



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
REGIONAL AND URBAN POLICY
Audit

The Director

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Brussels,
REGIO C2 D(2015)4489025

Subject: EPM "Bridging the assurance gap"
Environment Operational Programme (CCI 2007BG161PO005)
Final position letter on mission n°2012/BG/REGIO/J2/1165/1 of 15 – 19
October 2012

Ref.: Audit report of 17 January 2013 (Ares(2013)55942)
Member State letter of 8 April 2013 (Ares(2013)556667)
Member State letter of 10 April 2013 (Ares(2013)629297)
Final audit report of 23 April 2014 (Ares(2014)1257834)
Member State letter of 21/10/2014 (Ares(2014)3481855)
Member State reply - Additional information (Ares(2015)4652437 –
28/10/2015, Ares (2015)4652950 – 28/10/2015 and Ares(2015)4653134 –
28/10/2015)

Your Excellency,

I am writing to inform you that the Directorate-General Regional and Urban Policy has concluded the audit carried out on the functioning of systems in place for the 2007-2013 programming period for the Environment Operational Programme (CCI 2007BG161PO005).

Following the analysis of the information provided in the above-mentioned Member State replies to the Final Audit Report, you will find in **Annex I** our conclusions in this regard.

As the irregular expenditure detected, as presented in annex II, has been accepted by you, and you have agreed to make the required financial corrections, no further action will be taken by the Commission. The audit is therefore closed.

Furthermore you are requested to confirm that findings which have a financial impact on the EU budget exceeding EUR 10 000 have been reported to OLAF in the IMS system for reporting irregularities and to provide the related references.

Given that any reduction of the Community assistance to the programme at stake may adversely affect beneficiaries, I therefore formally request that you ensure that these persons/entities are duly informed and placed in a position to effectively make known their views on the information on which the proposed decision is based. I would be grateful to receive any information on this matter.

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I would like to remind you that under Article 90(1) of Council Regulation (EC) N° 1083/2006, the competent bodies and authorities are required to keep available all relevant documents for a period of three years following the closure of an operational programme as defined in Article 89(3) of the Regulation or three years following the year in which partial closure takes place, in case of documents regarding expenditure and audits on operations referred to in 90(2) of the said Regulation.


Yours faithfully,



Franck Sebert




ENCLOSURES: Annex I – DG Regional and Urban Policy's conclusions
Annex II – Summary of financial corrections accepted by Member State

c.c.:


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ANNEX I – DG REGIONAL AND URBAN POLICY'S CONCLUSIONS

Findings 1, 2, 4, 5, 6 and 7 have been closed in our letter Ares(2014)1257834

Pernik Municipality – Main sewer system

Finding n°3: Inadequate audit trail – Ineligible expenditure

The amount declared to the Commission for this project is BGN 18 299 197. The amount of the payment claims approved by the managing authority is BGN 18 131 695. The difference is BGN 167 502 (EUR 85 644). The managing authority explained that this amount represents the 'own contribution' of the municipality. However no supporting documentation was provided in respect of this amount by the managing authority or by the beneficiary. The amount of BGN 167 502 is ineligible.

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

The certifying authority should deduct the ineligible expenditure of BGN 167 502 from the next payment claim submitted to the Commission. The certifying authority should also verify whether there are any other differences between the expenditure declared to the Commission for the Environment OP and the payment claims verified and submitted by the managing authority to the certifying authority, and report the results of this verification to the Commission.

Member State reply

According to the managing authority, the total expenditure verified and certified under the project and declared to the Commission at the time of the audit mission was BGN 25 882 671 (Cohesion Fund – BGN 20 706 137). The own contribution in the amount of BGN 167 502 was mentioned in the project's final request for funds. The amount verified for the final request for funds relating to the grant was BGN 8 293 090, net of the own contribution of BGN 167 502, which was included in statement 16/21.05.2012 in line with the format of the 'Declaration of eligible expenditure' table as set out in instructions of the Minister of Finance No 5/21.10.2010. The National Fund certified the own contribution, but it was not included in the payment claim to the Commission. As evidence, we enclose the scanned final payment claim for the project, Certificate to the Commission No 9 under the Cohesion Fund (from the SFC system) and the breakdown table annexed to the Certificate No 9.

