

CONTRACT FOR FUNDING
of
PROJECT DEVELOPMENT SERVICES

between

EUROPEAN INVESTMENT BANK

and

MUNICIPALITY OF KAPOSVÁR CITY

CONTRACT NUMBER: ELENA-2017-097

Kaposvár, 21. 12. 2018

Luxembourg, 27. 12. 2018

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Definitions used in ELENA contracts between the Bank and Final Beneficiaries

Covenant of Mayors Initiative	means the initiative launched by the European Commission on 29 January 2008, under which the signatory cities have formally committed themselves to going beyond the objectives of the "20-20-20" Initiative in terms of reducing their CO ₂ emissions through energy demand and renewable energy actions;
ELENA Facility	European Local Energy Assistance Facility, set up by the European Commission and the European Investment Bank (EIB) under the Sustainable Energy Financing Initiative;
Eligible Costs	means the costs of external experts contracted by the EIB or the Final Beneficiary, or additional staff hired by the Final Beneficiary (e.g. to set up project implementation units), to provide Project Development Services to help prepare, implement and finance the Investment Programme;
Final Beneficiary	means both public and private project promoters that benefit from Project Development Services under the ELENA Facility;
Horizon 2020	means "Horizon 2020 the Framework Programme for Research and Innovation (2014-2020)", established by Regulation (EU) No 1291/2013 of the European Parliament and of the Council;
Investment Programme	means an eligible investment project or a group of projects. The Investment Programme or part of it can be implemented through other entities than the Final Beneficiary;
Leverage Factor	means the ratio between the total investment costs of the Investment Programme supported and the total ELENA resources attributed to the Project Development Services;
Participating Countries	means EU member states or Horizon 2020 Associated Countries;
Project Development Services (PDS)	means technical assistance requested by the Final Beneficiary to help prepare, implement and finance an eligible Investment Programme and implement the operational objectives of Horizon 2020;
"20-20-20" Initiative	means the European Union initiative which aims at reducing greenhouse gas emissions by at least 20%, increasing the share of renewables in energy consumption to at least 20% and improving energy efficiency by at least 20%, all by 2020.

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CONTRACT FOR FUNDING OF PROJECT DEVELOPMENT SERVICES

CONTRACT NUMBER: ELENA-2017-097

relating to the implementation of Project Development Services entitled "KaposGrid Smart Urban Energy Project" (KaposGrid) in the framework of the ELENA Facility (the "**Contract**"). (This financing benefits from a grant under the Horizon 2020 Programme).

The **European Investment Bank (EIB)** (hereinafter referred to as the "**Bank**"), established at 98-100, boulevard Konrad Adenauer, L-2950 Luxembourg, Grand Duchy of Luxembourg, represented for the purposes of signature of this agreement by Mr François Trévoux, Director, and Ms Sonja Malkki, Head of Division,

on one part,

and

Municipality of Kaposvár City, Kossuth tér 1., 7400 Kaposvár, Hungary (hereinafter referred to as the "**Final Beneficiary**"), represented for the purposes of signature of this contract by Mr. Károly Szita, Mayor and Ms Beáta Balogh, Economic Manager of the Mayor's Office,

on the other part

HAVE AGREED

The **Special Terms** and the **General Terms** below, and the following **Annexes**:

Annex I	Description of the Project Development Services and the planned Investment Programme
Annex II	Estimated budget of the Project Development Services
Annex III	Eligibility rules for the Project Development Services and the planned Investment Programme
Annex IV	Technical implementation reports and financial statements
Annex V	Fiche for requesting ex-ante Bank comments on the terms of reference (ToRs) of large sub-contracts
Annex VI	Reference to ELENA - Horizon 2020 funding and legal disclaimer
Annex VII	ELENA PDS Factsheet
Annex VIII	EIB Guide to Procurement

In the event of discrepancies, inconsistencies and/or conflict between the terms of this Contract, the documents shall prevail in the following order:

- the Special Terms
- the General Terms
- Annex I
- Other Annexes

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I — SPECIAL TERMS

ARTICLE I.1 — PURPOSE

I.1.1. The Bank has decided to award funding for the Project Development Services entitled "KaposGrid Smart Urban Energy Project" under the terms and conditions set out in the Special Terms, the General Terms and the Annexes to the Contract.

I.1.2. The Final Beneficiary accepts the Contract and undertakes to do everything in its power to carry out the work programme defined for the Project Development Services as described in Annex I, acting under its own responsibility.

ARTICLE I.2 — DURATION

The Contract shall enter into force on the first day of the next month following its signature by the parties and shall remain in full force and effect for 3 (three) years, unless terminated earlier in accordance with Article II.8.

ARTICLE I.3 — ROLE OF THE FINAL BENEFICIARY

The Final Beneficiary shall 'inter alia':

- (a) ensure that the Project Development Services are implemented in accordance with the Contract;
- (b) be responsible for supplying all documents and information to the Bank which may be required under the Contract, in particular in relation to the payment requests;
- (c) inform the Bank of transfers of budget, as provided in Article II.9.3;
- (d) establish the payment requests, detailing the estimated budget of Project Development Services as foreseen in Annex II, and the actual costs incurred.

ARTICLE I.4 — FINANCING THE PROJECT DEVELOPMENT SERVICES

I.4.1. The total Eligible Costs are estimated at EUR 3 419 292.00 (three million, four hundred and nineteen thousand, two hundred and ninety-two Euro), as shown in the estimated budget of Project Development Services in Annex II.

