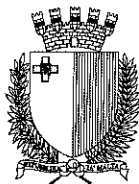


L-UFFIČĠJU TAL-PRIM MINISTRU



MALTA

OFFICE OF THE PRIME MINISTER

*Divisjoni għall-Ippjanar u Koordinazzjoni tal-Prijetajiet*

*Planning and Priorities Co-ordination Division*

Internal Note 02/2013

1<sup>st</sup> March 2013

To: ESF IB - TAF  
Cc: Line Ministries  
Certifying Authority  
Audit Authority  
Treasury

## **Internal Note to ESF Intermediate Body - TAF:**

### **Issues arising from procurement of services by Private Bodies**

This internal note ought to be seen in conjunction with guidance provided by the Managing Authority (MA) throughout the implementation of the Scheme with regards to the Procurement Services by Private Bodies.

It is being issued in view of the difficulties identified by the MA itself and the ESF Intermediate Body (IB) in the processing of claims presented by undertakings<sup>1</sup> in relation to services under the Training Aid framework (TAF) aid-scheme co-financed by Structural funds. Such guidance applies to those instances where: the procurement was not based on the cheapest quotation obtained (from a minimum of three quotations) from three different suppliers of the services for which co-funding is being requested; the costs exceeds €2,500<sup>2</sup>; the applicant failed to adequately justify why three quotation could not be obtained; and/or quotes were acquired from suppliers/service providers who are either related between them and/or to the Beneficiary enterprise.

<sup>1</sup> An undertaking is considered to be any entity carrying out an economic activity irrespective of its legal form excluding public sector entities but inclusive of self employed persons (self employment being the primary employment), non government organisations and professional bodies.

<sup>2</sup> If the cost does not exceed €2,500, it is still recommended that three quotations are sought. Nevertheless, if three quotes are not provided for claims below €2,500 there will be no financial implications.

As a general rule, the MA has always reiterated that even though Aid Scheme undertakings are not governed by the Public Procurement Regulations, since they are benefitting from public funds, they have to abide by the spirit of these regulations. EU Treaty principles and the General Financial Regulation oblige Member States to ensure that public funds (irrespective of whether they are being used by public or private bodies) are used in a manner that ensures best value for money, good governance, and compliance with the main principles of non-discrimination, equal treatment, transparency and proportionality.

It is pertinent to note that in the IB Network meeting of 03rd February 2010, DG (PPCD) emphasised the importance of transparency, competition and good governance in the implementation of aid schemes and reiterated that although there is no EU rule stating that three quotations should be received prior to procurement, this was considered to be the most form which would ensure a good snapshot of the market and also conducive to good governance. It was also emphasised that in those instances where the Beneficiary selects a more expensive quotation, this can be allowed as far as the IB reimburses the equivalent of the cheapest quotation. At this point, the MA was already arguing against procurement from related companies knowing that such instances would give rise to issues of transparency and the possibility of unfair competition. In addition, the MA needs to highlight that such practices may bring into question the need for the grant in the first place. In this regards it was recommended that the IB should start including declarations - endorsed by the Beneficiary - stating that the three quotations submitted do not include quotations from any of the company's subsidiaries. In conjunction to this, IB was also advised to double check relationships with MFSA records (IB Network Meeting, 3<sup>rd</sup> February 2010). Failure to abide by the aforementioned practices will leave the IB susceptible to defend this during future audits.

The IB carries out functions similar to those of the MA. It has been entrusted in fact with two separate and distinct functions: project selection and monitoring; and control. The payment process is in the hands of the IB together with the Line Ministry (LM) and Treasury.

Despite this, as MA we are aware of a number of instances from the earlier claims for reimbursement wherein the IB is finding it difficult to process claims for payments by Beneficiaries (or the MA not recommending paid claims for certification), either because the procurement was not made on the cheapest quotation, or three quotes were not submitted (usually the IB would have accepted a justification presented by the Beneficiary for not selecting the cheapest quotation and/or not submitting three quotations), or the quotations were not obtained from three independent service providers (either related between them, or with the Beneficiary), or else the procurement was made from a company related to the Beneficiary.

In such circumstances, while the MA reiterates strict adherence to the "three-quotations", the "cheapest" and the "non-related" principles, the IB would need to obtain and provide further assurance that expenditure was correctly incurred, that the grant did not lead to profits within the undertaking concerned, that the procurement, even though not based on the cheapest quotation and/or three quotations were not submitted and/or done from a related company, there still was adherence to the principle of best value for money, good governance, transparency, equal treatment, non-discrimination and proportionality, still prevailed. The MA understands that the quotations were checked by the Evaluation Committee during evaluation stage, nevertheless given the problems the MA encountered during documentary on-the-spot checks the IB needs to check the quotations before processing the Statement of Expenditure.