Cohesion Fund Certificate No 9 sent by the National Fund to the Commission indicates that the payment claims for the overall expenditure for projects under priority axis 1 total EUR 16 906 519.05. Out of this amount, the expenditure of Pernik municipality amounted to EUR 3 392 203.80 calculated as follows: The expenditure verified for the final payment claim of Pernik municipality, net of the own contribution, amounted to BGN 8 293 090. Out of this amount, the Cohesion Fund share is $\text{BGN } 8\,293\,090 \times 80\% = \text{BGN } 6\,634\,472$. In CF Certificate No 9 sent to the Commission, the National Fund declared $\text{BGN } 6\,634\,472 / 1.9558 = \text{EUR } 3\,392\,204$.

The certifying authority stated that the amount of BGN 167 502 is 'own contribution' of the beneficiary – the municipality of Pernik. It constitutes eligible expenditure verified by the managing authority and included in Certification Report and Declaration of Eligible Expenditure No 16 of 21 May 2012 sent to the certifying authority and certified by the latter by way of Certificate and Statement of Expenditure and Interim Payment Application No 9 under the Cohesion Fund; this was submitted to the Commission on 29 June 2012 but it was not claimed for reimbursement from the European Commission as it was not included in the amount of the project's grant.

In the certificate in question, the amount included in the payment claim sent to the Commission under priority axis 1, co-financed by the Cohesion Fund, totals EUR 16 906 519, of which the beneficiaries' own contribution of EUR 93 890 (BGN 183 630) was deducted, including EUR 85 644 (BGN 167 502).

As required by the Commission, the certifying authority verified whether there are any other differences between the expenditure declared to the Commission for the Environment OP and the payment claims submitted by the managing authority; as a result, it confirms that there are no such differences.

Commission position

The Member State reply is confusing. There is a discrepancy between the explanations provided by the managing authority and by the certifying authority and it is not clear from the reply whether the amount in question was declared to the Commission.

The audit mission covered expenditure declared in Cohesion Fund certificates 5, 6, 7, 8 and 9 and ERDF certificates 5, 6, 7, 8 9 and 10. The total amount of expenditure in these certificates is EUR 80 834 494 for the Cohesion Fund and EUR 27 306 884 for the ERDF, i.e. a total of EUR 108 141 378.

Prior to the mission, the certifying authority provided a breakdown of this expenditure with the total amount of BGN 211 502 908, i.e. EUR 108 141 378. In this breakdown, the following project payment claims were included in relation to the project in question:

MIS payment claim number	Beneficiary	Total certified by CA to EC (BGN)
BG161PO005-1.0.02-0105-C0001-M0015	Pernik Municipality	129 230,06
BG161PO005-1.0.02-0105-C0001-M0017	Pernik Municipality	3 193 474,52
BG161PO005-1.0.02-0105-C0001-M0019	Pernik Municipality	3 834 181,02
BG161PO005-1.0.02-0105-C0001-M0023	Pernik Municipality	2 681 719,31
BG161PO005-1.0.02-0105-C0001-M0034	Pernik Municipality	8 460 591,83
Other claims		193 203 711,30
Total		211 502 908,04

For the payment claims M0015, M0017, M0019 and M0023, the amounts of the expenditure declared correspond to the amounts of supporting documentation presented.

Nevertheless for the payment claim M0034, the amount of eligible expenditure based on the letter from the managing authority to the beneficiary of 26 March 2012 (reference 08-00-1157) is only BGN 8 293 090 (BGN 8 414 719 declared by the beneficiary minus corrections imposed by the managing authority of BGN 121 629). The list of individual expenditure items presented by the beneficiary amounted to BGN 8 414 719. This discrepancy is confirmed by the managing authority which states that the amount which should have been included in the last payment claim for the project is BGN 8 293 090 while the actual amount certified to the Commission in the last payment claim for this project is BGN 8 460 592.

The amounts declared to the Commission under the project in question are stipulated in the table above. The table clearly shows that BGN 8 460 592 has been declared to the Commission for the project and thus it appears that the deduction of 'own resources' was not performed.

As BGN 8 460 592 has been declared to the Commission as eligible expenditure under claim BG161PO005-1.0.02-0105-C0001-M0034 but there is only BGN 8 293 090 of expenditure supported by an audit trail, the difference of BGN 167 502 is ineligible.

The certifying authority is again requested to deduct the ineligible expenditure of BGN 167 502 from the next payment claim submitted to the Commission and to provide evidence of this deduction.

As the Member State reply suggests that the finding has not been adequately addressed for the particular project, it is not clear if the review of the other projects performed by the certifying authority has been sufficient. The certifying authority is requested again to verify whether there are any other differences between the expenditure declared to the Commission for the Environment OP and the payment claims verified and submitted by the managing authority to the certifying authority, and report the results of this verification to the Commission.

