



Limited Distribution¹

IAS Audit Report

Final Audit Report on Procurement within the Fundamental Rights Agency



IAS.A-2012-W FRA-001

22 May 2012

This IAS Audit Report is addressed to:

Mr Morten Kjaerum, Director, FRA
Ms Ilze Brands Kehris, Chairperson of the Management Board, FRA

with copies to

Mr Constantinos Manolopoulos, Head of the Administration, Contact Person, FRA
Mr Xavier Catala, Finance Manager, FRA
Mr Manfred Kraff, Director CEAD Group, ECA

¹ This IAS Audit Report is covered by a Marking provided for by Commission Decision 2001/844/EC, which imposes a constraint on its use and distribution. It is destined exclusively for the Services to which it has been expressly addressed and its contents should not be communicated to other Services or third parties without the express written consent of the Internal Audit Service. Audit Reports may contain personal data as defined in Article 2 of Regulation 2001/45 and in this context, recipients are subject to the responsibilities defined in this Article. Should this report inadvertently come into your possession when you are not a designated recipient it should please immediately be given to the Security Officer of your Service or that of the IAS.

ENGAGEMENT TEAM

<i>[Information deleted]</i>	Team Leader	[Signed]
<i>[Information deleted]</i>	Auditor	[Signed]
<i>[Information deleted]</i>	Auditor	[Signed]

AUDIT MANAGER

<i>[Information deleted]</i>	Audit Manager	[Signed]
------------------------------	---------------	----------

DIRECTOR

Agnieszka Kaźmierczak <i>Certified Internal Auditor (CIA®)</i> <i>Certified Government Auditing Professional (CGAP®)</i>	Director	[Signed]
------------------------------------------------------------------------------------------------------------------------------------	----------	----------

Hereby, we would like to thank all staff members of the Agency who participated in this audit for their kind and constructive co-operation.

Table of Contents

1.	EXECUTIVE SUMMARY	4
1.1.	OBJECTIVE AND SCOPE.....	4
1.2.	AUDIT OPINION AND MAJOR FINDINGS / OBSERVATIONS.....	4
1.3.	GOOD PRACTICES.....	5
2.	FULL REPORT	6
2.1.	INTRODUCTION	6
2.1.1.	<i>Reason for the Engagement</i>	<i>6</i>
2.1.2.	<i>Description of Audited Activity/Process</i>	<i>6</i>
2.1.3.	<i>Key Figures.....</i>	<i>7</i>
2.2.	MAJOR OBSERVATIONS AND RECOMMENDATIONS.....	8
	ANNEX 1: METHODOLOGY	15
	ANNEX 2: COMMENTS FROM THE AGENCY	16
	ANNEX 3: SAMPLE OF FRA PUBLIC PROCUREMENT PROCEDURES.....	17

1. EXECUTIVE SUMMARY

1.1. Objective and Scope²

This report summarises the results of the audit in the Fundamental Right Agency, hereafter called "Agency" or "FRA".

The objective of the audit engagement was to assess and provide an independent assurance on the adequate design and effective application of the internal control system related to the procurement process.

The scope of the audit covered the following activities and related processes:

- A. The appropriateness and effectiveness of controls for planning, implementation and monitoring of the procurement process;
- B. The compliance of the procurement procedures with the provisions of the Financial Regulation and its Implementing Rules;
- C. The clear and adequate allocation of roles and responsibilities in the procurement process.

The audit scope did not include the contracts execution or any of the phases subsequent to the signature of the contract, such as implementation of the contracts, pre-financing, interim payments, delivery of services or goods procured, and contract litigation.

1.2. Audit Opinion and Major Findings / Observations

Based on the results of our audit, as described in the objective and scope of the audit engagement, we believe that the internal control system in place **provides reasonable assurance** regarding the achievement of the objectives set up for the procurement process except for the following two issues :

1. The outcome of the review of six procurement files revealed weaknesses in the chain of custody for the documentation of the procurement process due to the absence of an adequate document management policy and relevant filing plans.

This entails the risk of non-compliance of the Agency with the art. 49³ of the Implementing Rules on the Financial Regulation and consequently might impair the authorising officer to timely reconcile the decision-making process that lead to the award of the contracts.

