



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
REGIONAL AND URBAN POLICY
Audit
The Director

Brussels,

REGIO C2/REGIO(2015) 1780861

Subject: Final audit report

EPM 'To obtain assurance on the functioning of the management and control systems through the audit of high risk Operational Programmes / areas and horizontal themes'

Regional Development OP CCI 2007BG161PO001

Mission n°2013/BG/REGIO/C2/1314/1 of 7 - 11 April 2014

Follow up audit missions performed by DG REGIO in the period 17-21 October 2014 (N° 2014/BG/REGIO/C2/1314/2) and 08-12 December 2014 (N°.2014/BG/REGIO/C2/1410/1) in relation to the priority axes 1 and 3 of the Regional Development Operational Programme (CCI 2007BG161PO001)

Ref.: Draft Audit report of 25 July 2014 (Ares(2014)2471079)

Draft Audit report of 8 October 2014 (Ares(2014)3326297) (BG language version)

Member State reply of 18 November 2014 (Ares(2014)3839242)

Results of the follow up audit missions performed by DG REGIO in the period 17-21 October 2014 (No 2014/BG/REGIO/C2/1314/2) and 08-12 December 2014 (No.2014/BG/REGIO/C2/1410/1) in relation to the priority axes 1 and 3 of the Regional Development Operational Programme (CCI 2007BG161PO001)

Your Excellency

I am writing to inform you that the Directorate General Regional and Urban Policy has analysed the reply received from the national authorities to the related draft audit report of the audit mission referred to above.

His Excellency Mr Dimitar TZANTCHEV
Ambassador Extraordinary and Plenipotentiary Permanent Representative
Permanent Representation of Bulgaria to the EU
Square Marie-Louise/Maria Louizasquare 49
1000 Bruxelles/Brussel

Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel - Belgium. Telephone: (32-2) 299 11 11.

Office: [REDACTED]. Telephone: direct line [REDACTED]

http://ec.europa.eu/regional_policy/

e-mail: [REDACTED]

U:\13-AUDIT MISSIONS 2007-13 PROGR PERIODIEPM Bridging the Assurance Gap\BG\2013BGREGIOC21314 - RD OP - April 2014\FOLLOW UP\Final Audit Report BG AA Reg. Dev - CONSOLIDATED.doc

Please find enclosed the **final audit report** setting out the Commission's final position on all the remaining open findings and related actions and recommendations.


The irregular expenditure detected during the audit where financial corrections have been accepted and executed by Member State is presented in **Annex I**.

I request that you treat the enclosed audit report as confidential until the follow up procedure set below has been brought to a final conclusion. If the whole or part of the report is transmitted to persons concerned by the audit to enable them to provide comments, please ensure that the information set out in this paragraph accompanies the transmission.

The national authorities are requested to inform the Commission on the implementation of actions and recommendations set out in the final audit report within two months of receipt of the national language version of this final audit report by the Permanent Representation.

Furthermore they are requested in their reply to confirm that findings which have a financial impact on the EU budget exceeding €10.000 have been reported to OLAF in the IMS system for reporting irregularities and to provide the relevant references.

Yours faithfully



Franck Seibert


Contact:




Enclosures:

Final Audit Report
Annex I – Summary of financial corrections accepted by Member State


Copies:



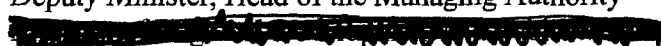
Acting Executive Director



4, Slavyanska Street
1040 Sofia
Bulgaria



Deputy Minister, Head of the Managing Authority



17-19, Kiril and Metodii Street
1202 Sofia
Bulgaria



EUROPEAN COMMISSION

DIRECTORATE-GENERAL

REGIONAL AND URBAN POLICY

Audit

Audit I

Brussels,

DG REGIO C2 D(2014)

FINAL AUDIT REPORT

Mission n°: 2013/BG/REGIO/C2/1314/1

ENQUIRY: Complementary EPM 'To obtain assurance on the functioning of the management and control systems through the audit of high risk Operational Programmes / areas and horizontal themes'

FUND : ERDF / Cohesion Fund

MEMBER STATE : Bulgaria

REGIONS : Pluri-regional

TYPE OF AUDIT : Regional Development OP (CCI N°: 2007BG161PO001)
Audit of operations

DATE OF MISSION : 7 - 11 April 2014

DG/Unit Chef de file: DG Regional and Urban Policy C.2

Principal auditor: [REDACTED] (DG Regional and Urban Policy C.2)

Associated auditors: [REDACTED] (DG Regional and Urban Policy C.2)
[REDACTED] (DG Regional and Urban Policy C.2)

Associated DGs: n/a

This audit report sets out the provisional findings, conclusions and recommendations of the Commission auditors. These may be modified in the light of the observations and further information received from the national authorities. Accordingly, this audit report should be treated as confidential until the follow up procedure has been brought to a final conclusion. If the whole or part of the report is transmitted to persons concerned by the audit to enable them to provide comments, please ensure that the information set out in this paragraph accompanies the transmission.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	4
1. LEGAL BASIS	14
2. AUDIT SCOPE	14
3. OBJECTIVES.....	14
4. WORK DONE.....	14
5. FINDINGS, RECOMMENDATIONS AND ACTIONS	19
<i>Finding n°1: Irregular reduction of the deadlines for submission of tenders on the basis of a non-compliant prior information notice</i>	<i>19</i>
<i>Finding n°2: Irregular reduction of the standard time limits for companies to obtain the tender documentation</i>	<i>21</i>
<i>Finding n°3: Irregular modification of a selection criterion by means of a clarification which was not advertised in the OJEU.....</i>	<i>24</i>
<i>Finding n°4 – Irregular modification of the winning bid done during the evaluation process, as a result of a request for clarification issued by the contracting authority</i>	<i>25</i>
<i>Finding n°5: Disproportionate and discriminatory selection criterion requiring tenderers for the supply of vehicles to already have an agreement for the servicing of vehicles in Burgas at submission of tenders stage.....</i>	<i>28</i>
<i>Finding n°6: Use of a discriminatory selection criterion.....</i>	<i>31</i>
<i>Finding n°7: Irregular reduction of the deadlines for submission of tenders on the basis of a non-compliant prior information notice</i>	<i>32</i>
<i>Finding n°8: Irregular reduction of the standard time limits for companies to obtain the tender documentation</i>	<i>34</i>
<i>Finding n°9: Missing information in the published tender notice.....</i>	<i>37</i>
<i>Finding n°10: Use of a discriminatory selection criterion.....</i>	<i>38</i>
<i>Finding n°11: Tenderer not respecting requirements of the national procurement law.....</i>	<i>39</i>
<i>Finding n°12: Insufficient verification of references</i>	<i>40</i>
<i>Finding n°13: Mathematical error in the calculations of the award criteria leading to contract being awarded to the wrong tenderer</i>	<i>41</i>
<i>Finding n°14: Irregular reduction of the standard time limits for companies to obtain the tender documentation</i>	<i>43</i>
<i>Finding n°15: Failure to advertise the sub criteria used for the award of the contract in the contract notice and/or in the tender documentation</i>	<i>45</i>
<i>Finding n°16: Use of an unlawful award criterion</i>	<i>46</i>
<i>Finding n°17: Disproportionate selection criteria.....</i>	<i>48</i>

<i>Finding n°18: Use of an unlawful award criterion</i>	<i>49</i>
<i>Finding n°19: Use of a disproportionate selection criterion</i>	<i>51</i>
<i>Finding n° 20: Unjustified rejection of a tenderer</i>	<i>52</i>
<i>Finding n°21: Unequal treatment of bidders</i>	<i>54</i>
6. OVERALL CONCLUSIONS AND RECOMMENDATIONS	55

EXECUTIVE SUMMARY

PROGRAMMING PERIOD: 2007-2013

FUND: EUROPEAN REGIONAL DEVELOPMENT FUND

OPERATIONAL PROGRAMME: REGIONAL DEVELOPMENT OPERATIONAL PROGRAMME

The present mission was carried out under the EPM "To obtain assurance on the functioning of the management and control systems through the audit of high risk Operational Programmes, areas and horizontal themes and was focused on public procurement and the quality of the management verifications for the Regional Development OP.

The total expenditure declared for the Regional Development OP up to 31.12.2013 amounts to **EUR 742,612,558**. The table below indicates the amount of expenditure declared per priority axis:

Table 1: Expenditure declared

Regional Development OP Priority axis	Cumulative Amount declared for the period 2007 – 2011 (EUR)	Cumulative Amount declared for the period 2007 - 2013 (EUR)	Amount declared for the period 2012 – 2013 (EUR)
Priority axis 1: Sustainable and Integrated Urban Development	91,503,491	399,518,266	308,014,775
Priority axis 2: Regional and Local Accessibility	61,526,191	210,639,629	149,113,438
Priority axis 3: Sustainable Tourism Development	1,043,539	52,251,638	51,208,099
Priority axis 4: Local development and co-operation	21,535,366	66,135,925	44,600,559
Priority axis 5: Technical Assistance	3,248,188	14,067,100	10,818,912
Total	178,856,775	742,612,558	563,755,783

From the total expenditure declared for the Regional Development OP between 2007 and 2013, **EUR 563,755,783** was declared in 2012 and 2013 and was not previously audited by DG REGIO.

As the previous audit mission under the 'Bridging the assurance gap' EPM, performed in September 2012, focused on Priority axis 2: Regional and Local Accessibility and as FEI (JESSICA) was audited by ECA as part of DAS 2013, this audit mission was carried out on the following three Priority axes:

- i) Priority axis 1: Sustainable and Integrated Urban Development, except FEI, which represents EUR 13,467,285 out of the cumulative expenditure declared under the Priority Axis for 2012 and 2013 (EUR 308,014,775);
- ii) Priority axis 3: Sustainable Tourism Development (EUR 51,208,099);

iii) Priority axis 5: Technical Assistance (EUR 10,818,912).

Priority Axis 4 was not selected due to the small amount of expenditure declared (See table above).

During the audit mission, twenty one contracts were audited in the five selected projects.

AUDIT SCOPE AND OBJECTIVES

The overall objective of the audit was to obtain reasonable assurance that the management and control systems established and implemented by the Member State:

- i) comply with the requirements of the Union rules; and
- ii) are functioning effectively to prevent and detect errors and irregularities and to ensure the legality and regularity of the expenditure declared to the Commission.

In respect of the 5 operations selected (refer to Table 1 above), the specific objectives of this audit mission were:

- to verify compliance with public procurement rules;
- to check the quality of management verifications in the area of public procurement;

The objectives of the audit mission relate to the Key requirement 4: Adequate management verifications.

Summary of main findings & actions

Table 2: Summary of main findings and actions

<u>MAIN FINDINGS</u>	<u>MAIN ACTIONS</u>	<u>PROJECT</u>
Irregular reduction of the deadlines for submission of tenders due to non-compliant prior information notices (PIN's) (not all required details were included in the PIN's).	<p>The managing authority should apply appropriate financial corrections (for details see Findings n°1 and 7).</p> <p>The managing authority should also improve the management and control system in order to detect and correct this type of irregularity.</p> <p>This is a potentially transversal issue that could affect other contracts above the EU Directive thresholds</p>	<p>BG161PO001-1.5.01-0001-C0001</p> <p>Integrated urban transport – Burgas;</p>
Irregular reduction of the time allowed to tenderers to obtain the tender documentation, by requiring tenderers to purchase the documents at least 10 days before the deadlines established for the submission of bids, when the standard time	<p>The managing authority should apply appropriate financial corrections (for details see Findings n°2, 8 and 14).</p> <p>The managing authority should also improve the management and control system in order to detect and correct this type of irregularity.</p> <p>The managing authority should</p>	<p>BG161PO001-1.5.01-0001-C0001</p> <p>Integrated urban transport – Burgas;</p> <p>BG161PO001-1.4.01-0002-C0009</p> <p>Modernisation of the units of NSPBZN – Ministry of Interior</p>

<p>limits provided by the public procurement Directives are shortened.</p>	<p>apply the provisions of the Commission Decision C (2013) 9527/ 19.12.2013 on the setting out and approval of the guidelines for determining financial corrections to be made by the Commission to expenditure financed by the Union under shared management in relation to this type of irregularities.</p> <p>The relevant point in the 'Guidelines' to be applied is point 4 - Insufficient time for potential tenderers/candidates to obtain tender documentation.</p> <p>The national authorities should ensure that the practice of allowing potential bidders to purchase the tender documents no later than 10 days before the deadline established for the submission of bids is discontinued, when the standard time limits provided by the public procurement Directives are shortened.</p> <p>For financial corrections proposed for contracts signed before the approval of the abovementioned Commission Decision, the managing authority should perform a case by case analysis (based on the percentage resulting from dividing the period for obtaining the tender documentation by the period for submission of tenders and the specificities of the contract (i.e. the object and complexity - as mitigating factors for the seriousness of the irregularity).</p> <p>This is a potentially transversal issue affecting other contracts above the EU Directive thresholds</p> <p>The audit authority should assess the risk for the other programmes / priority axes regarding this practice and advise the Commission of the results of its assessment. The audit authority</p>	
--	---	--

	shall report the results to the Commission after finalisation of the work.	
Disproportionate / Discriminatory selection criteria	<p>The managing authority should apply appropriate financial corrections (for details see Findings n°5, 17 and 19).</p> <p>The managing authority should also improve the management and control system in order to detect and correct this type of irregularity.</p>	<p>BG161PO001-1.5.01-0001-C0001</p> <p>Integrated urban transport – Burgas;</p> <p>BG161PO001-3.1.02-0108-C0001</p> <p>Assenovgrad Municipality</p>
Irregular modifications of bids during the evaluation process	<p>The managing authority should apply appropriate financial corrections (for details see Finding n°4).</p> <p>The managing authority should also improve the management and control system in order to detect and correct this type of irregularity.</p>	<p>BG161PO001-1.5.01-0001-C0001</p> <p>Integrated urban transport – Burgas</p>
Irregular tender evaluation methodology, involving favouring tenders close to the average price of all bids.	<p>The managing authority should apply appropriate financial corrections (for details see Findings n°16 and 18).</p> <p>The managing authority should also improve the management and control system in order to detect and correct this type of irregularity.</p> <p>This is a potentially transversal issue affecting other contracts above the EU Directive thresholds</p>	<p>BG161PO001-3.1.02-0108-C0001</p> <p>Assenovgrad Municipality</p>
Unjustified rejection of tenderers / Unequal treatment of bidders	<p>The managing authority should apply appropriate financial corrections (for details see Finding n°20).</p> <p>The managing authority should also improve the management and control system of the Operational Programme in order to detect and correct this type of irregularity.</p>	<p>BG161PO001-3.1.02-0108-C0001</p> <p>Assenovgrad Municipality</p>

KEY REQUIREMENT 4: ADEQUATE MANAGEMENT VERIFICATIONS (IN PARTICULAR PUBLIC PROCUREMENT)

1. Significant deficiencies identified in the functioning of the management and control system

The audit aimed at assessing management verifications in the area of public procurement for 5 operations financed under priority axis 1, 3 and 5 of the Regional Development OP. Following the verifications carried out, irregularities have been identified concerning the award of 10 out of 21 contracts verified. For another 2 contracts verified, the irregularities were detected by the certifying authority and not by the managing authority as a first level of control.

The following significant irregularities were identified:

- i) Irregular reduction of the deadlines for submission of tenders due to non-compliant prior information notices (PIN's) (not all the required details were included in the PIN's);
- ii) Irregular reduction of the time allowed to tenderers to obtain the tender documentation, by requiring tenderers to purchase the documents at least 10 days before the deadlines established for the submission of bids;
- iii) Disproportionate/discriminatory selection criteria;
- iv) Irregular modification of the technical proposal after the submission of bids;
- v) Irregular modification of a selection criterion by means of a clarification which was not advertised in the OJEU;
- vi) Failure to include the detailed methodology for the evaluation of bids in the contract notice and/or tender documents;
- vii) Irregular tender evaluation methodology, involving favouring tenders close to the average price of all bids;
- viii) Mathematical error in the calculation of the points attributed under the defined MEAT criteria which led to the award of the contract to a tenderer which should not have been awarded the contract.