The finding is open pending receipt of

- (i) confirmation of the deduction of the ineligible expenditure of BGN 167 502 and
- (ii) receipt of details from the certifying authority of any other differences between the expenditure declared to the Commission for the Environment OP and the payment claims verified and submitted by the managing authority.

Second Member State reply

The Member State has provided a detailed calculation table showing that the amount of BGN 167 502 was not certified to the EC, as it was own contribution of the Pernik Municipality. This amount was included as eligible under the project but not included in the expenditure amount certified to the Commission.

The certifying authority has declared that it has carried out checks in order to verify whether any other differences between the expenditure declared to the Commission for the Environment OP and the payment claims verified and submitted by the managing authority and did not identify any such differences.

Commission position

The Commission accepts the explanation and calculation provided by the managing authority and the certifying authority that the amount of BGN 167 502 was not included in the expenditure certified to the Commission.

The Commission takes note of the statement of the certifying authority that it did not identify any differences between the expenditure declared to the Commission for the Environment OP and the payment claims verified and submitted by the managing authority and therefore the finding is **closed**.

The Commission nevertheless reiterates its recommendation that the certifying authority carries out its checks in way as to ensure that expenditure of own contribution by the beneficiary is not certified to the EC.

West Aegean Basin Directorate in Blagoevgrad - Preparation of the management plans for the river basin

Finding n°8: All service contracts audited – Unlawfully shortened deadline for the submission of offers

Article 38 of Directive 2004/18/EC states: *In the case of open procedures, the minimum time limit for the receipt of tenders shall be 52 days from the date on which the contract notice was sent.* The shortened time limits of 36 days shall be only permitted provided that, insofar as possible, the prior information notice (PIN) has included all the information required for the contract notice.

The budget estimates for the four contracts audited according to the prior information notices were significantly lower than the budget estimates in the subsequent tender notices. The amounts were as follows:

Contract	Preliminary estimate (BGN)	Final estimate (BGN)	Increase
Contract 1	300 000	1 100 000	+ 267 %
Contract 5	420 000	1 900 000	+ 352 %
Contract 6	950 000	2 500 000	+ 163 %
Contract 11	2 500 000	3 000 000	+ 20 %

Although there were significant differences between the information regarding the budget price in the PIN and in the subsequent contract notices the contracting authority used the shortened deadlines. The deadline for submission of offers was 37 days for Contract 1, 38 days for Contract 5, 37 days for Contract 6 and 36 days for Contract 11.

As stated above, the price estimates in prior notices were significantly lower than the estimates in the tender notices. The prior information notices therefore did not allow prospective bidders to consider their participation. The use of the shortened deadlines in these cases was not in compliance with the Article 38 or Directive 18/2004/EC.

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

The use of the shortened deadlines in these cases represents a breach of Article 38 of the Directive 2004/18/EC. Point 2 of the 'Guidelines' provides for a correction of 25% to be applied where the contract was awarded without complying with the advertising requirements laid down in the EC Public Procurement Directives. A financial correction of 25% of the contract values is therefore proposed.

The total value of the contracts audited is BGN 8 500 000 + VAT, i.e. BGN 10 200 000 (EUR 5 215 257). The managing authority is requested to apply a financial correction of BGN 2 040 000 (= BGN 10 200 000 * 25% * 80%) or EUR 1 043 051.

The managing authority should also examine all of the other contracts under this project, identify the preliminary estimate, final estimate and deadline for submission of the offers and, if there are similar issues and make appropriate financial corrections. This information should be sent to the Commission in reply to this draft report.

Member State reply

The managing authority believes that deadlines for submission of offers have not been unlawfully shortened. The prior information notice (PIN) is information published by the contracting authority on public procurement planned for the following 12 months. The public procurement law states that by publishing a PIN, the contracting authority is not obliged to hold the relevant public procurement procedures.

Article 64(1) of the Bulgarian Act on public procurement sets out that when organising an open procedure, the contracting authority sends a notice for promulgation at least 52 days before the deadline for receipt of offers. Article 64(2) provides for shortening of this deadline to 36 days when a PIN was sent for promulgation between 52 days and 12 months before the date of sending the notice and the former contains information available at the time of its sending.

