



Questions & answers from implementation sessions – Secondary procurement

Implementation of Grant contracts by GBs “Collaborative grant scheme for innovative project ideas”

EuropeAid/162457/ID/ACT/ME

DATES: 27th/28th April 2020

Venue: Online sessions through Cisco Webex

Participants: IPA Staff tasked with grants management, 2 persons per lead grant beneficiary (Project Manager and Financial Manager) plus 1 representative of any partner.

Objective: To discuss implementation start and answer any pending issues, for the participants to become acquainted with the specific requirements and rules governing the grant projects' implementation in the area of secondary procurement.

During 2 days of implementation sessions regarding secondary procurement Grant Beneficiaries divided in 2 groups of participants were in the possibility to interact, ask questions and give comments. In order to share all information provided to each group of GBs, the summary of Q&A is provided as follows.

27/4/2020

- **How much time we should envisage for preparation of Simplified tender dossier and verification by CFCU?**

Preparation of Simplified tender dossier and verification by CFCU could take approximately one month or even more, but it really depends on the subject of procurement, experience of grant beneficiary and comments from the CFCU/need for another review of documentation.

- **Can the Single tender procurement documents be written in Montenegrin language? And consequently, can the offers be in Montenegrin language?**

Single tender procurement documents can be written in Montenegrin language (translated package of documents available under Tool 5) and offers can be in Montenegrin language if this is explicitly stated/requested in the tender documents.

- **Can we, as national public procurement entity (Institute for public health) use our already developed procurement procedures and tender documents in the local language and can the procurement process be implemented according to our national Montenegrin legislation in this area?**

For secondary procurement below 20.000 EUR (namely Single tender procedure) Grant Beneficiaries can choose to use their procurement procedures and tender documents in the local language and the procurement process can be implemented according to national Public



Procurement Law as long as these procedures and documents respect the basic principles of Annex IV of the Grant contract. If decided so, these procedures will be subject to control from the CFCU as the Contracting Authority.

- **We have to proceed with VAT exemption procedure for each procurement?**

VAT exemption procedure should be done for each Invoice, so basically it depends how many invoices are envisaged under each procurement.

- **Should the received financial offers include their price without VAT? There have been different interpretations, so we need a clear explanation as to whether it should be stated that the invoice must include the value of the VAT on which the exemption is sought?**

It is advised to state/highlight in the procurement documentation that prices in financial offer should be fulfilled without VAT cost. After the completion of the procurement process with signature of the contract and delivery of services/supplies, on the basis of pro-invoice (profaktura) you should request and receive VAT exemption from the CFCU, who issues 2 originals of certificate – one for the supplier, and one for your files. After receiving the certificate, the supplier issues the invoice without VAT. For detailed information please see VAT exemption instructions published on the CFCU website: <http://www.cfcu.gov.me/vijesti/156867/Nove-instrukcije-za-oslobadanje-od-placanja-PDV-a-decentralizovano-indirektno-upravljanje.html>.

- **How to implement the process of hiring field workers in different municipalities - is the request made for one field worker per municipality?**

When it comes to the hiring field workers in different municipalities, it is necessary to conduct market research to check if it is possible to engage one company who could insure all of the field workers (for example, employees assignment agencies). Please be informed that it is necessary to keep all the records of market research within your files as an audit trail and inform the Contracting Authority before procurement procedure launch, since this is related to preparing the procurement plan which the Beneficiary is obliged to submit within first month of implementation.

If there is one or more agencies found through the market research, the tender procedure should be conducted in accordance with the cumulative amount envisaged for field workers (Single Tender or Simplified Tender Procedure).

If this is not the case and after making sure that there is no possibility for tender procedure to be conducted, the service contract with each field worker can be signed separately (if the amount concerned is not subject to the procurement procedure) defining in each contract the amount and the service which should be provided for the amount assigned.

- **Can there be any deviation in the quantity of goods purchased, related to the purchase prices, which may be affected by the current situation? What to do in these situations?**

Any change of the quantity should be notified to the CFCU in advance/before starting the procurement process or the latest with the submission of the next Interim (6-month) or Final report (in line with Article 9.4 of General Conditions) with proper justification and reallocation of the budget, if there is any reallocation reflected by this change.



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- **Can the Single tender documentation that we prepare be sent to the CFCU for verification?**

There is no obligation of sending Single tender documentation to the CFCU for verification, only for Simplified tender procedure (above 20.000,00 EUR), but this issue can be agreed with the CFCU Project manager on case by case basis and according to the risk analysis. Specific questions in relation to the preparation of tender documentation may also be sent to the help-desk before tender launch.

- **If our Simplified tender procedure for supplies (above 20.000 EUR) fails, should we send the revised tender dossier to CFCU for another control?**

Yes, the revised tender dossier should be sent to CFCU for verification before starting the repeated procurement process.

- **In our project, we have to employ researchers (budgeted under BH 1) - can we engage them on the basis of service contract and what is the procedure of employment?**

Employing researchers (budgeted under BH 1) can be done according to your regular employment procedure/policy and they can be engaged on the basis of a labour contract. According to DEVCO COMPANION (<https://ec.europa.eu/europeaid/companion/> - The implementation of grant contracts - A users' guide), there is a situation under which employment based on the service contract is allowed under BH1. The following is explanation provided for Article 14.2 of General conditions - <https://ec.europa.eu/europeaid/companion/document.do?nodeNumber=19.3.1.2>:

Consultants (v. employees)

As a general rule, tasks performed by consultants, experts and/or other service providers (e.g. accountants, lawyers, translators, external IT staff, etc...) are to be considered as resulting from implementation contracts (Article 10). Consequently, beneficiaries must award these contracts in accordance with Annex IV. These costs are thus not considered as human resources (budget heading 1) but as other costs/services (notably budget heading 5 or 6).