Following internal discussions and taking into account international accounting standards and principles, as well as the specificities of the local market, in order not to leave claims lying idle in the system, the MA has sought to recommend a balanced guidance which is not totally exclusive but at the same time seeks to preserve the main principles of good governance.

In cases where **procurement was not based on the cheapest quotation**, the IB can undertake a detailed cost-comparison exercise between all quotations submitted to demonstrate that even though the selected quotation was *prima facie* not the cheapest, if one is to include and compare all items, it would still be the cheapest of the three, and that likewise, one can had a true and realistic snapshot of the market. Such an exercise needs to be documented and filed.

1. It is important to note that if this exercise is either not undertaken or the outcome does not justify the IB's decision to reimburse on the non-cheapest quotations, the IB / MA will have to recover the difference between the claimed amount and that of the cheapest quotation (unless the amount is below the threshold i.e. €2,500).
2. Nevertheless, with regards to claims processed after the 2<sup>nd</sup> April 2012 the IB should always reimburse the equivalent of the cheapest quotation. This is in line with instructions issued via email<sup>3</sup>.

In cases where **beneficiaries failed to produce a minimum of three quotations obtained from three independent service providers**:

---

<sup>3</sup> Email sent by PPCD dated 2<sup>nd</sup> April 2012 (10:00) re TAF guidelines (i.e. With regards to feedback in relation to TAF application and implementation guidelines it was recommended that the TAF guidelines clearly state that the Grant Agreement will be worked out on the cheapest quotation). The subsequent SOEs were raised on the basis that claims processed after 2<sup>nd</sup> April 2012 are being pegged on the basis of the cheapest.

3. If still in time (and if it still makes sense), Beneficiaries may be given the chance to rectify the situation and to re-submit all three quotations anew to determine a fair market price and to ensure equal treatment between all suppliers.
4. In the case of negative quotations or the three quotes were not provided, there has to be either a strong justification for not having three quotes or otherwise it is therefore to be considered that procurement was done without obtaining a fair and realistic snapshot of the market, and in such cases, a 10% financial correction on the claimed amount is being recommended (unless the amount is below the threshold i.e. €2,500).

In cases where ***procurement was made from a related enterprise:***

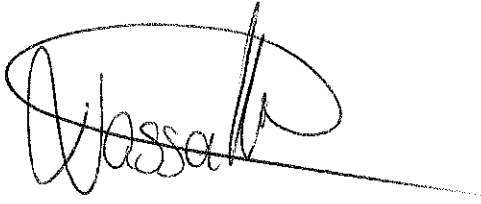
5. The IB should obtain assurance that the grant did not lead to profit within the undertaking concerned. Reasonable assurance on this can be obtained by asking for a declaration from the supplier / service provider's accountant / auditor stating that the sale did not involve intra-enterprise profits (i.e. was based solely on the cost, without a mark-up);
6. Further assurance can be obtained by asking for a copy of pay slips related to the training provided. Nevertheless, the MA understands that this is difficult especially in the case of foreign companies.

These recommendations are being presented to help the IB deal with those cases wherein the MA's instructions to reimburse on the cheapest and to procure from non-related companies, were not fully adhered to. It is to be made clear that such recommendations are only meant for "partial mitigation" to strengthen the reasonable assurances needed on such "dubious" cases, and do not offer a guarantee against any future financial recoveries. Additionally, they should not be regarded as alternative methods to those reiterated by the MA in the implementation of the scheme, i.e.:

- Beneficiaries submitting a minimum of three comparable quotations;
- Quotations should be obtained from independent suppliers / service providers;
- Procurement cannot be made from a company which is related to the Beneficiary;
- The IB should always reimburse the equivalent of the cheapest quotation.

The MA stresses that it is ultimately the IB who should be making recommendations to solve such implementation issues (in light of the guidance provided). It is important that any decisions taken by the IB are guided by the principles of sound financial management and good governance. Each case has to be looked at on its own merits and discussed in depth to ensure that any decision taken is sound. In this regard, the MA remains at the IB's disposal for discussion and support where additional guidance is

necessary. LMs are also encouraged to support the IB in its effort to implement the TAF scheme in an efficient and effective manner.

A handwritten signature in black ink, appearing to read 'Jonathan Vassallo', with a long horizontal line extending from the end of the signature.

**Jonathan Vassallo**  
**Head Managing Authority**