I.4.2. The Bank shall contribute a maximum 90% of the total Eligible Costs indicated in Article I.4.1, with a maximum of EUR 3 077 363.00 (three million, seventy-seven thousand, three hundred and sixty three Euro).

I.4.3. The amount of the Investment Programme as defined under Article I.4.4 to be prepared under the Project Development Services supported by this agreement must represent at least 20 times the amount of the total contribution by the Bank as defined under Article I.4.2 (Leverage Factor).

I.4.4. The amount of the Investment Programme corresponds to the sum of:

- (a) the investment occurred during the contract period which has been directly supported by the Project Development Services under this agreement; and
- (b) the estimated value of the contract for further investment which has been supported by the Project Development Services under this agreement, as published in the relevant notice relating to the procurement procedure for this investment and in accordance with applicable procurement rules.

To qualify for the inclusion under point I.4.4(b), the related budget must have been fully secured prior to publication and hence the award cannot be made conditional on the availability of

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budgetary resources. Evidence to that effect must be provided. An eventual cancellation of the tender procedure in accordance with applicable rules for reasons other than the non-availability of budgetary resources shall not affect the inclusion of the estimated value of the contract in the determination of the amount of the Investment Programme as per I.4.4(b).

ARTICLE I.5 — PAYMENT ARRANGEMENTS

The Project Development Services shall be funded in accordance with the following payment provisions:

I.5.1. First pre-financing

Within 45 (forty-five) calendar days from the entry into force of the Contract, a pre-financing payment of EUR 307 736.00 (three hundred and seven thousand, seven hundred and thirty-six Euro) representing 10% of the amount specified in Article I.4.2, shall be made to the Final Beneficiary.

I.5.2. Second pre-financing

The Final Beneficiary may request a second pre-financing payment request of 40% of the amount specified in Article I.4.2, which shall be accompanied by the interim report as per Article I.6 below.

Payment shall be made to the Final Beneficiary upon approval by the Bank of the interim report. The Bank shall have 30 (thirty) days to approve or reject the report and to pay the second pre-financing, or to request additional supporting documents or information. The Final Beneficiary shall have 15 (fifteen) calendar days in which to submit additional information or a new report. The payment of the amount of the second pre-financing may be suspended by the Bank in accordance with the procedure in Article II.11.2.

The payment in full of the new pre-financing payment shall be subject to the consumption of at least 70% of the total amount of any earlier pre-financing. Where the consumption of the previous pre-financing is less than 70%, the amount of the new pre-financing payment shall be reduced by the unused amounts of the previous pre-financing payment. The statement of the beneficiary's outlay shall be produced in support of any request for a new payment.

I.5.3. Payment of the balance

Upon completion of the Project Development Services, the Final Beneficiary may send a payment request of the balance, accompanied by the final implementation report as per Article I.6 below.

The balance of the contractual amount shall be paid to the Final Beneficiary upon approval by the Bank of the final implementation report and after the Bank has checked that the amount of the Investment Programme supported by the ELENA Project Development Services has represented at least 20 times the amount of the Contract as defined under Article I.4.2. If the Leverage Factor, as defined in Article I.4.3., is not respected, the Bank will have the right of recovery of part or all of the grant in accordance with the procedure in Article II.13 of the amounts paid pursuant to Articles I.5.1 and I.5.2.

The Bank shall have 60 (sixty) days to approve or reject the final implementation report and to pay the balance, or to request additional supporting documents or information. The Final Beneficiary shall have 20 (twenty) calendar days in which to submit additional information or a new report.

The payment of the balance may be suspended by the Bank in accordance with the procedure in Article II.11.2.

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ARTICLE I.6 — SUBMISSION OF REPORTS AND OTHER DOCUMENTS

I.6.1. In accordance with Annex IV of the Contract, and in the format provided by the Bank, the Final Beneficiary shall submit the following documents:

- (a) an Inception Report – a detailed work programme of the Project Development Services; covering the 3 (three) months after the starting date as specified in Article I.2.
- (b) Bi-annual Progress Reports; every 6 (six) months from the starting date specified in Article I.2 onwards and for the entire duration of the Project Development Services.
- (c) an Interim Report (including financial statements); covering the 18 (eighteen) months after the starting date as specified in Article I.2.
- (d) a Final Implementation Report (including financial statements); 1 (one) month after the closing date of the Project Development Services as specified in Article I.2.

All these documents shall be submitted in English or French, in 1 (one) original and 1 (one) electronic format. Any other deliverable shall be submitted in accordance with Annex I.

I.6.2. The Interim Report, covering the period from month 1 to month 18 shall be submitted within 30 (thirty) calendar days of the end of the reporting period in question.

I.6.3. The Final Implementation Report, covering the whole duration of the Project Development Services, shall be submitted within 30 (thirty) calendar days following the closing date of the Project Development Services specified in Article I.2. The Final Report shall include an audited financial statement on the Project Development Services costs and a reference to the specific eligible components of areas covered by the Project Development Services for the development of the Investment Programme as described in Annex III of the Contract.

I.6.4. Where the Final Beneficiary fails to present any of the required reports and fails to furnish an acceptable written explanation of the reasons why it is unable to comply with this obligation, the Bank may terminate this Contract, refuse to pay any outstanding amount and recover any amounts unduly paid.

I.6.5. The Bank shall review all reports specified in I.6.1 above but shall only give formal approval to the interim and final implementation reports.