Specific case: 'in-house consultants'

In house / 'intra muros' consultants are natural persons working on the basis of a service contract as opposed to employees hired on the basis of a labour contract. They join a beneficiary's project team and deliver 'external services'. The costs arising from these in-house consultants are in principle to be considered as costs relevant to implementing contracts.

However, as an exception to the rule, these costs may be considered as personnel costs regardless of whether the consultants are self-employed or employed by a third party, if the following cumulative conditions are fulfilled in accordance with the terms of the call for proposals and subject to the eligibility of costs:

- (a) a beneficiary has a contract to engage the consultant to work for it and (some of) that work involves tasks to be carried out under the action funded by the grant;



- (b) the consultant must work under the instructions/supervision of the beneficiary;
- (c) the consultant must work in the premises of the beneficiary as a member of the project team;
- (d) the output of the work belongs to the beneficiary;
- (e) the costs of employing the consultant are reasonable, are in accordance with the normal practices of the beneficiary and are not significantly different from the personnel costs of employees of the same category working under a labour contract for the beneficiary;
- (f) travel and subsistence costs related to such consultants' participation in project meetings or other travel relating to the action is directly paid by the beneficiary or in any case according to the beneficiary's own staff procedures.
- (g) the consultant uses the beneficiary's infrastructure (i.e. user of the 'indirect costs').

These conditions describe a de facto situation of subordination, as in a traditional labour contract (regardless of the legal form). Therefore in these cases, if the national applicable legislation allows for a de facto employee to be hired under a service contract, and provided that all the conditions stated above (similar costs, property of results, subordination, etc.) are satisfied, these service contracts may be assimilated to staff costs in the budget and for all useful purposes (for instance procurement principles set out in Annex IV would not apply).

This is to be evaluated by the contracting authority on a case by case basis, so it is strongly suggested to discuss it as soon as possible with the contracting authority to avoid any problems.

Grant beneficiaries should decide if they will hire a person on the basis of the labour or service contract.

- **Should we envisage for secondary procured researchers (budgeted under BH5) that they fulfil Time sheets (TS) to prove their work on the project?**

You can envisage fee-based service contract for secondary procured researchers (budgeted under BH5) under which they fulfil TS to prove their work on the project, in order for you as the Grant Beneficiary and Contracting Authority in the case of secondary procured contract can verify their engagement on the project. But you can also envisage global price contract where it is necessary to have proof that they have delivered outputs defined in the contract. With regards to supporting documents to be delivered to the CFCU as the Contracting Authority for your Grant contract, please consult the Tool 9 – Guidelines on Financial Reporting.

- **Regarding the procurement process of engaging researchers it is a bit difficult since they are in database of researchers. Could you please advise us how to proceed?**

There are no limitations to how many potential service providers you will send the request for offers, except of obligation for having the obligatory minimum 3 potential candidates for simplified procurement procedure (above 20.000 EUR). For single tender procedure there is a recommendation to invite minimum 3 potential tenderers to make sure that you will respect the



sound financial management principle. But also, it is allowed to send this request/to contact as many candidates as possible or inform the public through other online channels (such as your website, social networks and similar), if such need exists and will provide you with better selection process of candidates.

- **Is it allowed that we participate/cover the extra expenses if all offers under the supply procurement procedure are above the estimated procurement value or should we repeat the procurement process?**

According to PRAG 2018 provisions for procurement of supply contracts (Section 4.3.9.6. Choice of contractor) the successful tenderer is the one submitting the least expensive tender classified as 'technically compliant' during the technical evaluation. It must be declared the successful tender if it is equal to or lower than the maximum budget available for the contract. If the chosen tender exceeds the maximum budget available for the contract, Section 4.2.6.1(j) applies, as follows: "Where the tender procedure has been unsuccessful, that is to say, where no qualitatively and/or financially worthwhile tender has been received, in which case, after cancelling the tender procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the procurement documents are not substantially altered". If the negotiation process fails, the procurement should be repeated.

ADDITIONAL INFORMATION PROVIDED DURING THE TRAINING SESSIONS:

- The Grant Beneficiaries should perform their secondary procurement according to Annex IV of grant contracts since the contract and its annexes as their formal obligation.
- Engaging people who are working in the Beneficiary or project Partners institution/organization or in the affiliated entities as external experts is not allowed and it will be considered as non-eligible cost.
- External expert costs (procured under Budget heading 5 and 6) should include service fees together with cost of travel, accommodation and other related expenses.
- The time-limits for receipt of tenders and requests to participate must be long enough to allow interested parties a reasonable and appropriate period to prepare and submit their tenders; please take into account the minimum deadlines:
 - for Single tender procedure - at least 10 days are given between the invitation and the deadline for submission of the tenders; and
 - for Simplified procedure - at least 30 days are given between the invitation and the deadline for submission of the tenders
- Guidelines for drafting technical specifications for Supply contracts (A11b and A11c) are available on the following EuropeAid PRAG webpage: <https://ec.europa.eu/europeaid/prag/annexes.do>.
- If the current situation has delayed the implementation of the projects, hindered the realization of some of the planned activities, or led to the need to prolong the current activities, or in any other way affected the realization of the activities of your projects - we advise to make modifications to the contract using Tool 1 of the Implementation Package (Notification letter), contact the CFCU for a request to modify the activity / timetable.