transparent, does not allow to satisfactorily detect irregularities or fraud to the EU budget, so it is desirable to base costs reasonableness assessments on other evaluation systems.

Our starting point

As early as 2000, the Veneto Region separated the functions of RD programming and RD management and assigned the downstream programming phases to AVEPA, which manages payment authorisations and aid applications for the regional territory according to the regional guidelines and under the coordination of the Regional Government.

AVEPA has an organisational structure and a system of internal rules, controls and procedures ensuring compliance with regulatory obligations. Its set-up consists of a central office and satellite offices located in each province, and it is endowed with staff of sufficient number and professionalism to guarantee the management of applications, while respecting the principle of separation of functions.

AVEPA is acknowledged as a Paying Agency and provides the necessary assurance for the correct execution and accounting of payments.

AVEPA, which was established in 2001 as the Paying Agency of the Veneto Region, has been responsible ever since for the administrative procedures relating to applications for funding and payments, not only for RD, but also for other lines of support concerning national and EU funds in favour of agricultural and agri-food undertakings.

Over the years, AVEPA has always pursued the improvement of its control procedures in terms of transparency, efficiency and cost-effectiveness, i.e. those principles constituting the basis of the Public Administrations' governing regulations. Specifically, over the years AVEPA has managed to keep the information exchange up and running, thereby creating a sort of "bottom-up" communication. This channel is maintained through periodic specialist meetings with the experts in charge of the controls locally carried out by the satellite provincial offices. During these meetings major issues hampering the administrative procedures are identified, in order to find possible solutions through the collaboration provided by the Headquarters' "Business Competitiveness" Technical Area in charge of the overall coordination.

This direct line - strengthened by the fact that AVEPA is employing only internal staff and does not resort to Delegated Bodies - has made it possible to improve its costs-reasonableness assessment procedures.

Moreover, thanks to the significant contribution of the audits carried out over the years both by the Agency's Internal Control Unit and the EC, a number of weaknesses has been identified in relation to the specific subject of the three-offer-rule, the main ones being the following:

- Verification of the effective independence of the three bidders: cases were found where allegedly different undertakings had the same address and/or website and/or telephone or fax number, or even the same owner/legal representative;
- Manipulated prices: presence of identical or very similar quotes giving rise to suspicion of non-independent bidders;
- Misapplication of derogations: in case of purchase of highly specialised goods or in case of completion of pre-existing supplies, it is possible to derogate from the duty of getting three quotes. Cases of misapplication of this derogation were found, whereby, although the goods were neither highly specialised nor did represent a completion of pre-existing supplies (with unique characteristics), the beneficiary had not submitted the three quotes required and the assessor had accepted the justification provided without carrying out verifications of any kind.
- Comparability of quotes: it was found that the three bids concerned goods which were not comparable from a technical point of view, due to the fact the

endowment of optional features was so “inflated” that quotes could not be compared even if the base model was the same.

- Inconsistency with the real market situation: quotes issued at times too far from the one of submission of the application and therefore not useful to capture the real market price.

The Paying Agency considered difficult to dismiss the three-offer-rule as a tool for assessing the reasonableness of costs, but the problem was raised to the Managing Authority anyway, explaining that it was advisable to develop an evaluation tool that could support or, in the best scenario, even replace that method. The goal was to overcome the well-known implementation issues, thus ensuring a more uniform evaluation by all the assessors involved. Other goals to be simultaneously pursued concerned the downsizing and streamlining of the controls to be carried out, and, last but not least, a substantial reduction of the bureaucratic burden on beneficiaries, so as not to discourage them from applying for aid, thus ensuring a numerically adequate participation in the RD calls.

Our solution

As a result of the fruitful collaboration established over the years with AVEPA, the Veneto Region has tackled the problem and suggested the development of a machine and equipment price database, an idea inspired by the positive experience gained from the agro-forestry price list used for the itemised estimates required within the structural intervention procedures.

The working hypothesis was that the database would set the maximum cost of a given item on which both the eligible amount and the amount to be financed could be based. Therefore, the database had to possess certain characteristics in order to be useful for the purpose, namely:

1. Accuracy: the prices of the price-book had to reflect market values and, therefore, derive from a survey that was not limited to a mere collection of price-lists or data retrieved from suppliers;
2. Up-to-dateness: the price list had to be regularly updated, in order to reflect market trends which, in recent years, have shown a considerable volatility due to the underlying economic crisis.
3. Comparability: the system had to arrange prices collected from suppliers into homogeneous groups, classified by types of machinery and

equipment, and compare them on the basis of precise quantifiable technical characteristics that are specific to the intended use (e.g. engine power for the tractor, width of the bar for the seeders, etc.).

Based on these assumptions, by Regional Decree 1657 of 17/10/2017 the Veneto Region adopted the Operational Programme PO2 - Action 3 on Measure 20 - Technical assistance, which also includes the development of a price-book of maximum unit costs for agricultural machinery and equipment to be used under RDP 2014-2020.

The Agro-food Directorate of the Veneto Region deemed to outsource the development of the database and turned to the Electronic Market of the Public Administration. The only registered supplier suitable for the development of a reference cost calculator for agricultural machinery was the company *Edizioni L'Informatore Agrario s.r.l.*, a publishing house operating in the agricultural sector with over 40 years of activity.

Edizioni L'Informatore Agrario, besides having a deep knowledge of the agricultural and forestry sector in Veneto, also manages a database collecting technical characteristics of new and used agricultural machines on the Italian market, including the corresponding list prices, which are published in its own thematic magazines as well as on its own website (<http://www.macchineagricoledomani.it/>).

This led to the adoption of Director of the Agri-food Directorate Decree No 111 of 7 November 2017, which directly awarded to *Edizioni L'Informatore Agrario* the contract for developing a price-book of maximum unit costs for agricultural and forestry machinery and equipment.

Since agricultural machines, due to their variety and heterogeneity, can feature multiple parameters and functional characteristics that besides influencing their performance also affect their selling price, the funded intervention consisted in identifying, for each category of traction and operating machines, those homogeneous and univocal parameters most affecting their purchasing price, as well as in quantifying their impact. The goal was to elaborate an algorithm calculating the reference cost for a given piece of machinery.

The categories of agricultural machinery considered in the survey are:

- tractors (conventional, tracked, specialised, isodiametric and telehandler);
- large harvesters;

- machinery for soil tillage and seeders, crop protection (i.e. atomizers), mineral and organic fertilization (fertilizer spreaders), haymaking;
- agricultural trailers;
- mixer wagons;
- machinery for viticulture, olive growing and forestation.

The activities carried out by *Edizioni L'Informatore Agrario s.r.l.* to achieve the goal were carried out as follows:

- updated price-lists of the main manufacturers and retailers operating in Italy and in the Veneto Region were retrieved. The database used by Edizioni L'Informatore Agrario includes technical characteristics and list-prices updated to 2017 for tractors and self-propelled vehicles and to 2016 for other agricultural machines marketed in Italy. Before delivery, the database underwent a further check and a filtering process. Data were also filtered and processed before being used.
- A subdivision of the categories of machines into homogeneous sub-categories was carried out, and the mechanical characteristics that specifically and unambiguously differentiate the categories and sub-categories were subsequently identified; the technical parameters most affecting the price were then investigated by using traditional descriptive statistics tools (indexes of central tendency and data variability, box plots, histograms, etc.).
- A statistical analysis was carried out to identify the most significant correlations between the (numerical and non-numerical) parameters considered and the selling price for each sub-category of machinery (dependent variable) using one of the following methods:
 - simple or non-linear linear, polynomial, multiple regressions;
 - multivariate methods.
- The goodness of fit of the regression models designed and the statistical significance of the estimated parameters were then evaluated. When relevant, checks on statistical goodness of fit and significance levels include:

- estimation of correlation indexes r and/or determination index R^2 , testing correlation hypotheses by means of Student or Pearson tests
 - analysis of residuals
 - Estimates the standard error and confidence interval.
 - Verification of hypotheses by means of Fisher tests on the slope of the regression lines.
- Algorithms were then defined, and user-friendly models were developed for estimating the reference price for each sub-category of machine.

The statistical analysis was carried out by *Edizioni L'Informatore Agrario* using Excel built-in functions and Adalta's statistical package *Statgraphics* Centurion XVI.

With reference to Article 62, paragraph 2 of EU Regulation no. 1305/2013, which provides, even in cases of adoption of a price-book, that the Managing Authority shall ensure the accuracy and adequacy of data through a fair, equitable and verifiable calculation, the Department of Land and Agro-forestry Systems of the University of Padua (TESAF) has been identified as a functionally independent institution possessing the necessary expertise to validate the accuracy and adequacy of the calculations. On September 25, 2017, TESAF issued a statement certifying the accuracy and adequacy of the calculation methodology implemented for the maximum cost reference price-book.

Once the algorithm was developed, its performance was verified - for each type of machine considered - on the basis of 1.034 estimates (which included discounts applied by dealers on list prices) provided by AVEPA for the machinery and equipment positively appraised in 2016-2017 for the applications submitted under the 2014-2020 RDP calls for proposals. These estimates have been compared with the simulated values to identify the goodness of the model and the average discounts to be applied.

In particular, the analysis of the estimates showed that the model overestimated the actual values; in order to achieve a better accuracy, a correction coefficient was calculated and applied to the model so that most of the data would not exceed a $\pm 20\%$ deviation from the actual figures.

The coefficient is 0.775, which represents a 22.5% reduction in the price estimated by the model. This value can be considered reasonable based on two seemingly opposite factors, both of which may explain this variability. The first one concerns the list price, on which the simulations are based, which is never the final purchase price,

as it can be modified because of discounts applied by the seller, payment methods, existence of tax benefits, second-hand goods return, etc. The second one regards the estimates provided, which often include the provision of add-ons or accessories that are difficult to estimate with the available data.

At the end of the project, by decree of the director of the Directorate EAFRD Managing Authority, Parks and Forests n. 111 of 18/12/2017 the price-book of maximum reference costs for agricultural and forestry machinery and equipment for the Veneto Region was approved to replace the “three-offer-rule” for the purpose of submitting applications for support under the Rural Development Programme of Veneto 2014-2020.

The price-book is also made available to operators as reference price calculation app; it is downloadable from the Internet and works with both Windows and Apple operating systems.

Edizioni L'Informatore Agrario s.r.l. has agreed with the Region to implement three updates by 2021 but is available right from the introduction of the price list to integrate or update it in a timely manner whenever the relevant departments of the Region deem it appropriate. For instance, due to its peculiarity, the forestry machinery and equipment price-book was updated on August 21, 2018, by including new items and revising the prices of those already included based on the optional equipment concerned.

With reference to the documents to be attached to the submission of the application for support, the introduction of the new system allowed a simplification of the calls relating to those types of intervention of the RD involving the purchase of machinery included in the price-book among the eligible expenses, since applicants shall attach only the report produced by the app.

Since private applicants are no longer required to get three quotes from three independent and competing suppliers, a significant reduction of the bureaucratic burden has been achieved. Moreover, AVEPA has been able to simplify its own procedures, not having to check and fill-in the checklist relating to the verification of the three quotes on a sizable share of applications regarding machinery and equipment.

As far as the analysis of the add-ons to the basic models is concerned, the decision was made to take into consideration - as a starting point - only the ones deemed necessary to put the equipment in use. For each basic model, the price-book lists the most frequently purchased add-ons in the reference market, thus allowing the

applicant to choose her preferred set-up in the subsequent application for support. Moreover, add-ons that are deemed not in line with the FEASR grant are not included in the price-book.

Lessons learnt

The of ongoing evolutionary process pursued by AVEPA and the Veneto Region in terms both of simplifying administrative procedures and adopting innovative IT tools has triggered the development of this new procedure to assess of the reasonableness of costs.

The above described path can be followed by any PA but, irrespective of the subject entrusted to the development of such a “reference cost” database, the availability of a significant amount of data it is needed. In the case covered in this paper, the project started from a price collector organized by category of machinery and equipment and the collection of the quotes that AVEPA gathered during the first years of the RDP 2014-2020.

As first, in order to serve the highest possible number of applications for support, it is necessary to focus on those pieces of machinery and equipment that are mostly widespread in the pertinent territory and then, at a later moment, also goods characterised by a more restricted market, but for which a sizeable demand exist, can be included. At the same time, the add-ons to be combined with the basic versions should constitute a rather restricted set and include only the most purchased ones in the reference market and the ones deemed necessary to put the equipment in use. It should be noted that the database should be organised by categories and corresponding sub-categories to ensure comparability.

The constant revision of the database is crucially important, and it should not be carried out following a rigid schedule but, as far as possible, on the basis the evolution of relevant market conditions, so that real values can be effectively monitored. Each revision should be followed by informative notes alerting users and specifying which part of the database has been modified and/or integrated.

The price-book should provide the maximum eligible cost for the purchase of a particular asset. The introduction of maximum eligible costs should allow the simplification the application submission. Costs should not merely derive from producers’ official price lists but should be calibrated on the discounts usually applied in the territory, in order to ensure the reasonableness of costs principle.

Anyway, the “three-offer-rule” - where the offers are reported also in a technical paper explaining the final choice - cannot be totally replaced as not all categories of

agricultural and forestry machinery and equipment fall into the "price-book of reference unit maximum costs" approved by the Veneto Region's RD programme Managing Authority. In fact, there exist in the market eligible items which cannot be included in the price-book because of peculiarities such as a high technology content or rare and not comparable characteristics of the very place in which these goods are put in use.

Conclusions

The passage, even though still partial, from the evaluation of the reasonableness of the costs based on the three quotes to the one based on the reference maximum unit costs list of agricultural and forestry machinery and equipment, has been meeting since the beginning a significant appreciation by AVEPA's assessors, beneficiaries and consultants.

Although the system has been only recently adopted, all actors involved agree that the price list allows a better identification of real market prices while providing a smart solution to the issue of the add-ons that often made the three-offer hard to comparable.

Current appraisal procedures have shown a significant streamlining of AVEPA's investigation process, thus facilitating managers in charge of the administrative procedure during decision making phase on the admission to funding. Moreover, a more uniform applications assessment has been achieved, thus ensuring that the same funding is given to beneficiaries requiring the same items.

However, potential areas for improvement are already evident so as to increase the usability of the price list, the main one of which is switching from the downloadable "local" copy of the software programme to a web-based application and/or a mobile app. An additional advantage made possible by such a development could be a better management of the updates, which could be real-time monitored through alerts addressed to the users; these notices, besides tracing the frequency of the updates, could also report further details on the actual changes as to precisely inform users and specify what has been modified/integrated.

THE E-PROCUREMENT SYSTEM ON THE NPA WEBSITE

THIS CHAPTER:

- IMPROVES **PAS STAFF AWARENESS** OF THE BENEFITS OF MORE TRANSPARENT PROCEDURES
- BUILDS ON THE IDEA OF “**VALUE FOR THE MONEY**” BY STIMULATING INCREASED COMPETITION AND THE RESULTING REDUCTION IN PRICES.
- SHARES TESTED **SOLUTIONS** FOR AN E-PROCUREMENT SYSTEM

The problem.