The contracting authority can use PIN to shorten deadlines in accordance with Article 64(2), Article 81(2) and Article 104(1) of Bulgarian Act on public procurement ("Act"). The provisions of the law in question show that shortened deadlines are lawful if two cumulative conditions are met -- a PIN is sent between 52 day and 12 months before the date of sending the contract notice and the former contains information available at the time of its sending. Based on these provisions, we can conclude that when both conditions are met shortened deadlines are lawful even if the PIN is published after the deadlines referred to in Article 23(3) and Article 45a(10) of ZOP. This is how the Public Procurement Agency interprets the Act.

Meanwhile, in compliance with the conditions in questions, potential differences in the content of the PIN and the contract notice do not constitute an obstacle for shortening of deadlines, if these differences arise from information made available to the contracting authority after the publication of the PIN and are insignificant, i.e. when the public procurement subject has not been materially modified. In this case the public procurement subject has not been materially modified which is a crucial for shortening of the deadlines. As the Act does not set out a procedure for correcting PINs when there is a material modification between the PIN and the contract notice, the PIN of a notice with a modified subject has to be published again. It is obvious in this case that a significant deviation in the subject would be considered a change in the subject of the

PIN.

The scope of works awarded by the Basin directorates is specific and the range of economic operators eligible to submit offers is very small. In this case, the price estimate was not as crucial to the scope of the public procurement as the deadlines for its implementation. As the public procurement scope is highly specialised, the time frame to be observed by the operators and the stages of implementation of activities became known only upon the actual issue of the contract notice. The price change was due to a significant change in the context and circumstances for the contract execution, consisting of a shorter deadline for performance of the task.

Furthermore, it should be noted that the contracting authority was not obliged to announce a price estimate in its prior information notice and its contract notice. The Act and Directive 2004/18/EC do not set a requirement and do not make the use of shortened deadlines conditional upon the announcement of an estimate price in the PIN and the contract notice; they do not establish a link between the amount of the estimate price in the contract notice and the amount in the PIN.

In addition, we can say that the shortening of the deadlines did not restrict the participation of potential tenderers as the initially announced indicative value was considerably lower, i.e. a wider range of tenderers were potentially eligible to meet the requirements for technical and financial capabilities and therefore would be interested in the public procurement. After the definition of the public procurement parameters, the increased indicative value of the public procurement only imposed criteria corresponding to the quantities but only after more tenderers were informed of the indicative scope of the procurement. In this regard, it should be noted that the PIN of the four contracts were published in the *Official Journal of the European Union*. Given that all potential economic operators, or even a wider range of those meeting the specific requirements of the public procurement, had access to the information, we cannot claim that their participation was restricted.

In view of the above, the managing authority believes that the finding should be withdrawn.

Commission position

The Commission notes the information provided by the managing authority in relation to compliance of the prior information notices with the Bulgarian Act on public procurement. The Commission also notes that no references to articles of Directive 18/2004/EC were provided by the Bulgarian authorities in relation to the non-compliance of the shortened deadlines with Article 38 of Directive 18/2004/EC as referred to in the audit finding.

The Commission considers that the subject of a public procurement is defined by several elements, including, as specified in Annex VII A of Directive 18/2004/EC, the value of the contract. The Commission therefore disagrees with the statement by the managing authority that the public procurement subject has not been materially modified by substantial increases of the value estimates between the PIN and the tender notice.

The Commission notes the explanation of the managing authority that the increases of price estimates were due to shorter deadlines for performance of the task. The managing authority is requested in this context to inform the Commission why there was a need to

shorten the deadlines and whether this need arose from poor planning on behalf of the responsible authorities.

The managing authority is again requested to justify and explain in detail the substantial increases of the price estimates. The Commission notes the explanation that the increases were due to short deadlines but this explanation alone does not appear to justify the substantial increases in price.

The Commission disagrees with the argument that for an economic operator, the price for a service (e.g. its increase by 20%, 163%, 267% or 352%) does not constitute a significant element of the scope of the contract.

Annex VII A of Directive 18/2004/EC defines information which must be included in public contract notices for the prior information notice as follows:

"(...) In the case of public services contracts: the total value of the proposed purchases in each of the service categories in Annex II A."

The Commission therefore disagrees with the statement of the managing authority that "the contracting authority was not obliged to announce a price estimate in its prior information notice" and the argumentation that follows because a PIN for services listed in Annex II A is non-compliant unless the total value of proposed purchases in each service is defined.

