

SECTION BLOCK 3

Risks in auditing with regard to the tendering process

Břetislav GRÉGR

24th April, 2015, Budapest



Basic topics to be discussed:

- What changes in policy and processes came about in the management and control system as a result of the Commissions controls during 2007-2013?
- Have these changes in policy and processes fulfilled the expectations? Have they managed to treat the discovered risks or did they result in the emergence of new risks? What recommendations would you give to the Commission in this respect?
- In case of the 2014 – 2020 programs it is an indirect expectation that anti – fraud measures enable discovery of suspicious cases during the project selection process. What actions could be proposed for joint consideration?

Basic topics to be discussed:

- One of the main topics in the audits conducted by EU institutions is the market price equivalence of project budgets. Can we expect that the EU shall create average/recommended/maximum prices for the main project elements eligible for funding? How can market price really be determined?
- Please share your practical experience with the Simplified Cost Options (SCOs) method!

Discussants:

→ Mr. Pavol Borovský – Slovakia

→ Mr. Balázs Dencső – Hungary

→ Mr. Csaba Novák – Hungary

→ Mr. Zoltan Balogh – European Commission

WELCOME!

→ Břetislav Grégr – Czech Republic



What changes in policy and processes came about in the management and control system as a result of the Commissions controls during 2007-2013?

- stricter approach of auditors (more often financial corrections), often not taking into account opinions of the Czech Competition Office or even Czech court decisions
- unpredictable and disunited audit findings, retroactivity in judging cases (although denied)

EC letter from 2012 about contractual penalties as award criteria – although current **EU legislation on public procurement does not contain** explicit provisions about contractual penalties and bank guarantees used as award criteria, we would nevertheless like to repeat **our opinion** that such criteria, especially when their weight is substantial, may have a negative effect on the competition necessary for compliance with the principles of non-discrimination and equal treatment.

Auditors used this explanation even for cases of tenders solved before these interpretations. Similar approach to reduction of subsidies based on COCOF guidelines for financial corrections.

Have these changes in policy and processes fulfilled the expectations? Have they managed to treat the discovered risks or did they result in the emergence of new risks? What recommendations would you give to the Commission in this respect?

- audit findings should not only uncover mistakes in tendering but also act preventively against future irregularities
- entrepreneurs as applicants for grants mostly do not intend to avoid necessary rules, but for them it is very important to know detailed conditions in advance

CLEAR RULES AND THEIR INTERPRETATIONS IN ADVANCE

CASE:

**Guidelines determining financial corrections to be made to expenditures financed by the Union under shared management in case of non-compliance with public procurement rules
(Commission Decision C/2013/ 9527 from December 19th, 2013)**

→ conflict of interests – 100 % correction

WHAT IS THE DEFINITION OF CONFLICT OF INTERESTS?

Conflict of interests – 100 % correction

OLAF practical guidelines for identification of conflicts of interest in public procurements relating to structural measures (from November 12th, 2013 – COCOLAF) say:

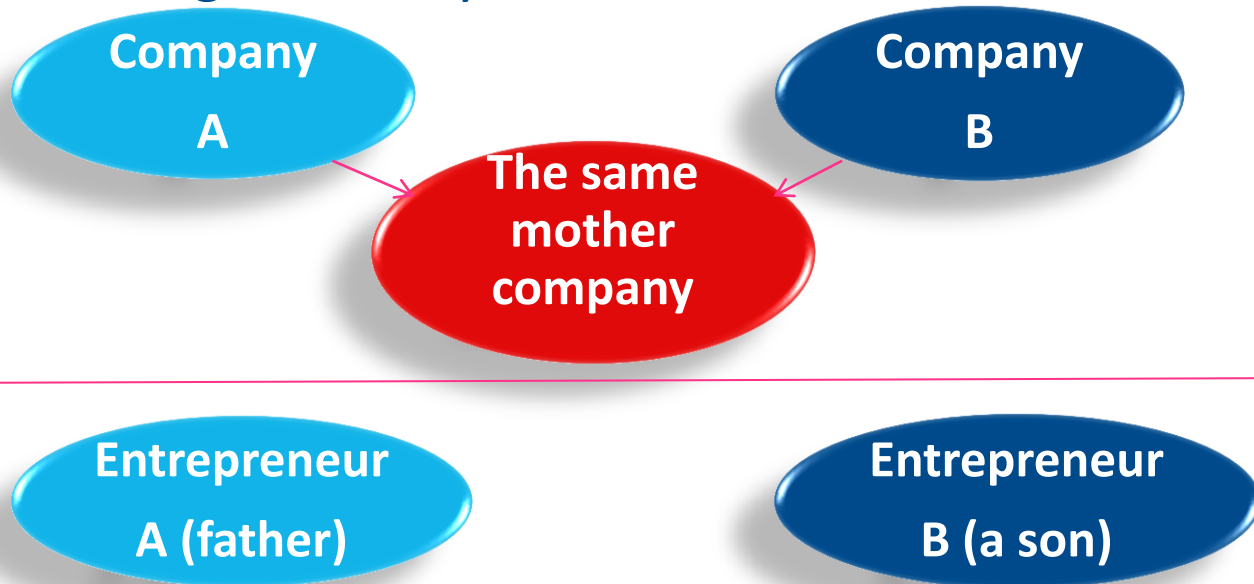
→ **Art. 57 par. 2 of Financial regulation on common EU budget (Regulation 966/2012) stipulates:**

1. The participants of financial operations and other entities participating in the realization and administration of the budget, including the preparation for these activities, in audit or inspection will refrain from any actions that could bring their interest in conflict with the interest of the Union.
2. For the purpose of the paragraph 1, the conflict of interest occurs if **family reasons, personal affiliation, political or national affiliation**, in case of **economic interest or other interest** held in common with the recipient of financial resources endanger the impartial and objective execution of functions of a participant of financial operations or other person according to paragraph 1.

Conflict of interests – 100 % correction – and what about companies?

Contracting Authority

Winner of the tender



CASE 1:

In case of the 2014 – 2020 programs it is an indirect expectation that anti – fraud measures enable discovery of suspicious cases during the project selection process. What actions could be proposed for joint consideration?

- new national strategies (internal anti-corruption programmes)
- emphases to risk factors during management controls (control lists with questions enabling to detect symptoms of possible corruption, controls of documents – if they are not distorted, rewriting or even adulterated)
- possible use of EU ARACHNE programme

One of the main topics in the audits conducted by EU institutions is the market price equivalence of project budgets. Can we expect that the EU shall create average/recommended/maximum prices for the main project elements eligible for funding? How can market price really be determined?

- more emphases to the economics of projects
- price comparison of project elements compared to prices in the usual place and time (possible especially in sphere of construction works, common technologies etc. – but what to do in cases of R&D, international experts etc.?)
- Czech Republic – special „URS software“ – comprehensive system of information, methodological manuals and procedures for determining the price of the works .

NEW APPROACH?

Please share your practical experience with the Simplified Cost Options (SCOs) method!

- no practical experience in the Czech Republic in the sphere of ERDF (used only for ESF measures)

CONCLUSIONS:

- very sensitive area
- more attention to the prevention is needed (too many restrictions now)
- education and dissemination of experience is needed
- clear rules and interpretations in advance

Thanks for your attention.