NPA deals with two different kinds of beneficiaries: public and private bodies. In accordance with RD Programme 2014-2020 administration rules, for their purchases of goods, services, works beneficiaries must act:

- In accordance with the Public Procurement Law of the Republic

of Lithuania (hereinafter referred to as the “Law”) and all others applicable laws, if they are public bodies;

- in accordance with Procurement rules accepted by the Minister of Agriculture (hereinafter referred to as the “Procurement rules”), if they are private bodies.

In the field of public procurement, the Lithuanian NPA has more or less the same problems with public bodies of other countries and they are mainly due to the frequent amendments and complexity of the Public Procurement Law.

The situation with private bodies was completely different. Private procurement procedures carried out by bodies such as limited liability companies or other types of natural and legal persons (e.g. farmers) were often opaque and irregular. These frequent irregularities were the consequence of: i) extensive and hardly understandable regulations; ii) the lack of perception of these same rules and; iii) the unavailability of instruments to track the correctness of procurement procedures carried out.

One of the main goals of the NPA is to ensure high-level administrative support in the procurement process. Before the introduction of the e-procurement system, applicants had to procure goods, services and works in accordance with the Procurement Rules, according to which the procurement procedure had to start with the publication of a procurement notice in newspaper. Thereafter, the applicant had to obtain paper quotes from potential suppliers. This paper-based system made it hard to ensure compliance with the transparency and non-discrimination principles.

Our starting point.

Following the practices in place in other Paying Agencies, NPA decided to suggest the Ministry of Agriculture to revise the Procurement Rules to make them clearer and simpler. After long consideration, the Ministry approved a new version of the Procurement rules, which provide that there is no need to resort to the procurement procedure in case of low-value purchases (three-offer rule) anymore, while it is required to initiate high-value purchases on the NPA's website.

The idea for the NPA web-based e-procurement system was based on the practice adopted by Lithuanian public bodies, which have been using the Government e-procurement system for years. It is worth to mention that at first NPA was considering transferring only a part of the "paper" procurement procedure to the cyberspace (i.e. by creating a notice-board to be used for publishing notices only). Later the idea came to connect purchases initiated by private bodies to the public procurement e-system, but this proposal was rejected by the State institution administering this system (Public Procurement Office).

Our solution.

After long consideration, NPA made the decision to create its own e-procurement system. With the introduction of the aforementioned changes to the procurement rules and the launch of the e-procurement system, procurement procedures have become clearer and more transparent. High value procurement procedure begins with the publication of a procurement notice in the e-system. All potential bidders can examine the procurement documents online as well as ask questions and write claims in the system. Moreover, they must submit their bid online. When purchases are carried out according to this procedure, Procurement Unit specialists can monitor the entire procedure and keep track of documents added. Not only this system makes it possible to prevent most of the fraud cases, but it also makes the procedure clearer, given that the system – and not the beneficiary - ensures the correct unfolding of the procurement procedure.

Procurement procedures for private bodies:

Open procedure	Negotiated procedure
<ul style="list-style-type: none"> Always Obligatory usage of NPA e-procurement system https://www.nma.lt/index.php/projektu-vykdytoju-pirkimai/5460 	<ul style="list-style-type: none"> <u>Only in special cases</u>: no offer submitted/all bids rejected because unsuitable/prices too high in the open procedure/ offers can be submitted only by a particular tenderer and there are no alternatives/ procurement object is postal, telecommunications, transport services or fuel

Contract type	Contract value	Terms for submission of tenders	Minimal number of tenders
Goods/services	= or > 58000	At least 14 calendar days for open procedure/ 5 working days for negotiated procedure	At least 1 valid tender
Works	= or > 145000		

Evaluation criteria: economic efficiency or the lowest market price.

Exception: Procurement procedure is not necessary when all the following conditions are met:

- Project manager is a private body;
- The value of contract is less than 58.000 (for goods and services)/145.000 (for works) EUR excluding VAT;
- three equivalent commercial offers, considered suitable by NPA, were attached to application to demonstrate the reasonableness of the costs.

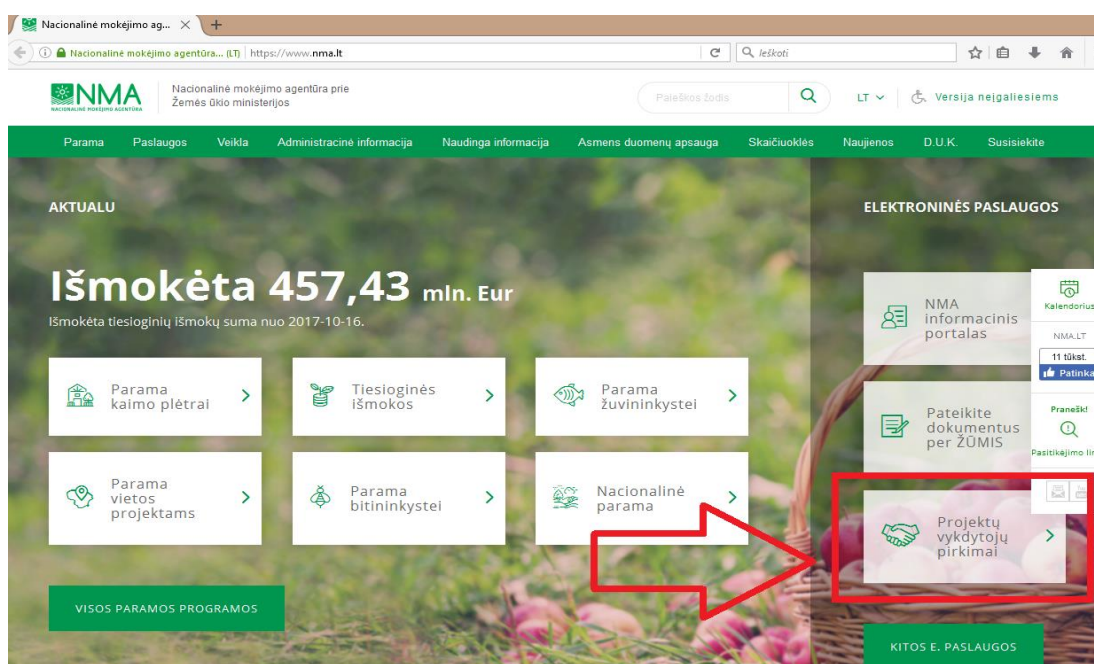


Figure 1- First page of NPA website and the link to e-procurement system

The E-procurement system was launched in the end of 2015 and became compulsory on 2017 January 1. Currently, the e-procurement system has 1.186 registered beneficiaries, 1.029 registered bidders, 1.907 completed procurement procedures.

Before using the e-procurement system, both beneficiaries and providers must register. There are two different registration paths:

- **For beneficiaries:** there is the possibility to register either as natural or legal persons. In any case, they must register via e-government website, which is available to electronic bank accounts owners.
- **For providers:** they also can register either as natural or legal persons. They have just to fill-in a simple form with the following data: name, code, email address and password.

Preparation of procurement notice in the system: beneficiary has to fill-in all required fields, such as type of procedure, goods/services/works to be provided, name of the procurement object, short description and his contact information. It is mandatory also to add procurement conditions.

Control step: once the notice form is fulfilled, an NPA operator verifies the information notice suitability as well as the admissibility of the procurement conditions prepared. This step improves the quality of procedure and reduces a number of irregularities such as discriminatory technical specifications or lack of adequate information regarding the procurement conditions.

The picture below shows how a published procurement notice looks like. Here it is possible to find all necessary information (name of the procurement object, short description, type of the procedure, publication ID, and contact details, term for submission of tenders). Bid opening procedure is in only one click away.

2018-06-14 Bulvių kasimo kombainas		
Pirkimo tipas Prekės	Pirkimo būdas Konkursas	Skelbimo ID 18-0687
Pirkimo kriterijus Mažiausia kaina		
Skelbėjo pavadinimas DARIUS STONIS		
Pirkimo santrauka Kviečiame dalyvauti bulvių kasimo kombaino (1 vnt.) pirkimo konkurse ir pateikti pasiūlymą. Pagrindinės prekės savybės: tipas - prikabinamas vienos vagos bulvių kasimo kombainas, bunkerio talpa - ne mažiau 2 t.		
El. paštas darius@siauresvilkas.lt	Galioja iki 2018-06-30 10:00 ?	
Dokumentai		
Dokumentai (įkelta 2018-06-12)		Peržiūrėti
Dalintis skelbimu	Pateikti pasiūlymą	Prenumeruoti

Figure 2 - Published procurement notice (1)

The screenshot shows a procurement notice for 'Bulvių kasimo kombainas' (Potato harrow) published on 2018-06-14. The notice includes the following fields and information:

- procurement object:** Bulvių kasimo kombainas
- publication's ID number:** Skelbimo ID 18-0687
- type of procedure:** Pirkimo būdas Konkursas
- evaluation criteria:** Pirkimo kriterijus Mažiausia kaina
- beneficiary:** Skelbėjo pavadinimas DARIUS STONIS
- purchase summary:** Pirkimo santrauka Kviečiame dalyvauti bulvių kasimo kombaino (vnt.) pirkimo konkurse ir pateikti pasiūlymą. Pagrindinės prekės savybės: tipas - prikabiamas vienės vagos bulvių kasimo kombainas, bunkerio talpa - ne mažiau 2 t.
- contact:** El. paštas darius@siauresvilkas.lt
- the deadline for the submission of tenders:** Galiojimo laikas 2018-06-30 10:00
- added procurement documents:** Dokumentai (įkelia 2018-06-12)

Buttons at the bottom include: 'Dalyvauti skelbime', 'Pateikti pasiūlymą', and 'Prenumeruoti'.

Figure 3 - Published procurement notice (2)

Lessons learnt.

Before launching an e-procurement system the pluses and minuses, advantages and disadvantages of the system should be analyzed:

Pros	Cons
Simplified procedure	Higher administrative burden on NPA
More transparency	Financial resources
Higher number of bidders	Staff resources
Reduced number of irregularities	Ensuring requirement of EU GDPR regulation
Lower administrative burden for applicants	System errors
Free of charge	Mistakes of system developer
Possibility to track procedures online	Limited possibilities if it is a part of PA website
Quicker and clearer control procedures	

It is very important to create the possibility for beneficiaries to obtain support in the simplest and most understandable way: indeed, the e-procurement system contributes to a certain extent to that goal.

Conclusions.

The system has led to the reduction of irregularities in procurement procedures, at least with regard to those procedural steps that are either automatically controlled by the system or manually verified by the Procurement Unit specialist (e.g. irregularities related to the content of the notice, the deadline for the submission of bids, etc.). Moreover, once the use of the e-system became mandatory, the number of offers received by the beneficiaries increased, and competition emerged, with the result that lower prices were obtained. Moreover, the e-system saves employees' working time, since it is not necessary to wait until the submission of all necessary

documents by the beneficiary anymore. Moreover, all received offers are visible on the e-system and it is now possible to check if the contract was correctly awarded. The “old” system caused huge administrative burden on NPA instead.

The e-procurement system has brought various advantages to the NPA, but at the same time it is important to remember to hold high the guard, since the more intelligent are the administration tools, the more cunning the fraudsters become.



MITIGATING MANIPULATION RISKS IN CONSTRUCTION SECTOR PROJECTS

THIS CHAPTER:

- IMPROVES **PAs** STAFF AWARENESS OF THE FACT THAT CONSTRUCTION ARE PROJECTS ARE THE MOST VULNERABLE TO COLLUSION IN “THREE OFFERS SYSTEM”
- BUILDS ON THE IDEA OF “**VALUE FOR THE MONEY**” BY SEPARATING HIGH-RISK FROM LOW-RISK CONSTRUCTION PROJECTS
- SHARES TESTED **SOLUTIONS** ON THE STANDARDIZATION OF QUOTATION TEMPLATES AND THE CREATION OF A REFERENCE PRICE MODEL FOR CONSTRUCTION PROJECTS

The problem

A remarkable amount of EAFRD expenditures is allocated to constructions. In Estonia a share of 40-50% (2016-2017) of the amount of EAFRD investments support includes construction works. The basic tendering process rules are laid down in legislative acts. The management of EAFRD resources should apply the principles of economy, effectiveness and efficiency. The key element is to give financial support to the “right things” at the best price. The main focus of the control

system is on the price comparability in grant applications. The main method used to assess the reasonableness of prices in grant applications consists in comparing offers from different suppliers.

However, ARIB had difficulties in comparing prices because bidders submitted offers structured in many different ways, so that the prices of items or works could not be easily compared. Moreover, these non-standardized offers caused significant administrative burdens, as the detection of discrepancies in the paperwork was complicated and time-consuming. As a result, formal differences in estimates hampered the verification of their actual content and, as a result, caused difficulties in assessing the reliability of prices as well as in identifying possible manipulations.

Moreover, our 2017 risk analysis confirmed that, compared to other areas, construction projects have a relatively higher risk of manipulation of the three-offer-rule in private procurement procedures. Two thirds of the investment projects included construction projects, of which 18% were at risk of manipulation.

The risk analysis allowed the identification of a strong risk pattern:



1. Involvement of “shadow companies” as bidders to formally fulfil the three-offer rule.
2. Risk indicators are: very low (or even zero) cost and taxes paid on employees; and a turnover ten or more times lower than the bid submitted for the project.

This share of 18% of the construction projects exhibiting private procurement manipulation risk consists of cases where the same companies have reiteratively submitted the same set of bids (the so-called “golden trio”) and where winner and losers are always predictable. In such cases, the losers could either turn out to be subcontractors or shadow companies.

Our starting point

Legal background

According to national law, eligible expenditures should be reasonable, clear and detailed, economically feasible and necessary for the purpose of the supported initiative. The applicant shall ensure that the money is used for appropriate and cost-effective purposes. The cost of the supported investment must not be unreasonably high in relation to that normally charged for similar activities. Luxurious and other unreasonable expenditures are not eligible under the general part of the Civil Code Act.

Article 67 of Regulation 1303/2013 lays down provisions on the forms of grants and repayable assistance. They may take one of the following forms:

- a) Reimbursement of eligible costs actually incurred and paid;
- b) Standard scale of unit costs;
- c) Lump sums not exceeding 100.000 EUR of public contribution;
- d) Flat-rate financing.

The amounts shall be established in one of the following ways:

- A fair, equitable and verifiable calculation method based on: i) statistical data or other objective information; ii) verified historical data of individual beneficiaries; or iii) application of usual cost accounting practices of individual beneficiaries;
- Scale of unit costs, lump sums and flat-rate;



- Rates established in regulations;
- Specific methods for determining amounts established by fund-specific rules.

The method used for establishing the price of construction is the three-offer-rule. National decree lays down the provisions for private procurements. In the case of constructions, the offer should include the following information:

- 1) The name of the building;
- 2) The identification code in the building registry;
- 3) The cadastral unit on which the building is located or is planned to be built;
- 4) Specific information on the building (cost of the building cost, external facilities costs, basement costs, supporting structures, facade elements, roof, etc.).