Therefore, in the opinion of the Commission auditors, the principles of equal treatment, non-discrimination, transparency and sound financial management were not sufficiently ensured and complied with.

Despite several layers of verifications, neither the Public Procurement Agency, nor the managing authority identified the above mentioned irregularities. Also the certifying authority, as a second layer of controls failed to identify most of these irregularities.

The number of contracts affected by irregularities **(10 out of 21 in the sample)**, together with the fact that the **irregularities identified represent 7,6% of the value of the contracts in the sample**, indicated that the management and control system in place for verifying public procurement procedures had serious deficiencies and needed substantial improvements.

Due to the serious deficiencies identified in functioning of the management and control system implemented for the programme, by letters Ares (2014) 1804165- 03/06/2014 and Ares (2014)3099804 – 22/09/2014, the payments for priority axes 1 and 3 were pre-suspended.

The audit authority submitted their report on the implementation of the action plan for priorities 1 and 3 of the Regional Development OP on 02 December 2014 (Ares(2014)4021724) and a follow up audit mission was performed by DG REGIO on 08-12 December 2014.

The full implementation of the exit points was assessed during the follow up audit mission under the 'Bridging the gap' EPM on the Regional Development OP in December 2014, the result of the assessment being that the management and control system implemented for the programme is Category 2 - works, but some improvements are needed. The Certifying Authority withdrew the impact of the financial corrections applied by the Managing Authority in the Payment Claims submitted to the European Commission via SFC on 04/02/2015 (Ares(2015)463346 - 04/02/2015) and, therefore, a lifting letter was issued for the programme on 23/02/2015 (Ares(2015)750908).

2. Red flags and fraud suspicions

Following the verifications carried out, red flags and fraud suspicions have been identified concerning the award of 6 of the 21 contracts, namely:

- i) Potentially collusive bidding scheme;
- ii) Potentially conflict of interest between the winning bidder and one subcontractor who also submitted an independent bid in the same public procurement procedure;
- iii) References not based on actual delivery submitted by the winning bidder in order to meet the selection criteria;
- iv) Award of the contract by using an evaluation methodology which did not allow for genuine competition (favouring tenders close to the average price of all bids, time for delivery – the shortest time being rejected and technical proposal which could be met by any bidder);
- v) Mathematical error in the calculations of the award criteria leading to contract being awarded to the wrong tenderer;
- vi) Unequal treatment of tenderers whereas similar time for delivery was accepted for one lot but rejected for another lot which lead to the same bidder winning both lots.

For the contracts for which red flags and fraud suspicions have been identified, the combination of irregular practices involved in the performance of the public procurement procedure was considered.

The above mentioned red flags and fraud suspicions were not identified and reported by the managing authority. The system in place for verifying public procurement procedures needed to be substantially reinforced in what concerns identification and reporting of red flags and possible fraud suspicions.

The matters uncovered were, in any event, being referred to OLAF for consideration.

Following Commission recommendations, the management and control system implemented for the Regional Development Operational Programme was improved in order to cover potential conflicts of interest situations and red flags.

3. Corrective actions:

Following the audit mission n°2013/BG/REGIO/C2/1314/1 of 7 - 11 April 2014 the national authorities were recommended the following corrective actions:

A. The national authorities should ensure the effective functioning of the management and control system and improve the management verifications in the area of public procurement in order to identify notably the risks outlined in the present audit report.

The national authorities should consider notably the following:

i) The tasks and responsibilities of all bodies involved in public procurement ex-ante and ex-post verification (managing authority, Public Procurement Agency, certifying authority) should be clearly defined for each step of the process so that checks tackle risk areas and identify in due time problems and irregularities and propose remedial actions and/or financial corrections.

ii) With regard to the contents of the management verifications, the responsible bodies should focus on the substance and on the risky areas, rather than on the formal aspects.

The content of tendering notice, regarding the selection and award criteria, the respect of the legally applicable deadlines and the adequacy of the tendering procedure (in particular for negotiated procedure) shall be duly checked ex-ante by the Public Procurement Agency and ex-post by the managing authority.

The transparency and the fairness of the procurement procedure and, in particular, the selection and the award phases together with the correct application of the corresponding published criteria, should be carefully checked ex-post by the managing authority.

iii) The responsible bodies (managing authority and the Public Procurement Agency) should carry out effective management verifications, resulting in the identification of all irregular expenditure and leading to the necessary corrective measures by the managing authority including financial corrections and preventing declaration of ineligible expenditure to the Commission if the public procurement procedure has not been legal and regular even if the other body (Public Procurement Agency) has not identified the issues ex-ante. When the irregularities are not detected and corrections not made at the first level of control then the correction should be made at the level of certifying authority which serves as a second independent level of control.

The certifying authority should ensure that the expenditure related to irregularities identified during its checks on payment claims is not certified to the European Commission.

In case, following its checks on a payment claim, the certifying authority identifies serious irregularities which may affect the legality and regularity of the expenditure to be certified to the European Commission, it should take the following preventive and corrective measures:

- Assess the seriousness of the irregularities and draw a conclusion whether these irregularities could affect the operations in the payment claim not checked (draw a conclusion whether the weaknesses identified could be horizontal or not)
- In case the issues identified are considered to have a horizontal impact on the payment claim, it should suspend the certification process and ask the managing authority to re-check the potentially irregular payment claim in order to identify additional risks.

iv) Overall coordination of the bodies and increased and continuous capacity building within the bodies will be critical success factors in promptly improving the management of the EU funds.

The recommended corrective actions have been implemented by the Member State.

Following Commission recommendations, the management and control system implemented for the Regional Development Operational Programme was improved in order to cover the identified risks as well as potential conflicts of interest situations and red flags.

B. Following the implementation of the improvements to the management verifications procedures, the managing authority should re-perform its management verifications in the area of public procurement for a representative sample of contracts under priorities 1 and 3 of the programme in question for which expenditure was declared to the European Commission up to date and apply financial corrections to past and future expenditure affected by irregularities in public procurement.

Any resulting financial corrections should be in line with the *Commission Decision C (2013) 9527/ 19.12.2013 on the setting out and approval of the guidelines for determining financial corrections to be made by the Commission to expenditure financed by the Union under shared management in relation to this type of irregularities* and should be extrapolated to the contracts not sampled.

The national authorities should ensure that all past expenditure up-to-date is corrected (including appropriate financial corrections for all contracts affected by the irregularities resulting from the re-verification work performed or from the extrapolation of the error rate on the contracts not sampled).

This correction should also apply to future expenditure to be incurred in relation to the contracts affected by the irregularities or by the extrapolation of the error rate on the contracts not sampled.

Any previous corrective action taken for the sampled operations can be taken into account in determining whether any additional corrections are needed.

The national authorities should also provide confirmation, with regard to future applications for payment, that the expenditure declared to the European Commission results from a management and control system, which is free from the failings identified and complies with the requirements of all the applicable rules, in particular Regulation (EC) No. 1083/2006 and Regulation No. 1828/2006.

The recommended corrective actions have been implemented by the Member State.

Based on the analysis of the reply provided by the Member State and the additional audit work performed by DG REGIO on the spot, the adequacy and the functioning of the improved management and control system were confirmed.

The Member State formally accepted the financial corrections of 10,11% for priority axis 1 and 11,48% for priority axis 3 (representing the maximum of 132.922.819,78 BGN (EUR 67.963.401,05) by the Council of Ministers Decision No 54/22/12/2014.

The Certifying Authority withdrew the impact on the financial corrections applied by the Managing Authority in the Payment Claims submitted to the European Commission via SFC on 04/02/2015 (Ares(2015)463346 - 04/02/2015)

The Certifying Authority also provided a statement of assurance to the European Commission, certifying that the financial corrections have been applied.

C. The national authorities should improve the management verifications in the area of public procurement in order to ensure that red flags and fraud suspicions are appropriately identified and reported:

The national authorities should consider notably the following:

i) The responsible bodies (managing authority and the Public Procurement Agency) should carry out effective management verifications and implement *adequate measures to improve* the overall control environment at the level of the operational programme, ensuring effective procedures to prevent detect and correct irregularities and potential cases of conflicts of interest and fraud suspicions;

ii) With regard to the contents of the management verifications, the responsible body (managing authority) should perform a risk analysis following the regular public procurement ex-post verifications and perform a more in depth check of the public procurement procedures which are considered to have a higher degree of risk for red flags and conflicts of interest.

In performing the afore-mentioned management verifications, the managing authority should consider the common and recurrent fraud schemes and the relevant fraud indicators (red flags) as described in the *Information Note on Fraud Indicators for ERDF, ESF and CF (COCOF 09/0003/00-EN)*.

The responsible bodies (managing authority and the Public Procurement Agency) should prevent and detect undisclosed conflict of interest practices, namely: bids submitted by relatives (companies of relatives) of the evaluation committee members or of the persons occupying management positions within the contracting authority, bids submitted by the employees of the contracting authority and other possible stakeholders close to the matters of the contract and bids submitted by winning bidder and one subcontractor who also submitted an independent bid in the same public procurement procedure.

iii) The managing authority should report the suspected undisclosed conflict of interest/fraud scheme cases to the Council for coordination in the fight against infringements affecting the European Union financial interests (AFCOS) for further investigation. When the suspected cases of undisclosed conflict of interests/fraud schemes are not detected and reported at the first level of control than they should be detected and reported at the level of the certifying authority which serves as a second independent level of control.

The certifying authority should undertake the necessary measures not to certify any expenditure related to suspected cases of undisclosed conflicts of interest/fraud schemes. In case the suspicions are confirmed by AFCOS, the certifying authority should decertify any already declared expenditure to the European Commission in relation to the affected contract/operation.

The recommended corrective actions have been implemented by the Member State.

Following Commission recommendations, the management and control system implemented for the Regional Development Operational Programme was improved in order to cover the identified risks as well as potential conflicts of interest situations and red flags.

D. The audit authority should provide an opinion on the improvements made to the management and control system together with an assessment of the adequacy of the re-verification work and the financial corrections proposed by the managing authority in light of the recommendations under points A,B and C above.

The recommended corrective actions have been implemented by the Member State.

The AA provided their final report on the implementation of the measures requested to the Member State in the pre-suspension letter (Ares (2014)4021724 – 02/12/2014) together with the detailed description of the population and sample. The opinion provided by the AA in the aforementioned final audit report in relation to the management and control system implemented for priority axes 1 and 3 is **Category 2 - works, but some improvements are needed**.

Based on the analysis of the reply provided by the Member State together with the detailed audit tests performed on the spot, the Commission audit confirms the category 2 opinion of the audit authority concerning the adequacy and effectiveness of the new management and control system implemented for the priorities in question.

OVERALL CONCLUSION/OPINION

We have audited the selected operations in accordance with the scope and objectives set out in the sections 2 and 3 of this report.

In our opinion, based on the work performed as described in section 4, we have obtained reasonable assurance regarding the effective functioning of the management and control systems in relation to the Regional Development OP except for the following deficiencies:

- Public procurement deficiencies.

Based on the analysis of the reply provided by the Member State together with the detailed audit tests performed on the spot we conclude for Key requirement 4 (Adequate management verifications) that the system **works, but some improvements are needed** (Category 2).

1. LEGAL BASIS

The legal basis for the Commission audits in the Member States in relation to structural actions expenditure is provided by Article 72.2 of Council Regulation (EC) No 1083/2006.

This audit mission was performed in the context of the Complementary EPM 'To obtain assurance on the functioning of the management and control systems through the audit of Operational Programmes, areas and horizontal themes'.

The overall objective of the audit units in the Directorate-General for Regional and Urban Policy is to obtain reasonable assurance regarding the proper functioning of the management and control systems established by the Member States.

2. AUDIT SCOPE

The scope of the mission was tailored in order to address the specific risks relating to operational programmes and taking into account the results of the work of the audit authority, weaknesses identified during the re-performance of systems audits, re-performance of audits of operations and results of the previous audits under the Complementary EPM and the general progress of the financial execution of the programmes in Bulgaria until the end of 2013. (See section 4)

3. OBJECTIVES

The objective of this audit was to obtain reasonable assurance regarding the effective functioning of the management and control systems in Bulgaria for the Regional Development OP (2007BG161PO001).

The specific audit objectives were:

- to verify the respect of public procurement rules;
- to check the quality of verifications in the area of public procurement;

in relation to the selected operations. The objectives of the audit mission relate to the Key requirement 4: Adequate management verifications. Please refer to the Table of the Executive Summary for details regarding the operations selected.

4. WORK DONE

The audit was carried out from 7 – 11 April 2014, in accordance with the work programme which was sent in advance to the Member State.

The Bulgarian authorities were notified of the timing and scope of the audit by a letter of 7 March 2014 (Reference Ares (2014)615087).

Monitoring tables, financial data relating to the programme and payment claims received until the end of 2013 were analysed prior to the mission. The selection of the projects to be audited was performed in consultation with the geographical unit. The preparation process also involved risk assessment at programme level and took into consideration the outcome of the preparatory meeting held with the geographical unit.

The work programme included meetings with representatives of the beneficiary and of the managing authority and examination of the relevant documentation held at the premises of the beneficiaries. The audit was carried out as planned.

Verification of the legality and regularity of the operations co-financed by the European Regional Development Fund was performed through an audit of the contracts listed in Table 3 below.

The audit work was carried out in accordance with the audit manual for the Structural Funds/Cohesion Fund used by DG Regional and Urban Policy. Checklists, as provided in the annex to the EPM 'Bridging the assurance gap', were used for each individual operation.

Based on the detailed information provided by the managing authority and focusing the audit work both on the expenditure declared by the national authorities in 2012 and 2013 and to cover more recent contracts, the following projects and contracts have been selected:

No	Project and Beneficiary	Amount of expenditure declared in 2012 and 2013 (BGN/EUR)	Public Procurement Contracts	Contract Amounts (BGN)	Contract Amounts (EUR)
1	BG161PO001-1.5.01-0001-C0001 Integrated urban transport - Burgas	34,899,449.08 BGN 17,844,078.68 EUR	BG161PO001/1.5-01/2010/001-U-007 – Project management unit - [REDACTED]	1,554,000	794,548
			BG161PO001/1.5-01/2010/001-D-005 – Lot 1 1 Supply of buses BG161PO001/1.5-01/2010/001-D-006 – Lot 2 "Supply of buses – [REDACTED]"	36,202,970	18,510,284
			BG161PO001/1.5-01/2010/001-U-003 – Preparation of technical investment projects – [REDACTED]	1,894,695	968,742
			BG161PO001/1.5-01/2010/01-U0010/30.01.2014 – Supervision of works"	1,416,558	724,275
2	BG161PO001-1.4.01-0002-C0009 Modernisation	14,863,051.06 BGN 7,599,473.90 EUR	МП-1МД-2 – Supply of 10 firefighting cars	2,723,006	1,392,251
			МП-6МД-13; МП-6МД-12; МП-6МД-11 – Supply	2,382,948	1,218,382

	of the units of NSPBZN – Ministry of Interior		of breathing equipment and other equipment	693,600	354,632
				271,200	138,662
			МП-5-МП-10 – Supply of safety cars	1,198,800	612,937
			МП-4-МП-2 – Supply of 26 ladders	16,018,247	8,189,999
3	BG161PO001- 1.1.07-0006- C0001 University for Architecture, civil engineering and geodesy Introduction of energy efficiency measures, providing access for people with disabilities, renovation and modernization of the library of the University Centre, Sofia.	3,460,424.59 BGN 1,769,314.14 EUR	BG16PO001/1.1- 07/2009/003-S-01 Works	2,930,719	1,498,453
			BG16PO001/1.1- 07/2009/003-D-01 Supply	505,419	258,416
4	BG161PO001- 3.1.02-0108- C0001 Assenovgrad Municipality Support the development tourist attractions in Assenovgrad	2,725,095.60 BGN 1,393,340.63 EUR	BG 161PO001/3.1- 02/2009/007-S-10 Works	1,590,401	813,159
			BG 161PO001/3.1- 02/2009/007-U-15 - Supply of software	357,600	182,838
			BG 161PO001/3.1- 02/2009/007-D-20Supply of equipment (Lot 1)	594,569	355,127
			BG 161PO001/3.1- 02/2009/007-D-16Supply of equipment (Lot 2)	10,151	5,190
			BG 161PO001/3.1-		

			02/2009/007-D-17Supply of equipment (Lot 3)	66,564	34,033
5	BG161PO001-5.3.01-0028-C0001 Ministry for Regional Development and Public Works Mark the scope and content of the project and gathering information on the five major cities	2,248,346.75 BGN 1,149,579.07 EUR	PД-02-29-3 – Lot 1Tender documentation for the urban transport in Varna	541,920	277,079
			PД-02-2910252 – Lot 5 Tender documentation for the urban transport in Pleven	461,040	235,726
			PД-02-2910253 – Lot 3 Tender documentation for the urban transport in Stara Zagora	597,784	305,642

Projects no. 1 and 2 of the above list were also selected by the national audit authority in the context of the audit of operations for the expenditure declared to the Commission in 2013. For these two projects DG REGIO's audit mission mainly concentrated on the contracts not audited by the audit authority in its audits of operations.