ARTICLE I.7 — BANK ACCOUNT

Payments shall be made to the Final Beneficiary's bank account or sub-account denominated in Euro, as indicated below:

Name of the bank:	OTP Bank Nyrt
Address of the branch:	2 Széchenyi square, Kaposvár, 7400 Hungary
Precise denomination of the account holder:	KMJV Önkormányzata ELENA Projekt
Full account number (including bank codes):	HU16 1175 1432 4417 1887 0000 0000
IBAN account code:	HU16
BIC code:	OTPVHUHB

This account or sub-account must make it possible to identify funds paid by the Bank.

The Final Beneficiary shall inform the Bank in writing without undue delay of any foreseen change of the above bank account details, which would come into force upon return letter of acceptance by the Bank of the new bank account details.

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ARTICLE I.8 — GENERAL ADMINISTRATIVE PROVISIONS

Any communication in connection with this Contract shall be in writing, in English or in French, indicating the number of the Contract and the title of the Project Development Services, and shall be sent to the following addresses:

For the Bank:

European Investment Bank (EIB)
Projects Directorate
Energy Efficiency & Small Scale Energy Projects
Mr Ralf Goldmann, Head of Division
100, Boulevard Konrad Adenauer
L-2950 Luxembourg

Ordinary mail shall be considered to have been received by the Bank on the date on which it is formally registered by the unit responsible at the Bank referred to above.

For the Final Beneficiary:

Kaposvár Megyei Jogú Város Önkormányzata (Municipality of Kaposvár)
Ms Katalin Kovács, Environmental Development Director
Kossuth tér 1.
7400 Kaposvár
Hungary

ARTICLE I.9 — LAW APPLICABLE AND COMPETENT COURT

The Project Development Services are governed by the terms of this Contract and by EU law.

Any dispute between the Parties as to the interpretation, application, or performance of this Contract, including its existence, validity or termination, not settled amicably shall be submitted to the jurisdiction of the Court of Justice of the European Union.

II — GENERAL TERMS

PART A — LEGAL AND ADMINISTRATIVE PROVISIONS

ARTICLE II.1 — LIABILITY

II.1.1 The Final Beneficiary shall be responsible for complying with any legal obligations incumbent on it.

II.1.2 The Bank shall not, in any circumstances or on any grounds, be held liable in the event of a claim under the Contract relating to any damage caused during the Project Development Services execution. Consequently, the Bank will not entertain any request for indemnity or reimbursement accompanying any such claim.

II.1.3 Except in cases of *force majeure*, the Final Beneficiary shall make good any damage sustained by the Bank as a result of the execution or faulty execution of the Project Development Services.

II.1.4 The Final Beneficiary shall bear sole liability vis-à-vis third parties, including or damage of any kind sustained by them while the Project Development Services are being carried out.

ARTICLE II.2 — CONFLICT OF INTERESTS

The Final Beneficiary undertakes to take all the necessary measures to prevent any risk of conflicts of interests which could affect the impartial and objective performance of the Project Development Services. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional reasons, or any other shared interest.

Any situation constituting or likely to lead to a conflict of interests during the performance of the Project Development Services must be brought to the attention of the Bank, in writing, without delay. The Final Beneficiary shall undertake to take whatever steps are necessary to rectify this situation at once. The Bank reserves the right to check that the measures taken are appropriate and may demand that the Final Beneficiary take additional measures, if necessary, within a certain time.

ARTICLE II.3 — OWNERSHIP/USE OF THE RESULTS

II.3.1 Unless otherwise stipulated in the Contract, ownership of the results of the Project Development Services, including industrial and intellectual property rights, and of the reports and other documents relating to it shall be vested in the Final Beneficiary.

II.3.2 Without prejudice to Article II.3.1 and II.4, the Final Beneficiary grants the Bank the right to make free use of the results of the Project Development Services as it deems fit.

ARTICLE II.4 — CONFIDENTIALITY

The Bank and the Final Beneficiary undertake to preserve the confidentiality of any document, information or other material directly related to the subject of the contract that is duly classed as confidential, if disclosure could cause prejudice to the other party. The parties shall remain bound by this obligation beyond the closing date of the Project Development Services.

This undertaking shall not however affect any communication of information which is required by a rule of law or by an order of a court having jurisdiction in the matter, which may include communication of information to the European Commission, to the European Anti-Fraud Office (OLAF) and/or to the Court of Auditors.

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ARTICLE II.5 — PUBLICITY

II.5.1 Unless the Bank requests otherwise, any communication, report or publication by the Final Beneficiary about the Project Development Services, including at a conference, training programme, seminar or symposia shall indicate that the Project Development Services have received funding from the ELENA facility under the Horizon 2020 Programme. The Final Beneficiary shall ensure in general that suitable publicity is given in order to inform the public of the role of the European Commission in the ELENA facility.

Any communication or publication by the Final Beneficiary in any form and medium shall indicate that sole responsibility lies with the author and that the Bank is not responsible for any use that may be made of the information contained therein.

Annex VI refers to the detailed information on the branding of the Horizon 2020 Programme and the disclaimers that have to be mentioned in all publications, leaflets and other communication media related to Project Development Service supported by the ELENA Facility.

II.5.2 The Final Beneficiary authorises the Bank and/or the European Commission to publish the following information in any form and medium, including via the Internet:

- the Final Beneficiary' names and addresses,
- the subject and purpose of the grant,
- the amount granted and the proportion of the support total costs covered by the funding.