Problems with implementation

Construction expenditures are reimbursed on the basis of eligible costs actually incurred and paid. Applicants have to attach three quotes provided by independent companies to their application in order to avoid conflict of interests. Before 2015, the construction quote form was not standardized and comparing the prices was complicated and time-consuming for the PA.

Our 2017 risk analysis carried revealed that 18% of construction area projects were at risk of preliminary agreements, i.e. competition was fake and private procurement manipulated. Moreover, the risk analysis detected a recurrent pattern of tenderers what we called the "golden trios".

Our solution

The main goal was to gather adequate information to mitigate the risk of the overpricing construction projects. The idea was to collect data in as uniform a format as possible so that they could be processed electronically (e.g. though Excel).

Recently, based on abovementioned risk assessments, the Ministry of Rural Affairs has also taken strong initiatives - which also affects construction investment projects - to mitigate the risks of manipulation of the three-offer rule in private procurement.

Standardized form

The first step was to map the information needed for a standardized construction offer. The standardized form consists of two parts:

1. The description of the building and other technical information (information source is the national construction register);



2. The building budget (structure of the building section was based on official standard EVS 885: 2005 "Classification of Building Costs").

In addition to the construction offer forms, project-stage construction requirements were also reviewed to substantially complement the construction information.

ARIB, in cooperation with the Ministry of Rural Affairs has introduced a new requirement, according to which all tenders must be formalised according to the official Estonian construction standards. Since then, all bids for construction works have been submitted by applicants via an excel form prepared by PA. Three different forms were created:

- 1) The construction work quote form (for submission to the contractor); all three offers are on the same sheet;
- 2) The construction activities cost form (for monitoring construction costs);
- 3) The construction activity form (for collecting information on the building).

The data provided by applicants were aggregated into one large database. The database consists following data fields:

- Support measure scheme (6.4 diversification of rural economy etc.)
- Description of the construction activity
 - Building size: five classes, depending on the size and functions the buildings;
 - Building type: buildings were classified into 21 types, 8 of which exhibit a sufficiently uniform information for data analyses.

On the basis of the data collected, the buildings were classified by size and purpose of use and the average cost per square metre of construction fee area was determined using the data submitted to the Paying Agency on the basis of the standardised dataset.



Closed net area in square meters (sqm)	Sqm 200+	Sqm 200-	Purpose 1 (manure storage)	Purpose 2	Purpose 3	Solar power parks by (kWh)	Indicative price EUR/kWh
	Indicative price range EUR/sqm						
0-99	N/A	770-850	N/A	N/A	N/A	0-15	1200-1320
100-199		710-790				16-49	980-1080
200-799	340-380	670-740	140-160		270-290	50-299	980-1080
800-1999	240-260	N/A	110-130	110-130	170-190	300-599	860-960
2000-5999	190-210		100-110	100-110	100-120	N/A	N/A

Table 1 - Example of outcome of Indicative price range by square meters and purpose

Data analysis

The second idea behind that requirement was to increase the comparability of the bid concerning construction works and collect data for deeper analyses. In 2016, the amount of comparable data available allowed the PA to analyse the average indicative prices for different types of buildings. The adequacy of the prices calculated by the model has been compared with market prices and estimated by construction price experts.

In 2018, a cooperation project with Tallinn University of Technology initiated. The goal of the project is to develop an alternative and more precise construction cost assessment model. The model should be scientifically validated. Stages of the project are following:

- Prototype creation;
- Prototype testing (18.09.2018);
- Building-cost assessment (model version 1);
- Model application.

As of 2018, the construction database includes 1.482 items amounting to 324 MEUR of total construction investment cost (VAT excluded).

According to Reg. 1303/2013 art. 67 p 5 a) i), the pricing model could be used as a tool to establish the price level of constructions granted by RD subsidies.

Initiatives of increasing transparency of private procurement

A third and larger initiative for mitigating private procurement manipulation risk in general was launched by the Ministry of Rural Affairs and is still ongoing. The idea is to increase transparency of private procurements by requiring beneficiaries to carry out private procurement in the Public Procurement Register. A first pilot project focused on the management of the environmental support schemes by the Estonian Environmental Investments Centre was successful. Benefits of the new approach should consist of more transparency and increased controllability of private procurement procedures (as the flow of documents takes place within the system),



open competition (new bidders). According to statistics on a certain support measure scheme, the new approach caused a price decrease of 65-70%. However, the obligation to carry out private procurement procedures in the public procurement register does not eliminate the risks of collusion between tenderers and contractors, nor does it exclude the exchange of important information outside the system.

Lessons learnt

The standardized offer form is filled in by the applicant or her consultant, as the standardized form is complicated and sometimes applicants need advice. The quality of the data submitted depends on their professional expertise of the construction industry. Therefore, data quality should be monitored, and anomalies should be corrected.

According to current practice, the applicant shall attach three quotes to the application submitted. The tendering procedure must be carried out before the award decision is taken. Investment activities must be carried out within two years of the financing decision. In practice, things may change after the investment planning phase, which leads to amendments to the project which impose an additional burden on the beneficiary.

The new approach is to divide the price evaluation process into two stages:

1. Granting decision is made on the estimated construction cost;
2. After the granting decision and before starting the construction, the beneficiary proceeds to the organisation of private procurement.

The benefits of this two-stages process are:

- Reducing administrative burden on applicants;
- Reducing administrative burden on the PA;
- Mitigating construction costs manipulation risk.

Through the standardized quote forms discrepancies in the paperwork can more efficiently identified.

Collected data is a valuable information source for deeper analyses both for PA and the Ministry of Rural Affairs.

As we have experienced, starting to collect standardised data from construction price offers has allowed us to create a valuable preparatory database for the



cooperation with the University and the elaboration of a model for the calculation of the construction cost tailored to the needs of our PA.

The price model has also been accepted as an additional source of evidence in court cases. This gave us confidence to continue developing the model, which could eventually become a mandatory and legally binding source for determining reasonable construction costs.

Conclusions

As construction investments expenditures accounts for a large share of EU grant budget, transparency and reasonable use of EU resources allow to achieve a better value for the money. Reducing the administrative burden both for the applicant and for the PA, collecting data for deeper analyses, processing applications in cost-effective way – all these goals are achievable by reorganizing working order and standardizing documents. Close cooperation with different parties creates innovative ideas and new approaches.

In order to reduce risk of manipulation of private procurement procedures, the first step was to focus on the riskiest sector - constructions - which has the greatest financial impact on EU funds.

The next steps for risk mitigation in construction projects were as follows:

- Preparation of standardized forms for construction projects in order to collect physically and digitally comparable data for construction cost analysis.
- On the basis of the data collected, a correct classification of the construction projects was carried out and the method for calculating the average price of the building per square metre was identified; this price constitutes a supporting material (not legally binding) for the submission of the application.
- In cooperation with the University of Tallinn, a construction cost model was developed on the basis of the database of the construction price offers, with the aim of using it as a legally binding method for determining reasonable construction costs and, on this basis, the possible maximum ceiling of EU support.
- Implementation of the new method before the granting decision phase, with the obligation to carry out private procurement procedures before the actual construction work starts.



- Increased transparency and competition of private procurement procedures carried out using the three-offer-rule with the obligation to carry out private procurement procedures through the Public Procurement Register.

A further conclusion that can be drawn is that, in our case, actions to mitigate the risks of manipulation of private contracts can be seen as a set of well-targeted actions and not as a single action. Focusing on the construction sector, which is the riskiest sector, is a sign that actions are targeted and risk-based. A smart and timely decision has been taken to collect standard mandatory price offers in order to create the basis for an appropriate mandatory price model. This was a strategy in the context of a longer-term plan to combat the risk of bid manipulation and to ensure that the construction projects are reasonably priced.

In the future, it will be necessary to define appropriate indicators to monitor the impact of the changes made or to mitigate measures taken.

Section 2

Topics in public procurement



IMPROVING PUBLIC PROCUREMENT MONITORING PROCEDURES OF EAFRD FUNDED PROJECTS – AVEPA'S EXPERIENCE (GIULIANO ZOGNO)

THIS CHAPTER:

- IMPROVES PAS STAFF **AWARENESS** ON CREATING AND NURTURING CONSTANT COMMUNICATION BETWEEN THE EXPERTS WHO DEVELOP MANUALS AND CONTROL TOOLS AND THE CONTROL STAFF MAKING USE OF THESE TOOLS.
- BUILDS ON THE IDEA OF “**VALUE FOR THE MONEY**” BY STRESSING THE NEED FOR EFFECTIVE AND CONSISTENT CONTROLS IN THE AWARD OF PUBLIC CONTRACTS.
- SHARES TESTED **SOLUTIONS** CONCERNING THE PRACTICAL ORGANIZATION OF INTERNAL TRAINING AS WELL AS THE DEVELOPMENT OF EFFICIENT COMMUNICATION TO BENEFICIARIES ON PUBLIC PROCUREMENT PROCEDURES AND CONTROLS.

The problem

The need to protect the EU interest in terms of legality, quality, efficiency and effectiveness of expenditure is becoming increasingly significant in the management of EU funds. This applies particularly with reference to the control procedures to detect potential irregularities or frauds in tendering procedures carried out by public bodies receiving grants.

In the case of public bodies, compliance with EU procurement rules must be ensured, i.e.:

- Directives 2004/18/EC and 2004/17/EC

- Directives 2014/23/EU, 2014/24/EU and 2014/25/EU

- Directives 89/665/EEC and 92/3/EEC

- general principles governing the award of public contracts derived from the Treaty on the Functioning of the European Union.

At the Italian national level, EU legislation was first implemented by Legislative Decree no. 163 of 12 April 2006, and then by Legislative Decree no. 50 of 18 April 2016, "Code of public contracts" and subsequent amendments and additions. Moreover, in order to be fully applicable, the "Public Contracts Code" needs several implementing measures: to date, only 33 out of the 66 provided for by the Code have

been approved. Other rules are in the ANAC (National Anti-Corruption Authority) guidelines, especially Guidelines no. 12, which provides further detailed provisions complementing the Code.

The Agency's work in examining aid applications and payments submitted by public bodies under the 2014/2020 Rural Development Programme has identified some critical issues regarding compliance with public procurement rules. Indeed, the rules concerning the award of public contracts are quite detailed and complex, both for procedures above and below the EC thresholds.

The complexity of the regulatory system as a whole has a negative impact both on the staff in charge of the control activities and on the contracting authorities required to organise tenders. In fact, the PA has found that irregularities by public bodies in procurement procedures are not intentional (i.e. they were not attempted fraud), but are rather the consequence of:

- misinterpretation of the rules;
- lack of or poor knowledge of the rules;
- inadequately trained staff;
- negligent tendering and awarding of 'below threshold' contracts;
- internal procedures conflicting with the reference legislation;
- implementation of incorrect procedures (possible legacy of previous rules that have been already amended or replaced).

Some critical aspects have also emerged within the Agency. In particular, the staff in charge of the controls reported difficulties in carrying out their inspection activities because of:

- lack of adequate training on the pertinent public procurement rules;
- difficulties in using the documentation and the control supporting tools (audit trails and manuals).

In order to minimise the critical issues identified during the audit on the correct application of the public procurement rules, it is important to work on two distinct levels, i.e. within and outside the Agency, by involving the public bodies entitled to submit applications for grants.

Very often, the criticalities identified during the control activities lead to arguments between beneficiaries and the Agency. Therefore, it is of utmost

importance to create a “common ground” where all actors involved can work together.

Our starting point

To tackle the outlined problem, the need to develop a thorough understanding of the subject immediately emerged. Therefore, AVEPA set up specific training courses on procurement rules addressed to a small group of people, the “experts” in charge of developing the control procedures. The choice of organising training courses addressed to such a restricted group of participants (less than 10 people) was deliberately made to respond in a very targeted way to their learning needs. Participants had the possibility to interact with the instructor and to focus on those aspects of the control activities that they perceived as the most relevant in their daily work.

Once the first step of targeted “expert” training was concluded, the need to train AVEPA’s staff involved in the actual control activities emerged. In this case, a two-tier training was organised, with the first tier concerning an in-depth overview of the general procurement regulation and the second one focussing on the actual control activities to be performed and on the audit track and the control manual to be used in the daily work. According to our experience, linking the explanation of the control methods to the actual audit track in use is crucial, since some of the difficulties experienced by the controllers is the consequence of inadequate understanding of the checklist questions.

Moreover, the Agency decided to invest in another aspect, the importance of which should not be underestimated: the communication addressed to beneficiaries and potential applicants for EU grants. During the training days organised by the Managing Authority for RD Programme 2014/2020, useful information was provided on the measures implemented, with a particular focus on how to submit RD Programme applications and expenditure reports. During the public meetings organised in each regional province the following topics were discussed:

- main news and updates regarding the pertinent legislation, with particular reference to EC papers (acts, guidelines, etc.);
- tender documents which will be requested and examined by AVEPA for control purposes;
- most frequent irregularities found during the control activity;
- contents of the control checklist (downloadable from the Internet).

Representatives of public bodies have been invited to contact the AVEPA branch offices for any issue they may face in relation to the submission of project applications involving public procurement rules.

In order to create a good starting point, it is therefore necessary to improve:

- training, both within and outside the Agency;
- raising public awareness of the need to adopt correct and rigorous procedures.

Our solution

The staff who participated in the restricted training group formed a working group, of which the instructor was also a member. A sizeable amount of work was carried out to draw up of the checklist and the corresponding manual. This activity of implementation and refinement of the working document required several meetings in which the elements to be controlled and how to track them in the control documents were analysed.

For the purposes of preparing the control documents, the main references were the national regulations and the EC support papers. In particular, the "*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*" (Decision C(2013)9527 of 19.12.2013) were analysed in detail.

Given the complexity of the matter, a great deal of work has been done on the preparation of tables to be included in the manual to make the rule easier to understand (e.g. a table summarising the procedures to be adopted for works or services according to the value of the contract; a table on how to publish notices; a table on time limits for the submission of tenders; etc.).

In fact, critical issues were the understanding of the reference rules and how to apply them, so in the drafting of the audit trail and its manual AVEPA tried to structure the layout of the manual conveniently by:

- Summarizing (through tables and bullet points) the content of the Procurement Code;
- Other regulations referred to in the Code are fully included in the manual to facilitate consultation and understanding of the regulation;
- Issues which are not subject to Agency control have not been included;

- Practical examples have been given (e.g. for the calculation of the reduction to be applied in the case of irregularities);
- The checklist includes the essential regulatory information needed to fill it in without having to refer continuously to the regulations or the manual.

The control checklist has been structured according to the public procurement procedural steps.