The above finding lead to recommend to the Agency to adopt a comprehensive document management policy that ensures documenting in full procurement processes (rec. N°3).

² For the audit methodology, see Annex 1.

³ Art. 49 - Keeping of supporting documents by Authorising Officers

2. The functions of the actors for the Procurement process (Senior Procurement officer, Chair of Evaluation Committee, Authorising Officer functions) are not fully segregated.

This might lead to possible lack of clarity in the roles and responsibilities of the actors intervening in the procurement process and consequently a lack of accountability of the actors and ineffective controls.

Therefore, it is recommended that the checks prescribed in step 160 of the FRA Procurement Procedure be re-designed to ensure applying the principle of segregation of duties between SPO and Chair of the Committee and the accountability of the Authorising Officer (rec. N°8).

1.3. Good practices

The IT application "Tender Contract Maker (TCM)" developed by the Agency to generate standard documentation for the procurement process ensures consistency of contractual records and their format across the different departments initiating the process.

The Budget module of the IT application "MATRIX" used for the Agency project management has been coupled with the accounting records retrieved from ABAC allowing a daily on-line update of the budgetary implementation.

Team Leader

Audit Manager

2. FULL REPORT

2.1. Introduction

2.1.1. Reason for the Engagement

The choice of the audit topic ("procurement") followed the risk assessment carried out by the IAS in the FRA in 2009, and the subsequent establishment of a strategic audit plan for the period 2010 – 2012.

The procurement area is sensitive and important for the implementation of the majority of FRA objectives, particularly as regards the core research activities.

In addition, procurement activities on the two main research areas are to be coordinated with the ones leading to communication and dissemination of the researches' results thus appropriate planning and monitoring of the process is of paramount importance for the achievement of the Agency's objectives.

2.1.2. Description of Audited Activity/Process

The Council Regulation (EC) n. 168/2007 establishing the European Union Agency for Fundamental rights provides in art. 2 and 4 respectively, the objective and the tasks entrusted to the Agency.

The Agency shall, as a core task, collect, record, analyse and disseminate relevant, objective, reliable and comparable information and data in relation to fundamental rights matters (Art.2 "Objective", Art. 4 "Tasks").

To accomplish any of the tasks entrusted, the Agency may enter in contractual relations, in particular subcontracting, and may also award grants, to promote appropriate cooperation and joint ventures, in particular with national and international organisations (Art.6 "Working arrangements").

The legal framework for entering in contractual relations in the procurement area is established according to Art. 74 of the Commission Regulation (EC, EURATOM) No 2343/2002 of 19 November 2002 on the Framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 (FR) and in accordance with the Financial Rules of the Agency entered into force on 01.01.2009.

Therefore the procurement process implemented by FRA, shall apply the provisions of the general Financial Regulation (FR) and of the Commission Regulation (EC, Euratom) No 2342/2002 (IR).

As per the Agency procurement procedure : *"the overall objective of the procurement process is to ensure , whilst managing the risks associated with procurement, that the Agency purchases goods or services in due time, in appropriate quality and quantity, and at the best price."*

The Agency procurement procedure is described in the document PR.PROC.001-01 duly adopted by the Agency Director on 21.12.2010 that includes 14 *Related Forms* (templates) and six TCM generated forms.

The description of the process distinguishes the procedures below and above a threshold fixed at 60,000 €. In the procedure, the seven main phases in the procurement process⁴ (from procurement planning until awarding and contract signature) have been documented with a detailed description of actions and responsibilities.

2.1.3. Key Figures

Financial years 2011 and 2012⁵

Expenditure

		Year 2012 Budget	Year 2011 Budget
Title	Appropriations	Amount (Euro)	Amount (Euro)
1	Staff	10 887 000	10 190 700
2	Administrative Expenditure	1 938 020	2 549 000
3	Operating Expenditure	7 551 000	7 440 320
Total		20 376 020	20 180 020

Staff according to the FRA Establishment Plan

Category	2012	2011
AD	47	44
AST	28	28
National experts	9	9
Contract agents	28	25
Total	112	106

⁴ Procurement Planning; Request for a call for tender; Preparation of the Tender Dossier; Questions and Answers with Potential Bidders; Opening and Evaluation, Awarding; Contract Signature. (FRA Procurement Procedure PR.PROC.001-01, page 5.)