Annex VII - ELENA PDS Factsheet relating to the implementation of Project Development Services entitled "KaposGrid Smart Urban Energy Project" will be published on the EIB website.

Upon a reasoned and duly substantiated request by the Final Beneficiary, the Bank may agree to forgo such publicity if disclosure of the information indicated above would risk compromising the Final Beneficiary security or prejudicing their commercial interests.

ARTICLE II.6 — FORCE MAJEURE

II.6.1 *Force majeure* shall mean any unforeseeable exceptional situation or event beyond the parties control which prevents them from fulfilling any of their obligations under the Contract, that was not attributable to error or negligence on their part, and proves insurmountable in spite of all due diligence. Defects in equipment or material or delays in making them available (unless due to *force majeure*), labour disputes, strikes or financial difficulties cannot be invoked as *force majeure* by the defaulting party.

II.6.2 A party faced with *force majeure* shall inform the other party without delay by registered letter with advice of delivery or equivalent, stating the nature, probable duration and foreseeable effects.

II.6.3 The party faced with *force majeure* shall not be held in breach of his obligations under the agreement if he's prevented from fulfilling them by *force majeure*. The parties shall make every effort to minimise any damage due to *force majeure*.

ARTICLE II.7 — AWARD OF CONTRACTS

II.7.1 If the Final Beneficiary has to conclude sub-contracts in order to carry out the Project Development Services and these sub-contracts constitute Eligible Costs within the budget of the Project Development Services, they shall be awarded according to EIB Guide to Procurement, set out in Annex VIII.

II.7.2 The tasks subcontracted must be set out in Annex I and the corresponding estimated costs must be set out in detail in the budget in Annex II.

II.7.3 The Final Beneficiary shall retain sole responsibility for carrying out the Project Development Services and for compliance with the provisions of the Contract. The Final Beneficiary must undertake to make the necessary arrangements to ensure that the contractor waives all rights in respect of the Bank under the Contract.

II.7.4 The Final Beneficiary must undertake to ensure that the conditions applicable to them under Articles II.1, II.2, II.3, II.4, II.5 and II.14 of the Contract are also applicable to the subcontractor.

II.7.5 For sub-contracts with a total amount higher than EUR 221 000 (excluding VAT), the Final Beneficiary will be requested to present to the Bank a request for comments on the terms of reference (ToRs) related to the subcontract prior to the launch for tender. The Final Beneficiary shall submit this request in accordance with Annex V of the Contract. The Bank will provide an answer to the request within 15 (fifteen) working days.

II.7.6 Subcontracting costs shall be eligible provided that these are incurred after the entry into force of this Contract.

ARTICLE II.8 — TERMINATION OF THE CONTRACT

II.8.1 Termination of the Contract by the Final Beneficiary

In duly justified cases, the Final Beneficiary may withdraw the Final Beneficiary's request for support and terminate the Contract at any time by giving 60 (sixty) days written notice stating the reasons. Where the stated reasons are acceptable to the Bank, no compensation or indemnity shall be due by the Final Beneficiary.

Where no reasons are given or the Bank does not consider the reasons to be acceptable, the Contract shall be deemed to have been terminated improperly and the second subparagraph of Article II.8.4 shall apply.

II.8.2 Termination by the Bank

The Bank may decide to terminate the Contract without any compensation or indemnity being due on its part, in the following circumstances:

- (a) in the event of a change to the Final Beneficiary's legal, financial, technical, organisational or ownership situation that is liable to affect the Project Development Services substantially or to call into question the decision to award the contract;
- (b) if the Final Beneficiary fails to comply with any of its material obligations under the Contract;
- (c) in the event of *force majeure*, in accordance with Article II.6;
- (d) if the Final Beneficiary is declared bankrupt, is being wound up or is the subject of any other similar proceedings;
- (e) if the Final Beneficiary is guilty of misrepresentation or submits information or reports inconsistent with reality to obtain the funds provided for in the Contract;
- (f) if the Final Beneficiary has intentionally or by negligence committed a substantial irregularity in performing the Project Development Services or in the event of fraud, corruption or any other illegal activity on the part of a Final Beneficiary to the detriment of the Bank's financial interests. A substantial irregularity shall consist of any breach to any contractual obligation or any applicable legal or regulatory provision resulting from

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an act or an omission on the part of a Final Beneficiary which causes or might cause a reputational damage or financial loss to the Bank;

- (g) if the amount of the Investment Programme to be prepared under ELENA Project Development Services represents less than 20 times the amount of this contract as defined in Article I.4.2 (Leverage Factor).

II.8.3 Termination procedure

In the cases referred to in points (a), (b) and (d) of Article II.8.2, the Final Beneficiary shall have 30 (thirty) days from the date of the notification of the Bank's decision to terminate the contract to submit his observations and take any measures necessary to ensure continued fulfilment of his obligations under the contract.

If notice is not given in the cases referred to in points (c), (e), (f) and (g) of paragraph 2, termination shall take effect from the day following the date on which notification of the Bank's decision to terminate the contract is received.

II.8.4 Effects of termination

In the event of termination of the Contract, payments by the Bank shall be limited to the Eligible Costs actually incurred by the Final Beneficiary up to the date when termination takes effect. Costs relating to current commitments that are not due to be executed until after termination shall not be taken into account. The Final Beneficiary shall have 60 (sixty) days from the date when termination of the Contract takes effect to produce a final payment request.