The main topics of the control checklist are listed below in chronological order:

- Identification of the procurement procedure (e.g. subject of the award, amount of the contract);
- Verification of the initial documentation relating to the call for tenders;
- Verification of the presence and profile of the Sole Responsible Officer (Italian law requires that for each administrative procedure a Sole Responsible is identified; the SRO is responsible for the correct progress of the procedure until its conclusion);
- Verification of the tender procedure adopted (correctness of the procedure adopted, contract splitting);
- Verification of content, publication, accessibility of the call or invitations;
- Verification of the criteria for selecting the tenderer;
- Verification of abnormally low bids;
- Verification of award criteria;
- Verification of the contents of the contract;
- Verification of situations related to the conflict of interest;
- Verification of variations and modifications in progress.

All staff involved in procurement controls have been trained in understanding and completing the checklist by means of the Agency's internal training courses. Moreover, these trainings have proved to be very useful occasions for discussing practical cases arisen during the control activity. It is very important to monitor the control activity carried out by the control staff so as to promptly intervene with clarifications or, where appropriate, with amendments/additions to the control documents (checklist, manual). Finally, it is advisable to involve, through public meetings, potential applicants (see previous paragraph for the information content

of such meetings) to increase their awareness of the importance of being compliant with the rules to minimize the risk of irregularities. AVEPA has noted that in comparison with the past, when no external communication with public bodies was organised, the documentation attached to the application for grants and to claims for reimbursement appears to be of better quality. External communication, along with the work carried out within the Agency (internal training, preparation of control documents), has become an important tool for improving the whole control system.

Lessons learnt

Control documents and tools (manual, checklists, etc.) must be exhaustive but also easy to understand. It is crucial to train the control staff both on general procurement regulations and on the practical aspects relating to the completion of the checklists. In turn, this requires the creation of a positive relationship between the “experts” and control staff as well as the organisation of periodical coordination meetings with the latter. In fact, the desired results cannot be achieved unless there is adequate collaboration between those responsible for preparing the control documents and tools and the staff who must work with these same tools. Coordination meetings are useful not only to train the control staff but also to receive feedbacks on the activities carried out as well as on the actual use of support documents and tools provided.

Another important aspect consists in identifying the most appropriate communication channel to sensitise beneficiaries on the importance of procurement rules and of the consequences of possible infringements.

In our case, along with traditional communication channels and methods such as letters and the Internet site, the organisation of local meetings for discussing various aspects linked to the application for grants under RD Programme 2014/2020 – procurement regulation included - has proven to be particularly effective.

Conclusions

There is an increasing need to protect the EU financial interests, with particular reference to control procedures aimed at detecting potential irregularities or frauds in tendering procedures carried out by public bodies receiving grants.

The body of public procurement regulations is very detailed and complex, and this holds both for contracts awarded by implementing below and above EC thresholds procedures.

AVEPA has found that infringements of public procurement rules by public bodies are not intentional (i.e. no suspected frauds) but are rather the consequence of an inadequate command or wrong interpretation of the regulation.

It is therefore crucial to work on two levels, the external one - the beneficiaries - and the internal one relating to the preparation of the control documents and tools and to the training on their use addressed to the control staff.

The first level – the external communication to the beneficiaries - is useful to sensitise on the importance of implementing correct tender procedures complying with legal documentary requirements.

The second level consists of a two-tier approach, the first one relating to the preparation of the control documentation and tools and the second one relating to the training addressed to the control staff, which in turn includes an overview of the procurement rules and practical training on how to carry out the control activity and make correct use of the documents and tools provided.

In order to improve the control performances, AVEPA is currently considering the opportunity of developing a sort of self-evaluation checklist that could be provided to the beneficiary before the start of the tendering procedure. This checklist - to be filled in by the beneficiary - should assist her with the identification of the correct tender procedure as well as should remind her of the legal requirements to be met (and which will be later subject of control).

PUBLIC PROCUREMENT OBLIGATIONS IN RURAL DEVELOPMENT – ASSURING AN EU COMPLIANT IMPLEMENTATION IN A DECENTRALISED ADMINISTRATION (MICHAEL ZEHETMAYER)

THIS CHAPTER:

- IMPROVES PAS STAFF **AWARENESS** WHEN WORKING WITH OTHER BODIES ON THE IMPLEMENTATION OF RURAL DEVELOPMENT AID SCHEMES AVAILABLE TO CONTRACTING AUTHORITIES.
- BUILDS ON THE IDEA OF “**VALUE FOR THE MONEY**” BY INCREASING PUBLIC PROCUREMENT KNOWLEDGE WITHIN THE PAYING AGENCY AND SHARING IT WITH OTHER BODIES.
- SHARES TESTED **SOLUTIONS** FOR PAYING AGENCIES FACING A DECENTRALISED ADMINISTRATION ON RURAL DEVELOPMENT AID SCHEMES.

The problem

Compliance with procurement law is a requirement for beneficiaries under European Union law in the context of EAFRD expenditures. As such, these requirements must be checked by PAs in the context of their administrative controls. Sanctions must be set in case of violations of public procurement obligations. These sanctions can range from reductions to exclusion from aid.⁴

Sanctioning criteria are severity, extent, duration and frequency of violation.⁵ This

ensures that the principle of proportionality, as a general rule of law, is taken into account.

Austria delegated some PA functions to other bodies as defined under Art. 7 of Regulation (EU) No 1306/2013⁶ already in previous RD periods. Also, in the current

⁴ Art. 35 of the Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance, OJ L 181, 20.6.2014, p. 48.

⁵ Art. 35 para 2 leg. cit.

⁶ Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008, OJ L 347, 20.12.2013, p. 549-607.

RD period 2014-2020, the authorisation function for individual EAFRD measures has been delegated to other bodies.

In Austria, Agrarmarkt Austria (AMA) is the responsible Paying Agency and must ensure that the delegated tasks are performed in compliance with European Union rules.

Our starting point

Compliance with public procurement law by beneficiaries has already been reviewed and assessed in the Rural Development period 2007-2013 as a requirement of EC regulations under EAFRD expenditure. The national legal basis was the Federal Act on Public Procurement 2006⁷ implementing the respective European Communion Directives.

To strengthen public procurement expertise in the PA, AMA has appointed a public procurement expert. This public procurement expert had already gained legal experience in procurement law practice and provided legal assistance to the departments of AMA in assessing applications for EAFRD measures in terms of public procurement obligations. The assessment was based on a checklist, which allowed the evaluation of violations of formal procurement rules. This checklist has been made available to all delegated bodies as well.

Since the criteria of severity, extent, duration and frequency of the violation have not been defined in the RD period 2007-2013, there was only one possible sanction in the final application assessment. As there was no tiered sanction system, detected violations were typically sanctioned with a reduction of 100%.

However, sanctions were rarely applied, as the number of applicants for EAFRD expenditures falling under the scope of procurement rules was very low.

This changed with the new Rural Development period 2014-2020. Due to the extended funding opportunities in the EAFRD regime, the possibility of applying for funds has opened up to those previously unable to benefit of these funding opportunities. Ipso facto the number of applications for aid carried out by contracting authorities falling under the scope of public procurement law increased.

This situation caused an increased administrative burden for AMA and its delegated bodies to grant the aid, as greater knowledge of public procurement was needed, which had to be created first.

⁷ Federal Law Gazette I No 17/2006.

In addition, the documentation of the administrative controls was not consistent among the delegated bodies, so that AMA, as the responsible PA, had to ensure measures for a uniform administrative process.

Our solution

The increasing number of applications by contracting authorities at AMA and its delegated bodies incentivized the rearrangement of the process.

AMA decided to reorganise the evaluation of aid applications in the area of public procurement in order to provide clear guidance to all staff involved in the evaluation and authorisation processes.

Already in the previous Rural Development periods, AMA organised the delegated bodies' activity by means of written instructions. Those procedures, which included manuals, checklists and FAQ-documents, ensured that delegated bodies' activities were implemented in the same way across Austria. The compliance with the instructions was supervised by the PA based on a selection of projects already in a final stage of implementation (quality controls). In addition, regular coordination meetings of AMA with its delegated bodies and in the presence of representatives of the Managing Authority took place.

For the current RD period, two new documents have been shared to organise the administrative control in the area of public procurement:

- The Guide to the Administrative Control of Project Measures under the Austrian Rural Development Program 2014-2020 "RD Project Funding" and
- the Fraud Prevention Manual for RD 2014-2020 funding period.

These documents ensure that the requirements are fully implemented, that the documentation of controls is consistent across the country and available for reviewing purposes at any time.

In addition, training on procurement was provided to the staff of both PA and delegated bodies.

On the one hand, the delegated bodies welcomed the new requirements, since a countrywide, standardised procedure was created. On the other hand, the increased administrative burden led to a decreased acceptance by the beneficiaries.

The new system did not add to an administrative simplification for the beneficiaries or the administration.

However, in order to ensure compliance with EU rules on aid and public procurement, the procedure chosen to implement the requirements had to be implemented without alternative. This was also reflected in an audit carried out by the European Commission in Austria in 2017. This audit evaluated the compliance of

the Austrian administration with public procurement obligations by means of an external audit company, taking samples and assessing the process over a period of 5 months.

Lessons learnt

One of the main advantages of the new guidance documents is definitely the documentation of the legal correctness in the context of the process.

Based on the current checklists, it is now possible to quickly and easily understand what has been actually assessed in terms of procurement law and to trace back what has been checked in the administrative process.

The new documents also ensure that every employee involved in the process is up-to-date with the current requirements at any time.

AMA dealt with the increased administrative burden with a change in the organisational structure. Already in 2014, a separate unit called “Central Services” was created for the public procurement experts. New staff was contracted to both “Central Services” and the operational departments.

In addition to the increase in human resources and in technical information in the new guidance documents, active knowledge transfer was an essential aspect to meet the challenges of the current RD period.

Through training sessions provided by AMA at the premises of the delegated bodies across the country, the new guidance documents could be communicated personally to the employees involved. Due to the suggestions, questions and feedback on the documents – and taking into account the European Commission audit of 2017 – an update of the guidelines for administrative control has been provided.

Conclusions

Austria has a special status in the field of general administration due to its constitutionally based federal conception. For example, the federal state can resort to the regional governors and the bodies under their authority. This relieves the AMA as an Austrian Paying Agency, which is a federal body, of certain financial and staffing requirements. At the same time, the regional bodies have the opportunity to profit and use their advantage of being close to their citizens as applicants.

A decentralised administration has advantages and disadvantages in terms of the aid administration. On the one hand, it enables the use of the organisational structure of the state, on the other hand, there is the risk that a larger number of organisational

units will result in an inconsistent approach, which tends to become unguided without central control.

These deviations and the resulting lack of uniformity in practice ultimately represents a risk of financial corrections. The PA is responsible for compliance with all relevant requirements.

The big challenges for the future and especially the next RD period 2021-2027 are:

- increasing administrative burden for the authorities involved in the preparation and implementation of new aid schemes and
- decreasing willingness of the applicants to accept stricter procurement regulations.

Agricultural policy is asked to provide the agricultural administration with all the necessary resources and the possibility to provide value for money and to establish and maintain the balance between cost and benefit acceptable for the public.

INTERNAL AUDIT COVERAGE OF PUBLIC AND PRIVATE PROCUREMENT IN EAFRD USING COMPLEMENTARY APPROACHES (HANS-PETER LERCHNER)

THIS CHAPTER:

- IMPROVES PAs STAFF **AWARENESS** OF ON DIFFERENT APPROACHES TO COVER HORIZONTAL TOPICS SUCH AS PUBLIC PROCUREMENT TO INCREASE THE COVERAGE AND ASSURANCE OF RELEVANT TOPICS
- BUILDS ON THE IDEA OF “**VALUE FOR THE MONEY**” BY PROVIDING THE HEAD OF INTERNAL AUDIT WITH A VARIETY OF POTENTIAL TOOLS TO CHOOSE THE BEST APPROACHES FOR THE CONCRETE SITUATION PAYING AGENCY
- SHARES TESTED **SOLUTIONS** TO HANDLE A TOPIC CURRENTLY IN THE FOCUS OF THE EUROPEAN COMMISSION AND TO EMPOWER THE INTERNAL AUDIT UNITS TO SUPPORT THE HEAD OF AGENCY WITH INDEPENDENT ASSURANCE WORK

The problem

The management of EAFRD non-IACS measures in Austria is assigned to the central Paying Agency and it is carried out by the existing administration structures. However, since the start of rural development programmes, the authorisation function has been delegated to other federal and regional bodies. This set-up creates a unique situation for the PA’s internal audit unit. The focus of the internal audit was - and still is- on the different delegated bodies managing the authorisation function, each one of them is in charge of a specific sub-set of measures. Some delegated bodies cover certain

measures entirely, while others cover specific measures in one region only. So far, the internal audit unit could assign only limited resources to cover horizontal topics relevant to several or all delegated bodies, in accordance with the obligatory audits based on the accreditation criteria (Reg. 907/2014, Annex 1, Pt. 4. B. ii)). The internal audit unit covered over the years several horizontal issues, e.g. data quality, assessment of on-the-spot control results and information security. An issue not covered so far was public procurement, unless the issue appeared in the samples as part of an audit of a delegated body.

Our starting point

The audit universe consists of different types of audit. These types of audits are:

- Measure audits;
- Horizontal audits;
- Audit of delegated bodies;
- Information security audits; and
- Re-performance of on-the-spot controls,

This audit universe and its annual implementing plans were both approved by the head of the AMA and by our certification body. Although this understanding of relevant regulation requirements and international internal audit standard satisfied all our stakeholders and, not surprisingly, the internal audit unit, some developments showed that there was room for improvement. Some changes in the audit work seemed to be necessary, since it should not only be compliant with the regulatory framework but also increase the level of assurance the internal audit unit could and should provide to the PA and its stakeholders.

Because of the changes in PA's processes and because of the results of past EU audits, the need to implement changes in the internal audit unit approach seemed clear. These new approaches were already - to some extent - implemented in the audit period 2014-2018. An additional 'push' came from the EU audit in 2017. This audit covered the area of the application of public procurement in RD and highlighted a challenging topic for the PA and its delegated bodies but also showed clearly a demanding situation for the internal audit unit and its approach.

An updated audit approach must overcome the sample-based – and thus sporadic - coverage of public procurement in RD, since the sample-based approach leaves the possibility of a broader coverage of the topic to chance. An upgraded approach should cover all possible and available measure management aspects subject to public procurement. These aspects include:

- Setting up internal rules for handling projects with public procurement issues;
- Training to the staff of both Paying Agency and delegated bodies;
- Proper identification of beneficiaries subject to public procurement law;
- Definition of the minimum documentation necessary;
- Identification of red flags and regular update of the red flag register;
- Comparison of practices carried out by different delegated bodies and supervision by the responsible operative department;

- Etc.

Some circumstances and data availability in the PA do not allow an easy solution. This holds both for the Paying Agency and the internal audit unit.