The Commission disagrees with the statement of the managing authority that the publication of low price estimates did not have a dissuasive effect as economic operators who see an estimate in the PIN which amounts to e.g. less than a quarter of the final contract amount can be dissuaded from starting preparation for the tender as it would be reasonable for them to conclude that it would not be economically feasible or financially rewarding to submit an offer for a contract under the conditions specified in the PIN (namely the very low price).

The Commission maintains its position that prior information notices did not allow prospective bidders to consider their participation. The use of the shortened deadlines in these cases was not in compliance with the Article 38 or Directive 18/2004/EC.

The total value of the contracts audited is BGN 8 500 000 + VAT, i.e. BGN 10 200 000 (EUR 5 215 257).

The managing authority is requested to

(i) apply a financial correction of BGN 2 040 000 ($= 10\,200\,000 \times 25\% \times 80\%$) or EUR 1 043 051 in accordance with the Guidelines for determining financial corrections to be made to expenditure co-financed by the Structural Funds or the Cohesion Fund for non-compliance with the rules on public procurement, point 2: Non-compliance with the advertising procedures where a 25% correction is applicable.

(ii) to examine all other contracts under this project, identify the preliminary estimate, final estimate and deadline for submission of the offers and, if there are similar issues, to make appropriate financial corrections. This information was already requested in the draft audit report but a reply has not been provided by the Bulgarian authorities in this regard.

The finding remains open.

Second Member State reply

Notwithstanding its general disagreement with the conclusions set out in the final report, the managing authority has agreed to impose a 25 % financial correction on all contracts implemented under the project. The managing authority confirmed that it has taken preventive measures to protect the financial interests of the Community and withdrawn 25 % of the verified expenditure for the contracts in question from payment claim No 18/13.11.2012.

Commission position

The Member State accepted to implement 25% financial corrections on all the contracts implemented under the project. The finding is **closed**.

Finding n°9: Service contracts 1 and 11 – Award of the contract to a tenderer who did not fulfil the selection criteria

For service contracts 1 and 11, the selection criteria included the requirement to have a profit in the previous three years. The income statements for the last three years were to be submitted as a proof.

The winning tenderer for both Contracts 1 and 11 was a consortium of two companies, namely [REDACTED] with a share of 90% and [REDACTED] with a share of 10%.

However, [REDACTED] was only established in the year of the tender and therefore did not have any profit and loss statements for the last three years. [REDACTED] had a loss of EUR 28 594 for the 2007 accounting period according to the income statement submitted for Contract 11. No income statement was submitted in the tender of this consortium for Contract 1. The winning consortium therefore did not fulfil the selection criteria and should have been eliminated in the selection phase for the both Contract 1 and 11. There was no other bidder for Contract 11. There was another bidder for Contract 1 who offered contract price of BGN 985 000 compared to the contract price of BGN 1 100 000 offered by the winning tenderer.

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

The flat-rate financial correction of 25% of the contract values for Contract 11 proposed under Finding 8 also covers the deficiency identified by this finding. No additional financial correction is therefore needed according to the 'Decision' because flat-rate corrections are not cumulated.

Member State reply

In view of the information presented in the preliminary audit report on finding No 9, we hereby express the following opinion:

Section II 'Requirements for tenderers', point 2.1.3 'Financial requirements' states that:

'(a) The tenderer has to have generated a total profit in the past 3 (three) years, in particular: in 2005, 2006 and 2007.

(b) The annual turnover of the tenderer for each of the past (3) years, in particular: 2005, 2006 and 2007 cannot be under BGN 400 000 (four hundred thousand

BGN)/ BGN 300 000 under contract No 11.

In case the tenderer presents an offer in a grouping (consortium, etc), the above requirements apply to the grouping (consortium, etc) as a whole.

The tenderer will be disqualified from this public procurement procedure if it does not meet the above requirements.'

The financial documents enclosed to the offer (see Annex 3) show that the tenderer meets this requirement as it has provided evidence for its turnover for the three years preceding the submission of the offer, as follows:

- Profit/ loss for the previous three years:
 - 2005 – EUR 199 519.80 in annual profit;
 - 2006 – EUR 473 184.53 in annual profit;
 - 2007 – EUR 28 594.22 in loss.
- Turnover for the three years in question:
 - 2005 - EUR 10 600 000;
 - 2006 - EUR 10 800 000;
 - 2007 - EUR 11 100 000;

The above data show that the overall amount of the profit for the three years in question was EUR 644 110.11 or EUR 214 703.37 a year on average. The turnover data show that it is several times higher than the requirements set out in the tender dossier.