Table 3 also indicates the scope of the audit work for each project audited.

Table 3: Audit scope for the projects audited

Beneficiary	Project	Audit scope
Municipality of Burgas	BG161PO001-1.5.01-0001-C0001 Integrated urban transport - Burgas	3 service contracts 2 supply contracts
Ministry of Interior	BG161PO001-1.4.01-0002-C0009 Modernisation of the units of NSPBZN – Ministry of Interior	4 supply contracts
University of Architecture, civil engineering and geodesy	BG161PO001-1.1.07-0006-C0001 University for Architecture, civil engineering and geodesy Introduction of energy efficiency measures, providing access for people with disabilities, renovation and modernization of the library of the University Centre, Sofia.	1 works contract 1 supply contract
Assenovgrad Municipality	BG161PO001-3.1.02-0108-C0001 Support for the development tourist attractions in Assenovgrad	1 works contract 4 supply contracts
Ministry for Regional Development and Public Works	BG161PO001-5.3.01-0028-C0001 Ministry for Regional Development and Public Works Mark the scope and content of the project and gathering information on the five major cities in two separate lots	3 service contracts

Comments received from the Member State (Ares (2014)1922283 – 13/06/2014 and Ares (2014)2110597 – 27/06/2014) in reply to the Interruption letter (Ares (2014)1804165 – 03/06/2014) have been taken into account when preparing the draft audit report.

In addition, two follow-up audit missions were performed by DG REGIO in the period 17-21 October 2014 (No 2014/BG/REGIO/C2/1314/2) and 08-12 December 2014

(No.2014/BG/REGIO/C2/1410/1) in relation to the priority axes 1 and 3 of the Regional Development Operational Programme (CCI 2007BG161PO001) in order to assess the implementation by the Member State of the corrective measures outlined in the present Audit Report as well as in the interruption and pre-suspension letters concerned.

5. FINDINGS, RECOMMENDATIONS AND ACTIONS

Findings n° 1 - 8 relate to one project implemented by the Municipality of Burgas under Priority 1

The project Integrated Urban Transport of the City of Burgas has been implemented through 13 contracts. Three service and two supply contracts were selected for the audit:

1. Project management unit - [REDACTED] (BG161PO001/1.5-01/2010/001-U-007)
2. Supply of buses - Lot 1 [REDACTED] (BG161PO001/1.5-01/2010/001-D-005)
3. Supply of buses – Lot 2 [REDACTED] (BG161PO001/1.5-01/2010/001-D-006)
4. Preparation of technical investment projects – [REDACTED] (BG161PO001/1.5-01/2010/001-U-003)
5. Supervision of works (BG161PO001/1.5-01/2010/01-U 0010/30.01.2014)

Contract 1: Project Management Unit – [REDACTED]

Finding n°1: Irregular reduction of the deadlines for submission of tenders on the basis of a non-compliant prior information notice

The contract notice was sent for publication on the 19.01.2012 and the time limit for receipt of tenders was set at 24.02.2012, allowing potential bidders 36 days for the preparation of their bids. This is less than the standard period of 45 days foreseen where there is electronic transmission (i.e. 52 days – 7 days = 45). The time limits for receipt of tenders were lowered to 36 days on the basis that a PIN had been published. However, this PIN is considered to be non-compliant and the reduction to 36 days is therefore irregular.

Article 38 of Directive 2004/18/EC deals with this issue and states that:

When contracting authorities have published a prior information notice, the minimum time limit for the receipt of tenders under paragraphs 2 and 3(b) may, as a general rule, be shortened to 36 days, but under no circumstances to less than 22 days. (...)

The shortened time limits referred to in the first subparagraph shall be permitted, provided that the prior information notice has included all the information required for the contract notice in Annex VII A, insofar as that information is available at the time the notice is published and that the prior information notice was sent for publication between 52 days and 12 months before the date on which the contract notice was sent.

Annex VII A of Directive 2004/18/EC specifies that the following information must be included for the prior information notices:

(...) In the case of public services contracts: the total value of the proposed purchases in each of the service categories in Annex II A; Nomenclature reference No(s).

The PIN did not contain information about the quantity, the estimated price and selection criteria. The estimated price and quantity of the service contracts together with their complexity on the basis of which selection criteria could have been established was known to the contracting authority at the time the PIN was sent for publication (28/02/2011) as a major project application for the Burgas Integrated Urban Transport Project had already been sent to the European Commission (Ares(2010)841564 – 19/11/2010) and a grant agreement (together with the estimated budget per activity) had already been established.

As the PIN did not include all the required information, it should not have been used to shorten the deadlines for submission of bids. The use of the deadline of 36 days is therefore irregular.

The managing authority did not identify and correct this irregularity during its management verifications.

Action n°1 (Responsible body: managing authority; Deadline: 60 days; Priority: High):

The managing authority should apply financial correction in compliance with the *Commission Decision C (2013) 9527/ 19.12.2013 on the setting out and approval of the guidelines for determining financial corrections to be made by the Commission to expenditure financed by the Union under shared management, for non-compliance with the rules on public procurement (hereinafter the 'Guidelines')*. The applicable point of the guidelines is point 3 Non-compliance with the time limits for receipt of tenders. A financial correction of 5 % of the contract value is applicable in this case as the irregular shortening of the deadline was less than the 30% mentioned in the guidelines (i.e. 9 days / 45 days = 20%).

Member State reply (summary)

The managing authority accepts the recommendations formulated by the Commission. In relation to this finding an irregularity report was registered in the Managing Authority's register for irregularities. The Beneficiary provided its comments in relation to the finding. Following the analysis of the finding the Managing Authority accepts the finding of the Commission and agrees in principle with the amount of the proposed financial correction. Following the letter for interruption of payments for Priority Axes 1 and 3 of the Regional Development OP the Audit Authority prepared statistical samples for all certified expenditure under Priority Axes 1 and 3 since the start of the OP (05/11/2007). The Managing Authority carried out re-verification of the public procurement procedures in the sample. Based on the results of the re-verification the Managing Authority established the necessity to apply a flat rate financial correction. The specific amount for this particular case was determined based on the Methodology adopted by the Certifying Authority.

Commission position

The Commission acknowledged the acceptance of their recommendations by the Member State.

The contract concerned falls within the scope of the extrapolated financial correction accepted by the Member State (representing the maximum amount of 132.922.819,78 BGN – 67.963.401,05 EUR) by Decision of the Council of Ministers no. 54 of 22 December 2014.

The Certifying Authority withdrew the impact of the financial corrections applied by the Managing Authority in the Payment Claim submitted to the European Commission via SFC on 04/02/2015.

The Certifying Authority also provided a statement of assurance to the European Commission, certifying that the flat rate financial corrections resulting from the re-verification exercise related to the legality and regularity of the public procurement procedures have been deducted.

As the contract concerned falls within the scope of the flat rate financial corrections accepted by the Member State and the corresponding irregular expenditure was decertified, the finding is **closed**.

Finding n°2: Irregular reduction of the standard time limits for companies to obtain the tender documentation

The contract notice was sent for publication on the 19.01.2012 and the time limit for potential tenderers to purchase the tender documentation was set for 14.02.2012, allowing potential bidders 26 days to purchase the tender documentation. The time for submission of offers was 45 days (see finding 1) The time provided to tenderers to purchase the tender documents is less than 60% of the time limits they were allowed to provide for the preparation of bids (the time limits they were allowed to provide for the preparation of bids in line with the provisions of Directive 2004/18/EC – $26/45 \times 100 = 57\%$).

The managing authority did not identify this irregularity during its management verifications.

Action n°2 (Responsible body: managing authority; Deadline: 60 days; Priority: High):

The managing authority should apply a financial correction in accordance with point 4 of the 'Guidelines' - Insufficient time for potential tenderers/candidates to obtain tender documentation. A 10 % financial correction is applicable in this case as the time provided to tenderers to purchase the tender documents is less than 60% of the time limits they were allowed to provide for the submission of bids.

Member State reply (summary)

The managing authority accepts the recommendations formulated by the Commission. In relation to this finding an irregularity report was registered in the Managing Authority's register for irregularities. The Beneficiary provided its comments in relation to the finding. Following the analysis of the finding the Managing Authority accepts the finding of the Commission and agrees in principle with the amount of the proposed financial correction. Following the letter for interruption of payments for Priority Axes 1 and 3 of the Regional Development OP the Audit Authority prepared statistical samples for all certified expenditure under Priority Axes 1 and 3 since the start of the OP (05/11/2007). The Managing Authority carried out re-verification of the public procurement procedures in the sample. Based on the results of the re-verification the Managing Authority established the necessity to apply a flat rate financial correction. The specific amount for this particular case was determined based on the Methodology adopted by the Certifying Authority.

In addition to the finding, the Managing Authority states that it received a letter from the Public Procurement Agency in which it sets out its position in relation to the finding. According to the Agency the irregularity cannot be established as the shortening of deadlines for obtaining the tender documentation was in compliance with the provisions of Article 28 (6) of the Public Procurement Law (version in force until 01/07/2014) and therefore cannot be established as an irregularity. The Public Procurement Agency argues that Directive

2004/18/EC does not specify a minimum deadline for tender documentation and refers to Article 39 (1) of the Directive which stipulates that the specifications and supplementary documents shall be sent to economic operators within six days of receipt of the request to participate, provided that the request was made in good time before the deadline for the submission of tenders. The Public Procurement Agency further states that the Directive does not define 'in good time' and that this rule is applied only when the contracting authority 'did not provide unrestricted and full direct access by electronic means to the documentation and therefore, if it is freely available electronically this restriction is not applicable which is the case in question. As at the time of launching the public procurement procedures the deadline for obtaining the tender documentation was set as 10 days before the deadline for receipt of tenders. The Public Procurement Agency states that this was done in order to ensure legality and to avoid the possibility for subjective interpretation and establishment of diverse practice in establishing whether a request for obtaining the tender documentation is done 'in good time'.

The Managing Authority states that it upholds the opinion of the Public Procurement Agency.

Commission position

The Commission acknowledge the acceptance of their recommendations by the Member State.

The contract concerned falls within the scope of the extrapolated financial correction accepted by the Member State (representing the maximum amount of 132.922.819,78 BGN – 67.963.401,05 EUR) by Decision of the Council of Ministers no. 54 of 22 December 2014.

The Certifying Authority withdrew the impact of the financial corrections applied by the Managing Authority in the Payment Claim submitted to the European Commission via SFC on 04/02/2015.

The Certifying Authority also provided a statement of assurance to the European Commission, certifying that the flat rate financial corrections resulting from the re-verification exercise related to the legality and regularity of the public procurement procedures have been deducted.

However, in relation to the additional comments on the finding provided by the Member State the Commission has the following observations:

The financial corrections for identified irregularities related to insufficient time for potential tenderers/candidates to obtain tender documentation are applied by the European Commission in accordance with point 4 of the Guidelines as follows:

- 25% if the time that potential tenderers/candidates have to obtain tender documentation is less than 50% of time limits for receipt of tenders (in line with relevant provisions);
- 10% if the time that potential tenderers/candidates have to obtain tender documentation is less than 60% of time limits for receipt of tenders (in line with relevant provisions);
- 5% if the time that potential tenderers/candidates have to obtain tender documentation is less than 80% of time limits for receipt of tenders (in line with relevant provisions).

The aforementioned 'relevant provisions' concern the legal time limits for receipt of tenders applied by the contracting authority for a particular public procurement procedure in

accordance with the provisions of Article 38 of Directive 2004/18/EC or Article 45 of Directive 2004/17/EC as transposed in the Bulgarian national legislation.

The provisions of Article 39(1)¹ of Directive 2004/18/EC provide for two alternatives for making the tender documentation available to economic operators: electronic access granted to interested bidders or sending of the contract documentation by the contracting authority to the interested bidders.

As far as the electronic access is concerned, no restriction of the 'full and unrestricted electronic access' is specified in Article 39, therefore, technical specifications should be, as a general rule, available until the deadline for the submission of tenders. In addition, the wording of 'full and unrestricted electronic access' also suggests that the technical specifications should be available to the public at all times before the deadline for the submission of tenders. In our view, establishing a deadline for potential tenderers/candidates to obtain tender documentation when the latter is electronically published may be an additional boundary to the interested potential bidders as the contracting authority does not provide 'full and unrestricted electronic access' to the aforementioned documentation.

The second part of Article 39 of Directive 2004/18/EC specifies that, in case of no electronic access, the technical documentation should be sent within six days of receipt of the request, provided that the request was made in good time. As it is up to the interested economic operator to determine whether the time left at his disposal will allow him to submit a tender within the deadline, we estimate that 'good time' in this context refers to the possibility of the contracting authority to send the technical documentation before the end of the deadline for the submission of offers.

This article contributes to ensure the respect of the principle of transparency and equal treatment, which require that any potential tenderer has the easiest possible access to the tender documentation before the expiration of the deadline for the submission of tenders in order to be able to prepare his tender. In conclusion, by establishing a deadline of 10 days for potential tenderers/candidates to obtain tender documentation when the latter is not electronically published the contracting authority restricts the right of potential bidders to determine whether the time left at their disposal allows them to submit a tender within the deadline, even though the former has the possibility to send the technical documentation in 'good time', before the end of the deadline for the submission of offers.

In order to ensure consistency between the principles enshrined in the provisions of Directives 2004/18/EC and 2004/17/EC and the national public procurement legislation and practice in Bulgaria, we recommend, as an example of good practice, for the contracting authorities to grant 'full and unrestricted electronic access' to the tender documentation for all potential bidders at the time the contract notices are published and to eliminate the practice of establishing a deadline for potential tenderers/candidates to obtain tender documentation.

Providing electronic access to the tender documentation at the time the contract notices are published while at the same time providing a deadline for purchasing or accessing the aforementioned tender documentation after which potential bidders cannot participate in the public procurement procedure, cannot be considered as 'full and unrestricted electronic access'. Therefore the additional shortening of the deadlines for the submission of bids with 5(five) days, in accordance with the provisions of Article 38, point 6 of Directive 2004/18/EC, should not be allowed.