- Austria has been using since 2008 a specific clause allowing direct awards: a very simplified set of legal requirements must be applied to all procurement activities below € 100.000. Paradoxically, this clause led to a difficult situation, since delegated bodies and beneficiaries perceived these procurement activities as “normal” unrestricted procurement procedures and did not comply with the obligations referred to in the regulations, which – although in simplified form - do exist in every public procurement.
- Until recent times, instructions provided by the PA’s responsible department defined some minimum standards at most. The reason behind was that these bodies, being themselves subject to public procurement rules, should have already possessed the necessary and relevant know-how to handle the challenges of public procurement;
- The Paying Agency uses a database to organise the cooperation with the delegated bodies. However, to date the data stored do not include the status of beneficiaries as to whether or not they are subject to public procurement rules. This situation makes it a real challenge - both for our day-to-day work and during the EU audit - to identify projects where public procurement plays a role.

Our solution

The Paying Agency and its delegated bodies had to initiate a series of improvement and other changes because of the findings of the EU audit in 2017 and the resulting action plan.

Although the internal audit was not directly affected by the EU auditors’ findings, the opportunity and the timing were used to reassess the approach to the topic and to these horizontal issues in general. The timing was good because a re-assessment of the audit universe for the 5-year audit cycle 2019-2023 was planned anyway.

The new audit universe was discussed and developed by different working groups. The delegated bodies group and the horizontal topics group interacted in an

especially intense manner and came up with some new ideas and approaches to increase the coverage and improve the assurance provided by the internal audit unit.

With reference to public procurement, RD and the specific organisational situation of RD management, in order to increase coverage and improve the assurance provided by the internal audit unit, the new audit universe includes now the following possibilities/topics:

1 - Coordination of the responsible operative department and the legal experts for public procurement in the PA

In the current decentralised administration, the PA develops guidelines, templates, checklists, and training materials. Additionally, the PA provides training for the staff of the delegated bodies as well as a regularly updated Q&A-document for the delegated bodies. In case of doubts and/or ambiguities, the (legal) experts of the PA provide case-by-case guidance.

2- Legal topics with relevance for the PA (e.g. public procurement)

All legal topics relevant for the functioning of an EU PA come under this audit topic. The specific legal areas to be covered as focus can be selected based on an assessment carried out during the assignment phase and/or during the planning phase of the specific audit. As the field of public procurement law can be considered as especially critical - and therefore relevant for the PA - the selection of public procurement law as focus will be highly probable.

3 - Implementation of public procurement in different delegated bodies

One of the major challenges for a harmonised implementation of public procurement rules can derive from an organisational framework, such as the one established in Austria: i.e. a central PA and a number of delegated bodies, with a potential multitude of more or less different ways to apply the same rules, a situation which poses a real threat of future financial corrections. An audit of the application of the same rules in different/all delegated bodies can provide an insight into the potential deviations deriving from the organisational framework. This audit would imply special challenges for the internal audit unit, but it could also provide valuable information whether the practice in the delegated bodies deviates over time from the intended harmonised way.

4 - PA supervision activities

Part of the obligations of PA delegating some of its functions is the need to supervise the delegated bodies. This supervision should cover all aspects and tasks delegated and should not be not limited to public procurement. Audits of the

supervision of delegated bodies were already planned in former audit universes and implemented in annual audit plans. In the new period, these audits can also focus on the area of public procurement. In such a case, the audit will cover the handbook in use for such supervision activities, the selection of samples for the supervision and the concrete supervision activities carried out.

5 - Traditional sample-based coverage within audits of delegated bodies

Last but not least, the coverage of all delegated bodies within a five years period will stay in the focus of annual audit plans. Sample projects with public procurement relevance can be part of these audits. Some consideration will be given in the sample selection processes where special focus could - and should - be given to the selection of at least one project with public procurement relevance. With such an approach, the coverage of the public procurement topic in all the delegated bodies can be ensured.

All these approaches and audit topics provide the Head of Internal Audit with a wide range of potential tools to cover such a critically relevant area. In selecting the 'right' audit topics for the annual audit plans, the Head of Internal Audit has all the tools to ensure the necessary coverage and the provision of the assurance necessary for the PA.

Lessons learnt

The most important lesson from the reassessment process for the development of the new audit universe was that the internal audit should never stop improving and adapting its approaches to a changing environment.

A single approach to a specific topic such as public procurement cannot guarantee anymore that internal audit activities are sufficiently effective. PAs Directors need a more complete picture delivered by an independent unit. The internal audit units must provide such a picture and must upgrade their approaches accordingly.

Audits with different angles and focusing on different aspects of the issue can increase the completeness and accuracy of the information delivered in the audit reports. The use of different approaches will enable the internal audit unit also to use its different auditors - who have different strengths and areas of expertise - in an optimal way.

The new approaches will also show some additional challenges for staffing and training of internal audit units. New audit topics might involve additional training needs and might even influence future hiring activities to efficiently cover these new areas of expertise.

Conclusions

The multitude of approaches outlined here offers a good set of tool for the Head of Internal Audit, but it will not appear automatically and immediately in all future annual audit plans. The annual selection process will not necessarily get easier, but it will provide in the end a good solution for the internal audit unit and the PA. The concrete circumstances and needs of the Paying Agencies can be met with such a tool set.

Moreover, the general approach to public procurement as a relevant topic of audits can also be applied to similar horizontal topics and therefore benefit other PA's areas of activity. Even if such topics might not be there yet, the European Commission will for sure come up with new ones!

SUBCONTRACTING AS A POSSIBLE FRAUD RISK FACTOR IN PUBLIC PROCUREMENT AND DISTINCTIVE FEATURES OF ITALIAN LAW (FEDERICA DELL'AMICO AND CECILIA TORNIELLI)

THIS CHAPTER:

- IMPROVES PAS STAFF **AWARENESS** OF THE RISKS RELATED TO SUBCONTRACTING IN PUBLIC PROCUREMENT
- BUILDS ON THE IDEA OF “**VALUE FOR THE MONEY**” BY INTRODUCING SPECIFIC CONTROLS TO ENSURE THE QUALITY OF WORK IN CASE OF SUBCONTRACTING
- SHARES TESTED **SOLUTIONS** TO MANAGE RESTRICTIONS TO SUBCONTRACTING

The problem

Although subcontracting is widespread and widely accepted in Italy, historically its reputation has been generally unfavorable.

In both public and private contracts, subcontracting is perceived as a factor providing less assurance of smooth execution and achievement of the result. The reason is that the contractor is not the agent who actually carries out (the whole) work.

In particular, in the area of public procurement, subcontracting is also considered to increase the risk of market distortions or even fraudulent and criminal behaviors. Subcontracting allows access to public funding to enterprises that have not participated in public tenders, nor followed their rules, and that have not been selected on the basis of criteria compliant with the principles of transparency, impartiality and free competition. These enterprises could have conditioned from outside the outcome of the tender.

On the other hand, in situations of weak administrative control, contractors may exert a vexatious behavior against small subcontractors, with anti-competitive effects to the detriment of the weakest parties.

Italian public procurement law allows for the possibility of limiting subcontracting by introducing significant quantitative constraints which are not provided for in European legislation.

Further evidence of the particular attention paid by Italian law to the control of subcontracting is provided by the provisions of Law no. 190 of 6 November 2012, *"Provisions for the prevention and repression of corruption and illegality in the public administration"*, which, inter alia, has defined certain activities, including transport of materials, supply and transport of concrete and bitumen, and equipment rental with operator- i.e. the most frequently subcontracted ones- as being most exposed to the risk of mafia infiltration.

Finally, the recent "security decree" (Decree Law No. 113 of October 4, 2018, converted with amendments by Law No. 132 of December 1, 2018) has considerably increased criminal sanctions for companies involved in "unlawful subcontracting". The decree punishes with imprisonment from one to five years, in addition to a fine, anyone who, having contracted works for the Public Administration, subcontracts them in whole or in part without the authorization of the competent authority.

Our starting point

Currently, subcontracting regulation is laid down in Article 105 of Legislative Decree No. 50 of April 18, 2016 *"Code of Public Contracts"*, implementing Directives 2014/23/EU, 2014/24/EU and 2014/25/EU, but an analogous restriction were also provided for in the previous Code (Legislative Decree 163/2006 implementing the Directive 2008/18). Contractors " usually carry out on their own" the works, services and supplies envisaged in the contract; subcontracting is allowed, but the share of 30 per cent of the amount shall not be exceeded.

The contractor must apply a discount of no more than 20% of the award price for subcontracted services (this restriction is also not provided for in the EU directive).

The execution of subcontracted services may not be further subcontracted (the European standard does not preclude the occurrence of subcontractors' subcontractors in the "subcontracting chain").

In Italy, public contractors may subcontract to third parties provided that:

- they have already stated during the tender process their intention to subcontract, by specifying the services or parts thereof;
- they have proven that the subcontractors are qualified in terms of technical capability requirements:

- they possess the general suitability requirements (as regular tax payments, compliance with social and security contributions, no convicted administrators, compliance with the anti-mafia rules....)
- they have obtained the required authorisation, which the administration issues within 30 days of the request. (The European provision provides for the possibility of imposing controls on the existence of reasons for excluding subcontractors but does not refer to any authorisation act).

It should be pointed that the EU directives do not say anything about the possibility of imposing quantitative restrictions to subcontracting. On the other hand, Italian law introduced these restrictions many years ago for public order reasons and with specific anti-mafia purposes.

The reference, in fact, goes back to Art. 18 of the Law of 19 March 1990, No. 55, concerning *"New provisions for the prevention of mafia-type crime and other serious forms of expressions of social danger"*. The purpose of setting limits to the possibility of subcontracting was based on the awareness that this instrument, being part of the executive phase of the contract and thus generally elusive in terms of administrative controls, lends itself to fraudulent use, in order to avoid tender rules and to improperly obtain public contracts within criminal environments.

The provision of art. 18 of Law no. 55/1990 has then been merged into the various successive laws on public procurement, first in art. 34 of Law no. 109 of 11 February 1994, then in art. 118 of Legislative Decree no. 163 of 12 April 2006, and finally in the law currently in force, the above-mentioned art. 105 of Legislative Decree no. 50/2016.

In reports and advisory opinions on procurement law, it was pointed out that the stricter limits imposed by the national law compared to the EU directives on subcontracting are not unjustified, since they are based on significant public order, transparency and labour protection considerations (Council of State, Opinion No 855/2016). Moreover, it was observed that the new Directive 2014/24 allows Member States to lay down stricter rules on subcontracting compared with the greater freedom of subcontracting provided for in the previous Directive, including the purposes of a greater transparency and labour protection which until now had been specific to Italian legislation (Italian State Council, Opinion No 782/2017).

However, it should be noted that in 2018 the matter was formally referred to the Court of Justice of the European Union:

- first, Regional Administrative Tribunal of Lombardia Region (Order No 148 of 19.01.2018) which has submitted the following interpretative question:
"Do the principles of freedom of establishment and freedom to provide services laid down in Articles 49 and 56 of the Treaty on the Functioning of the European Union (TFEU), Article 71 of Directive 2014/24 of the European Parliament and of the Council of 26 February 2014 - which does not provide for quantitative restrictions on subcontracting - and the European Community principle of proportionality, preclude the application of national legislation on public contracts, such as the Italian legislation contained in the third sentence of Article 105 (2) of Legislative Decree No 50 2016 of 18 April 2016, according to which subcontracting may not exceed 30 % of the total amount of the works, service or supply contract?"
- then also the Italian Council of State (with Ordinance Section VI, June 11, 2018, no. 3553) raised similar interpretation doubts, but in relation to the previous Code and referred the matter to the Court of Justice of the European Union formulating the following question: *"Do the principles of freedom of establishment and freedom to provide services laid down in Articles 49 and 56 of the Treaty on the Functioning of the European Union (TFEU), Article 25 of Directive 2004/18 of the European Parliament and of the Council of 31 March 2004 and Article 71 of Directive 2014/ 24 of the European Parliament and of the Council of 26 February 2014, which do not provide for restrictions on the share of subcontracting and the reduction to be applied to subcontractors, and the European Community principle of proportionality, preclude the application of national legislation on public contracts, such as the Italian legislation contained in Article 118 (2) and (4) of Legislative Decree No 163 of 12 April 2006, under which subcontracting may not exceed a proportion of 30 % of the total amount of the contract and the contractor must apply the same unit prices for the subcontracted services as those resulting from the award of the contract, with a discount not exceeding 20 %?"* (in that question has also been included the other

quantitative limit currently present in the Italian legislation relating to prices).

It will be interesting to see whether the Court will maintain the restrictive approach already expressed on previous occasions (for example, the judgment of 14 July in Case C-406/14 "Wrocław" concerning a financial correction applied by the Polish State for an alleged infringement of EU law in the context of a public tender procedure for works co-financed by European funds, and the judgment of 5 April 2017 in Case C-298/15 'Borta' concerning the Lithuanian law on public procurement) or whether the Court will recognise public interest reasons, as the Italian legislation, to limit subcontracting.

The overall regulation deriving from new directives, which are more sensitive, also in relation to subcontracting, to transparency and labour protection, as well as oriented to the protection of micro, small and medium enterprises, could reasonably lead to interpret that the quantitative limitations to subcontracting provided for in the national law can be justified. Arguments are based both on social sustainability principles, which are included in the mentioned directives, and on the basis of those higher values - including public order and security - set out in Art. 36 TFEU, which may constitute valid grounds for restricting free market and competition.

The result could be that the intent of ensuring public contracts integrity and their protection from criminal infiltration could justify a restriction on the freedom of establishment and the freedom to provide services principles.

Our solution

AVEPA's tender procedures attempted, as far as possible, to set limits on the use of subcontracting, in full compliance with Italian law and European principles.

Procedures have been implemented to control subcontractors in order to reduce risks of non-compliance with competition rules, as well as of criminal conduct or any behaviour prejudicial to the proper execution of contract.

In some below-EU-threshold contracts, when the service must be necessarily performed by a specific person (e.g. legal representation) or where the nature of the service is such that sub-contracting is excluded - e.g. tasks entrusted to specific professional figures (doctors, brokers, banks) - the calls for tenders established the non-eligibility of subcontracting. The Italian law already excludes subcontracting in case of specific types of contracts as planning, works site management, and testing (art. 31 paragraph 8 of Legislative Decree 50/2016).

Another possible solution to limit subcontracting - which can be achieved through tenders that award the contract on the basis of the best quality/price ratio - could be to award a better quality-score to those operators who do not subcontract or reduce their use. Under such a procedure, subcontracting is not forbidden but only discouraged. However, it should be noted that actually it is not totally clear whether this criterion is discriminatory or restricts freedom of establishment and free competition or not. The most recent Italian administrative case-law appears to be geared towards the legitimacy of this tender evaluation method (for example, the Regional Administrative Court of Piemonte Region gave a favourable ruling in its judgment of 578/2018).

AVEPA has not used this procedure yet. However, we consider this to be a potentially useful tool and we are evaluating the possibility of employing it in the next tender procedures requiring greater guarantees.