⁵ Statement of revenue and expenditure of the European Union Agency for Fundamental Rights for the financial year 2011 and 2012

IAS analysis of negotiated procedure⁶

The total number of the contracts signed in 2011 for negotiated procedures (all below 60 000 €) amounts to 172 for a total contract value of 1 111 873, 42 € as per the Summary Table below:

Nr. Contracts	Type of procedure	Total value (€)
130	Single tender procedures (all below 5 000 €)	229 565,15 ⁷
24	Negotiated procedure	364 848,40 ⁸
1	Direct treaty procedure due to urgency	4 507,09 ⁹
13	Negotiated procedures stemming from the award of relevant framework contracts	190 435
1	Direct treaty for additional services linked to the main contract	30 091 €; ¹⁰
3	Negotiated procedures stemming from Service Level Agreements with other institutions	292 426,80
172	Total	1 111 873,42

2.2. Major Observations and Recommendations

A. On the appropriateness and effectiveness of controls for planning, implementation and monitoring of the procurement process:

PLANNING AND MONITORING THE PROCUREMENT PROCESS
BACKGROUND INFORMATION
<p>According to the Director decision, 3-DIR-2009 of 27 November 2009 the Agency follows an integrated project management approach. The FRA Project Life Cycle can be summarised with the following seven phases: preparation for the decision, inception, formulation, production, implementation, impact assessment and lesson learned.</p> <p>The Agency has developed an IT application for the planning, implementation and monitoring of the entire project life cycle (MATRIX) including the planning, monitoring and</p>

⁶ Based on the Excel spread sheet provided by the Agency (e-mail dated 28/03/2012)

⁷ The highest number (8) of single tenders awarded to the same supplier amounts to 9,052 € for event/ catering.

⁸ For the negotiated procedures between 5,000 € and 25 000 € the Agency confirm to always invite at least three bidders, as per articles 91 of FR and 129.2 IR

⁹ Art. 126.1.c of IR

¹⁰ Art. 126.e of IR

implementation of the procurement procedures.

In order to gain experience with the MATRIX working methodology with decision 1-DIR-2010 dated 11 February 2010 the Director selected a list of projects under the Annual Working programme 2010, which should receive particularly focused attention.

FINDINGS

The IAS analysis of the functionalities of MATRIX, the Agency's records available for the set of projects mentioned under the decision of the Director nr. 1-DIR-2010, and the information for the monitoring and planning of procurement process provided by the Agency during the fieldwork, revealed that in the implementation of the foreseen controls:

1. As concerns procurement plans and monitoring of their implementation, the information is currently managed by means of Excel spreadsheets not embedded in MATRIX.
2. The project records, relevant data and milestones for the procurement process are not consistently recorded in MATRIX.

CURRENT RISK(S)

The lack of availability of integrated and consistent data in the IT application MATRIX does not allow providing a complete and reliable overview of the status of the projects and in particular of the procurement process possibly hindering the achievement of an efficient and effective implementation of the Agency projects.

RECOMMENDATIONS

Recommendation N° 1 – Embed the procurement planning and monitoring in MATRIX

Important

The procurement planning and monitoring should be fully embedded in the project management application MATRIX, which is becoming essential for the Agency's project management and it should allow the production of reliable projects status implementation reports.

Recommendation N° 2 – Established mandatory projects records, milestones and deadlines to be recorded in MATRIX

Important

A set of mandatory project data should be consistently recorded in MATRIX to provide the Agency with a reliable overview of the projects status. This information should enable planning and execution of projects/procurement activities and consequently matching the Agency's resources (e.g. identifying critical paths, avoiding a posteriori commitments, tracking heavy workload periods and allowing timely implementation of corrective actions).

B. On the compliance of the procurement procedures with the provisions of the Financial Regulation and its Implementing Rules:

MANAGEMENT OF PROCUREMENT DOCUMENTATION

BACKGROUND INFORMATION

According art. 49 of the Implementing Rules to the Financial Regulation:

"The management systems and procedures concerning the keeping of original supporting documents shall provide for:

(a) such documents to be numbered;

(b) such documents to be dated;

(c) registers, which may be computerised, to be kept identifying the exact location of such documents;

(d) such documents to be kept for at least five years from the date on which the European Parliament grants discharge for the budgetary year to which the documents relate."