¹ In the cases where Directive 2004/17/EC is applied, the relevant provisions are those of Article 46 of the aforementioned Directive

In case the contracting authority does not provide full and unrestricted access to the tender documentation by electronic means, the overall assessment of the compliance of public procurement procedures with the applicable legislation, or the impact of non-compliance as the case may be, has to take into account the risk of exclusion of potential competitors in each individual procedure. The corrective measures need to be proportionate to the level of the shortening of the deadlines established for obtaining the tender documentation. Hence, this assessment would need to be done on a case-by-case basis.

For example, the financial correction may be reduced to 2% in the cases where the time that potential tenderers/candidates have to obtain tender documentation is between 75% and 80% of time limits for receipt of tenders (in line with relevant provisions)

As the contract concerned falls within the scope of the flat rate financial corrections accepted by the Member State and the corresponding irregular expenditure was decertified, the finding is closed.

Finding n°3: Irregular modification of a selection criterion by means of a clarification which was not advertised in the OJEU

The irregular modification/addition relates to point III.2.2) of the contract notice namely, the fulfilment of the initial requirement to have "*a total turnover of activities in an amount not less than 1.5 million BGN without VAT, of which not less than 750 000 BGN without VAT of services similar to the subject matter of this procurement, namely: management of projects co-financed by the Structural Funds, the EC Cohesion Fund, or other sources of funding in total for the last three (3) years (2008, 2009 and 2010).*"

In order to prove the abovementioned turnover, the potential bidders had to fill in Annex 9 (part of the tender documentation), which stated as follows: "*Appendix 9, point II: Over the last three years (2008, 2009 and 2010) I have implemented the following contracts, which scope of activities include development of tender procedures conducted under the PPA:*"

In relation to the latter requirement, one potential bidder asked the following question:

"Is there obligatory that part of the procedures to be carried out under the Bulgarian public procurement legislation, or they could have been carried out under equivalent Public Procurement laws?"

The contracting authority answered the following:

"The tender procedures could have been implemented also under equivalent laws for public procurement"

This modification of the initial selection criterion related to the turnover specifying how this criterion could be met and this should have been advertised in the OJEU in the same way as the initial selection criterion was published. This is contrary to Articles 36(1), 44(1) and 2 of the Directive 2004/18/EC, as candidates reading the notice published in the OJEU were not aware of this modification of the initial selection criteria.

Action n°3 (Responsible body: managing authority; Deadline: 60 days; Priority: High):

The managing authority should apply financial correction in compliance with point 8 of the 'Guidelines' – Failure to state the selection criteria in the contract notice. A financial correction of 5% of the value of the contract is applicable in this case as the criterion was specified in the tender documents, but in insufficient detail, and the impact on the procedure of the irregularity is limited.

Member State reply (summary)

The Member State states that in relation to this finding an irregularity report was registered in the Managing Authority's register for irregularities. Following the analysis of the irregularity and the arguments of the Beneficiary the position of the Managing Authority is that there is no irregularity and therefore does not accept the Commission's finding.

The Member State states that the reply provided to one potential bidder relates to the fulfilment of one of the selection criteria in Section III.2.2 of the Notice which is proven by submitting Declarations No 9 and 9a which are an inseparable part of the tender documentation. The text *'Over the last three years I have implemented the following contracts, which scope of activities include development of tender procedures conducted under the PPA'* is included only in Declaration 9. The clarification provided to one potential bidder was that *"The tender procedures could have been implemented also under equivalent laws for public procurement"*. The Managing Authority believes that as the text in *'under the PPA'* appears only in the Declaration and the criteria is described generally in the notice itself the clarification provided to one potential bidder does not restrict potential bidders. At the same time, according to the Managing Authority the clarification does not modify the selection criteria. Therefore, the Managing Authority believes this did not have a restrictive effect, nor does it lead to unequal or discriminatory treatment of bidders (mostly for foreign bidders) The publication in the OJEU would have been necessary if the text *'under the PPA'* would have been included in the notice. Therefore, the Managing Authority believes there is no breach and no financial correction should be imposed.

Commission position

The Commission agrees to the interpretation provided by the Member State and therefore no financial correction is required for this particular potential irregularity.

Nevertheless, the Commission emphasize the fact that any modification of the content of the initially published conditions for participation in the public procurement procedure needs to be advertised the same way as the initial conditions had been advertised, otherwise, the practice would represent an infringement of the provisions of Articles 36(1), 44(1) and 2 of the Directive 2004/18/EC, as candidates reading the initially published information are not aware of the modifications and may be dissuaded from participating in the public procurement procedure concerned.

In case such situations are identified by the managing authority during their regular management verifications, financial corrections in compliance with point 8 of the 'Guidelines' – Failure to state the selection criteria in the contract notice, need to be applied.

The finding is **closed**.

Finding n°4 – Irregular modification of the winning bid done during the evaluation process, as a result of a request for clarification issued by the contracting authority

As a result of a request for clarification made by the contracting authority concerning the team of non-key experts which he didn't prove to have available at the time of the submission of bids, the winning tenderer modified its tender by submitting the list of nominated non-key experts he failed to initially provide. (answer to clarification provided on 06/04/2012).

This is not a clarification, but rather an irregular modification of the tenderer's initial proposal which should not have been accepted by the contracting authority. The winning tenderer should have been rejected for not meeting the selection criteria advertised in the contract notice.

Both the acceptance of this modification of the tender and the subsequent awarding of the contract to a bidder which did not initially meet the selection criteria related to the provision of non-key experts infringe Article 44(1) of Directive 2004/18/EC and the principle of equal treatment under its Article 2.

The managing authority did not identify this irregularity during its management verifications.

Action n°4 (Responsible body: managing authority; Deadline: 60 days; Priority: High):

The managing authority should apply a financial correction in compliance with point 17 of the 'Guidelines' – Modification of a tender during evaluation. A financial correction of 25% of the value of the contract is applicable in this case, as the winning bidder should have been excluded if this modification wasn't accepted by the contracting authority.

The managing authority is requested to reinforce its management verifications in the area of public procurement in order to address the following risks:

- Irregular modification of the winning bid done during the evaluation process, as a result of a request for clarification issued by the contracting authority;
- Selection criteria imposed in the contract notice and contract documents not met by the winning company.

The managing authority should also improve the guidance it provides to beneficiaries to avoid the occurrence of this type of public procurement irregularity in the future.

Member State reply (summary)

The Member State states that in relation to this finding an irregularity report was registered in the Managing Authority's register for irregularities. Following the analysis of the irregularity and the arguments of the Beneficiary the position of the Managing Authority is that there is no irregularity and therefore does not accept the Commission's finding.

The irregularity identified in the finding concerns a modification of a bid during the evaluation process as during the review of the documents in Envelope 1 the Evaluation Committee discovered that the bidder (who was ranked as the winning bidder at a later stage) did not include in his offer proof that he has the required by the Contracting authority non-key experts. The Evaluation Committee requested from the bidder to submit proof of the availability of the non-key experts. The request was made in compliance with Art 68 (8) of the Public Procurement Law. In compliance with the version of the law in force at the time of the launch of the tender procedure which requires the Evaluation Committee to describe in detail all missing documents or non-conforming documents and the types of documents to be requested from the bidder and to set a deadline for receipt. The deadline is the same for all bidders and cannot exceed 5 days from receipt of the Protocol of the Evaluation Committee.

Therefore, by requesting the bidder ~~to present~~ to present within the deadline proof for the availability of the required non-key experts the Evaluation Committee acted within its powers and treated all bidders equally. Furthermore, the Evaluation Committee requested from all bidders additional documents and /or evidence regarding the selection criteria in a specified time limit. All have submitted the additional documents required, therefore all were admitted to the examination and evaluation of the technical proposals. The Member State points out that the irregular modification could be when the Evaluation Committee allows for a change to the technical proposal of a bidder (Envelope 2 of the offer) or to the financial proposal of a bidder (Envelope 3 of the offer). This particular case concerns additional

submission of missing documents which prove the compliance of a bidder to the minimum selection criteria (Envelope 1 of the offer) and not an irregular possibility given to the bidder to modify the offer. By presenting additional documents the Evaluation Committee clarified some aspects in relation to the quality of several bidders (additional documents for Envelope 1) and being impossible for it to reject a bidder on such grounds, as this would have been a formal rejection of bids which is irregular.

Therefore, taking into account the above mentioned and following a second review of the position of the Beneficiary during the contradictory procedure the Managing Authority believes there is no breach and no financial correction should be imposed.

Commission position

The Commission acknowledge the position of the Member State and maintains their recommendation for applying a financial correction in compliance with point 17 of the 'Guidelines' – Modification of a tender during evaluation.

The Commission auditors recognise the right of the contracting authority to request additional information and documentation in order to avoid or mitigate the possibility of contractual non-performance. Bidders are pre-selected based on the selection criteria for example qualifications that are already held by the tenderer at the time of submission of the bids. Given that the underlying facts or conditions which enable an economic operator to meet selection criteria and thus participate in the award procedure cannot change, the co-legislators gave the possibility to contracting authorities to invite the companies to supplement or clarify the certificates and documents that prove the existence or lack of such facts or conditions.

Nevertheless, the use of the possibility provided by the directive should not infringe the provisions of the public procurement directive mentioned under Article 51 of Directive 2004/18/EC on additional documentation and information.

For the contract in question, the award of the contract was based on the economically most advantageous offer with the following criteria: relative weight of the price (weighting 30%) and technical offer criteria (weighting 70%). Among the sub-factors to be assessed in order to decide on the technical offer there are sub-factors related to the project's proposed team, namely the description of the distribution of the resources available to the contractor for the implementation of the contract.

Therefore, the Commission auditors consider that, in the above presented case, modifying the project's team initially offered equals to a modification of elements of the offer which come directly under evaluation as award criteria, the modification of the team of experts representing, in fact, a modification of the technical offer which was treated as such by the contracting authority.

Therefore, the contracting authority did not comply with the provisions of Article 51 of the Directive 18/2004/EC as it should not have accepted a modification of the project's team. In this case, the tenderer should have been disqualified for non-compliance with the selection criteria as the additional elements provided were not of a formal nature and modified the technical offer submitted. Therefore, the managing authority should have identified and proposed a financial correction for the irregularity under discussion.

The contract concerned falls within the scope of the extrapolated financial correction accepted by the Member State (representing the maximum amount of 132.922.819,78 BGN – 67.963.401,05 EUR) by Decision of the Council of Ministers no. 54 of 22 December 2014.

The Certifying Authority withdrew the impact of the financial corrections applied by the Managing Authority in the Payment Claim submitted to the European Commission via SFC on 04/02/2015.

The Certifying Authority also provided a statement of assurance to the European Commission, certifying that the flat rate financial corrections resulting from the re-verification exercise related to the legality and regularity of the public procurement procedures have been deducted.

As the contract concerned falls within the scope of the flat rate financial corrections accepted by the Member State and the corresponding irregular expenditure was decertified, the finding is **closed**.

Observation in relation to Findings n°1 to 4

In accordance with the 'Guidelines' where a number of irregularities are detected in the same tender procedure, the rates of correction are not cumulated, the most serious irregularity being taken as an indication to decide the rate of correction.

Contracts 2 & 3: Supply of Buses – ~~XXXXXXXXXXXX~~ Lot 1

Supply of Buses – ~~XXXXXXXXXXXX~~ Lot 2

Finding n°5: Disproportionate and discriminatory selection criterion requiring tenderers for the supply of vehicles to already have an agreement for the servicing of vehicles in Burgas at submission of tenders stage

In the contract notice (No. 64634-2012), one of the conditions (III.2.3) required tenderers, by submission of tender stage, to prove they had an agreement in place for the subsequent servicing the vehicles in Burgas with a capacity to service more than 30 busses.

The legality of this requirement has to be assessed in light of the provision of Articles 44(1), 44(2) and 48(2) of Directive 2004/18/EC and the general procurement principle of non-discrimination enshrined in Article 2 of the Directive on the other hand.

1. Analysis of the connection of the selection criteria to the subject matter of the contract

Article 48(2)(h) of Directive 2004/18/EC specifically allows the contracting authority to request a statement of the tools, plant or technical equipment available to the contractor for carrying out the contract. Contracting authorities can use this criterion in their selection procedures if it is connected to the subject-matter of the specific contract at hand.

The main subject matter of the contract is supply of buses. Usually, the supply of buses contracts also has a component for warranty and post-warranty. Under these circumstances, it is justifiable that the contracting authority should ascertain whether a contractor can provide the warranty and post-warranty services for the buses supplied. Taking this into account, it appears that the requirement is connected to the subject matter of the contract.

2. Non-discrimination and proportionality

In a second step, it should be assessed (i) whether the justified need on behalf of the contracting authority to be able to ensure that the contractor will be in a position to provide adequate warranty and post-warranty services could have been achieved in a less restrictive manner (proportionality), and (ii) whether the obstacle such requirement imposes on non-Bulgarian tenderers is justifiable by objective considerations.

The requirement does not discriminate directly against economic operators established in another Member State; however, Bulgarian companies are more likely to already have access to servicing facilities in Burgas. Furthermore, as we have already established that the warranty and post-warranty services are linked to the subject matter of the contract, by formulating such a requirement at the time of submission of bids the contracting authority restricts the

choice of potential bidders in relation to the performance of the warranty and post warranty services only to local service providers in Burgas. This requirement restricts the free movement principles, which is not acceptable.

A less restrictive solution would be to allow potential bidders to provide a service facility of their choice which meets the technical requirements of the contracting authority and allow them to fulfil their contractual obligations related to warranty and post-warranty (the location of the service facility is not a technical requirement) and/or to allow potential bidders to provide a service facility of their choice at the time of the actual delivery of the warranty and post-warranty services, due to the fact that the cost of these services are paid by the contractor and it is in their best interest to ensure a good value for money.

For comparison, in the case C-158/03 Commission vs Spain ('Insalud'), the CJEU considered the selection criterion of having to have an office in the geographical vicinity of the contracting authority to be disproportionate.

In addition, the disproportionate nature of the requirement was also confirmed by the Judgment of the Court Case C-71/92 which ruled that the statement of the equipment available for a contract implementation can be required from tender applicants. However, no distinction should be made as to whether this equipment is situated in the territory of the state, in which the contract is awarded.

3. Legality of the condition as part of the selection criteria

In order to establish the legality of the condition as part of selection criteria, it should be assessed whether this condition was correctly imposed upon the tenderers as selection criteria, as opposed to, for example, requesting it as a contract execution clause. The major difference between these two methods is the point in time in which they are requested: before tender submission for all tenderers in case of selection criteria or before contract execution only for the winning tenderer in case of a contract execution clause.

In this case, there are two conflicting interests between which a reasonable balance needs to be struck. On the one hand, the contracting authority has to be sure that the selected bidder will be able to perform the contract according to the agreed performance levels and it has to mitigate the risks of non-contractual performance. On the other hand, in order not to restrict competition unjustifiably, tenderers should not be requested to furnish unreasonable formalities (authorisations) and neither should they be required to undertake large investments (building an actual service) before being awarded a contract.

In this specific case, the contracting authority required the potential bidders to prove access to an authorised service facility in Burgas for servicing the busses with a capacity to service more than 30 busses. In order for the service to be authorised, the economic operator which does not have available to it an already established authorised service facility in Burgas, will have to have a service facility already in place and operational since, otherwise, the authorisation could not have been issued. It is very unlikely that such an investment, followed up by the authorisation process, could be completed in the timeframe of the procurement procedure.

The potential bidders are forced under these circumstances to work exclusively with authorised, already established service providers in Burgas without given the possibility to invest in their own service facility in case they win the contract or provide a service facility of their choice at the time of the actual delivery of the warranty and post-warranty services. An additional risk implied by the selection criteria under discussion is that the local service providers (including the local transport operator which is 100% owned by the contracting authority) may have the possibility to decide which company participates in the public procurement procedure by agreeing to perform the warranty and post warranty services.