AVEPA's tenders have included "agreed upon" limitations on subcontracting, using the instrument of preliminary "voluntary" acceptance - shared by the Contracting Authority and all competitors - of specific "legality clauses" stipulating reciprocal commitments with declared anticorruption purposes.

Law 190/2012 "*Provisions for the prevention and repression of corruption and illegality in the public administration*" introduced the possibility for contracting authorities to establish in notices, calls for tenders or letters of invitation that non-compliance with the clauses contained in the legality protocols or integrity pacts constitutes a reason for exclusion from the tender.

Since 2012, AVEPA has adopted the legality protocol provided by the Veneto Region in agreement with the *Prefettura* (Governmental institutions at regional level in charge of public order and security) in order to prevent organized crime infiltration attempts in the area of public contracts (the text was updated in 2015 according to the indications provided in the Memorandum of Understanding between the Ministry of Interior and the National Anticorruption Authority - ANAC). The protocol establishes, inter alia, that in the calls for tenders the commitment of the contractor to report to the contracting authority on any illegal request for money or other benefits during the execution of the contract is introduced, and that a similar obligation is borne also by possible subcontractors.

It also provides for the introduction in the calls of an express prohibition for successful tenderers to subcontract to companies that have taken part in the same tender.

The legality protocol also provides for the introduction of stricter anti-mafia controls to be carried out by the competent territorial offices, with particular reference to sub-contracts relating to an identified set of "sensitive activities" and in every situation considered of greater risk, no matter the value of the contract.

It should be noted that, following the corrective decree 56/2017, the prohibition to subcontract to those who were competitors of the tender - prohibition previously contained only in the pacts of legality - has now been expressly introduced into the law.

In its contracts, AVEPA inserts a clause providing for the supplier's commitment to comply with the legal protocol clauses and forcing the supplier to insert the same clause in any subcontracting contract, with the consequence that possible illicit acts have to be reported also to the Contracting Authority and not only to the judicial authority.

In addition, as required by Italian law, under penalty of nullity of the contract, a clause is inserted in the contracts requiring the supplier and the subcontractors to track the financial flows of each individual contract, by communicating to the Contracting Authority a dedicated bank account for the financial transactions relating to the contract and tracking all payments with a unique code specifically provided by the Contracting Authority through National Anticorruption Authority platform (art. 3 law 136 of August 3, 2010, law for anti-mafia purposes).

Another AVEPA practice - a valid tool for preventing the risk of illegal behaviour - is to carefully monitor subcontractors, both in terms of technical and professional capacity requirements, and in terms of possession of the general suitability requirements to contract with the Italian public Bodies.

Before the authorisation act, the documentation relating to technical and economic requirements included in the contract between contractor and subcontractor is checked, with particular attention to prices and clauses on payments tracking. The general requirements are verified at first through the acquisition of a self-declaration. Then, after the authorisation, all the contents of the declaration (regular tax payments, compliance with the contributions, no convictions, compliance with the anti-mafia rules, etc.) are checked by requesting ad-hoc verifications to the competent offices (Tax Agency, Social Security Office, public Register of companies, Court Offices).

A proper investigation is carried out for each subcontract – no matter its amount – and it follows the very same checklist used for controlling the companies awarded the tender.

If a false declaration is found, the subcontracting authorization is revoked, and the company is reported to the Prosecutor.

Contracts are monitored throughout their execution: at the time of each payment, the regularity of social security contributions payment is checked, and the receipted subcontractors' invoices are acquired. In the event of irregularities are detected, payments are suspended until regularization.

In AVEPA in both the activities concerning subcontracts - authorising and monitoring - a plurality of actors is involved (as “second pair of eyes”):

- The Public Procurement Office supports the Contract Execution Manager in the documentation verification phase for the authorisation;
- the Contract Execution Manager adopts the authorisation act;
- the Public Procurement Office carries out the control on the anti-mafia requirements;
- The Contract Execution Manager monitors the performance of subcontracting activities and pays invoices;
- the Accounting department carries out its verifications before the actual payment.

The legality clauses mentioned above along with the division of tasks among the various offices involved constitute the measures to mitigate the corruption risks mentioned in the Three-year Corruption Prevention Plan that AVEPA annually draws up and updates in compliance with the National Anticorruption Plan.

Lessons Learnt

To date, no critical issues have emerged in the use of legality clauses; there have been no appeals nor disputes. On the other hand, indeed, no significant positive effects were found either.

Controls on the contents of subcontracts as well as on the documentation submitted during the subcontract authorisation in compliance with the regulations have made it possible to assess the subcontractors suitability, limiting the risk that the lack of responsibility towards the contracting station might cause inefficiency, or

that the activities might be carried out by agents without requirements or in an irregular position with respect to their employment relationship.

The division of tasks among the various offices of AVEPA in the activities of authorisation and control of subcontracting provides greater guarantees of legitimacy and legality.

Conclusions

The practices adopted by AVEPA, both in the preparation of calls for tenders (with more stringent clauses for the bidders, involving the stipulation of legality protocols/integrity agreements) and in the subcontracting authorisation (in-depth review of the contract between the contractor and the subcontractor; subcontractor's requirements verification by acquiring a self-declaration and subsequent *ex officio* verification of its reliability) as well as during the execution of the contract (previous verification of the subcontractor's regularity of contribution when making payment; acquisition of paid invoices) have so far given good results, in the sense that no anomalous or "pathological" situations emerged.

We are not sure that everything that appears to be regular is actually regular, but the implementation of timely administrative verifications seems to be at least a valid preventive - and probably effectively deterrent measure.

AVEPA is considering the opportunity to introduce in the monitoring of the EAFRD Funded projects, in particular in the "RDP verifications checklist" some items to monitor the proper use of subcontracting.

ENSURING THE “VALUE FOR MONEY” PRINCIPLE IN PUBLIC PROCUREMENT

„Democracy is the worst form of government except for all the others”
– Winston S. Churchill.

THIS CHAPTER:

- IMPROVES PAs STAFF **AWARENESS** OF THE FACT THAT EVEN “REGULAR” PUBLIC PROCUREMENT PROCEDURES CAN PROVIDE “POOR VALUE FOR THE MONEY”
- BUILDS ON THE IDEA OF “**VALUE FOR THE MONEY**” BY STRESSING THE IMPORTANCE OF EX-POST CONTROLS ON THE EXECUTION OF THE CONTRACT
- SHARES TESTED **SOLUTIONS** TO IDENTIFY THE “RIGHT VALUE” OF SPECIFIC SUPPLIES/WORKS, E.G. INVESTMENTS HAVING AN ARTISTIC NATURE

The Problem

Even though Churchill’s quote opens a question on politics, it perfectly symbolizes the essence of this paper. This essay will show that even in case of regular public procurement procedures, once the investments have been made, NPA may find that they provide *poor value for money*. In these cases, NPA relies on independent experts, the conclusions of other institutions and follows other steps necessary to secure the EU financial interests. The case law shows that this is no perfect way

to reach the aim (i.e. to detect irregularities and secure EU financial interests) but as the aforementioned quote highlights there is no better solution at the moment. Nevertheless, case law has pointed out several principles which, if followed, could make it possible to achieve the goal.

In order to disseminate the scope of NPA’s methods, this paper focuses on how NPA can demonstrate *poor value for money* in particular cases of construction investments and in other types of investments where this task is made difficult because of their artistic nature, which cannot always be estimated. The main problem arises when the beneficiary submits documents to NPA and the agency notices that the price submitted is higher than the real market price. At this point, NPA has to provide adequate evidence in order to secure both EU and State financial interest: in fact, if the NPA cannot prove the alleged *poor value for money* of the investment, beneficiaries may have the incentive to use EU support in a fraudulent way or for other illegal activities.

Article 58 of the Regulation (EU) No. 1306/2013 clearly states that MS shall, within the framework of the CAP, adopt all legislative, regulatory and administrative provisions and take any other measures necessary to ensure effective protection of the financial interests of the EU, in particular to prevent, detect and correct irregularities and fraud. Two of the major problems that NPA faces today in the court are: i) irregularities during the procurement procedures; ii) and irregularities after the conclusion of the contract. As for the first problem, there are cases in court where the question is whether the beneficiaries complied with procurement laws and whether irregularities during the procurement procedures have actually been committed. The second problem occurs after the contract has been concluded without irregularities at the procurement stage, but the investment in question allegedly provides *poor value for the money* ex post. At this point, NPA must provide adequate evidence to substantiate its final decision to prove that the investment does not meet the principle of *value for money*. There are cases where it is difficult to prove the low value of the investment because of its artistic nature. These problems are assessed as essential issues, because if NPA were not able to demonstrate that the investment provides *poor value for the money*, there would be a serious risk for the EU financial interests and the aim of the EU funding would be distorted. *Poor value for money* will be highlighted as it was under the spotlight at ECA Special Report 22/2014 on rural development expenditure – it was stated, that the MS authorities have not sufficiently ensured that the project costs approved are reasonable. So, it is clear that even though the technical part of the procurement was carried out properly, financial interests must be protected at all levels.

Our starting point

The case law has highlighted several principles to be applied if *poor value for money* is suspected:

- NPA has a right to invoke independent experts in the investigation procedure;
- The beneficiary, once she has committed to execute a contract at the lowest possible price, must put all efforts to perform accordingly;
- Decision must be well reasoned, consistent and comprehensive. Moreover, if independent experts are invoked into a process, they must be truly competent.

Administrative rules contain a provision that, in order to substantiate its decision, NPA can invoke independent experts possessing specific knowledge of the specific field.

A few years ago, in several cases, the beneficiaries stated that NPA could not rely on any proofs, with the exception of the ones collected by NPA itself. Then, NPA

presented its argument, according to which there are projects requiring specific expertise to evaluate whether declared prices are consistent with real market prices. Moreover, NPA was relying on a legal act which clearly stated that independent experts can be invoked into an investigation. Even though this right was stated in law, NPA did not provide beneficiaries with detailed information on the identity of expert if the investment was considered to provide *poor value for money* and if the price was much higher than real market price. The Court backed the beneficiaries by stating that, where independent experts are called upon to participate in an investigation into irregularities, the decision should clearly indicate their identities and their qualifications. At that time, NPA had an official agreement with these independent experts according to which the agency could not disclose this information to the beneficiaries. Bearing in mind that this was a ground for a Court to annul NPA’s decision, the necessary measures were taken. Since then, the NPA is clearly stating the identity of the experts and their qualifications in each of its decisions.

The second point is related to the responsibility of the beneficiary to make sure that investments are in the line with market prices. The case law indicates that once the beneficiary has committed to execute the contract according to the lowest price possible, she must do it. Practice in case law has shown that although the beneficiaries were aware of this duty, not everyone was prepared to comply with the lowest price rule. The Court held that, even if the beneficiary had already submitted a request for payment to NPA and stated that she had already incurred certain costs, this did not imply that those costs had been incurred under the lowest-price-rule, with the result that the beneficiary could not reasonably expect reimbursement of any costs incurred regardless.

Our Solution

NPA is using data from an official data base called SISTELA, which makes it is possible to calculate the cost of any investment. The database shows the prices at any moment: in fact, given that the database is updated twice a year, it can show what was the real market situation at a given time. Usually, irregularities after the execution of the contract become apparent once NPA and the independent experts visit the project site. NPA or the independent experts calculate the real price by using the database: it suffices to indicate the type and quantity of the wood used and of other materials needed for the investment (e.g. nails, digging or excavation works, concrete and so on). The database calculates also all the taxes and payments for the workers. Then, the database provides with an estimate of the exact amount of money needed to build such a work. If it is estimated that less money is needed to build such

a work, NPA is not allowed to pay the amount requested, as the investment was not made at the lowest market price.

Moreover, on the NPA website there is a catalog of works. Works and construction projects involve the use of materials – e.g. wood, sand, concrete and stones and so on. This catalogue should not be considered as a legal act since it is not legally binding. Its goal is to increase beneficiaries’ awareness, so they can get to know current market prices. It should be pointed out that beneficiaries cannot rely on this catalogue to claim that the expenditures incurred are in line with the catalogue prices. NPA clearly states on its website that *“each project is evaluated on individual basis and there might be higher or lower prices and the aim of catalogue is to avoid irregularities after the procurement is finalized”*. In other words, the beneficiary cannot be reimbursed based on the catalogue prices if poor quality materials were used. As mentioned before, NPA performs its calculations by using a public database. Both the catalogue and the database are publicly accessible for all beneficiaries and other stakeholders.

Lessons learnt

NPA decision must be well reasoned, consistent and comprehensive. The content of the decision should consist of clear facts, calculations, proofs, information on the results of on-the-spot verifications, information about the independent experts and their conclusions (if they were invoked into investigation) and legal acts. Of course, a clear connection between facts, evidence and legal acts regarding irregularities must be highlighted in the decision, so that this link becomes clear not only to NPA, but also to the beneficiaries and the Court.

Irregularities during the procurement process are considered as a more explicit challenge to handle than those that may emerge after the conclusion of the public procurement procedure. However, NPA still faces some challenges. For example, there are some cases where beneficiaries did not follow public procurement rules and used oral surveys instead of written ones. In these cases, the Court considered written surveys mandatory: NPA had therefore reasonably argued that written surveys help to ensure compliance with public procurement principles. Moreover, case law has indicated that the requirement to question at least three suppliers under public procurement rules should not be considered as a purely formal condition since it guarantees at least minimum levels of competition and transparency. The same happened in cases where beneficiaries should have carried out the public procurement procedure by organizing a call for tenders but resorted to the use of written or even oral surveys only.

A number of principles should be respected when carrying out a public procurement procedure. One of these is the principle of equality, according to which all participants in public procurement procedures are subject to exactly the same conditions for the submission and evaluation of tenders and must be treated in exactly the same way. This implies that it must be ensured that they obtain the same information on the contractual terms and conditions. As regards case-law, in a case where NPA was a party to the case, the Court declared that the terms for the full conclusion of contracts are essential conditions of the contract. The Court considered that deadlines can affect the willingness of further possible suppliers to submit their bids and thus the award price. In the case under examination, the beneficiary changed the deadline when the contract was signed, thereby distorting the principle of equality. It is seen from the case law, that the Court evaluates if there was a hidden advantage for any of the suppliers in order to make sure that all bidders were given the same conditions and possibilities.