The revised Internal Control Standards for Effective Management adopted by the Agency's Director on 14/12/2009 with decision 2009/6 provides for the Document Management that: *"Appropriate processes and procedures are in place to ensure that the Agency's document management is secure, efficient (in particular as regards retrieving appropriate information) and complies with applicable legislation".*

It should be noted that on 25 July 2011 the Agency's Director adopted the decision nr. ADMIN.ICTF05 related to the registration of incoming and outgoing mail defining in art. 4 the documents to be registered.

FINDING

Since a document management policy has not yet been adopted by the Agency, IAS analysis of the hard-copy documents and electronic files¹¹ for the six procurement procedures confirmed that :

1. The files sampled do not follow a coherent and complete filing plan, each of the official hard-copy procurement files had different level of accuracy in the registration of the relevant documents¹²;
2. The files sampled lack of consistency between hard-copy files and e-format files; for some of the procedures sampled, not all the documents available in the electronic were also available in hard copies;
3. In the file sampled the documentation was not duly filed and registered¹³ especially for what concerns the exchange of correspondence between the tenderer/candidates and the Agency (requests for the terms of reference, requests for clarifications, letter informing about the outcome of the procedures etc.).

¹¹ Stored on the Agency local server drive L: /

CURRENT RISK(S)	
Inadequate filing and registration of the documentation entails the risk of non-compliance of the Agency with the art. 49 ¹⁴ of the IR and consequently it might impair the Authorising Officer to timely reconcile the decision-making process that leads to the award of the contracts, especially in case of candidates challenging the award decisions, lodging an appeal and/or starting litigations and possible related pecuniary compensation. This latter might expose the Agency also to reputational risks.	
RECOMMENDATION	
Recommendation N° 3 – Adopt the Agency document management policy	Very important
The Agency should adopt a comprehensive document management policy that ensures documenting in full procurement processes.	
Recommendation N° 4 – Ensure coherence and completeness of files	Important
Regardless of their format (hard copy or electronic), documents should be filed in one single official procurement file to ensure coherence and completeness of the documentation as well as an appropriate chain of custody.	
Recommendation N° 5 – Ensure adequate registration of correspondence	Important
The Agency correspondence should be duly dated and adequately recorded in the registry. In particular, the registration of correspondence with candidates/tenderers should be complete, including possible requests for clarification of technical/financial offers sent by the evaluation committee. The registration should ensure clarity concerning document identification, author, and its receipt and/or dispatch.	

C. On the clear and adequate allocation of roles and responsibilities in the procurement process:

DECISION-MAKING PROCESS
BACKGROUND INFORMATION
The request for a call for tender is initiated by the relevant Head of Department based on the Agency's Annual Work Programme, Annex IV, Financing Decision. The Head of

¹² According to FRA Procurement Procedure PR.PROC.001-01, the records in a procurement file include Technical specifications, Invitation letters, Appointment of opening committee, Appointment of evaluation committee, Offers received, Opening report, Evaluation report, Evaluation grids, Award decision/ Letter to successful tenderers, No-letter to unsuccessful tenderers, Letter for request of clarification, Signed Contract.

¹³ For examples: documents with different content registered under the same number, documents not dated, handwritten corrections not duly initialled, or cases of unregistered documents that according to art. 4 of the Director's decision on the registration of incoming and outgoing mail of 25.07.2011 should be registered.

¹⁴ Art. 49 - Keeping of supporting documents by authorising officers

Department, having identified the needs and estimated the value of the services/goods to be purchased, addresses to the Head of the Administration a detailed explanatory note containing the justification for procuring the activity.

At this stage, the Senior Procurement Officer reviews the documentation for all procurement projects including the technical specifications and convenes the meeting(s) of the Steering Committee (composed of the Head of the Administration, the Finance Manager, the Accountant, Quality Manager, and Budget Officer). According to the FRA Procedure, the Steering Committee performs a top-level check¹⁵ of the technical specifications to ensure they are adequately structured, with no ambiguity or overlap between award and selection criteria.