In conclusion, the requirement for the availability of a centre for serving bus category M3, Class 1 in Burgas for the tender submission date and not as a contract performance condition is considered to be both discriminatory, as it favours tenderers already having access to the required facility in the given location as compared to other tenderers, and disproportionate and breached Articles 2, 44(1), 44(2) and 48(2) of Directive 2004/18/EC.

Action n°5 (Responsible body: managing authority; Deadline: 60 days; Priority: High):

The managing authority should apply a financial correction in compliance with the points 9 - Unlawful and/or discriminatory selection and/or award criteria laid down in the contract notice or tender documents and 10 - Selection criteria are not related and proportionate to the subject matter of the contract, of the 'Guidelines'. Given that the selection criteria includes a geographical restriction related to the use of an authorised service facility in the city of Burgas, but on the other the terms of reference allows for several ways to meet this criterion (ownership, rental or use of the services of a public entity), a 10% financial correction is therefore proportionate in this case. The amount of the supplies under the contracts for the two lots (VAT included) is BGN 36,202,970 (Lot 1 = 16,363,233 + Lot 2 = 19,839,736). The managing authority is requested to apply a financial correction of BGN 3,620,297 ($=36,202,939 * 10\% * \%$) = EUR 1,851,028.

The managing authority is requested to indicate its acceptance of this finding and its agreement to deduct this expenditure in the next payment claim.

Member State reply (summary)

The managing authority accepts the recommendations formulated by the Commission. In relation to this finding an irregularity report was registered in the Managing Authority's register for irregularities. The Beneficiary provided its comments in relation to the finding. Following the analysis of the finding the Managing Authority accepts the finding of the Commission and agrees in principle with the amount of the proposed financial correction. Following the letter for interruption of payments for Priority Axes 1 and 3 of the Regional Development OP the Audit Authority prepared statistical samples for all certified expenditure under Priority Axes 1 and 3 since the start of the OP (05/11/2007). The Managing Authority carried out re-verification of the public procurement procedures in the sample. Based on the results of the re-verification the Managing Authority established the necessity to apply a flat rate financial correction. The specific amount for this particular case was determined based on the Methodology adopted by the Certifying Authority.

Commission position

The Commission acknowledge the acceptance of their recommendations by the Member State.

The contract concerned falls within the scope of the extrapolated financial correction accepted by the Member State (representing the maximum amount of 132.922.819,78 BGN – 67.963.401,05 EUR) by Decision of the Council of Ministers no. 54 of 22 December 2014.

The Certifying Authority withdrew the impact of the financial corrections applied by the Managing Authority in the Payment Claim submitted to the European Commission via SFC on 04/02/2015.

The Certifying Authority also provided a statement of assurance to the European Commission, certifying that the flat rate financial corrections resulting from the re-verification exercise related to the legality and regularity of the public procurement procedures have been deducted.

As the contract concerned falls within the scope of the flat rate financial corrections accepted by the Member State and the corresponding irregular expenditure was decertified, the finding is closed.

Contract 4: Preparation of technical investment projects – ~~USPOTN, 2007, 2008, 2009~~

Finding n°6: Use of a discriminatory selection criterion

The selection criteria included requirements in relation to several experts. One of the criteria for the position of 'Specialist for traffic control' required experience of at least 3 projects for organisation of traffic in urban settings in towns of functional type 1, where the functional type is defined according to the 'Unified classification of populated areas' (EKHM) in Bulgaria.

The EKHM classification only applies to cities in Bulgaria. Furthermore, the EKHM classification was introduced in the 1970's and in 1990's it was replaced by the EKATTE classification.

This criterion therefore requires an expert of the contractor to have acquired experience in Bulgaria without allowing for an equivalent. This requirement might disadvantage foreign bidders and represents non-respect of the principle of non-discrimination under Article 2 of Directive 2004/18/EC.

Action n°6 (Responsible body: Managing authority; Deadline: 60 days; Priority: High):

The applicable point of the 'Guidelines' is point 9 - 'Unlawful and/or discriminatory selection and/or award criteria laid down in the contract notice or tender documents' which provides for a 25% financial correction which can be lowered to 10% or 5% depending upon the seriousness of the breach.

In this particular case, a 5% financial correction is proposed as foreign bidders could have participated by contracting local experts. This was the case for the winning bidder. The value of the contract affected by the error is BGN 1,894,695 (EUR 968,757). The irregular expenditure to be deducted is therefore BGN 94,735 (BGN 1,894,695 X 5% = BGN 94,735) = EUR 48,438

The managing authority is requested to indicate its acceptance of this finding and its agreement to deduct this expenditure in the next payment claim.

Member State reply (summary)

The managing authority accepts the recommendations formulated by the Commission. In relation to this finding an irregularity report was registered in the Managing Authority's register for irregularities. The Beneficiary provided its comments in relation to the finding. Following the analysis of the finding the Managing Authority accepts the finding of the Commission and agrees in principle with the amount of the proposed financial correction. Following the letter for interruption of payments for Priority Axes 1 and 3 of the Regional Development OP the Audit Authority prepared statistical samples for all certified expenditure under Priority Axes 1 and 3 since the start of the OP (05/11/2007). The Managing Authority carried out re-verification of the public procurement procedures in the sample. Based on the results of the re-verification the Managing Authority established the necessity to apply a flat rate financial correction. The specific amount for this particular case was determined based on the Methodology adopted by the Certifying Authority.

Commission position

The Commission acknowledge the acceptance of their recommendations by the Member State.

The contract concerned falls within the scope of the extrapolated financial correction accepted by the Member State (representing the maximum amount of 132.922.819,78 BGN – 67.963.401,05 EUR) by Decision of the Council of Ministers no. 54 of 22 December 2014.

The Certifying Authority withdrew the impact of the financial corrections applied by the Managing Authority in the Payment Claim submitted to the European Commission via SFC on 04/02/2015.

The Certifying Authority also provided a statement of assurance to the European Commission, certifying that the flat rate financial corrections resulting from the re-verification exercise related to the legality and regularity of the public procurement procedures have been deducted.

As the contract concerned falls within the scope of the flat rate financial corrections accepted by the Member State and the corresponding irregular expenditure was decertified, the finding is **closed**.

Contract 5: Supervision of works – ~~XXXXXXXXXX~~

Finding n°7: Irregular reduction of the deadlines for submission of tenders on the basis of a non-compliant prior information notice

The contract notice was sent for publication on the 15.08.2013 and the time limit for receipt of tenders was 20.09.2013, giving potential tenderers 36 days for the preparation of their bids. This is less than 45 days foreseen where there is electronic publication (i.e. 52 days – 7 days = 45). The time limit for receipt of tenders was lowered to 36 days on the basis that a PIN had been published. However, this PIN is considered to be non-compliant and the reduction to 36 days is therefore irregular.

Article 38 of Directive 2004/18/EC states that:

When contracting authorities have published a prior information notice, the minimum time limit for the receipt of tenders under paragraphs 2 and 3(b) may, as a general rule, be shortened to 36 days, but under no circumstances to less than 22 days. (...)

The shortened time limits referred to in the first subparagraph shall be permitted, provided that the prior information notice has included all the information required for the contract notice in Annex VII A, insofar as that information is available at the time the notice is published and that the prior information notice was sent for publication between 52 days and 12 months before the date on which the contract notice was sent.

Annex VII A of Directive 2004/18/EC indicates the following regarding information which must be included for the prior information notices:

(...) In the case of public services contracts: the total value of the proposed purchases in each of the service categories in Annex II A; Nomenclature reference No(s).

The PIN was published on 10.05.2013. The PIN did not contain all the information for bidders as it did not contain information about the quantity, the estimated price and the selection criteria.

As the PIN did not include all the required information, it should not have been used to shorten the deadlines for submission of bids. The use of the deadline of 36 days is therefore irregular.

The managing authority did not identify and correct this irregularity during its management verifications.

Action n°7 (Responsible body: managing authority; Deadline: 60 days; Priority: High):

The managing authority should apply a financial correction in accordance with point 3 of the 'Guidelines' - Non-compliance with the time limits for receipt of tenders.

A financial correction of 5 % of the contract value is applicable in this case as the irregular shortening of the deadline was less than the 30% mentioned in the guidelines (i.e. 9 days / 45 days = 20%).

Member State reply (summary)

The managing authority accepts the recommendations formulated by the Commission. In relation to this finding an irregularity report was registered in the Managing Authority's register for irregularities. The Beneficiary provided its comments in relation to the finding. Following the analysis of the finding the Managing Authority accepts the finding of the Commission and agrees in principle with the amount of the proposed financial correction. Following the letter for interruption of payments for Priority Axes 1 and 3 of the Regional Development OP the Audit Authority prepared statistical samples for all certified expenditure under Priority Axes 1 and 3 since the start of the OP (05/11/2007). The Managing Authority carried out re-verification of the public procurement procedures in the sample. Based on the results of the re-verification the Managing Authority established the necessity to apply a flat rate financial correction. The specific amount for this particular case was determined based on the Methodology adopted by the Certifying Authority.

Commission position

The Commission acknowledge the acceptance of their recommendations by the Member State.

The contract concerned falls within the scope of the extrapolated financial correction accepted by the Member State (representing the maximum amount of 132.922.819,78 BGN – 67.963.401,05 EUR) by Decision of the Council of Ministers no. 54 of 22 December 2014.

The Certifying Authority withdrew the impact of the financial corrections applied by the Managing Authority in the Payment Claim submitted to the European Commission via SFC on 04/02/2015.

The Certifying Authority also provided a statement of assurance to the European Commission, certifying that the flat rate financial corrections resulting from the re-verification exercise related to the legality and regularity of the public procurement procedures have been deducted.

As the contract concerned falls within the scope of the flat rate financial corrections accepted by the Member State and the corresponding irregular expenditure was decertified, the finding is **closed**.

Finding n°8: Irregular reduction of the standard time limits for companies to obtain the tender documentation

In addition to finding n°7 for the same contract, potential tenderers were required to purchase the tender documents by 10.09.2013, giving them only 26 days to do so. The time provided to tenderers to purchase the tender documents is less than 60% of the time limits they were allowed to provide for the submission of bids (the time limits they were allowed to provide for the preparation of bids in line with the provisions of Directive 2004/18/EC – $26/45 \times 100 = 57\%$)

The managing authority did not identify and correct this irregularity during their regular management verifications.

Action n°8 (Responsible body: managing authority; Deadline: 60 days; Priority: High):

The managing authority should apply a financial correction in compliance with the point 4 of the 'Guidelines' - Insufficient time for potential tenderers/candidates to obtain tender documentation.

A 10 % financial correction is applicable in this case as the time that potential tenderers/candidates had to obtain the tender documentation was less than 60% of time limits for receipt of tenders (i.e. 26 days / 45 days = 57%).

Member State reply (summary)

The managing authority accepts the recommendations formulated by the Commission. In relation to this finding an irregularity report was registered in the Managing Authority's register for irregularities. The Beneficiary provided its comments in relation to the finding. Following the analysis of the finding the Managing Authority accepts the finding of the Commission and agrees in principle with the amount of the proposed financial correction. Following the letter for interruption of payments for Priority Axes 1 and 3 of the Regional Development OP the Audit Authority prepared statistical samples for all certified expenditure under Priority Axes 1 and 3 since the start of the OP (05/11/2007). The Managing Authority carried out re-verification of the public procurement procedures in the sample. Based on the results of the re-verification the Managing Authority established the necessity to apply a flat rate financial correction. The specific amount for this particular case was determined based on the Methodology adopted by the Certifying Authority.

In addition to the finding, the Managing Authority states that it received a letter from the Public Procurement Agency in which it sets out its position in relation to the finding. According to the Agency the irregularity cannot be established as the shortening of deadlines for obtaining the tender documentation was in compliance with the provisions of Article 28 (6) of the Public Procurement Law (version in force until 01/07/2014) and therefore cannot be established as an irregularity. The Public Procurement Agency argues that Directive 2004/18/EC does not specify a minimum deadline for tender documentation and refers to Article 39 (1) of the Directive which stipulates that the specifications and supplementary documents shall be sent to economic operators within six days of receipt of the request to participate, provided that the request was made in good time before the deadline for the submission of tenders. The Public Procurement Agency further states that the Directive does not define 'in good time' and that this rule is applied only when the contracting authority 'did not provide unrestricted and full direct access by electronic means to the documentation and therefore, if it is freely available electronically this restriction is not applicable which is the

case in question. As at the time of launching the public procurement procedures the deadline for obtaining the tender documentation was set as 10 days before the deadline for receipt of tenders. The Public Procurement Agency states that this was done in order to ensure legality and to avoid the possibility for subjective interpretation and establishment of diverse practice in establishing whether a request for obtaining the tender documentation is done 'in good time'.

The Managing Authority states that it upholds the opinion of the Public Procurement Agency.

Commission position

The Commission acknowledge the acceptance of their recommendations by the Member State.

The contract concerned falls within the scope of the extrapolated financial correction accepted by the Member State (representing the maximum amount of 132.922.819,78 BGN – 67.963.401,05 EUR) by Decision of the Council of Ministers no. 54 of 22 December 2014.

The Certifying Authority withdrew the impact of the financial corrections applied by the Managing Authority in the Payment Claim submitted to the European Commission via SFC on 04/02/2015.

The Certifying Authority also provided a statement of assurance to the European Commission, certifying that the flat rate financial corrections resulting from the re-verification exercise related to the legality and regularity of the public procurement procedures have been deducted.

However, in relation to the additional comments on the finding provided by the Member State the Commission has the following observations:

The financial corrections for identified irregularities related to insufficient time for potential tenderers/candidates to obtain tender documentation are applied by the European Commission in accordance with point 4 of the Guidelines as follows:

- 25% if the time that potential tenderers/candidates have to obtain tender documentation is less than 50% of time limits for receipt of tenders (in line with relevant provisions);
- 10% if the time that potential tenderers/candidates have to obtain tender documentation is less than 60% of time limits for receipt of tenders (in line with relevant provisions);
- 5% if the time that potential tenderers/candidates have to obtain tender documentation is less than 80% of time limits for receipt of tenders (in line with relevant provisions).

The aforementioned 'relevant provisions' concern the legal time limits for receipt of tenders applied by the contracting authority for a particular public procurement procedure in accordance with the provisions of Article 38 of Directive 2004/18/EC or Article 45 of Directive 2004/17/EC as transposed in the Bulgarian national legislation.

The provisions of Article 39(1)² of Directive 2004/18/EC provide for two alternatives for making the tender documentation available to economic operators: electronic access granted to interested bidders or sending of the contract documentation by the contracting authority to the interested bidders.

² In the cases where Directive 2004/17/EC is applied, the relevant provisions are those of Article 46 of the aforementioned Directive

As far as the electronic access is concerned, no restriction of the 'full and unrestricted electronic access' is specified in Article 39, therefore, technical specifications should be, as a general rule, available until the deadline for the submission of tenders. In addition, the wording of 'full and unrestricted electronic access' also suggests that the technical specifications should be available to the public at all times before the deadline for the submission of tenders. In our view, establishing a deadline for potential tenderers/candidates to obtain tender documentation when the latter is electronically published may be an additional boundary to the interested potential bidders as the contracting authority does not provide 'full and unrestricted electronic access' to the aforementioned documentation.

The second part of Article 39 of Directive 2004/18/EC specifies that, in case of no electronic access, the technical documentation should be sent within six days of receipt of the request, provided that the request was made in good time. As it is up to the interested economic operator to determine whether the time left at his disposal will allow him to submit a tender within the deadline, we estimate that 'good time' in this context refers to the possibility of the contracting authority to send the technical documentation before the end of the deadline for the submission of offers.

This article contributes to ensure the respect of the principle of transparency and equal treatment, which require that any potential tenderer has the easiest possible access to the tender documentation before the expiration of the deadline for the submission of tenders in order to be able to prepare his tender. In conclusion, by establishing a deadline of 10 days for potential tenderers/candidates to obtain tender documentation when the latter is not electronically published the contracting authority restricts the right of potential bidders to determine whether the time left at their disposal allows them to submit a tender within the deadline, even though the former has the possibility to send the technical documentation in 'good time', before the end of the deadline for the submission of offers.

