

GUIDANCE NOTE ON LARGE-SCALE PROJECTS (LSP)

1. DEFINITION and CRITERIA:

- According to the CBC Implementing Rules Article 2 (7) *LSP's are projects comprising a set of works, activities or services intended to fulfil an indivisible function of a precise nature pursuing clearly identified objectives of common interest for the purposes of implementing cross-border investments.* Article 4: *"... the participating countries may also, in agreement with the European Commission, jointly identify large-scale cross-border investment projects which will not be selected through calls for proposals: these projects shall be specifically mentioned in the programme or selected at a later stage by the Joint Monitoring Committee, ..., provided that they are consistent with the programme's priorities and measures and that there is a budget specifically for this purpose."*
- A LSP shall fulfil the following criteria:
 - Be directly related to the Programme and its priorities,
 - Be crucial for the development of the part of the Programme area,
 - Have a clear cross-border impact,
 - Have an investment (infrastructure) character,
 - Be coherent with national/regional development strategies and have support from the national/regional level authorities on both sides of the border
 - Have outcomes of a sustainable character,
 - Be compliant with the criteria defined by the programme / by the JMC / applicable rules and procedures (cross-border partnership, size of grant, eligibility of the applicant, eligibility of the action, eligibility of costs etc.)
 - The beneficiary must be clearly identified as the only one being able to implement the LSPs.

2. IDENTIFICATION

If the percentage of the overall programme allocation dedicated to LSPs is not indicated in the Joint Operational programme, we recommend, as a principle, to limit this portion to a maximum of 30%.

If the LSP's have not been described or listed in the JOP, the JMC may identify a shortlist of possible LSP's¹ in accordance with the method of identification decided upon by the programme.

The recommended method of identification is described below and is divided into different steps:

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¹ The programme implementation schedule should be carefully considered in this respect. All projects' activities must end on 31 December 2014.

Step 1: Shortlist

The JMC will approve a draft shortlist of large scale projects on the basis of **project summaries** which should include the following elements:

- a brief project description
- an overall indicative budget
- identification of the beneficiary and partners
- justification of the choice of both beneficiary and partners, in line with section 6.3.2 of PRAG²
- justification that both beneficiary and partners possess sufficient operational and financial capacity to implement the project
- justification of how the project meets the criteria listed in Point 1 above.

The minimum requirements for this summary (and possibly a template) shall be defined by the programme authorities.

The task of the preparation of the project summary may be shared between the national authorities of the countries where the project will be implemented and the potential beneficiary and partners.

The decision of the JMC should have the form of a **written recommendation** reflecting how each proposal complies with the minimum criteria.

At this stage, the draft shortlist accompanied by the project summaries and the JMC's recommendation, should be **submitted to the EC** (DG EuropeAid). DG EuropeAid shall check the relevance of the projects, if necessary in cooperation with other relevant DGs. Projects accepted by the EC shall form the final shortlist.

Step 2: Final list of projects to be financed

Once the shortlist has been confirmed by the EC the JMC shall request the potential beneficiary to provide the following additional documents:

- a feasibility study
- an environmental impact assessment
- evidence of ownership or access to the land

The JMC may request these documents either for all shortlisted projects or only for those with the highest ranking by the JMC.

² An award of a grant without a call for proposals (a **direct award procedure**) is only possible:

1. Where the grant is awarded to a body with a de jure or de facto monopoly, duly substantiated in the award decision. For these purposes, "de facto" or "de jure" monopoly means that the beneficiary, which may be a consortium:
 - has exclusive competence in the field of activity and/or geographical area to which the grant relates pursuant to any applicable law; or
 - is the only organisation (i) operating or (ii) capable of operating in the field of activity and/or
 - geographical area to which the grant relates by virtue of all considerations of fact and law
2. For actions with specific characteristics that require a particular type of body on account of its technical competence, its high degree of specialisation or its administrative power, on condition that the actions concerned do not fall within the scope of a call for proposals.

If feasibility studies and/or environmental impact assessments are not available for some of the projects, the JMC shall instruct the JMA to sign service contracts with external experts/consulting companies to procure these studies.

The external experts/consulting companies shall be selected and contracted according to national procurement rules of the JMA.

The studies may be financed from the relevant priority allocation. Depending on the size of the project, the estimated cost of this feasibility study could be +/- 200.000 EUR and the implementation period +/- 6 months.

Based on these additional documents, the JMC shall draw up the draft final list of projects to be financed.

The decision of the JMC should have the form of a **written recommendation** reflecting the admissibility of the additional documents.

When taking this decision, the JMC may be assisted by experts, who may be employed by either national administrations of participating countries or private consulting companies.

The final draft list accompanied by the additional documents and the JMC's recommendation should be **submitted to the EC** (DG EuropeAid). DG EuropeAid shall check the admissibility of the projects with respect to their feasibility, environmental impact and their viability in terms of land ownership, if necessary in cooperation with other relevant DGs. Projects accepted by the EC shall form the final list of projects to be financed.

3. AWARD PROCEDURE AND CONTRACTING PHASE

Once the final list of projects has been confirmed by the EC, the JMA shall approach the beneficiaries and request the following documents required for the signature of a grant contract:

- a detailed Description of the Action
- the final Budget
- and any other required annexes

The grant contract should be the standard grant contract from the PRAG. Derogations already agreed upon by the EC within the framework of another call for proposals do not have to be submitted again for approval.

4. SUBCONTRACTING/ PROCUREMENT BY THE GRANT BENEFICIARY AND PARTNERS

- The procurement procedure for works should comply with Annex IV of the grant contract (application of principles such as transparency, equal treatment, value for money etc). However, the Programme may require that beneficiaries and partners from all or some participating countries use instead of Annex IV of the grant contract the procurement rules stipulated in chapters 3, 4 and 5 of the PRAG if the programme documents already foresee this possibility.
- The beneficiary and its partners should possess the necessary human resources to draft the tender documentation for works and to supervise the implementation of the works contract. If this is not the case, the beneficiary may contract these activities to external

experts/companies, in accordance with the procurement rules set in Annex IV of the grant contract or chapter 4 of the PRAG, depending on the solution adopted by the programme. Please remember that under no circumstances costs incurred before the signature of the grant contract between the JMA and the Beneficiary will be considered eligible. The beneficiary, partners and contractors may only start working after the signature of the grant contract.

5. CONTROL BY THE JMA

- Depending on the provisions contained in the JOP, the JMA may require that the Beneficiary submits the tender documentation and the tender evaluation report for works for its prior approval.
- The JMA may also send observers (never voting members) to participate in the tender evaluation.
- If the JMA does not possess the necessary expertise to review the tender documentation and the evaluation report and to act as an observer during the tender evaluation, it may contract these activities to external experts or companies. If these costs are financed from the Technical Assistance budget, the JMA should select the external experts/companies according to its national procurement rules.