Furthermore, it should be noted that during the evaluation phase, the procurement procedure foresees that the Evaluation Committee signs the report and forwards it to the Senior Procurement Officer who checks the outcome consistency and completion, and endorses the evaluation report before submitting the report to the Authorising Officer¹⁶.

FINDING

The analysis of the six sampled procurement files and the information received during the meetings with key actors of the process revealed that :

1. The explanatory notes containing the justification of the needs, the estimation of the contract value and having attached the technical specifications varies in form and content between the sampled procedures. In the implementation of this control measure, for three files,¹⁷ the initial estimation of the value of the contract was not adequately justified and in one case,¹⁸ the reasoning behind the increase of the estimation was not duly recorded. Consultation with other institutions/services performing similar researches, and possibly procuring similar surveys and studies were not recorded.
2. The outcome of the work of the Steering Committee is in general not recorded and consequently the department requesting the tender is not formally informed about the outcome of the top-level check performed.
3. In the procurement procedures where the Senior Procurement Officer (SPO) is also appointed as Chair of the Evaluation Committee, segregation of duties is not applied since the SPO checks the work of the Evaluation Committee.
4. The deadline for the submission of the offers for an open procedure¹⁹ published in the OJ series S was extended, but no evidence of the relevant Authorising Officer approval was available in the file. In the same procedure, the file containing the Terms of Reference posted on the Agency web site had to be also updated²⁰ but no evidence of the formal authorisation process for doing so was available in the

¹⁵ PR.PROC.001-01 -03B

¹⁶ See procedure 05- Opening and evaluation - Steps 150 and 160

¹⁷ Tender ref. D-SE-10-05, D-SE-11-T03 and F-SE-10-01-NP2

¹⁸ Tender ref. D-SE-10-05

¹⁹ OJs S161 dated 24.08.2011 Corrigendum 2001/S 161-264821

²⁰ Pages 8 -14 were missing.

documentation.		
CURRENT RISK(S)		
<p>Inadequate assessment of the procurement needs may lead to an inefficient use of resources.</p> <p>Lack of clarity in the roles and responsibilities of the actors intervening in the procurement process may lead to a lack of accountability and ineffective controls.</p> <p>Inadequate description of the process may lead to lack of accountability of the actors involved, legal uncertainty , and inadequate traceability of the decision making process.</p>		
Recommendation N° 6 – Improve Explanatory Notes for the definition and justification of procurement needs		Important
<p>The content of the explanatory note should be improved in order to provide a comprehensive justification for the procurement regarding the contract value. The explanatory note should also record, when appropriate, consultations made with other entities in order to avoid overlap and/or duplication of activities. Any subsequent change(s) in the contract scope and/or estimated contract value must be duly justified, authorised and recorded.</p>		
Recommendation N° 7– Record outcome of the Procurement Steering Committee meetings		Important
<p>The outcome of the Procurement Steering Committee's work should be adequately recorded. The operational departments concerned by a specific procurement should be appropriately informed.</p>		
Recommendation N° 8 – Ensure safeguarding segregation of duties		Very Important
<p>Step N°160²¹ of the FRA Procurement Procedure should be updated to ensure the safeguarding of the segregation of duties between the role of the SPO and of the Chair of the Evaluation Committee on one side, and the responsibilities entrusted to the Authorising Officer by the Financial Regulation with regard to the award of contracts²².</p>		
Recommendation N° 9 – Describe corrective actions in the procurement process		Important
<p>The procurement process description should provide for corrective actions that might be</p>		

²¹ "The SPO checks the minutes and outcome, in particular considering the announced selection and award criteria, the elements that had been requested under the technical proposal, the elements that had been requested under the financial proposal, the correctness of the evaluation grids and related formulas". – PR.PROC.001-01, page 5

²² Art. 60(4) of the Financial Regulation and Art. 47 of the Implementing Rules

necessary. It should describe possible instances and the corresponding procedure to follow (i.e. for issuing an *errata corrige* concerning the terms of reference, an extension of the deadline for the submissions of offers, an updates of ex-ante publicity notices on the Agency's web- site).