In order to ensure consistency between the principles enshrined in the provisions of Directives 2004/18/EC and 2004/17/EC and the national public procurement legislation and practice in Bulgaria, we recommend, as an example of good practice, for the contracting authorities to grant 'full and unrestricted electronic access' to the tender documentation for all potential bidders at the time the contract notices are published and to eliminate the practice of establishing a deadline for potential tenderers/candidates to obtain tender documentation.

Providing electronic access to the tender documentation at the time the contract notices are published while at the same time providing a deadline for purchasing or accessing the aforementioned tender documentation after which potential bidders cannot participate in the public procurement procedure, cannot be considered as 'full and unrestricted electronic access'. Therefore the additional shortening of the deadlines for the submission of bids with 5(five) days, in accordance with the provisions of Article 38, point 6 of Directive 2004/18/EC, should not be allowed.

In case the contracting authority does not provide full and unrestricted access to the tender documentation by electronic means, the overall assessment of the compliance of public procurement procedures with the applicable legislation, or the impact of non-compliance as the case may be, has to take into account the risk of exclusion of potential competitors in each individual procedure. The corrective measures need to be proportionate to the level of the shortening of the deadlines established for obtaining the tender documentation. Hence, this assessment would need to be done on a case-by-case basis.

For example, the financial correction may be reduced to 2% in the cases where the time that potential tenderers/candidates have to obtain tender documentation is between 75% and 80% of time limits for receipt of tenders (in line with relevant provisions)

As the contract concerned falls within the scope of the flat rate financial corrections accepted by the Member State and the corresponding irregular expenditure was decertified, the finding is **closed**.

Observation in relation to Findings n°7 and 8

In accordance with the 'Guidelines', where a number of irregularities are detected in the same tender procedure, the rates of correction are not cumulated, the most serious irregularity being taken as an indication to decide the rate of correction.

Findings n° 9 - 14 relate to one project implemented by the Ministry of Interior under Priority 1
--

The project, 'Modernisation of the units of the national fire service (NSPBZN)' has been implemented through 12 contracts. Four supply contracts were selected for audit:

1. Supply of 10 firefighting vehicles (MII-1MД-2 –);
2. Supply of breathing equipment and other equipment (MII-6-MД-13; MII-6-MД-12; MII-6-MД-11);
3. Supply of safety cars (MII-5-MД-10);
4. Supply of 26 ladders (MII-4-MД-2).

Contract 1: Supply of 10 fire fighting vehicles

Finding n°9: Missing information in the published tender notice

The form submitted for publication in the Official Journal via the Bulgarian Public Procurement Agency included information on the estimated value of the contract (BGN 2,500,000 + VAT). The published contract notice did not include any information about the estimated value of the contract.

Action n°9 (Responsible body: Managing authority; Deadline: 60 days; Priority: Medium):

The national authorities should investigate the reasons for this discrepancy and inform the Commission of the results. The management and control system at the body responsible for the discrepancy should be modified to avoid similar issues occurring in the future.

Member State reply (summary)

The managing authority accepts the recommendations formulated by the Commission. The Beneficiary provided its comments in which it is stated that in 2012 when the public procurement procedure was launched the national legislation did not require publishing the forecast amount in Section II.2.1 Total quantity or volume. Section II.2.1 includes forecast amount. In the form of the notice there is a question – do you agree this information to be published in the Public Procurement Procedures Register allowing also a negative reply which was provided by the Contracting Authority. The forecast amount was mentioned in the notice and in the paper version. The potential bidders were obliged to purchase the tender documentation, i.e. all interested parties had access to the forecast amount. All bidders presented supporting documents for purchasing the documentation which included the forecast amount in the paper version. The fact that not only Bulgarian, but also foreign

bidders submitted offers and no questions or requests for clarifications were received by the Contracting Authority in relation to the forecast amount is further proof that the bidders had sufficient information for the forecast amount.

Commission position

As, according to Annex VII A to the Directive 2004/18/EC, there is no legal obligation to publish the estimated value of the contract in the contract notice, the Commission accepts the interpretation provided by the Member State.

The finding is closed.

Finding n°10: Use of a discriminatory selection criterion

The Public Procurement Agency verified, ex-ante, the tender documentation and advised that, in order to comply with the Bulgarian procurement law, a selection criterion needed to be introduced in relation to the minimum turnover of tenderers over the last three years.

Accordingly, a requirement for a turnover of at least BGN 4,500,000 was introduced. However, the requirement was only stated to apply to 'physical persons' (sole-traders) and not to 'legal persons' (companies). This requirement represents unequal treatment of tenderers.

The effect of this unequal treatment is limited however as the selection criteria also include a general turnover requirement of at least BGN 7,500,000 BGN and completed similar contracts of at least BGN 4,500,000 BGN (these requirements being applicable to both physical and legal persons).

Action n°10 (Responsible body: Managing authority and Public Procurement Agency; Deadline: 60 days; Priority: Low):

A financial correction is not proposed as, taking into consideration the other selection criteria imposed on all tenderers, the burden imposed on physical persons is limited.

The managing authority should ensure that its procedures are sufficiently robust to identify unequal treatment.

The Public Procurement Agency should consider amending its procedures to not only check the published tenders but also how its proposals resulting from these checks are implemented to avoid similar problems occurring in the future.

Member State reply (summary)

The managing authority accepts the recommendations formulated by the Commission. The Beneficiary presented its arguments for a technical mistake in the Decision for modification of the notice. The decision for modification was attached to the original notice in which the requirement was for physical and legal persons i.e. in the context of the original notice the technical mistake is of minor importance as in the notice there is no unequal treatment of bidders. The requirements for economic and financial capability are the same for all bidders without making a distinction whether they are physical or legal persons and the minimum criteria have to be met by each bidder. The Beneficiary further argues that during its work the Evaluation Committee did not treat the bidders discriminatively in relation to the documents for compliance with the selection criteria presented in Envelope 1.

The Managing Authority states that it has revised its procedures for ex-ante and ex-post control for public procurement procedures. Updated guidelines to beneficiaries which have been also approved by the Audit Authority have been uploaded on the electronic page of the Managing Authority in June 2014.

The Public Procurement Agency provided its comments in relation to actions requested by the Commission in relation to this finding. The Public Procurement Agency believes there are factual inconsistencies in the finding. In the notice there is no requirement for economic and financial capability which applies to physical persons only. The requirement for turnover is the same for all persons. The Public Procurement Agency states that it did not recommend the introduction of minimum criteria for turnover for the past three years. In relation to physical persons, the findings and recommendations of the Public Procurement Agency are related to the way the requirements will be set and the documents with which it should be proven. The recommendation was implemented by the Contracting Authority. When this recommendation was reflected in the notice the clarification was made that for physical persons the requirement is formulated as 'income from activities' as opposed to 'annual turnover from the activity' which is for legal persons.

The conclusion of the Member State is that this finding should be dropped.

Commission position

The Commission acknowledge the significant improvements to the management and control system implemented by the managing authority in relation to the public procurement management verifications concerning the identified risk, together with the relevant guidance provided to beneficiaries. Therefore, the finding is closed.

Finding n°11: Tenderer not respecting requirements of the national procurement law

There were four bidders for this contract out of which two were admitted to the award stage, ~~XXXXXXXXXX~~, who was subsequently awarded the contract, and ~~XXXXXXXXXX~~

Article 55(5) of the Bulgarian Public procurement act states that:

"A person participating in an association or having given consent and is in the offer as subcontractor of another participant may not present an independent offer."

Accordingly, ~~XXXXXXXXXX~~ should not have submitted a bid and should have been eliminated as he was also a subcontractor of ~~XXXXXXXXXX~~.

However, this issue did not have any impact on the outcome of the tender and accordingly a financial correction is not proposed.

Action n°11: (Responsible body: Managing authority; Deadline: 60 days; Priority: Medium)

Contracting authorities should be advised to include verification of this issue as part of tender evaluation procedures. This issue should also be included in the scope of the MA's management verifications.

Member State reply (summary)

The managing authority accepts the recommendations formulated by the Commission. The beneficiary is of the opinion that the two bidders in question are separate entities and that ~~XXXXXXXXXX~~ presented a letter authorising ~~XXXXXXXXXX~~ to sell and maintain cars produced by ~~XXXXXXXXXX~~. The reply of the Member State also makes reference to the fact that the Public Procurement Law does not forbid producers or entities authorised by a producer to participate in a specific procurement procedure. The Member State updated the check-list used for the management verifications related to public procurement in order to cover potential conflicts of interest situations and red flags, including the situations where a nominated subcontractor also submits an independent offer for the same public procurement procedure.

Commission position

The Commission acknowledge the significant improvements to the management and control system implemented by the managing authority in relation to the public procurement management verifications, including the additional checks performed for red flags and potential conflicts of interest situations. Therefore, the finding is **closed**.

Finding n°12: Insufficient verification of references

The selection criteria included a requirement to provide three references for contracts of a similar nature, completed in the last three years (2009, 2010 and 2011), of minimum value of BGN 4,500,000 + VAT. The winning tenderer [REDACTED] provided three references. The first reference was given by the Ministry of Interior (i.e. the contracting authority for the audited contract). The second reference was given by the [REDACTED] (the award of this contract could have been verified in the Bulgarian public procurement register). The third reference was provided by [REDACTED] in relation to the construction site "Srnya", Smolyan.

The reference provided by the [REDACTED] does not include its postal or email addresses. The village of Srnya has a small population and would not therefore appear large enough to require EUR 1.9 m of firefighting equipment. In addition, there are no details in the reference regarding the type of fire-fighting equipment actually provided. There is also no website for the company on the internet.

The auditors contacted [REDACTED] which confirmed orally the delivery and the reference. However, when more detailed information was requested the company requested the questions in writing but declining to provide a postal address and providing only an email. No reply has been received to our email.

Action n° 12 (Responsible body: Managing authority; Deadline: 60 days; Priority: High):

There are some red flags/indications that the reference provided by the winning tenderer [REDACTED] may not be based on an actual supply.

The managing authority is requested to examine the validity of the reference provided by [REDACTED].

If the reference is found to be invalid, other contracts signed with [REDACTED] should also be verified and the results advised to the Commission. In this regard we note that Avtozhenering was the winning tenderer for the supply of safety cars contract (МП-5-МД-10) also audited as part of this audit mission. If any suspicion of fraudulent aspects are identified these should be advised to the relevant competent authorities. Financial corrections should be made if appropriate.

The managing authority should also ensure that references provided are adequately verified by contracting authorities, especially when there are indications that they may not be valid (e.g. insufficient specification of the subject-matter, no mailing address, no webpage, no e-mail contact, etc.).

Member State reply (summary)

The managing authority accepts the recommendations formulated by the Commission. According to the comments provided by the Beneficiary, [REDACTED] provided a list of three supply contracts and three references in compliance with the requirements. The minimum requirement of the Contracting Authority was for the bidder to have contracts implemented for past three years (2009, 2010 and 2011) for a total amount of at least 4,500,000 BGN. The contracts No. 1 and 2 from the list amount to 5,065,200 BGN. The Contracting Authority states that these two contracts fulfil the minimum requirements and the

relevant references presented have all the necessary properties. In this sense, even if the third reference from [REDACTED] was not considered, the bidder complies with the minimum requirements of the Contracting Authority.

The Managing Authority received a written confirmation from [REDACTED] of the reference re-confirming all the facts initially set out in the reference. In addition, the Managing Authority received a copy of the contract for supply between [REDACTED] and [REDACTED] as well as a copy of the delivery document for the supplied equipment.

The Managing Authority believes that there are insufficient reasons to doubt the reality of the delivered supplies and of the relevant reference. Nevertheless, the Managing Authority further checked in UMIS all contracts with [REDACTED] under the Regional Development OP. From the check it is evident that [REDACTED] has four contracts under the Regional Development OP. The Managing Authority carried out ex-post checks in relation to these four contracts, paying particular attention to the references provided by [REDACTED]. The Managing Authority believes that following these additional checks, there are insufficient reasons to doubt the circumstances declared in the references.

Commission position

The managing authority submitted the ex-post verification check-lists related to the public procurement contracts delivered by [REDACTED] under the Regional Development OP, including the checks concerning potential red flags which might lead to fraud suspicions (Ares(2015)1590310 – 14/04/2015). For one contract, namely the contract established between Teteven Municipality and [REDACTED] for the supply of medical equipment for the Teteven Hospital – Doctor Anghel Peshev, the managing authority identified potential red flags.

As the managing authority accepted and implemented the recommendations formulated by the Commission, the finding is **closed**.

Contract 3: Supply of emergency service safety cars

Finding n°13: Mathematical error in the calculations of the award criteria leading to contract being awarded to the wrong tenderer

The contract involved the supply of emergency service safety cars. There were two contract award criteria, price and delivery time. The intended weightings were 80% for price and 20% for delivery time.

There were only two compliant tenderers evaluated at tender award stage namely [REDACTED] and [REDACTED]. The delivery time proposed by [REDACTED] was 210 days and for [REDACTED] it was 90 days. As a result, the score for this criterion was 0.429 for [REDACTED] and 1 for [REDACTED] on a scale from 0 to 1.

The price offered by [REDACTED] was 999,000 BGN and the price offered by [REDACTED] was 1,149,930. As a result the score for this criterion was 100 for [REDACTED] and 86,875 for [REDACTED].

The calculation of the total score was carried out as follows:

$$[REDACTED]: (100*80\%) + (0.429*20\%) = 80 + .086 = 80.086$$

$$[REDACTED]: (86.875*80\%) + (1*20\%) = 69.5 + 0.2 = 69.7$$

This calculation is incorrect as the weighting of 20% has not been applied correctly for the 'delivery time' criterion.

The correct calculation is as follows:

$$\text{Bids 1 and 2: } (100 \times 80\%) + (0.429 \times 20) = 80 + 8.57 = 88.57$$

$$\text{Bids 3 and 4: } (86.875 \times 80\%) + (1 \times 20) = 69.5 + 20 = 89.5$$

Accordingly, **Bids 3 and 4** should have been awarded the contract and not **Bids 1 and 2**.

It was noted that there was a discrepancy between the weightings published in the contract notice and the more detailed formulas for calculating the points for 'price' and 'delivery time' contained in the tender documents.

The contract notice had a ratio of 80:20 for price/delivery time. However, the formula stated in the tender documentation omitted a multiplier for the points under 'delivery time' resulting in an unintended ratio of 99.8/0.2 being used. This is contrary to Article 53 and 2 of the Directive 2004/18/EC, as the published weighting of the award criteria has been changed.

In such cases the Bulgarian Public Procurement Act (article 39, para 1, p. 6) requires termination of the procedure. However, instead of cancelling the public procurement procedure, the Contracting Authority awarded the contract to a bidder, who would not have been selected had the weightings published in the tender notice been used.

Action n°13 (Responsible body: Managing authority; Deadline: 60 days; Priority: High):

The irregularity should be considered, by analogy, in line with points 13 and 14 of the 'Guidelines' (Modification of selection criteria after opening of tenders, resulting in incorrect acceptance/rejection of tenderers) in relation to point 15 of the 'Guidelines'. The applicable correction under these points is 25%, which can be decreased to 10% or 5% depending on the seriousness of the irregularity.

In this particular case, the decrease would not be justified as the use of changed weightings resulted in the award of the contract to a tenderer which should not have been selected.

The value of the contract affected by the error is BGN 1,198,800 or EUR 612,946 including VAT. The expenditure to be deducted based on a 25% financial correction amounts to BGN 299,700 or EUR 153,237 (i.e. BGN 1,198,800 X 25% = BGN 299,700).