With regard to the finding that [REDACTED], was newly set up, it should be noted that the requirements for tenderers did not include a condition for the time of establishment of a company as this would be discriminatory. In this case, [REDACTED] is part of a consortium. According to the selection criteria when the tenderer is part of a grouping (consortium, etc), the requirements apply to the grouping (consortium, etc) as a whole.

In view of the above, the managing authority believes that the finding should be withdrawn.

Commission position

During the review of the tender submission by the consortium in relation to Contract 1 by the Commission auditors, no income statement was included. No information has been provided in relation to this part of the finding. The managing authority is requested to check the tender submission for Contract 1 by the winning consortium and to verify whether there is an income statement included and if so, to assess whether it forms a genuine part of the submission by the tenderer.

In relation to the criterion '(a) *The tenderer has to have generated a total profit in the past 3 (three) years, in particular: in 2005, 2006 and 2007.*'

The managing authority argues that the interpretation of this criterion is that the combination of the profits in years 2005, 2006 and 2007 should be a positive number.

This is contrary to the explanation provided by the representatives of the beneficiary during the on-the-spot audit work where the Commission auditors were explained that

the requirement of a profit (i.e. not a loss) was to be respected for each of the years 2005, 2006 and 2007.

Nevertheless, the Commission agrees that the requirement can be understood as a requirement for a profit for the cumulative period of three years. Therefore the loss of a tenderer in one of the three years, while the total result for the three years combined is a profit is no longer considered contrary to the requirements of the tender dossier.

In any case, the criterion was not defined clearly and could have dissuaded companies who had a combined total profit for the last three years but experienced a loss in one or two years in question. The managing authority should ensure that selection and award criteria are defined clearly in future procurement procedures.

The finding remains open pending receipt of confirmation that documents proving the financial standing of the tenderer (profit and loss statements) were included in its tender submission for Contract 1.

Second Member State reply

The managing authority reviewed the public procurement documentation for Contract 1 concluded with [REDACTED] and established that the documents (balance sheet as at the end of 2005, 2006 and 2007) were available in the tender offer documents of the relevant bidder as presented to the managing authority as supporting documents as part of its ex-post checks. The managing authority considers that the contractor is selected lawfully since he has met the requirements laid down in the notice.

Commission position

The managing authority has declared that for the purpose of its ex-post checks it has reviewed the documents proving the financial standing of the tenderer (profit and loss statements) which were included in its tender submission for Contract 1 and provided to the Commission proof that the documents were in the initially submitted tender and were assessed by the evaluation committee. The finding is closed.

Finding n°10: Other serious issues

Several other serious issues have been identified for the four contracts audited under this project in addition to those identified under findings 8 and 9.

There was only very limited competition for the contracts, where only 1 tender was submitted for Contracts 5, 6 and 11 respectively and only 2 tenders were submitted for Contract 1. This strongly suggests that the use of the shortened deadlines referred to in finding 8 had an impact on the level of competition for these contracts.

Another point indicating limited competition for all the contracts audited is that all the contracts have been awarded for exactly the budgeted amount published in the tender notice.

Finally, 6 of the 14 contracts for activities planned under this project were not implemented. The non-implemented activities were:

- Evaluation of the hydro morphological conditions

- Evaluation of the impact on the quantity of water
- Catalogue of the measures for the improvement of the conditions in the water basins
- Evaluation of the impact of the diffused sources of pollution on water
- Environmental goals for water in the water basins and
- Creation of a 3D model.

The unimplemented activities amounted to 65% of the total project budget as defined in the tender notices. It is not clear how the goals of the project can be reached given that a significant part of the activities planned were not carried out.

Action n°10 (Responsible body: Managing authority; Deadline: 60 days; Priority: Medium):

The combination of the above-mentioned issues indicates a poor project management with significant implications for the implementation of the project.

The managing authority should explain whether it carried out management verifications and what were the results of these checks.

The managing authority should explain how its current procedures address these types of risks. It should also inform about the improvements of the procedures that will be used to address similar risks in the future.

The managing authority should explain which of the problems indicated in Findings 8, 9 and 10 have been identified during its management verifications and if so, what actions have been taken to address them and whether these problems were considered as possible fraud indicators / suspicions to be reported.

The managing authority should also provide detailed justification of the original budget (in PIN), the increased budget (in tender notice) and regarding dramatic budget increases within a short period of time. It should also clarify why the six elements were not implemented and the impact of their non-implementation on the overall project objectives.

The reply of the managing authority should cover all the contracts under this project.

Member State reply

The Member State reply only addresses the question of the achievement of goals and does not address the other issues raised.