ANNEX 1: METHODOLOGY

A. Methodology

The audit was conducted in conformity with the IAS Guidelines and the Mutual Expectations Paper and the *International Professional Practice Framework of Internal Auditing* issued by the Institute of Internal Auditors.

The Mutual Expectations Paper, describing the responsibilities of the IAS and the Agency's in terms of the audit process, was attached as an annex to the Announcement Letter sent to the Agency.

The Audit Manager and the Team Leader conducted preliminary meetings on 03 February 2012 in Vienna.

The audit fieldwork took place from 20 February 2012 to 24 February 2012, all observations and recommendations relate to the situation as of that date.

Audit programmes and checklists were developed to evaluate the adequacy of the internal control system and risk management processes of the items mentioned in the scope. Interviews were held with key actors of the process working in the Administration Department as well as in the Operational Department, together with supporting documents and relevant information obtained from the Agency formed the basis for the evaluation of the design of the internal control systems of the Agency.

Walk-through testing: Following the evaluation of the adequacy of the internal control system, tests of transactions (sample of six procurement files – see Annex 3) were performed in order to verify the application in practice of the internal controls. The sampling of the files were made to cover accomplished procurement procedures launched during the years 2010-2011 and implemented under different procurement legal basis (i.e. open and negotiated procedures).

B. Follow-Up

In accordance with the IAS' follow-up policy, any *critical* or *very important* recommendations will be followed up through an audit follow-up engagement, normally planned to be conducted within one year from the issuing of the final report. The *important* or *desirable* recommendations will usually be followed up through a desk review, based on documentation provided by the Agency in Issue Track.

ANNEX 2: COMMENTS FROM THE AGENCY



[FRA, A-1040 Wien; Schwarzenbergplatz 11]

[Register 2012-599]

**NOTE TO THE ATTENTION OF Ms Agnieszka KAZMIERCZAK,
DIRECTOR IAS.A**

Vienna, 16 May 2012

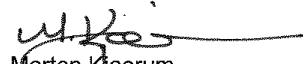
***Subject: Draft report of IAS Audit on "Procurement within the
Fundamental Rights Agency" – FRA answer******Reference: Your note Ares (2012)565745 – 08/05/2012***

On 08/05/2012 the Agency received the draft report of the audit on Procurement with the results of the mission your services undertook last February.

The Agency accepts the conclusions of the report and will prepare an action plan for the prompt closure of all the recommendations.

We would like to thank you for your constructive approach during the audit and we remain at your disposal for any further information you may need on this subject.

Kind regards,


Morten Klærum

European Union Agency
for Fundamental Rights

Agence des droits fondamentaux
de l'Union Européenne

Agentur der Europäischen Union
für Grundrechte

FRA
Schwarzenbergplatz 11
A – 1040 Wien
Austria

tel. +43 (1) 580 30 – 60
fax +43 (1) 580 30 – 691
office@fra.europa.eu
<http://fra.europa.eu>

Cc : Constantinos Manolopoulos

ANNEX 3: SAMPLE OF FRA PUBLIC PROCUREMENT PROCEDURES

The sampling concerns open and negotiated procurement procedures in relation to operational and administrative budget years 2010 and 2011.

1) Violence against women: An EU Survey

Service Contract ref. DS-E-11- T04 signed on 02.12.2011

Type of Procedure: Open

Contract value : 3 345 000 €

2) Access to Justice – a sociological study on cases of discrimination in the EU

Service Contract ref. D-SE-10-05 signed on 09.12.2010

Type of procedure: Open

Contract value : 410 000 €

3) Building Maintenance

Multiple Service Framework Contracts ref. F-SE-10-10-5 signed on 22.12.2010

Type of procedure: Open

Budget : 400 000 €

4) External evaluation

Service Contract ref. D-SE-11-T03 signed on 15.12.2011

Type of procedure : Open

Contract value : 245 700 €

5) European case Law Handbook on non-discrimination

Service Contract ref. D-SE-10-01 signed on 08.04.2010

Type of procedure: Negotiated

Contract value : 39 000 €

6) Executive Coaching Consultancy Services

Service Framework Contract ref. F-SE-10-01-NP2 signed on 20.12.2010

Type of Procedure : Negotiated Procedure

Budget : 25 000 €