The managing authority is requested to indicate its acceptance of this finding and its agreement to deduct this expenditure in the next payment claim.

Member State reply (summary)

The managing authority disagrees with the 25% financial correction proposed as in their opinion there are circumstances justifying a lower financial correction level for this particular contract, namely: the bidders have not been discriminatorily treated as the same award methodology was applied to all of them and the winning bidder submitted a better financial offer in comparison to the bidder ranked second, who should have won the contract, had the correct award methodology been applied.

In the context of the re-verification exercise triggered by the interruption and subsequent pre-suspension of payments for the Regional Development Operational Programme, which lead to extrapolated flat rate financial corrections of 10,11% for priority axis 1 and 11,48% for priority axis 3, the managing authority proposes that the financial correction to be applied for this particular contract to be the one determined by applying the methodology for calculating the financial corrections to be implemented at contract level as a result of the afore-mentioned re-verification exercise.

Commission position

The Commission maintains their opinion that the financial correction to be proposed for the public procurement irregularity identified in the case of the contract concerned should be 25% of both past and future expenditure certified as the dissuasive effect of the irregular practice is significant and, if applied correctly, the methodology would have allowed for another bidder to win the public procurement procedure.

The value of the contract affected by the error is BGN 1,198,800 or EUR 612,946 including VAT. The expenditure to be deducted based on a 25% financial correction amounts to BGN 299,700 or EUR 153,237 (i.e. BGN 1,198,800 X 25% = BGN 299,700).

The contract concerned falls within the scope of the extrapolated financial correction accepted by the Member State (representing the maximum amount of 132.922.819,78 BGN – 67.963.401,05 EUR) by Decision of the Council of Ministers no. 54 of 22 December 2014.

The Certifying Authority withdrew the impact of the financial corrections applied by the Managing Authority in the Payment Claim submitted to the European Commission via SFC on 04/02/2015.

The Certifying Authority also provided a statement of assurance to the European Commission, certifying that the flat rate financial corrections resulting from the re-verification exercise related to the legality and regularity of the public procurement procedures have been deducted.

As the contract concerned falls within the scope of the flat rate financial corrections accepted by the Member State and the corresponding irregular expenditure was decertified, the finding is **closed**.

Contract 4: Supply of 26 ladders

Finding n°14: Irregular reduction of the standard time limits for companies to obtain the tender documentation

The contract notice was sent for publication on the 15.02.2013 and potential tenderers were required to purchase the tender documents by 18.03.2013, giving potential tenderers 31 days to obtain the tender documentation. The number of days given for submission of tenders was 41, the reduction from the standard 52 days being due to electronic publication. The time provided to tenderers to purchase the tender documents is less than 80% of the time limits they were allowed to provide for the submission of bids (the time limits they were allowed to provide for the preparation of bids in line with the provisions of Directive 2004/18/EC – $31/40 \times 100 = 76\%$).

The managing authority did not identify this irregularity during its management verifications.

Action n°14 (Responsible body: managing authority; Deadline: 60 days; Priority: High):

The managing authority should apply a financial correction in accordance with point 4 of the 'Guidelines' - Insufficient time for potential tenderers/candidates to obtain tender documentation.

A 5 % financial correction is applicable in this case as the time that potential tenderers/candidates had to obtain the tender documentation was less than 80% of time limits

for receipt of tenders (i.e. 31 days / 40 days = 76%). Therefore, the irregular expenditure to be deducted is therefore (BGN 16,018,247 X 5%= BGN 800,912) = EUR 409,500.

The managing authority is requested to indicate its acceptance of this finding and its agreement to deduct this expenditure in the next payment claim.

Member State reply (summary)

The managing authority accepts the recommendations formulated by the Commission. An irregularity report was registered at the level of the managing authority and the beneficiary was notified in relation to the financial correction to be applied for the concerned contract.

Nevertheless, the managing authority is of the opinion that a 2% financial correction is applicable in this case as the time provided for the purchase of the tender documentation represents 75,61% of the time provided for the preparation and submission of bids and therefore the dissuasive effect of the shortened deadlines in the case of potential bidders is limited.

Commission position

The Commission agrees with the opinion of the managing authority that a 2% financial correction of both past and future expenditure certified is applicable for this particular case as the dissuasive effect of the shortened deadlines in the case of potential bidders is limited. The irregular expenditure to be deducted is therefore (BGN 16,018,247 X 2%= BGN 320.364,94) = EUR 163.802,51.

For similar infringements, identified for other public procurement procedures, on a case by case analysis and considering the principle of proportionality, the financial corrections proposed for providing insufficient time for potential bidders to purchase/access the tender documentation may be reduced to 2% in the cases where the time that potential tenderers/candidates have to obtain tender documentation is between 75% and 80% of time limits for receipt of tenders (in line with relevant provisions).

The contract concerned falls within the scope of the extrapolated financial correction accepted by the Member State (representing the maximum amount of 132.922.819,78 BGN – 67.963.401,05 EUR) by Decision of the Council of Ministers no. 54 of 22 December 2014.

The Certifying Authority withdrew the impact of the financial corrections applied by the Managing Authority in the Payment Claim submitted to the European Commission via SFC on 04/02/2015.

The Certifying Authority also provided a statement of assurance to the European Commission, certifying that the flat rate financial corrections resulting from the re-verification exercise related to the legality and regularity of the public procurement procedures have been deducted.

As the contract concerned falls within the scope of the flat rate financial corrections accepted by the Member State and the corresponding irregular expenditure was decertified, the finding is **closed**.

<p>Finding n°15 relates to one project implemented by the University of Architecture under Priority 1</p>
--

Introduction of energy efficiency measures, providing access for people with disabilities, renovation and modernization of the library of the University Center, Sofia.

The project has 16 contracts. One works contract and one supply contract were selected for the audit:

1. Works (BG16PO001/1.1-07/2009/003-S-01) – main building improvements
2. Supply (BG16PO001/1.1-07/2009/003-D-01) – library equipment

Contract 1: Works – main building improvements

Finding n°15: Failure to advertise the sub criteria used for the award of the contract in the contract notice and/or in the tender documentation

At the evaluation stage the evaluation committee used a checklist for awarding and recording the scores under each award criterion. This checklist was not included in the tender documents (methodology for evaluation) and there are differences between the methodology used by the evaluation committee and the one published in the contract notice and/or tender documentation (e.g.: the environmental protection measures, certificates for compliance of the material and the samples for the window panes were sub criteria used by the evaluation committee which were not advertised in the contract notice as such). This is a breach of the principle of transparency and in particular breaches article 28 (1), item 7 of the Bulgarian Public Procurement Law which states that:

The documentation for participation in public procurement procedure shall contain: (...)

7. the indices, their relative weight and the methodology for determining the complex assessment of the offer when the criterion for the assessment is economically the most favourable offer;

and article 28 (2) which states:

The methodology under para 1, item 7 shall contain exact instructions for determining the assessment by each indicator and for determining the complex assessment of the offer, including of the relative weight, with which the contracting authority awards each of the indices for assessment of the most favourable offer economically. The relative weight of the individual indices may be expressed by maximum values within the frames of the general assessment.

The managing authority did not identify this irregularity during its management verifications.

A financial correction of 5% is applicable in this case in compliance with point 8 of the 'Guidelines' – Failure to state the award criteria (and their weighting) in the contract notice or in the tender specifications as the award criteria were specified in the tender documents, but in insufficient detail, and the impact on the procedure of the irregularity is limited.

As a 5 % financial correction was already made by the managing authority for other public procurement irregularities relating to this contract, which is below the EC Directive threshold, no additional financial correction is proposed.

Action n°15 (Responsible body: Managing authority; Deadline: 60 days; Priority: medium):

The managing authority is requested to reinforce its management verifications in the area of public procurement in order to address this risk. The managing authority should also provide guidance to beneficiaries in this regard.

Member State reply (summary)

The managing authority accepts the recommendations formulated by the Commission. The procedures and check-lists used for the performance of the management verifications related

to public procurement have been improved in order to address the concerned risk. Furthermore, specific guidance was provided to the beneficiaries and information notices with the types of irregularities identified following the management verifications performed are published on the website of the managing authority.

Commission position

The Commission acknowledge the significant improvements to the management and control system implemented by the managing authority in relation to the public procurement management verifications, together with the relevant guidance provided to beneficiaries. Therefore, the finding is **closed**.

Findings n°16 to 20 relate to one project implemented by the Municipality of Asenovgrad under Priority 3

Support for the development of tourist attractions in Asenovgrad

The project has been implemented through 17 contracts. One works and two supply contracts were selected for the audit:

1. Works (BG 161PO001/3.1-02/2009/007-S-10)
2. Supply of software (BG 161PO001/3.1-02/2009/007-U-15)
3. Supply of equipment (Lot 1) (BG 161PO001/3.1-02/2009/007-D-20)
4. Supply of equipment (Lot 2) (BG 161PO001/3.1-02/2009/007-D-16)
5. Supply of equipment (Lot 3) (BG 161PO001/3.1-02/2009/007-D-17)

Contract 1: Works

This works contract concerned the reconstruction of a tourism attraction (fort and church). The value of the contract was below the EC thresholds. (BGN 1,325,334 = EUR 677,643)

Finding n°16: Use of an unlawful award criterion

The award criteria for the works contract were as follows:

- | | | |
|---|------------------------------|-----|
| • | Deadline for implementation: | 30% |
| • | Warranty: | 10% |
| • | Price: | 60% |

The mathematical formula used for the price was:

$$P3 = \frac{(AWP - (AWP - \text{price of the bidder})) \times 60}{AWP}$$

Where P3 was the Price score, AWP was the average weighted price of all the bidders.

The use of mathematical formulae that favours tenderers with offer prices near to the average price of all offers (60% weight in relation to the tender examined) is unlawful. Firstly, this

criterion is not linked to the subject-matter of the contract but rather to the offers of other participants.

Secondly, this criterion is discriminatory because it discriminates against bidders offering cheaper rather than average prices.

The managing authority did not identify this problem in its management verifications. However, a 10% financial correction was proposed for this contract by the certifying authority following a check of this contract. The check carried out by the certifying authority in the period 14-20.12.2013 identified this issue together with other public procurement related irregularities. The managing authority agreed the financial correction proposed by the certifying authority on 08.04.2014.

Action n°16 (Responsible body: Managing authority / Certifying authority; Deadline: 60 days; Priority: Medium):

The managing authority should ensure that its management verifications cover the aspects of public procurement identified by the certifying authority.

In addition, the certifying authority (CA) should provide evidence on the recovery of the amounts related to the irregular expenditure identified as a result of its checks carried out in the period 14-20.12.2013 for this particular contract (when was the recovery process initiated and the financial corrections implemented).

The CA is also requested to provide evidence that it did not certify irregular expenditures on this contract to the Commission during the period of 20 December 2013 up to 8 April 2014.

The managing authority is requested to provide evidence on the procedures in place related to the treatment of irregularities identified by the CA together with the relevant documents issued as a result of the implementation of these procedures for this particular contract.

Member State reply (summary)

The managing authority accepts the recommendations formulated by the Commission. An irregularity report was registered at the level of the managing authority and the beneficiary was notified in relation to the financial correction of 10% of both past and future expenditure to be applied for the concerned contract. Evidence was provided from both the managing authority and the certifying authority in relation to the imposition of the financial correction in relation to both the beneficiary and the European Commission.

The check-list used for the management verifications related to public procurement was improved in order to cover the concerned risk together with potential conflicts of interest situations and red flags.

Commission position

The Commission acknowledges the acceptance and implementation of their recommendations.

In addition, the contract concerned falls within the scope of the extrapolated financial correction accepted by the Member State (representing the maximum amount of 132.922.819,78 BGN – 67.963.401,05 EUR) by Decision of the Council of Ministers no. 54 of 22 December 2014 and implemented by the certifying authority.

As the Member State fully accepted and implemented the recommendations, the finding is **closed**

Contract 2 – Supply of software

Finding n°17: Disproportionate selection criteria

The contracting authority requested a legal document issued by the National Revenue Agency (NRA) or the National Social Security Institute (NSSI) in order for the bidders to prove that they have at their disposal 30 employees with labour contracts.

However, for the performance of the contract, the contracting authority requested in the contract notices that the potential bidders should dispose of 17 experts in order to meet the selection criteria. As the contracting authority itself acknowledged that for the performance of the contract 17 experts would be enough, the requirement for the potential bidders to have at their disposal 30 employees with labour contracts is disproportionate in relation to the subject matter of the contract.

The managing authority did not identify this problem in their management verifications.

However, a 25% financial correction was proposed by the certifying authority following a check of this contract. The check carried out by the certifying authority in the period 14-20.12.2013 identified this issue together with other public procurement related irregularities. The managing authority agreed to a 10% financial correction on 08.04.2014.

Action n° 17 (Responsible body: Managing authority / Certifying authority; Deadline: 60 days; Priority: Medium):

The managing authority should ensure that its management verifications cover the aspects of public procurement identified by the certifying authority.

In addition, the CA should provide evidence on the recovery of the amounts related to the irregular expenditure identified as a result of its checks carried out in the period 14-20.12.2013 for this particular contract (when was the recovery process initiated and the financial corrections implemented).

The CA is also requested to provide evidence that it did not certify irregular expenditures on this contract to the Commission during the period of 20 December 2013 up to 8 April 2014.

The managing authority is requested to provide evidence on the procedures in place related to the treatment of irregularities identified by the CA together with the relevant documents issued as a result of the implementation of these procedures for this particular contract.

Member State reply (summary)

The managing authority accepts the recommendations formulated by the Commission. An irregularity report was registered at the level of the managing authority and the beneficiary was notified in relation to the financial correction of 10% of both past and future expenditure to be applied for the concerned contract. Evidence was provided from both the managing authority and the certifying authority in relation to the imposition of the financial correction in relation to both the beneficiary and the European Commission.

The check-list used for the management verifications related to public procurement was improved in order to cover the concerned risk together with potential conflicts of interest situations and red flags.

Commission position

The Commission acknowledges the acceptance and implementation of their recommendations.

In addition, the contract concerned falls within the scope of the extrapolated financial correction accepted by the Member State (representing the maximum amount of

132.922.819,78 BGN – 67.963.401,05 EUR) by Decision of the Council of Ministers no. 54 of 22 December 2014 and implemented by the certifying authority.

As the Member State fully accepted and implemented the recommendations, the finding is closed

Contracts: Supply of equipment contracts 3 to 5 (i.e. 3 lots)

The combined value of the 3 lots was BGN 495,474 net of VAT (= EUR 253,335) which is above the EC threshold.

Finding n°18: Use of an unlawful award criterion

The award criteria for all the three lots were as follows:

- Average price: 50%
- Technical specifications: 40%
- Time to delivery: 10%

The formula used for the price was:

$$K1 = PO(\text{bidder}) - (PO \text{ average} - PO \text{ bidder}) \times 50$$

Where K1 was the price score, PO (bidder) was the price offered by the bidders and PO (average) was the average price of all the bidders.

The use of mathematical formulae that favours tenderers with offer prices near to the average price of all offers (50% weight in relation to the tender examined) is unlawful. Firstly, this criterion is not linked to the subject-matter of the contract but rather to the offers of other participants. This is a breach of Article 53 (Contract award criteria) of Directive 2004/18/EC which states:

"(...) The criteria on which the contracting authorities shall base the award of public contracts shall be (...) when the award is made to the tender most economically advantageous from the point of view of the contracting authority, various criteria linked to the subject-matter of the public contract in question, for example, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion. (...)"

Secondly, this criterion is discriminatory because it discriminates against bidders offering cheaper rather than average prices. This constitutes a breach of Articles 53 and 2 of Directive 2004/18/EC, as interpreted in points 69 to 86 of the Case T-402/06, *Spain/Commission*.

The managing authority did not identify this problem in its management verifications.