By way of exception, in the event of improper termination of the contract by the Final Beneficiary, or termination by the Bank on the grounds set out in points (e), (f) or (g) of Article II.8.2, the Bank may require the partial or total repayment of sums already paid under the Contract plus in any case an indemnity fee equal to 5% of the allocated maximum grant amount as specified in Article I.4.2.

ARTICLE II.9 — MODIFICATIONS TO THE CONTRACT

II.9.1 Amendments to this Contract shall be made in writing and shall become effective upon execution by both Parties.

II.9.2 The Parties may agree to modify Annex I of this Contract at any time upon written request by one of the Parties, while respecting the eligibility rules stipulated in Annex III.

II.9.3 Changes affecting the budget which entail transfer of cost from one category (direct staff costs or external experts / sub-contracts) to another, and which do not exceed 10% of the total budget may be unilaterally decided by the Final Beneficiary, only once over the contract duration and as long as they are immediately notified to the Bank.

PART B — FINANCIAL PROVISIONS

ARTICLE II.10 — ELIGIBLE COSTS

The following categories of costs are eligible costs:

II.10.1 Eligible Costs are costs of external experts contracted by the Final Beneficiary or costs related to additional staff hired by the Beneficiary (direct staff costs), which meet the following criteria:

- they are incurred during the duration of the Project Development Services and the commissioning was signed after the entry into force of the Contract;
- they are necessary for the implementation of the Project Development Services;
- they comply with the requirements of applicable tax and social legislation;
- they are reasonable, justified and comply with the requirements of sound financial management in particular regarding economy and efficiency.

The Final Beneficiary's internal accounting and auditing procedures must permit direct reconciliation of the costs and revenue declared in respect of the Project Development Services with the corresponding accounting statements and supporting documents.

Direct staff costs comprise actual salaries plus social security charges and other statutory costs included in the remuneration, provided that this does not exceed the average rates corresponding to the Final Beneficiary's usual policy on remuneration.

Existing staff of the Final Beneficiary or external experts having an ongoing contract with the Final Beneficiary may be assigned, full or part-time, for works related to the Project Development Services described in this Contract, provided that:

- (a) either:
- a new contract is signed in relation with these specific works, or
 - a side letter to an existing employment or service contract is signed. This side letter shall be signed by the staff member or the external expert concerned and by the appropriate Director(s) in charge of employment or service contract signatures, and shall explicitly mention:
 - the time dedicated to the Project Development Services,
 - the expected cost per hour/day/month and
 - the functions and role of the staff member or the external expert concerned.
- (b) the Final Beneficiary ensures that the staff member or external expert concerned records and justifies their working hours using appropriate means of time registration (timesheets, organisation's software, etc.), so as to make possible proper justification of the costs and control of time used.

II.10.2 Eligible Costs arising directly from requirements imposed by the Facility (dissemination of information, specific evaluation of the project, audits, translations, reproduction), including the costs of requested financial guarantees, provided that the corresponding services are purchased in accordance with the applicable rules and procedures adopted by the EIB, taking into account the principles of transparency, proportionality, equal treatment, best value for money, avoidance of conflict of interest and non-discrimination in awarding contracts.

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II.10.3 The following costs shall not be considered eligible:

- travel costs;
- costs of equipment;
- exchange losses;
- VAT, unless the Final Beneficiary can show that he is unable to recover it;
- costs declared by the Final Beneficiary and covered by another project or work programme receiving a Community grant;
- excessive or reckless expenditure.

ARTICLE II.11 — GENERAL PROVISIONS ON PAYMENTS

II.11.1 Payments shall be made by the Bank in Euros. If the currency for the cost occurred is not Euro, the conversion into Euro shall be determined using the relevant foreign exchange reference rates published by the European Central Bank (which are based on the daily concertation procedure between central banks within and outside the European System of Central Banks) applicable on the first working day of the month following the period covered by the financial statement concerned.

Payments by the Bank shall be deemed to be effected on the date when they are debited to the Bank's account.

II.11.2 The Bank may suspend the period for payment at any time by notifying the Final Beneficiary that his request for payment cannot be met, either because it does not comply with the provisions of the Contract, or because the appropriate supporting documents have not been produced or because there is a suspicion that some of the expenses in the financial statements are not eligible and additional checks are being conducted.

The Bank may also suspend its payments at any time if a Final Beneficiary is found or presumed to have infringed the provisions of the Contract, in particular in the wake of the audits and checks provided for in Article II.14.

The Bank shall inform the Final Beneficiary of any such suspension by registered letter with advice of delivery or equivalent, setting out the reasons for suspension.

Suspension shall take effect on the date when notice is sent by the Bank. The remaining payment period shall start to run again from the date when a properly constituted request for payment is registered, when the supporting documents requested are received, or at the end of the suspension period as notified by the Bank.

II.11.3 The Final Beneficiary shall have 2 (two) months from the date of notification by the Bank of the final amount of the grant determining the amount of the payment of the balance or the recovery order pursuant to Article II.13, or, failing that, from the date on which the payment of the balance was received, to request information in writing on the determination of the final contractual amount, giving reasons for any disagreement. After this time, such requests will no longer be considered. The Bank undertakes to reply in writing within 2 (two) months following the date on which the request for information is received, giving reasons for its reply. This procedure is without prejudice to the Final Beneficiary's right to appeal against the Bank's decision pursuant to Article I.9. Under the terms of Community legislation in this matter, such appeals must be lodged within 2 (two) months following the notification of the decision to the applicant or, failing that, following the date on which the applicant learned of the decision.

