

Tender Procedures for EU-funded Projects

Membership in the European Union opens up an opportunity for Bulgaria to utilize up to 7 billion EUR during the period 2007-2013. The economic and social areas eligible for subsidies are well defined in the seven Operational Programmes (OPs). Applications for financial assistance from EU funds will be submitted on the basis of detailed projects developed. Project implementation commences following the signature of a contract between the beneficiary and the Managing Authority. Where under individual projects a requirement exists to select a contractor for the purpose of executing construction works, providing services or supplying goods, tender procedures will be regulated by the provisions laid down in Bulgarian legislation. Where beneficiaries of funds under individual projects qualify as "assignors" pursuant to the definition set out in the Public Procurement Act (PPA), the assignor will utilize public funds made in compliance with the provisions laid out in PPA and applicable bylaws thereto.

Procurement Procedures

In Bulgaria procurement is regulated by the provisions of the Public Procurement Act (PPA), the Regulation on Small Procurements (RSP) and the Regulation on the Terms and Conditions as of Special Procurements (RTCSP).

The Public Procurement Act provides for 5 types of procedures:

- an open procedure where all stakeholders may submit proposals;
- a limited procedure where proposals may be submitted solely by applicants who have been invited to do so following preliminary selection;
- a procedure of negotiation following a notice where the assignor conducts negotiations in order to agree on the clauses of the contract to be signed with one or several contractors chosen following preliminary selection;
- a procedure of negotiation without notice where the assignor conducts negotiations in order to determine the clauses of a contract to be signed with one or several specific contractors;
- project competitions – a procedure where the assignor acquires a plan or project selected by an independent competition panel following a competition, either involving awarding prizes or not.

Where the beneficiaries qualify as "assignors" pursuant to the definition laid down in PPA and bylaws thereto the provisions set out in *Regulation no. 55 of the Council of Ministers on the Terms and Conditions of Selecting Contractors by Beneficiaries of Grant*

Funding from EU Structural Funds and Funds under the PHARE Programme (promulgated SG, no. 24 dated 20th March 2007, in force as from 20th March 2007) apply.

The Regulation sets out generally applicable, simplified procedures, defining the terms and conditions of utilisation of EU Structural Funds and funds under the PHARE Programme by this group of beneficiaries.

The responsibilities of beneficiaries in respect of the selection of subcontractors must be clearly set out in the grant contracts signed. The progress reports beneficiaries are required to submit to the Managing/Intermediary Body must contain information on the respective tendering or procurement procedures (if applicable). Additional documents should be attached to the reports (applicable solely to the first report following the tender or procurement procedure), which should be annexed to the project file. The reporting procedure and documentation rules form an essential element of the grant contract.

Costs Eligible for Reimbursement under EU Rules

As full member-state of the European Union (EU), during the period 2007-2013 Bulgaria will have the opportunity to utilise almost 7 billion EUR. The country has been granted recourse to project funding under seven Operational Programmes (OPs), which detail priority development areas.

The financial management and spending of funding available under the Structural Funds and the Cohesion Fund is of fundamental importance to Bulgaria, with funds management being the top-priority issue. All EU member states are required to adopt rules determining project cost eligibility that are fully in line with the regulations setting out the requirements in respect of the individual funds - the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund (CF).

On 7th March this year the Council of Ministers of the Republic of Bulgaria adopted rules of cost eligibility under the various Operational Programmes. These rules apply to all costs incurred under the Operational Programmes.

The individual Operational Programmes define sets of specific eligible activities and, respectively, costs. Therefore, each Managing Authority is required to draw up its own specific rules of cost eligibility under the respective Operational Programme. In principle, eligible costs are all costs incurred between 1st January 2007 and 31st December 2015. Costs must be incurred in relation to activities

defined and implemented under the supervision of the Managing Authority in accordance with project approval criteria. These criteria must be approved by the Monitoring Committee of the respective Operational Programme.

The Regulation, which sets out the parameters of cost eligibility in Bulgaria, defines **eligible costs** as follows:

- depreciation;
- contribution in kind (essentially, a non-cash contribution);
- organizational and management costs;
- cost of financial engineering tools;
- cost of legal advice and notary services;
- cost of the services of technical and financial experts, if directly linked to co-financed activities or deemed necessary for the preparation and implementation of activities;
- accounting and auditing costs; costs associated with the insurance of fixed assets acquired. Only tangible assets which meet the requirements of the Managing Authority are considered eligible.

By way of exception, under the European Social Fund the costs listed below are also considered eligible:

- salaries and other forms of remuneration, scholarships/bursaries and other income paid by third parties to the participants in a project activity;
- in respect of grants, indirect costs declared on flat-rate basis of up to 20% of the direct eligible costs for an activity.

Similarly, under the European Regional Development Fund the costs listed below are also considered eligible:

- multi-occupant residential buildings;
- buildings owned by public bodies or not-for-profit legally incorporated bodies intended to meet the social housing needs of low-income households or people with special needs.