Action n°18 (Responsible body: Managing authority; Deadline: 60 days; Priority: High):

The applicable point of the 'Guidelines' is point 9 'Unlawful and/or discriminatory selection and/or award criteria laid down in the contract notice or tender documents' which provides for a 25% financial correction which can be lowered to 10% or 5% depending upon the seriousness of the breach.

In this particular case, the proposed financial correction is 25% as no elements have been identified which would justify lowering of the rate.

The managing authority should ensure that its management verifications cover this aspect of public procurement.

Member State reply (summary)

The managing authority accepts the recommendations formulated by the Commission. An irregularity report was registered and the beneficiary was notified in relation to the financial correction to be imposed.

The check-list used for the management verifications related to public procurement was improved in order to cover the concerned risk together with potential conflicts of interest situations and red flags.

In the context of the re-verification exercise triggered by the interruption and subsequent pre-suspension of payments for the Regional Development Operational Programme, which lead to extrapolated flat rate financial corrections of 10,11% for priority axis 1 and 11,48% for priority axis 3, the managing authority proposes that the financial correction to be applied in relation to the European Commission for these particular contracts to be the one determined by applying the methodology for calculating the financial corrections to be implemented at contract level as a result of the afore-mentioned re-verification exercise.

Commission position

The Commission is of the opinion that the financial correction to be proposed for the public procurement irregularity identified in the case of the affected contracts should be 25% of both past and future expenditure certified as the dissuasive effect of the irregular practice is significant.

The value of the contracts affected by the error is BGN 671,284 (lot 1: BGN 594,569, lot 2: BGN 10,151 and lot 3: BGN 66,564) including VAT. The expenditure to be deducted based on a 25% financial correction amounts to BGN 167,821 (= EUR 85,807).

The contracts concerned fall within the scope of the extrapolated financial correction accepted by the Member State (representing the maximum amount of 132.922.819,78 BGN – 67.963.401,05 EUR) by Decision of the Council of Ministers no. 54 of 22 December 2014.

The Certifying Authority withdrew the impact of the financial corrections applied by the Managing Authority in the Payment Claim submitted to the European Commission via SFC on 04/02/2015.

The Certifying Authority also provided a statement of assurance to the European Commission, certifying that the flat rate financial corrections resulting from the re-verification exercise related to the legality and regularity of the public procurement procedures have been deducted.

As the contracts concerned fall within the scope of the flat rate financial corrections accepted by the Member State and the corresponding irregular expenditure was decertified, the finding is **closed**.

Contract 4: Supply of equipment contract lot 2

Finding n°19: Use of a disproportionate selection criterion

The selection criteria for all the three lots included a minimum overall turnover for the last three years and the revenue from similar contracts for the last three years as follows:

Lot	Estimated contract value (BGN)	Minimum turnover for last three years (BGN)	Minimum revenue from similar contracts for last three years (BGN)
1	521 660	1 500 000	1 000 000
2	8 546	150 000	100 000
3	58 390	20 000	10 000

In relation to lot 2, the requested minimum turnover per year is 6 times higher than the estimated contract value and the requested minimum revenue from similar contracts per year is 4 times higher. These requirements are disproportionately high in relation to the lot 2 and therefore contrary to Article 44(2) of the directive 2004/18/EC.

The managing authority did not identify this problem in its management verifications.

Action n° 19 (Responsible body: Managing authority; Deadline: 60 days; Priority: High):

The managing authority should ensure that its procedures are sufficiently robust to identify disproportionate turnover and experience criteria.

Member State reply (summary)

The managing authority accepts the recommendations formulated by the Commission. The check-list used for the management verifications related to public procurement was improved in order to cover the concerned risk together with potential conflicts of interest situations and red flags.

Commission position

The Commission acknowledges the acceptance and implementation of their recommendations.

As the Member State fully accepted and implemented the recommendations, the finding is **closed**

Contract 3: Supply of equipment lot 1

Finding n° 20: Unjustified rejection of a tenderer

~~_____~~ tender for lot 1 has been rejected because the time offered for completion (5 days) was considered abnormally low. Abnormally low times for completion requiring clarification according to the applicable Bulgarian regulation are those shorter than 70% of the average of times proposed by the other tenderers. This tenderer used the following reasoning:

- He had been for a long time partner with the producers which allows him to pre-order and receive the supplies in one day;
- He already has some of the equipment in a storage facility in Bucharest;
- He implements an efficient quality standard system;
- He attached a methodology for the delivery of goods together with a risk analysis of the delivery process which shows that the delivery could be performed in 5 days.

The justification provided by the tenderer was not accepted by the evaluation committee. In the analysis of the above-mentioned reasoning, the contracting authority provided the following reasons for not accepting it:

- The evaluation committee considers that these arguments are not objective, because not based on normal customs formalities and peculiarities.
- The fact that they implement a quality control system cannot be taken into consideration as proof;
- The methodology is very general and cannot be taken into consideration as proof.

The EC auditors are of the opinion that the justifications provided by the tenderer that he can start the delivery process the next day he is requested, because he already has access to the products which need to be supplied, are acceptable. Also, considering the clarifications provided by the tenderer, the nature of the delivery and the fact that there is an additional time period between the moment the tenderer is informed about the decision of the evaluation committee and the signature of the contract, the time offered by the rejected tenderer is considered realistic by the EC auditors.

The EC auditors consider the rejection of tenderer **[REDACTED]** unjustified, according to Articles 44 (1) and 53 of the Directive 2004/18/EC.

We also note that in relation to lot 3³, the winner offered time for delivery of three days while the other offer was 40 days. The three days deadline was not questioned by the evaluation committee because based on the jurisprudence quoted by the beneficiary; this is only done if there are at least 3 offers. This indicates that the rejected tenderer "XXXXXXXXXXXXXXXXXXXX" offering 5 days for lot 1 was not treated equally with the winning tenderer for lot 3 offering 3 days ("XXXXXXXXXXXXXXXXXXXX"). "XXXXXXXXXXXXXXXXXXXX" was also the winning tenderer for lot 1. "XXXXXXXXXXXXXXXXXXXX" was also the winning tenderer for the supply of 10 freighting vehicles under a different project audited during the present audit mission and implemented by the Ministry of Interior.

³ The subject matter for lot 1 (where 5 day time for completion was deemed abnormally low) was delivery of various electronics equipment while the subject matter for lot 3 (where 3 day time for completion was not questioned) was delivery of replicas of various medieval siege machines including a siege tower several metres high.

Action n° 20 (Responsible body: Managing authority; Deadline: 60 days; Priority: High):

The 25% financial correction proposed under findings n° 18 and 19 above covers also the irregularity identified under this finding. No additional financial correction is therefore necessary subject to the acceptance of the aforementioned findings.

The managing authority should ensure that its procedures are sufficiently robust to identify unjustified rejection of tenderers and unequal treatment of tenderers.

The managing authority should review all the contracts financed under Regional Development OP and awarded to "[REDACTED]" with the aim to identify red flags and to report on these to AFCOS.

Member State reply (summary)

The Managing Authority accepts the finding. As the Managing Authority has accepted Findings n° 18 and 19, it believes that a financial correction is not necessary. The Managing Authority has adopted new updated procedures and checklists for ex-ante and ex-post control for public procurement procedures. The new mechanisms for control are in full compliance with the requirements of the Audit Authority. The Managing Authority carried out additional checks in the UMIS and it is evident that "[REDACTED]" has four contracts within the Regional Development OP. The Managing Authority has updated its checklists in order to include 'red flags'. The Managing Authority carried out additional ex-post checks for these contracts, paying special attention to the references provided by "[REDACTED]". The Managing Authority believes that following these additional checks, there are insufficient reasons to doubt the circumstances declared in the references.

Commission position

The managing authority submitted the ex-post verification check-lists related to the public procurement contracts delivered by "[REDACTED]" under the Regional Development OP, including the checks concerning potential red flags which might lead to fraud suspicions (Ares(2015)1590310 – 14/04/2015). For one contract, namely the contract established between Teteven Municipality and "[REDACTED]" for the supply of medical equipment for the Teteven Hospital – Doctor Anghel Peshev, the managing authority identified potential red flags.

As the managing authority accepted and implemented the recommendations formulated by the Commission, the finding is **closed**.

<p>Finding n° 21 relates to one project implemented by the Ministry of Regional Development and Public Works under Priority 5</p>
--

Mark the scope and content of the project and gathering information on the five major cities in two separate lots

Six service contracts were signed for the implementation of the project, three of which were selected for the audit.

1. Lot 1: Tender documentation for the urban transport system in Varna (PД-02-29-3)
2. Lot 3: Tender documentation for the urban transport system in Stara Zagora (PД-02-2910253)

3. Lot 5: Tender documentation for the urban transport system in Pleven (ПД-02-2910252)

Each of the 3 lots was above the EC public procurement threshold for service contracts.

Contract: Service contract

Finding n°21: Unequal treatment of bidders

One tender procedure was held For Lots 1, 2, 3, 4 and 5. Following the implementation of the public procurement procedure four service contracts were signed for Lots 1, 2, 3 and 5.

Lot 1: Tender documentation for the urban transport system in Varna (ПД-02-29-3)

Four bidders submitted offers for Lot 1. Bidder [REDACTED] was rejected for lack of experience of the financial expert in at least 2 projects which included the development of a CBA analysis in accordance with the EC guidance on CBA⁴. No clarifications were asked by the contracting authority in relation to the aforementioned issue. For the same lot in the case of [REDACTED] clarifications were asked twice in relation to the previous experience of the transport expert of the bidder. [REDACTED] is the winning bidder for this lot.

Action n°21 (Responsible body: Managing authority; Deadline: 60 days; Priority: Medium):

The managing authority should provide explanations as to why the evaluation committee did not seek clarifications from [REDACTED] in relation to the experience of the financial expert. This could be contrary to Articles 51 and 2 of the Directive 2004/18/EC, as interpreted by point 41 of the Case C-599/10, *SAG ELV Slovensko*. In case it is established that clarifications should have been asked also from [REDACTED], the managing authority is requested to apply a financial correction of 25% of the contract value in accordance with point 16 of the Guidelines – Lack of transparency and/or equal treatment during evaluation for the infringement of Articles 51 and 2 of the Directive 2004/18/EC.

Member State reply (summary)

The Member State states that in relation to this finding an irregularity report was registered in the Managing Authority's register for irregularities. Following the analysis of the irregularity and the arguments of the Beneficiary the position of the Managing Authority is that there is no irregularity and therefore does not accept the Commission's finding due to the following arguments:

The Managing Authority believes the requirement to have experience in the preparation of CBA analysis in accordance with the EC guidance on CBA is not restrictive having in mind the huge importance of this project. The Managing Authority believes this requirement guarantees a high quality product which is important for the approval of this major project by the EC. The Managing Authority brings attention to the fact that the Commission provides only indicative guidance to be followed when preparing a CBA. The Managing Authority states that the matter is very specific; it requires a special set of knowledge, terminology, etc.

The Managing Authority reviewed in detail the CV of the financial expert of the rejected bidder and believes that development of a CBA was not mentioned and that following a close

⁴ Experience in the preparation of a CBA in accordance with the EC Guidance was a selection criteria in the contract notice for the financial expert

review of the CV of the expert it was evident that he is a specialist in the field of marketing based both on his educational background and professional experience. There is no implicit mentioning in the CV that he has any experience in the field of financial analysis and modelling. The Managing Authority believes that the Evaluation Committee rejected lawfully this bidder due to the incompliance with the requirements. The Managing Authority further states that the experience of the proposed expert did not imply the necessity to further ask the bidder for clarification. The Managing Authority also makes reference to fact that the Evaluation Committee asked this bidder for clarifications for a different expert. The clarifications sought from the winning bidder aimed at receiving information in order to verify the consistency of information provided in the CV of an expert, i.e. information already included in the initial offer.

Based on this the Managing Authority is of the opinion that both bidders were treated equally and the rejection of one of the bidders was lawful. Therefore, the Managing Authority believes that there is no irregularity established and a financial correction should not be imposed.

Commission position

The Commission agrees to the interpretation provided by the Member State and therefore no financial correction is required for this particular potential irregularity as asking for clarifications in this particular case would have implied a modification of the bid submitted by the rejected bidder and not a clarification in the sense of Article 51 of the Directive 18/2004/EC.

Nevertheless, the Commission underline the fact that, in cases where the additional elements provided by the bidders following a request for clarifications from the contracting authority are not of a formal nature and modify the technical offer submitted (e.g. replacement of initially proposed experts or proposal of additional experts), financial corrections should be applied based on a case by case analysis in compliance with point 17 of the 'Guidelines' – Modification of a tender during evaluation.

The finding is **closed**

6. OVERALL CONCLUSIONS AND RECOMMENDATIONS

The audit was carried out as planned. The beneficiaries co-operated fully and all requested documentation was made available to the auditors. Comments raised during the audit and during the wrap-up meeting have been taken into consideration when drafting this report.

We have audited the selected procedures in accordance with the scope and objectives set out in sections 2 and 3 of the audit report.

In addition, two follow up audit missions were performed by DG REGIO in the period 17-21 October 2014 (No 2014/BG/REGIO/C2/1314/2) and 08-12 December 2014 (No.2014/BG/REGIO/C2/1410/1) in relation to the priority axes 1 and 3 of the Regional Development Operational Programme (CCI 2007BG161PO001) in order to assess the implementation by the Member State of the corrective measures outlined in the present Audit Report as well as in the interruption and pre-suspension letters concerned.

In our opinion, based on the additional information provided by the Member State and the work performed, we have obtained reasonable assurance regarding the effective functioning of the management and control systems in relation to the Regional Development OP except for the following deficiencies:

- Public procurement deficiencies.

Based on the analysis of the reply provided by the Member State together with the detailed audit tests performed on the spot we conclude for Key requirement 4 (Adequate management verifications) that the system works, but some improvements are needed (Category 2).

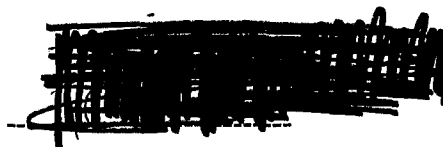
Signatures of the EC audit team and dates:



[Principal auditor]



[Associated auditor]



[Associated auditor]



Approved by / date:



[Team leader]

Approved by / date:



[Head of unit]

ANNEX I - Summary of financial corrections accepted by Member State

Finding N°	Project/Contract affected	Contract amount in EUR	% Financial correction	Amount of financial correction in EUR	Date and ARES ref. of letter of acceptance by Member State
1-4	Integrated Urban Transport project -Service contract for project management unit	794,548	25%	198,637	Ares(2014)3839242/18.11.2014 Council of Ministers Decision No. 54/22.12.2014
5	Integrated Urban Transport project – Supply of buses (two contracts)	18,510,284	10%	1,851,028	Ares(2014)3839242/18.11.2014 Council of Ministers Decision No. 54/22.12.2014
6	Integrated Urban Transport project – service contract for preparation of technical investment projects	968,742	5%	48,438	Ares(2014)3839242/18.11.2014 Council of Ministers Decision No. 54/22.12.2014
7-8	Integrated Urban Transport project – Supervision of works	724,275	10%	72,426	Ares(2014)3839242/18.11.2014 Council of Ministers Decision No. 54/22.12.2014
13	Ministry of Interior project – supply of safety cars	612,946	25%	153,237	Council of Ministers Decision No. 54/22.12.2014 Payment Claim No. Ares(2015)463346/04.02.2015
14	Ministry of Interior project – supply of 26 fire engines with ladders	8,189,999	5%	409,500	Ares(2014)3839242/18.11.2014 Council of Ministers Decision No. 54/22.12.2014
18-20	Municipality of Asenovgrad – supply of equipment in 3 lots	343,222	25%	85,807	Ares(2014)3839242/18.11.2014 Council of Ministers Decision No. 54/22.12.2014
TOTAL				2,819,073	