

SUMMARY

12 July 2012

Report to the Flemish Parliament

**Statements of account paid by the Flemish Waterways and Sea Canal Agency
(agentschap Waterwegen en Zeekanaal)**



The Flemish Waterways and Sea Canal Agency (agentschap Waterwegen en Zeekanaal nv - W&Z) has paid statements of account amounting to 10.4 million euro, or 10.1% of the initial tenders, on an overall number of 261 works contracts. This means that the cost of works performed has risen, on average, by the same percentage. These high amounts often result from an inadequate preparation of the contracts. Moreover, the length of time taken for processing some statements has led to increased interest on arrears.

Introduction

The Court of Audit has examined the statements of account related to public works contracts that have been awarded by W&Z. A new statement is drawn up as soon as some elements of a running contract are modified. It sets the new quantity or the quantity estimated in the specifications that has been adapted. It also mentions the prices that have been corrected or agreed on following additions, changes or deletions.

Financial magnitude of the statements of account

With regard to the 261 works contracts (accounting for an aggregate of 102.6 million euro) that were accepted in 2009 and 2010, W&Z paid statements up to 10.4 million euro or 10.1% of the total tender amount. This percentage is calculated on a balance of the statements of account for plus or minus works and is an average. However, if the statements for plus or minus works are summed up (and not balanced), the percentage of all statements rises to 63%, which indicates that major changes have occurred during the completion of the works. Besides, the average figure conceals substantial statements of account for plus works.

Reasons for drawing up statements of account

The review of 26 selected public works files for which huge statements of account have been drawn up shows that the amounts claimed can mainly be attributed to an inadequate preparation of the contracts by W&Z. The statements cover the significant overruns of estimated quantities, as well as the alteration and extension of ongoing works, in most cases at prices that have been set outside of a competitive bidding process. Recurrent deficiencies are, among others, the poor quality of field studies, the sloppy drafting of the specifications, the weaknesses of the preliminary technical study, the late submission of urban planning applications, the slow pace of expropriations and the delay in launching a procurement procedure.

Regularity of the statements of account

In some cases, the extension of the works in progress has assumed such a proportion – additional works accounting for up to 214% of the initial contract – that it can genuinely be regarded as a new contract. An extension of this scope is contrary to the fundamental principles of equal treatment and fair competition, and it undermines the legal “lump sum” principle. The Court of Audit has noted several other breaches of public procure rules. For example, statements of account have sometimes proved to be direct award contracts, for which W&Z should have organized a competitive tendering procedure.

Interest on arrears

On the works that were handed over in 2009 and 2010, W&Z paid interest totalling just under one million euro. This huge amount is largely explained by the length of time taken for processing some statements of account and, consequently, the late payments made to the contractor. Although guidelines aimed at preventing arrears and limiting interest had been set out by W & Z in an administrative order issued in 2006, it is clear, in light of the files examined, that these guidelines are not yet sufficiently complied with (or, at least, not in due time).

Minister’s reply

In her reply, the Flemish Minister for Mobility and Public Works underlines that she agrees to the recommendations made by the Court of Audit. A proper and careful preparation of the works contracts is essential to avoid having to pay important statements of account (as well as interest on arrears) and to avoid using exceptional procedures when negligent acts occurred at the planning stage.

Information for the press

The Court of Audit exerts an external control on the financial operations of the Federal State, the Communities, the Regions and the provinces. It contributes to improving public governance by transmitting to the parliamentary assemblies, to the managers and to the audited services any useful and reliable information resulting from a contradictory examination. As a collateral body of the Parliament, the Court performs its missions independently of the authorities it controls.

The audit report on the *Statements of account paid by the Flemish Waterways and Sea Canal Agency* has been sent to the Flemish Parliament. The full version and this press release can be found on the Court’s website: www.courtofaudit.be.