In relation to the achievement of goals, the reply explained the purpose of the project as set out in the project application, including the justification of the necessity of the project.

The launch of the tender for development of the project was relevant to the fulfilment of Bulgaria's obligations set out in Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (Water Framework Directive 2000/60/EC) which obliges Member States to draw up river basin management plans.

Page 3 of the call for tenders for direct award of a grant under priority axis 1 of

Environment Operational Programme 2007-2013 details the concrete and major goal of the project relating to Bulgaria's commitments arising from the Water Framework Directive.

With regard to the main goal of the project, the project proposal (page 17, point 2.3 'Project goals' clarifies that: *'...To date part of the necessary activities (information, data, map material, analyses, etc) have been carried out in relation to the management plans of the four basins in accordance with the requirements set out in Article 149(1) and Article 155(1)(2) of the Water Act...'* After this clarification, the document formulates a specific goal to ensure the achievement of the expected outcome of the project: *'...This project aims to ensure the performance of other activities necessary for inclusion and further development of management plans....'* The main indicators to measure the successful achievement of the main goal are also available in the call for project proposals.

When analysing the implementation of the activities in question and in view of the first of the above indicators measuring the achievement of the goals set out in this contract, in particular 'Number and type of activities implemented and necessary for preparation of river basin management plans', we can sum up as follows:

- 1) The results from the fulfilment of the first 5 activities indicated are available as components of the content of the river basin management plans prepared and presented by Bulgaria which confirms their timely implementation as set out in the Water Framework Directive. The last, sixth, activity is a non-mandatory component of the river basin management plan (in accordance with Annex VII to the Water Framework Directive) and its implementation was postponed for a later stage relating to the enforcement of Directive 2007/60/EC on the assessment and management of flood risks without affecting the completeness, quality and compliance with the deadlines for publishing the river basin management plans.
- 2) The officials of the basin directorates in Bulgaria took care to implement the activities in question thanks to their prompt and timely response to the termination of the contracts for the activities in question by external contractors. This prevented the considerable delay in the fulfilment of Bulgaria's obligation to enforce the Water Framework Directive (detected in other EU Member States), a considerable part of the assessment was made by experts in the first cycle of the river basin management plans and they are about to be updated during the second stage of the implementation of scientific research.
- 3) The termination of the contracts for the six activities in question was due to strict control and continuing monitoring of the quality of contract execution by the project's beneficiary. This measure was taken in response to the material weaknesses detected in the documentation presented and the insufficient capacity of external teams identified during the performance of activities; as a result there was a risk for the contractor to fail to achieve the necessary results relating to the preparation of the river basin management plans. Therefore, the decision to terminate the public procurement contract in view of the findings aimed to prevent ineligible expenditure of EU funding. It should be noted that if the public procurement contracts had remained in force despite the detected weaknesses and lack of capacity of external contractors could have led to the absorption of considerable financial resources (65 % of initial estimates) without achieving the necessary result. Therefore, we believe that the termination of the public procurement contracts and the implementation of activities within the expert capacity of the basin

directorates in Bulgaria was the sole correct and possible decision to prevent considerable financial losses and thereby the fulfilment of the main goal for successful preparation and presentation of the river basin management plans within the deadlines set in Directive 2000/60/EC.

In this sense, the indicator 'Number of river basin management plans completed/ approved' - 4 is 100% implemented. River basin management plans were prepared for the four basin management regions in Bulgaria and were approved by the Minister of Environment and Water's order of 22 March 2010. They were published and made available on the website of the basin directorates and were presented to the Commission.

Commission position

The Member State reply is unsatisfactory as it does not address any of the serious issues raised in the finding.

Based on the reply of the managing authority we consider that adequate management verifications were not carried out in relation to the project, which is a breach of Article 60 of Council Regulation (EC) No 1083/2006 which states that: *"The managing authority shall be responsible for managing and implementing the operational programme in accordance with the principle of sound financial management and in particular for: (...) (b) verifying that the co-financed products and services are delivered and that the expenditure declared by the beneficiaries for operations has actually been incurred and complies with Community and national rules."*

- a) The managing authority is requested to provide a detailed justification for the increase in the budget amount (in tender notice compared to the amount shown in the PIN including details of when were both budget amounts were prepared.
- b) to carry out in-depth management verifications of this project covering all the issues raised in this report for all the contracts co-financed under this project (public procurement and implementation) and following this to consider the appropriateness of including this project for any ERDF co-financing given the extent of both the public procurement breaches and the implementation problems where only 8 of 14 contracts were implemented as planned.
- c) The results of the in-depth management verifications should be communicated in reply to this letter.