ARTICLE II.12 — DETERMINING THE FINAL CONTRACTUAL AMOUNT

II.12.1 The total amount paid by the Bank may not in any circumstances exceed the maximum amount laid down in Article I.4.2, even if the total actual costs eligible exceed the estimated total Eligible Costs specified in Article I.4.1.

II.12.2 If the actual eligible costs when the Project Development Services end are lower than the estimated total eligible costs pursuant to Article I.4.1, the Bank's contribution shall be limited to the amount obtained by applying the grant percentage specified in Article I.4.2 to the actual eligible costs approved by the Bank.

II.12.3 The Final Beneficiary hereby agrees that the final support shall be limited to the amount necessary to balance the receipts and expenditures incurred by the Project Development Services and that it may not in any circumstances produce a profit for them.

II.12.4 Without prejudice to the right to terminate the agreement under Article II.8, if the Project Development Services are not implemented or are implemented poorly, partially or late, the Bank may reduce the support initially provided for in line with the actual implementation of the Project Development Services on the terms laid down in the Contract.

II.12.5 On the basis of the amount of the final payment determined in this way and of the aggregate amount of the payments already made under the terms of the Contract, the Bank shall set the amount of the payment of the balance as being the amount still owed to the Final Beneficiary. Where the aggregate amount of the payments already made exceeds the amount of the final grant, the Bank shall issue a recovery order for the surplus.

ARTICLE II.13 — RECOVERY

II.13.1 Where an amount paid by the Bank to the Final Beneficiary is to be recovered under the terms of the Contract, the Final Beneficiary undertakes to repay the Bank the sum in question, on whatever terms and by whatever date it may specify. If the payment has not been made by the due date, the Bank reserves the right to recover directly the amount due from the Final Beneficiary.

II.13.2 If the obligation to repay the amount due is not honoured by the date set by the Bank, the amount due shall bear interest. Interest on late payment shall cover the period between the date set for payment, exclusive, and the date when the Bank receives full payment of the amount owed, inclusive. Any partial payment shall first be entered against charges and interest on late payment and then against the principal.

II.13.3 If payment has not been made by the due date, sums owed to the Bank may be recovered by offsetting them against any sums owed to the concerned Final Beneficiary after informing him accordingly by registered letter with advice of delivery or equivalent. In exceptional circumstances, justified by the necessity to safeguard the financial interests of the Communities, the Bank may recover by offsetting before the due date of the payment. The Final Beneficiary's prior consent shall not be required.

II.13.4 Bank charges occasioned by the recovery of the sums owed to the Bank shall be borne solely by the concerned Final Beneficiary.

ARTICLE II.14 — MONITORING, CONTROLS AND AUDITS

II.14.1 The Final Beneficiary undertakes to provide any detailed information requested by the Bank to check that the Project Development Services and the provisions of the Contract are being properly implemented.

II.14.2 The Final Beneficiary shall provide the Bank with an audited financial statement on the Project Development Services costs and on the costs of the eligible components of the Investment Programme, included in the Final Report, in accordance with Article I.6.3. Any audit should be carried out by an accredited auditor.

The audited financial statement on the Project Development costs shall include at least:

- Confirmation that the claimed expenses have actually occurred and the relevant supporting documents, namely invoices for external services or salary slips for staff employed.
- Confirmation that the claimed expenses are linked to the preparation of the Investment Programme supported and are eligible in accordance with this contract (see article II.10).
- Legal opinion confirming that the applicable procurement procedures, in accordance with Article II.7, have been followed for the award of any sub-contracts to any external service provider(s).

The audited financial statements on the costs of the eligible components of the Investment programme shall include at least:

- Confirmation that the costs have occurred within the contract duration and the relevant supporting documents, namely invoices.
- Confirmation that only investment costs which have been supported by the project development services under the Contract and are eligible in accordance with this Contract, have been considered as components of the Investment Programme (see article I.4 and Annex I).
- In case of costs claimed according to I.4.4 (b) confirmation that these costs have been estimated and described in the relevant procurement notice and that the relevant budget had been secured.

II.14.3 The Investment Programme shall consist of coherent and clearly defined capital investments needed for the realisation of one or several projects to save energy or increase the use of renewable energies or improve the performance of urban mobility. These needs comprise all elements of a permanent nature (whether tangible or intangible) that are necessary for achieving the results that the project is designed to deliver. The total investment cost of a Programme includes studies and engineering, civil works, equipment and installation. In case of leasing contracts the value of the leased assets is considered as investment cost. Financing costs, future operation and maintenance costs or future energy purchase are not considered as investment costs.

II.14.4 The Final Beneficiary shall keep at the Bank's or at the European Commission's disposal all original documents, especially accounting and tax records, or, in exceptional and duly justified cases, certified copies of original documents relating to the Contract, stored on any appropriate medium that ensures their integrity in accordance with the applicable national legislation, for a period of 7 (seven) years from the date of payment of the balance specified in Article I.5.3.

II.14.5 The Final Beneficiary agrees that the European Commission and/or the Bank may carry out audits and controls of the use made of the financial support, either directly by its own staff or by any other outside body authorised to do so on its behalf. Such audits and controls may be carried out throughout the period of implementation of the agreement until the balance is paid and for a period of 7 (seven) years from the date of payment of the balance. Where appropriate, the audit findings may lead to recovery decisions by the Bank and/or the European Commission.

II.14.6 The Final Beneficiary undertakes to allow the Bank's staff and outside personnel authorised by the Bank and/or the European Commission the appropriate right of access to sites and premises where the Project Development Services are carried out and to all the information, including information in electronic format, needed in order to conduct such audits.