For the purpose of funding the costs below are deemed **non-eligible**:

- Under the European Social Fund:

- Recoverable VAT
 - Interest on loans;
 - Purchasing items of furniture, equipment, motor vehicles, infrastructure, real estate and land;
- Under the European Regional Development Fund:
- interest on loans;
 - purchasing land, the total value of which is higher than 10% of total eligible costs in respect of an activity. By way of exception, and following due justification, the Managing Authority may approve a higher percentage in respect of the implementation of environmental protection activities;
 - nuclear power plant decommissioning;
 - recoverable VAT;
 - contributions in kind.
- Under the Cohesion Fund:
- interest on loans;
 - recoverable VAT;
 - residential construction;
 - purchasing land, the total value of which is higher than 10% of total eligible costs in respect of an activity;
 - decommissioning of nuclear power plants.

Three-Stage Process of Disbursement of Funding under the EU Structural Funds

By joining the family of EU member states Bulgaria has gained solid financial support under the European Structural Funds and the Cohesion Fund. During the period 2007-2013 beneficiaries in Bulgaria will have an opportunity to utilise over 7 billion EUR under seven Operational Programmes (OPs). Those applying with projects will receive assistance from the state, which is committed to ensuring the necessary co-financing from the National Fund of approximately 1.3 billion EUR over the same period.

During the seven-year period Bulgaria will additionally receive funding from sources other than the Structural Funds. Subsidies under the Common Fisheries Policy and the Rural Areas Development Programme exceed 3.3 billion EUR. The Ministry of Agriculture and Forests has been selected to act as Managing Authority for these programmes.

In comparison to the funding made available under the pre-accession tools – PHARE, ISPA and SAPARD Programmes – Bulgaria will gain access to funding exceeding the funding resources available prior to accession to the European Union by a multiple of three.

The state co-finances projects implemented under the European Structural Funds

The commitment of the country to receive funding under EU Structural Funds entails an obligatory state co-financing contribution. It will be provided from the state budget and will be disbursed via the National Fund, a unit within the Ministry of Finance. For the first seven-year period state co-financing will be in the region of 1.3 billion EUR.

The Ministry of Finance manages and coordinates the Structural Funds and the Cohesion Fund. Cash payments from the European Commission (EC) under the funds will be wired to bank accounts specifically designated for the individual Fund under which a project is funded. These accounts will be opened with the Bulgarian National Bank.

The financial commitment of the European Commission in respect of any individual year remains valid until the end of the second year. This condition is known as the N+2 rule. The General Regulation on the Structural Funds and the Cohesion Fund provides for an exception in the case of Bulgaria and Romania. In order to facilitate the efforts of these countries to absorb the funding available more efficiently the N+2 rule is transformed into the N+3 rule. However, these arrangements will apply only during the first three-year period, i.e. during the period 2007-2009, where afterwards the country will commence implementing the general EU rules on the absorption of funding.

Payments from the European Union to Bulgaria will be made in three stages.

Financial flows from EU to Bulgaria will cover advance payments, interim payments and a final payment.

Advance payments will be received during 2007, 2008 and 2009 and are determined as a percentage of the budget of the respective Operational Programme under individual Funds. The total amount of advance payments is 540 million EUR. Advance payments represent permanent turnover intended to fund payments from Bulgaria.

Interim payments represent amounts reimbursed in respect of eligible costs incurred and declared by the beneficiary after an audit has been carried out by the Certifying Body. These payments are made by the European Commission no later than two months after a notification for reimbursement is submitted by the Certifying Body.

The final payment from the European Commission is made on the condition that no later than 31st December 2017 the Commission has received: an application for funding submitted by the Certifying Body, a final report on the implementation of the Operational Programme submitted by the Managing Authority and a Final Certification submitted by the Auditing Body.

Key Participants in the Allocation of Funds

The key participants in the payment process are the beneficiary, the Managing (or Interim) Body, and the National Fund.

The beneficiary is responsible for payments to project contractors, receives advance, interim and final payments from the Managing (or Interim) Body.

The Managing Authority is responsible for payments to the beneficiary. This function may be delegated to an Interim Body.

The National Fund is the body responsible for receiving the funds from the European Commission made available under the Structural Funds and the Cohesion Fund. It provides the funding allowing the Managing/Interim Body to be make payments to beneficiaries.

Advance payments may not exceed 20% of total project value. They represent advance financial resource, intended to facilitate project implementation.

Interim payments are made on the basis of eligible costs effectively incurred and declared by the beneficiary. A mandatory requirement for interim payments to be made is that costs have been examined and verified by the Managing (or Interim) Body.

The final payment in respect of a project is made by the Managing (Interim) Body after project completion and verification of all eligible costs. The final payment takes account for all payments previously made, including advance payments to the beneficiary.

Payments to the beneficiary will be made in the national currency from a single treasury account. A decision adopted by the Council of Ministers provides for an opportunity to sign contracts in respect of up to 50% of the value of the respective OP prior to its approval by the European Commission. The intended purpose is facilitation and streamlining the expediency of the absorption of funding under the Structural and the Cohesion Funds. Notwithstanding the above, payments will be made after the approval of the respective Operational Programme.

The payment system set up in respect of the management of funding available under the Structural and the Cohesion Fund and the organization of cash flows and bank account guarantee the availability of a permanently available and effectively managed financial resource, which contributed to the successful implementation of the Operational Programme under the Structural and Cohesion Funds and implementation of the respective financial commitments of the European Union.