Another point which might highlighted concerns investments of an artistic nature. Beneficiaries have the possibility to create publicly available recreation zones in the woods (investments like benches, paths, sculptures, etc. are eligible). The tricky part comes when there is a need to calculate the real market price of the sculpture. Investments of an artistic nature cannot be easily valued in terms of money (a work of art is open to interpretation and may therefore have a different value for each individual), but the members of the Lithuanian Folk Artists are in a better position to assess whether the investment of an artistic nature is of high artistic value or not. Conclusions of the Lithuanian Folk Artists union are considered as a very important assessment factor while finalizing the investigation. It should be noted that conclusions by the Lithuanian Folk Artists union are required only for investments of artistic nature. As mentioned before, NPA or independent experts calculate the out-of-pocket costs of these investments, usually a sculpture or a statue. Subsequently, the Lithuanian Folk Artists union is invited to provide the NPA with an assessment of the artistic value of the work: is it a work of art or an amateur expression? The Lithuanian Folk Artists union in its conclusion also mention other important points – if the sculptures are considered to have little artistic value, what is enduring value of the investment? In its conclusions, the Lithuanian Folk Artists union defines whether the cost of the investment is in line with current market prices. Why is this point highlighted? Usually, it is not that difficult to prove the *poor value for money* in the case of other types of investments but here we are dealing with investments of an artistic nature. Accordingly, it is crucial to make sure that all possible evaluation factors are collected. With an estimate of the out-of-pocket costs and the opinion of

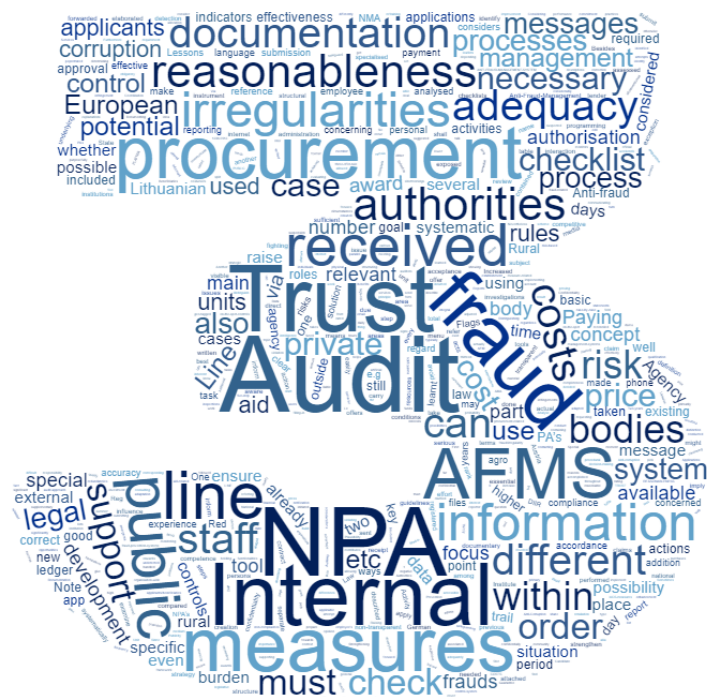
the Lithuanian Folk Artists Union on the artistic quality of the artwork, NPA is able to take a substantiated decision on the value of the investment.

Conclusions

To sum up, in public procurement procedures, due attention must be paid not only to the preliminary and implementation phases but also to the post-delivery phase of the contract. Irregularities might be found even if the procurement procedure seems to be regular and compliant with legal acts. In order to ensure a reasonable use of the EU funds, each member State should take all necessary actions to identify fraudulent cases. In order to incorporate these actions into the investigation, NPA invokes independent experts and other State institutions possessing competence on the specific fields. It emerged that each member State should take extra actions (even though particular additional measures are not listed into the legal acts) if it is sensed that the procurement (or its outcome) might be fraudulent.

Section 3

Additional topics- Cross-cutting issues



AUDITING THE ANTI-FRAUD-MANAGEMENT-SYSTEM (MARKUS PLATTER AND KERSTIN BOJAR)

THIS CHAPTER:

- IMPROVES PAS STAFF **AWARENESS** ON THE DESIGN AND PRINCIPLES OF AN ANTI-FRAUD-MANAGEMENT-SYSTEM (AFMS)
- BUILDS ON THE IDEA OF “**VALUE FOR THE MONEY**” BY PROVIDING PRACTICAL GUIDELINES TO INTERNAL AUDIT DEPARTMENTS OF PAYING AGENCIES
- SHARES TESTED **SOLUTIONS** FOR INTERNAL AUDIT DEPARTMENTS OF PAYING AGENCIES RESPONSIBLE FOR AUDITING THE ANTI-FRAUD-MANAGEMENT-SYSTEM (AFMS) OF ITS AGENCY

The problem

While the performance of special investigations into cases of suspected fraud and the examination of fraud-related aspects during regular measure-related audits have always been the focus of the PA's Internal Audit Service, the systematic and comprehensive audit-approach of an agency-wide Anti-Fraud-Management-System is a new aspect.

Commission Reg. 907/2014 requires the verification of the adequacy of the PA's procedures

the Internal Audit Service. All significant areas are to be covered over a period not exceeding five years.

For the programming period 2014-2020, according to the *Guidance Note on Anti-fraud Measures* (26/02/2014) by the European Commission, PAs should take a more systematic approach to control activities related to the prevention and detection of frauds and irregularities. Therefore, they are supposed to make their fraud-prevention-systems more visible or to even implement new, more adequate systems.

Under these circumstances, it is obvious that also the Internal Audit Services should review their approach to the topic within their 5-year-plans.

Our starting point

The Austrian PA has always had a management and control-system that included separate measures for the prevention, detection and correction of irregularities. Nevertheless, with Commission Reg. 907/2014, it has become necessary to build a systematic framework around the anti-fraud measures already in place. To achieve this goal, the PA followed the path recommended by the European Commission in its *Guidance Note on Anti-fraud Measures* (26/02/2014) and started to systematically

determine, assess and rank fraud risks. In this regard, projects in rural development (EAFRD) have been investment an area of special interest, because – as evaluated by the PA and suggested by European Commission - they are exposed to higher fraud risk than IACS-measures (EAGF). Inter alia, this assessment is motivated by the possibility of fraudulent manipulation of private procurement following the three-offer-rule, and the artificial creation of funding conditions (Article 60 of Regulation (EU) No 1306/2013) which can be very difficult to detect without well-defined indicators.

Although the European Commission considers the risk of internal fraud, corruption or other serious irregularities within Managing Authorities and Paying Agencies throughout the EU and Candidate Countries lower than the risk of “external” frauds perpetrated by beneficiaries, “Red Flags” for possible internal fraud have also been identified by AMA.

Considering all these reasons, the Internal Audit decided to primarily focus on Rural Development (RD) support measures in its outline for auditing the Anti-Fraud-Management-System. The Internal Audit oriented its audit approach towards the DIIR (German Institute of Internal Audit) Audit Standard No. 5 *Standard for the Audit of the Anti-Fraud-Management System by the Internal Audit Activity*, and it follows also the suggestions of the EC *Guidance Note on Anti-fraud Measures* (26/02/2014).

By using these two guidelines as reference documents, and with the help of the Internal Audit expertise available in the PA, the Internal Audit elaborated an individual audit concept fitting the actual needs of a PA, with special focus on auditing the accuracy, adequacy and effectiveness of the Anti-Fraud-Management-System established by the PA. The main goal of this audit concept and of the resulting system-audit was to identify potential factors for improving the Anti-Fraud-Management-System itself and to strengthen preventive measures in the business processes and in the communication strategy of the PA.

Our solution

The audit concept elaborated by the Internal Audit considers two main aspects: The evaluation of the organisational structure of the AFMS (organisation-specific requirements) in the PA and the audit of the AFM measures and processes based on these requirements (process organisation).

The evaluation of the organisational requirements consisted of checking the documentation on the definition of functions, responsibilities and reporting channels of the different organisational units and individuals involved in the AFMS, as well as

the adequacy of the allocation of human and physical resources by the PA management. Special focuses were on the interaction of the units involved in order to detect possible control-gaps or redundancies and on the integration of the AFMS into the regular risk management system of the PA. Besides evaluating the situation of the different units within the PA, the audit concept also considered the situation in the delegated bodies of the agency, which - in the Austrian case – are responsible for the authorisation of most of the applications in the field of RD support measures. Based on the experience gained during former audits, the Internal Audit rated the risk of irregularities and potential fraud in delegated bodies higher than in the PA.

For the audit of the process organisation, the Internal Audit compared the target condition described by the EC in its *Guidance Note on Anti-fraud Measures (26/02/2014)* and the DIIR (German Institute of Internal Audit) Audit Standard No. 5 *Standard for the Audit of the Anti-Fraud-Management System by the Internal Audit Activity* with the situation in the Paying Agency in place at the time of the audit. That situation was analysed following the five-step concept described by EC:

1 - Systematically determine, rank and record the fraud risk to which CAP expenditure managed by the PA is exposed

The main questions for the Internal Audit in this regard were the extent and the frequency of an adequate risk assessment and the ranking of fraud risks in the different units and the extent to which this approach was systematic and extended to organisation as a whole. This included an evaluation of the detected cases of irregularities and fraud, as well as a consideration of all changes within or outside the PA that might influence the risk of fraud (legislative and employee changes, new measures, etc.). All relevant documentation about the underlying processes was checked during this assessment.

2 - Analyse the existing administrative and monitoring procedures

This step was necessary to check if the corresponding workflows were complete, so that a fraud attempt would not remain undetected due to shortcomings in the processing and/or control phases. In addition, in order to assess the degree of effectiveness of the AFMS, the Internal Audit determined whether and how the PA systematically compared the risks of irregularity and fraud actually detected with the risk reduction measures and processes in place.

3 - Establish a ledger of fraud/irregularity indicators (“Red Flags”)

The existing fraud indicators ledger has been reviewed and its functionality has been assessed. This included an assessment of how the AFMS considers “Red Flags” in high-risk areas and the remedial actions taken. During this part of the audit, one of

the main questions was to which extent the fraud ledger was organisation-wide, systematic and coherent. The focus was on how the fraud ledger was used as underlying document in the course of both regular administrative and on-the-spot-controls and how and when it is updated.

4 - Adoption of clear internal rules on how to deal with files that contain indicators for fraud or other serious irregularities.

The Internal Audit performed checks on the process of reporting files showing irregularities or signs of potential fraud and on all other anti-fraud written measures. Besides the process of reporting suspicious files, the existence of organisational anti-fraud targets specified by the management and the acceptance of the establishment of the AFMS within the organisation were analysed.

5 - Raising fraud awareness of staff through training and other measures to share specific anti-fraud intelligence

The Internal Audit assessed the existing training concepts and measures on the AFMS in the PA and analysed whether the overall communication concept to raise awareness of irregularities and potential fraud is effective.

Lessons learnt

The audit on the AFMS of the PA was intended to identify potential improvement factors for the AFMS itself and to strengthen preventive measures in the business processes and the communication strategy of the PA. Another task was to raise awareness among all stakeholders on the importance of fighting irregularities and frauds. These goals have been mostly achieved.

However, Internal Audit Units when auditing the AFMS of the PA should consider some issues:

First, the different roles and responsibilities of Internal Audit in the AFMS should be made clear to all stakeholders from the beginning. The basic task of the Internal Audit with regard to the AFMS is to audit its accuracy and effectiveness. The Internal Audit can also carry out consulting activities for the structuring and adaptation of the AFMS. Both roles imply that the Internal Audit is independent and not responsible for setting up the business processes of the AFMS. However, the Internal Audit is part of the AFMS when it comes to perform suspicion-related special investigations on potential internal or external frauds or preventive actions to raise awareness of irregularities and frauds.

Secondly, another issue refers to the interaction between anti-fraud and risk-management measures. Systematically determining, ranking and recording risk is a

basic risk-management task. With the experience of the audit performed, the AFMS must be an integral part of the agency's risk management system in order to be effective and to gain stakeholders' acceptance. It makes no sense to establish separate, independent systems. However, it is still possible that responsibilities and decision-making for the PA's management-systems are split among different organisational units. For this reason, it is even more important to clearly define and communicate roles and responsibilities.

Thirdly, although the primary focus of the audit was on the part of the AFMS referring to the main business processes of the PA and of its delegated bodies - and therefore to irregularities and fraud perpetrated by beneficiaries – the Internal Audit focused on measures taken by the PA to avoid internal fraud as well. It has proven a good idea to cover also compliance issues at the same time.

Finally, appropriate documentation on both the risk-based considerations on the design of the AFMS and on the descriptions of tasks and responsibilities in the AFMS should exist and being adequately communicated within the Paying Agency.

Conclusions

Auditing the Anti-Fraud-Management-System (AFMS) of the Paying Agency proved to be a good tool to raise the staff and management awareness of irregularities and fraud threats.

By providing suggestions to improve the system, the Internal Audit could contribute to its enhancement. The definition of the different roles and responsibilities has been clarified and some additional processes have been established. The documentation of the system itself and of the processes within the system has been improved.

Strengthening preventive measures to avoid irregularities and fraud was also a goal of the audit. Because of the audit, the material for training measures for operating departments and delegated bodies was adapted and additional measures were implemented in the PA. These measures included both training for fighting external and internal fraud.

What is still to improve is the integration of the AFMS in the existing risk management system of the Paying Agency to benefit from possible synergies.

THE VERIFICATION OF THE REASONABLENESS OF COSTS IN PUBLIC AND PRIVATE PROCUREMENT

THIS CHAPTER:

- IMPROVES PAs STAFF AWARENESS OF THE DIFFERENT EFFORTS TO BE TAKEN DUE TO PUBLIC AND PRIVATE PROCUREMENT PROCEDURES WHILE AUTHORISING CLAIMS.
- BUILDS ON THE IDEA OF “**VALUE FOR THE MONEY**” BY INCREASING LEGAL CERTAINTY FOR THE PAYING AGENCY THROUGH IMPROVED DOCUMENTATION.
- SHARES TESTED **SOLUTIONS** FOR OPERATIONAL DEPARTMENTS OF PAYING AGENCIES WHILE AUTHORISING CLAIMS.

The problem

The check of the reasonableness of the costs is one of the key controls for Rural Development during the aid application approval process. Documenting this check is an important part of the administrative control.

In the case of private procurement, cost items listed in the cost statements must be documented in writing, depending on the rating systems and on the documents on which the reasonableness can be

determined. Therefore, different systems for aid projects can be allowed. For example, a reference cost system, an evaluation committee, and a comparison of different offers (possibly also via the Internet)⁸ could be used. The relevant documents shall be attached to the written documentation or refer to specific payment claims already approved. It is not sufficient to refer to general previous experiences without specific documents.

In the case of public procurement, the applicant must submit all documents proving that the selected award procedure has been carried out in accordance with the legal provisions laid down in the public procurement law. If a tendering procedure has been carried out in accordance with the provisions of public procurement law, its

⁸ Art. 48 para. 1 lit. e Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance, OJ L 227, 31.7.2014, p. 69.

implementation is already considered as a cost reasonableness check of and it can be accepted for approval.

From the PA's perspective, checking public procurement in an application is more demanding than in cases of private procurement. The effort required to the applicant to demonstrate to the PA that the procedure complies with public procurement rules is also greater. Handling, describing, applying and communicating these different requirements to the staff of the PA, to its delegated bodies and to the applicants is challenging and requires additional and specialised resources.

Our starting point

Since the beginning of Rural Development, natural persons and private bodies were entitled to apply for EAFRD co-financed measures. The check on the cost reasonableness was always an essential element of the administrative control procedure on the authorisation process.