II. 14.7 The European Court of Auditors and the OLAF shall have the same rights as the Bank and the European Commission, notably right of access, as regards controls and audits.

SIGNATURES

The Contract is executed in three counterparts in the English language, each of which represents an authentic original of this document.

European Investment Bank

Kaposvár MJV (Municipality of Kaposvár)
(Final Beneficiary)

Date: 27.12.2018.

Date: Kaposvár, 2018. 12. 21.


.....
François Trévoux
Director


.....
Sonja Malkki
Head of Division

JGC p.p.


.....
Károly Szita
Mayor




.....
Beáta Balogh
Economic Manager

Overview of contract annexes

Annex I

Description of the Project Development Services and the planned Investment Programme

Annex II

Estimated budget of the Project Development Services

Annex III

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Reference to ELENA – Horizon 2020 funding and legal disclaimer

Annex VII

ELENA PDS Factsheet

Annex VIII

EIB Guide to Procurement

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Annex I : Description of the Project Development Services and the planned Investment Programme

1. Location and Beneficiary Details
Location of the Project Development Service
A Project Co-ordination and Management company (PCM) will have its main office set up in the Kaposvár Municipality.
Description of the Final Beneficiary
The applicant is the Municipality of Kaposvár.
Role of the Final Beneficiary in the Investment Programme to be prepared
<p>A consortium of 6 municipalities has been formed for the KaposGrid Smart Urban Energy Project (KaposGrid). Kaposvár is the Lead Municipality and the ELENA applicant. The other municipalities are Dunaújváros, Szombathely, Tatabánya, Veszprém and Zalaegerszeg.</p> <p>ELENA is mainly requested to provide the support necessary for the preparation of a public procurement process for a Service Provider Company that will install and manage all of the components in the KaposGrid project.</p> <p>Kaposvár will monitor and supervise the project management and investment preparation work on behalf of, and with input from, the other consortium members. Kaposvár will be responsible for all decisions. This includes Kaposvár to inter alia: publish the public procurement documents for the external experts; Head the evaluation committee in the public procurement procedures for the external experts; sign employment contracts with the part time external experts that are chosen after the required public procurement processes; sign employment contracts with all of the direct staff under ELENA, including own Municipal staff and Municipal staff (part time and full time) who are seconded from the other 5 Municipalities publish the tender for the Service Provider company; and head the evaluation committee and decide on the winning Service Provider company, with input from the other Municipalities</p> <p>Kaposvár Municipality will be responsible for selecting the winning Service Provider Company, on behalf of the Consortium and will sign a contract with the winning Service Provider Company. The tender procedure planned is a competitive dialogue process.</p>

2. Description of the Project Development Services
Aims and objectives of the Project Development Services and the main justification as to why support is needed
<p>The main objective of the KaposGrid project is for the participating municipalities to use energy more efficiently, to monitor their own energy consumption and to continually reduce municipal energy costs through a regional smart grid system. ELENA will mainly support the external experts with detailed sector and technical knowledge required to prepare the tender documents for a Service Provider company and the detailed feasibility study that the national promotional bank requires. This feasibility study will contain all of the required technical data that the Service Provider company will need for implementation. The Service Provider company will not need to repeat studies for this technical data. The participating local</p>

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governments would not have the necessary financial resources and expertise to prepare such a complex endeavour without ELENA support.

Indicative activities included in the Project Development Services (personal costs, external services, etc.) indicating the link between the Project Development Services and the Investment Programme

Estimated total budget for the assistance including a detailed budget breakdown according to activities

ELENA is mainly requested to provide the support necessary for the preparation of a public procurement process for a Service Provider Company that will install and manage all of the components in the KaposGrid project.

The following 5 work packages request ELENA support:

1. Tendering for the hiring of the external experts
2. A detailed feasibility study - the preparation of the detailed feasibility study involves a series of activities that detail every aspect of the project (e.g data for the business plan, governance structure, the operational working structure of the project, detailed technical specifications, financial modelling etc)
3. A detailed business plan
4. Public procurement documentation for the implementation phase, so that the Service Company can be procured
5. Preparation of the contracts between the Service Provider Company and the municipalities and the financing contract

These tasks will require part-time experts for:

- Legal services (- 405 mandays)
- Public procurement services (- 704 mandays)
- Quality and Assurance services (- 270 mandays)
- Technical expertise services (- 3109 mandays)
- Economic and financial expertise services (- 180 mandays)
- Other related expertise services (- 60 mandays)

These experts have a total estimated cost of EUR 2.5m for an estimated total of 4728 working days. This is high as there needs to be expert technical design work carried out in each of the participating six municipalities.

All hiring will be done in line with national and EU public procurement procedures and regulations.

Legal and procurement services are exempt from the procurement obligation by the Public Procurement Law. (Process according to 113. § of the Public Procurement Law). All the other experts will be procured in an open EU procedure.

Staff

MFK (the Hungarian Development Centre Non-profit Ltd) is a public company that joined the Consortium in a project management role in order to assist the municipalities. The addition of MFK to the consortium was in line with the relevant national and EU public procurement procedures.

Under the KaposGrid project, the MFK staff and the Municipal staff from the 5 participating municipalities (Dunaújváros, Szombathely, Tatabánya, Veszprém and Zalaegerszeg) will be seconded to the Municipality of Kaposvár. They are existing Municipal staff and no procurement is needed for new staff.