The finding is open.

Second reply of the Member State

The launch of the procedure is connected with the fulfilment of Bulgaria's obligations under Directive 2000/60/EC of the European Parliament and of the Council of 23.10.2000 establishing a framework for Community action in the field of water policy (Water Framework Directive — WFD (2000/60/EC)). The Directive requires EU Member States to draw up River Basin Management Plans (RBMPs) with volume and content laid down in Annex VII of the WFD and transposed in the Water Act. The deadline for publication of RBMP is defined in Art. 13 paragraph 6 of WFD and not later than nine years after the date of entry into force of this Directive (22 December, 2009)

The main objective of the project concerning fulfilment of the WFD commitments of Bulgaria is worded in the invitation for the submission of project proposals for direct award under the project which sets out the specific objectives:

- '...Financial assistance to the four water basin directorates in Bulgaria to complete successfully and within the process of preparation and approval of river basin management plans...'

It also defines the main indicators for the successful achievement of the main goal:

- Number and type of implemented activities necessary for preparing the river basin management plans..."
- Number of completed/approved river basin management plans...'

These indicators are also used in the approved project proposal.

In this regard, one of the key indicators for the successful achievement of the project's objective is the number of completed/approved river basin management plans. The managing authority considers this indicator to be fulfilled, given that river basin management plans for the four river basin districts have been developed, published and approved. They have been reported to the EC and therefore, in all international reports including in the strategy for the water sector, it is considered that Bulgaria has fulfilled its obligation in relation to the WFD.

The managing authority considers that by discontinuing part of the project activities given the low quality of implementation, the contracting authority prevented inefficient and inappropriate use of funds.

The creation of a digital model is an activity which has not been realised due to multiple appeals by the end of the project. The activity was not compulsory in the development of the RBMPs. Failure did not prevent achieving the basic project objective. At the same time, the value of this contract is approximately one-third of the total value of the grant.

The managing authority maintains its position that the project's objectives were achieved through the implementation of 100 % of one of the key indicators for its successful implementation, namely 'number of completed/approved river basin management plans'.

In addition, the Managing Authority has conducted a final on-the-spot check in order to verify the implementation of the project. The verification was carried out in 2012 and consists of 4 separate on-the-spot checks in each of the four river basin directorates (West Aegean, Danube, East Aegean region, Black Sea area). The scope was a complete documentary check of project implementation in relation to the verification of the request for final payment. The objective of verification was the follow-up of the implementation of the project activities, compliance of the conditions and requirements in accordance with the grant agreement, including the implementation of the measures resulting from risk assessment, the recommendations from previous on-the-spot checks, reality, relevance and substantiation of the project costs, as well as detailed review of the results from implementation of the activities. Recommendations were made concerning the improvement of internal rules for public procurement, improvement of organisation of the work, improvement of the filing system, continuing training of staff (project management and public procurement) aimed at future projects of the four river basin directorates.

Commission position

The Commission takes note that the reply of the managing authority does not provide the requested detailed justification for the increase in the budget amount (in tender notice compared to the amount shown in the PIN including details of when were both budget amounts were prepared).

Nevertheless, the Member State has provided proof that the objectives of the project are met and communicated to the Commission the results of it's on the spot check in 2012.

In addition, the Member State has accepted to implement a 25% financial correction on all contracts under the project for Finding 8 above. As there is no additional potential financial impact for the finding in question, the finding is **closed**.

ANNEX II - SUMMARY OF FINANCIAL CORRECTIONS ACCEPTED BY THE MEMBER STATE

Finding N°	Amount on irregular expenditure in BGN (Basis for calculation of financial correction)	Amount on irregular expenditure in EUR (1 EUR = 1.9558 BGN)	% Rate of assistance	ERDF/CF expenditure	% Financial correction	Amount of financial correction in EUR	Date and reference of the acceptance letter
4	2 443 068	1 249 140	80%	999 312	10%	99 931	14 November 2013 Ares(2013) 3513172
8,9,10	10 200 000	5 215 257	80%	4 172 206	25%	1 043 051	21 October 2014 Ares(2014) 3481855
8,9,10	2 328 000	1 190 305	80%	952 244	25%	238 061	21 October 2014 Ares(2014) 3481855
Total	14 971 068	7 654 702	80%	6 123 762		1 381 043	