The number of contracting authorities applying for EAFRD co-financing has increased in Austria from 2007 onwards. For the 2007-2013 programming period, specific funding opportunities were created for public authorities, so the number of these bodies – as contracting authorities – started to increase significantly. Until then, the question of the plausibility of the costs had to be handled differently. Therefore, new control procedures had to be developed for the contracting authorities, as applicants in the previous scheme – due to the competitive procedures implemented by the contracting authorities – could no longer be reconciled with the methods used so far (e.g.: reference cost system, evaluation committee, comparison of different offers).

A key principle in public procurement is the award of a contract to the lowest or the best bid at reasonable prices. This price adequacy of the tendered service, determined by means of a competitive procedure, is systemically inherent in the award procedure under public procurement law provisions. Although price adequacy is not the same as the reasonableness of cost, in practice the necessary distinction between these two principles is not made. This fact confused applicants, staff of the PA and the delegated bodies, as well as EU auditors.

One of the main differences between the two principles is that they do not occur at the same step of the (private or public) procurement process. The reasonableness of the costs has its focus on the incurred costs. The invoice submitted is to be examined for reasonableness in the context of the administrative control. The check on the reasonableness of the cost is typically done with the payment claim.

Plausibility of the costs does not preclude placing an order. The check on the plausibility of the costs must be done at the time of submission of the documents for the application.

It is different with price adequacy. Here, even before the award of the contract, the adequacy of the price is checked during the review of the tender. If price adequacy is not plausible, the offer concerned is not eligible and must be excluded from the award procedure. Therefore, an offer is no longer considered for an award after a negative price adequacy check.

Our solution

In order to be able to carry out the correct verification during the application assessment, it is necessary to distinguish if the applicant is a contracting authority subject to the rules of public procurement or if the applicant is a private body not subject to these same rules.

Depending on this qualification, the topics to further examine are:

- The price adequacy for public authorities; and
- The reasonableness of the costs for private entities.

The Austrian Paying Agency has increased the number of specialised staffs, because of the higher administrative burden linked to the price adequacy assessment. The staff of the legal unit responsible for the legal support of the operational departments was increased. Likewise, the number of staff members in the operational departments was increased.

Furthermore, the documents for administrative control were further developed for this point. For example, the authorisation checklist for contracting authorities has been redesigned and expanded. A guideline for applicants who are contracting authorities was created. This checklist shows an overview of the individual steps of the procurement process. Based on the checklist, the applicant can check if the relevant procurement-related steps are all part of the application, including the possibility to provide supplementary documents.

For the development of these checklists for the documentation of procurement procedures, practical examples from other bodies and beneficiaries were used. In the particular case of aid-related construction projects, beneficiaries independently produced and transmitted these summary lists, independently of each other when submitting their payment claims. Their basic structure was adopted and adjusted, taking into account the results of the EC Audit of 2017. If several individual purchases

are relevant for the aid application, several parallel procurement procedures can easily be documented with the checklist.

No complete list of all contracting authorities in Austria is available. Sometimes even the applicants do not know whether they qualify as a contracting authority or not. A case-by-case assessment based on the notion of contracting authorities under European law⁹ is required to decide whether an applicant has the status of a contracting authority or not. In addition to the checklist for the approval of funding applications from contracting authorities, another checklist was prepared to assess whether an applicant is a public contracting authority or not.

The above-mentioned documents for the use in the approval process are available to both the employees of the PA and to the delegated bodies. In order to ensure a consistent application and to raise awareness of the requirements for a correct assessment of an application of a contracting authority, the staff members concerned are regularly trained on the above-mentioned documents. The training is conducted by staff of the PA (operational departments and the legal unit).

Lessons learnt

Distinguishing between price adequacy and costs reasonableness

These terms are not congruent. Although every application has to comply with the provisions on costs reasonableness, price adequacy is an issue only in the case of public procurement. A tender procedure carried out in compliance with public procurement provisions (except direct awards) fulfils the costs reasonableness requirements.

Increased legal certainty and increased burden for the applicant

Documentation is essential for the correct processing of applications for aid. It is applicants' responsibility to provide evidence that they comply with all application requirements, including those concerning public or private procurement rules. This means that along with the application, they must submit all relevant documents supporting their claim for aid. This, in turn, requires that the applicant prepares and delivers all the necessary documentation to serve as audit trail for the Paying Agency.

The instructions provided by the PA in combination with the checklist support users in achieving accuracy and completeness.

⁹ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94 28.3.2014, p. 65–242.

The administrative burden for the applicant related to the preparation of the documentation is a disadvantage.

Increased legal certainty and increased authorisation documentation costs

Applications of higher quality which include all necessary documentation support the authorising body in the implementation of the mandatory administrative controls. If the applicant is a contracting authority, the quality of the submitted documents is even more important for the authorising body. In the best case, the applicant is aware of its status as contracting authority and has already complied with the obligatory documentary requirements and presented a comprehensive application file for the submission to the authorising body. In this case, the authorising body can check the application using the checklist provided by the PA. In addition to the already provided checklist, authorising bodies have received from the PA instructions and training on the use of this tool to ensure compliance with all EU and national public procurement requirements.

The legal certainty provided by the improved documentation is a clear advantage achieved.

A disadvantage is - again - the increased administrative burden for the authorisation body, which has to check the documentation attached to the application using the checklist.

4. Audit trail

Improved checklists and instructions provide the PA with a better documentary situation and a proper audit trail.

This improved audit trail helps the PA in any future internal and external audits.

Conclusions

- The costs reasonableness assessment as a key control is an EU requirement that every PA has to comply with.
- Depending on the applicable procurement rules (public or private), administrative controls on cost imply considerably different efforts.
- It tends to take more time to assess the documentation needed to grant authorisation in the case of contracting authorities than in the case of applications from bodies having to comply with private procurement rules.

- As long as contracting authorities can apply the EAFRD measures, coping with public procurement requirements is still challenging and the administrative burden for implementing the necessary controls is still high.
- Additional staff can ensure the effectiveness of the costs reasonableness assessment procedure.

ANTI-CORRUPTION - THE “TRUST LINE” TOOL

THIS CHAPTER:

- IMPROVES PAs **STAFF AWARENESS** OF THE BENEFITS OF WHISTLEBLOWING TOOLS
- BUILDS ON THE IDEA OF “**VALUE FOR THE MONEY**” BY REDUCING THE RISK OF FRAUD S PERPETRATED BY AGENCY STAFF
- SHARES TESTED **SOLUTIONS** FOR IMPLEMENTING WHISTLEBLOWING

The problem

The transparent provision of high-quality services meeting expectations of our customers is one of the most important strategic goals of NPA. In order to achieve this goal, NPA is committed to ensure that EU and Lithuanian State support for agriculture, rural development and fisheries are used

purposefully and effectively. NPA puts effort into preventing the occurrence and diffusion of corruption within the agency. In order to achieve the aforementioned goals, several anti-corruption tools have been implemented:

- Two-years corruption prevention programs;
- Assessment of probability and impact of corruption events and subsequent counteractions;
- Anti-corruption assessment of legislation and draft legislation;
- Corruption prevention training for NPA employees;
- “Trust line”;
- Other corruption prevention measures.

One of the most effective instruments for preventing corruption within (and outside) NPA is the so called “Trust line”. Our “Trust Line” contributes to ensuring the legitimate absorption of EU and Lithuanian funds in support of agriculture, rural development and fisheries and has been active in NPA for thirteen years.

Our starting point

At the beginning of the “Trust Line” there was no special legislation or other conditions to be met for the creation of such an anti-corruption instrument. NPA, and other member States alike, had only basic EU and national corruption prevention legal acts available (Corruption Prevention Law, Law on the Coordination of Public and Private Interests in the State Service, National Anti-Corruption Program, etc.). Undoubtedly, good practices of the implementation of similar tools in other Lithuanian and foreign institutions were helpful.

Taking all above into consideration, NPA had to find sufficient financial resources to develop this tool (i.e. the technical side of “Trust line”), make it publicly available and prepare the procedural guidelines for the management of the notifications received through the “Trust Line” by the NPA’s staff.

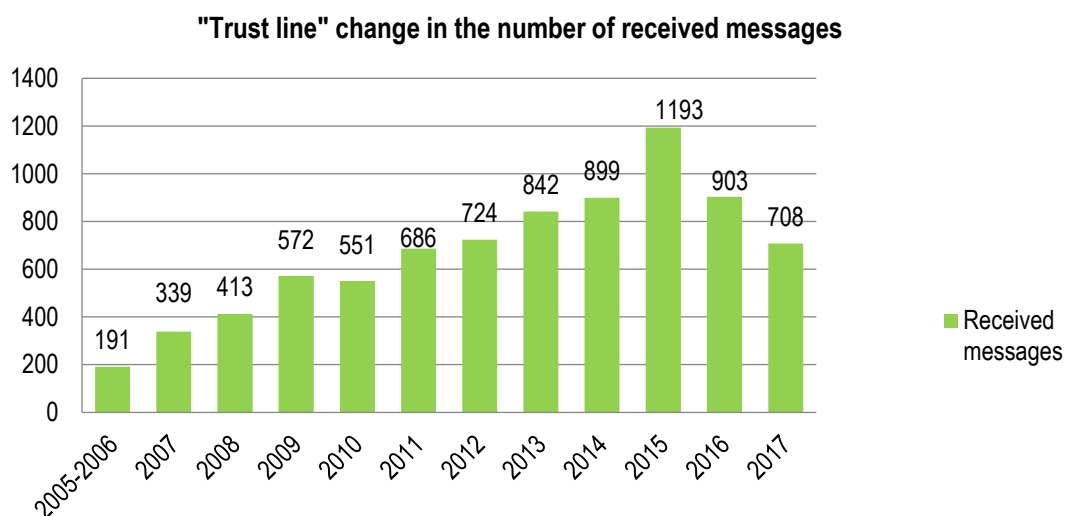
Our solution

At any time, through the " Trust Line ", either by telephone or by filling in a specific table on the NPA website, beneficiaries and other interested parties have the possibility to inform the NPA of potential cases of abuse concerning persons receiving or requesting EU and Lithuanian support for agriculture, rural development and fisheries or concerning non-transparent behavior or other attempts to influence the institution managing the aid perpetrated by its employees

Information received through the “Trust Line” is not publicly available. Data on the identity of the informant are confidential. If information about alleged illegal activities perpetrated by employees of agency is provided by a staff member who provided his name or other information allowing her identification, the necessary safeguard measures are adopted in order to protect her from possible retaliation (e.g. safeguarding the confidentiality of the NPA employee, refraining from disclosing the NPA employee’s data and etc.).

NPA’s employees violating the confidentiality of the information obtained through the “Trust line” or through other channels are liable in accordance with the procedure established by legal acts.

From the day of the “Trust line” started working (20 December 2005) until 31 December 2017, 8.021 messages were received. Messages received via “Trust Line” are registered in the official language. When a message is received in a non-official language, the message is registered by an NPA employee who knows that language. If needed, translations by external suppliers might be considered.



By the end of 2017, in total 708 messages were received through the “Trust line”:

- 201 by phone,
- 306 through the special table that can be filled-in on the NPA website,
- 71 by the NPA phone,
- 19 by contacting the applicants,
- 6 sent to employees by email,
- 34 submitted to info@nma.lt,
- 71 received in other ways.

In total 520 messages concerned the European Agricultural Guarantee Fund, the European Agricultural Fund for Rural Development and the European Fisheries Fund; 19 messages were associated with potentially non-transparent activities; and 169 messages were outside the competence of the NPA or contained incomplete information.

Reports received via the “Trust line” are checked on the information system on the day the message is received. If reports are received on non-working days, holidays or weekends, the verification takes place on the first following working day. Messages received are forwarded to the competent departments for further consideration in terms of their actual competence, and on-site inspections are initiated where necessary.

If the message via the “Trust line” is received, on spot checks are made within 10 business days. Other NPA structural units have to examine the report within 5 working days of receipt, unless otherwise provided for in the notification procedure. If additional data (documents, explanations, etc.) is required from applicants/beneficiaries, from other NPA structural units, or from other institutions, etc., the message shall be reviewed within 5 working days from the date of receipt of the additional data. Messages containing personal information not related to the aid administration are not considered.

The Quality Unit monitors the administration of the “Trust Line” and of other information received by NPA. According to the information received by the “Trust Line”, these are the figures of the on-the-spot controls accomplished: in 2007 – 163, 2008 m. – 164, 2009 m. – 345, 2010 m. – 258, 2011 m. – 352, 2012 m. – 463, 2013 m. – 482, 2014 m. 519, 2015 m. – 634, 2016 m. – 546 and 2017 m. – 387. In case of messages outside the scope of NPA, they are forwarded to the relevant competent authorities. If the information contained in the messages relates to several non-compliances, irregularities in the use of the support are detected, and appropriate sanctions are imposed on the beneficiaries (e.g. reduction of the amount of the benefit, suspension of payments, etc.).

Lessons learnt

During the years, the NPA staff has learned several important lessons regarding the “Trust line”:

- The “Trust line” should be easily accessible through different media (phone, e-mail, direct talk to NPA employees, filling-in of the web form, using an app, etc.) and possibly 24 hours a day 7 days a week;
- Publicity of “Trust line” and its benefits is one of its success factors. It is necessary to use various measures (internet, press, leaflets and so on) to make the community aware of the possibilities offered by the “Trust line” functionalities. One of the key points is providing the public with information of the possibility to use the “Trust line”;
- Information about the “Trust line” and possibility to use it must be placed in the most visible places regardless of the medium (internet, leaflet, media in the reception area or etc.). As the NPA experience has shown, once the banner of the “Trust line” was removed from the front page, less messages via the “Trust line” were received;
- It is useful to conduct opinion surveys to obtain important information to improve the tool;
- Information received through the “Trust line” must be managed promptly to get a good result;
- Confidentiality must be ensured in order for the informer to trust this tool.

Conclusions

The anti-corruption instrument „Trust line” was set up as an additional source of information to ensure transparent use of EU support. Via the “Trust line” the NPA can be informed of potential cases of frauds and irregularities regarding the EU and the Lithuanian support for agriculture, rural development and fisheries. Each report received via the “Trust line” is equally important to the NPA, so all messages are verified with no exception.

NPA is always looking for ways to improve its daily work. Corruption prevention is no exception. Recently (2018, late summer), NPA created and started to use the app “NMA agro” (<https://play.google.com/store/apps/details?id=lt.giscentras.nma>). This app may be used in two ways:

- To provide information about actions taken. Beneficiaries using “NMA agro” may send information to the NPA about actions implemented or to inform of any problems that she faced during the commitment period. The only thing that the reporter must do is to choose the option “Inform about action taken” and provide the information required: choose an action from the pick-up menu and give his personal data (name, surname, project number or holding number);
- To report infringements. This information may be sent confidentially without giving any personal data. The informer must choose the option “Inform about violation”, pick up the correct infringement type from a menu and describe it shortly.

This app allows the submission of geo-tagged photos directly from the place where the informer is in that moment. In our perspective, “NMA agro” can be used as further anti-corruption tool in NPA.

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