Each staff has 2 parts to their employment contract - a work contract and a work description. The work description will be modified to say that the staff are being seconded to Kaposvár for the ELENA supported services. These work description will detail the tasks and time that will be spent on the project under ELENA. All of these staff will be under the responsibility of the Municipality of Kaposvár for the duration of the ELENA contract regarding all ELENA funded activities.

All of the staff costs under ELENA will be financed by the Municipality of Kaposvár. All salary costs are in line with the current public salary scales for MFK and municipalities.

A Project Management Company (PCM) will be set up and it will contain the following:

Project manager (1FTE)

The role will be carried out by MFK staff seconded to the Municipality of Kaposvár.

The Project Manager will be responsible for the coordination and management of all the technical assistance activities and reports to the Municipal Leader of Kaposvár

Tasks include:

- Co-ordinate the work of the consortium and manage the project development tasks as outlined in the ELENA Contract
- Organize and control the energy auditing activities performed by the experts at the planned locations of the investment
- Co-ordinate reporting and settlement and the preparation of the relevant documentation
- Inform the Municipal Leader about progress and activity continuously
- Help to prepare and be responsible for finalising the public procurement procedures for the external experts
- Help to prepare and be responsible for finalising the public procurement procedures the Service Provider company
- Advise the municipalities during the tender process for the Service Provider company

Sector Technical Leaders (2 FTEs)

These roles will be carried out by MFK staff seconded to the Municipality of Kaposvár.

The project technical management covers the task of coordinating and supervising the work of the hired external experts. Reports to the Project Manager.

Tasks include:

- Directly managing and coordinating the work of the local Municipal staff, the technical external experts and non-technical external experts (e.g legal, procurement, Q&A, economic and financial)

Assistants (2 FTEs)

These assistant roles will be carried out by MFK seconded to the Municipality of Kaposvár and will support the above tasks as outlined for the Project Manager and the Sector Technical Leaders

Municipal Leader, Kaposvár representative (1 FTE)

This role will be carried out by Municipal staff from Kaposvár.

The Municipal Leader is the representative of Kaposvár and is responsible for the whole of the project.

Tasks include:

- Overall responsibility for the project and will monitor the activities of the Project Manager

5 part-time local project managers from each of the Municipalities (2.5 FTEs)

These roles will be carried out by municipal staff from the 5 participating municipalities (Dunaújváros, Szombathely, Tatabánya, Veszprém and Zalaegerszeg).

These local project managers will help the work of the experts and also represent his / her municipality in the project.

Tasks include:

- Supporting the experts with the necessary local organisation
- Data gathering
- Keeping contact with the managers of the institutions, the buildings of which will be retrofitted
- Helping in the management of all local stakeholders;
- Being involved in the onsite supervision and management of the technical experts works in each location
- Providing input for the decision process to select the external experts
- Providing input for the decision process to select the Service Provider company.
- Each will sign an independent contract with the winning Service Provider company.

Assistants (5 FTEs)

These assistant roles will be carried out by municipal assistant staff and will support the above tasks as outlined for the Municipal Leader of Kaposvár and the 5 part-time local project managers

External part time experts will also be required for the following tasks.

Technical assistance activity	Investment component being supported	Details of how Technical assistance activity will support Investment component	Deliverables	Total costs, EUR
Legal counsel	All	<ul style="list-style-type: none"> - General legal counsel regarding any aspect of the project; - Cooperating with the public procurement experts in preparing the public procurement documents; - Working on regulatory and policy compliance and Risk assessment and risk management. 	Public procurement documentation for the selection of <ul style="list-style-type: none"> - Q&A experts - economic and financial experts - technical experts - other related experts Regulatory and policy compliance Risk assessment and risk management Preparation of the public procurement documents for the selection of the Service Provider company	202,500

Public procurement preparation	All	<ul style="list-style-type: none"> - Preparing the public procurement documentation and managing the public procurement process for the selection of the experts working in the ELENA TA - Preparing the public procurement documentation and managing the public procurement process for the selection of the Service Provider company - Giving public procurement advice to the Project manager and the Municipal leader anytime it is requested and / or necessary 	<p>Public procurement documentation for the selection of</p> <ul style="list-style-type: none"> - Q&A experts - economic and financial experts - technical experts - other related experts <p>Preparation of the public procurement documents for the selection of the Service Provider company</p> <p>Technical annex of the Service Provider company procurement for:</p> <ul style="list-style-type: none"> - the energy efficiency measures - the public lighting - the energy storage - the control center - telecommunication 	352,000
Quality control	All	The quality control will follow through the whole process of the Detailed Feasibility Study. This is requested by the envisaged promotional bank.	Quality control report	45,000
Validation	All	The Validation activities will cover the validation of the whole prepared Detailed Feasibility Study by an independent third party. This is requested by the envisaged promotional bank.	Validation report	90,000
Energy performance certificate audit	Modernisation of public buildings	The energy audits will be the starting point of the planning procedure of the modernisation of public buildings to serve as a reference as how the energy indicators will change as a result of the modernisation measures.	<ul style="list-style-type: none"> - Carrying out energy audits for all the buildings of the project as the starting point of the planning procedure of the modernisation of public buildings - Writing the relevant parts of the detailed feasibility study 	115,500

<p>Energy efficiency and building counselling and planning – Energy efficiency experts, architects</p>	<p>Modernisation of public buildings</p>	<ul style="list-style-type: none"> - Elaborating on an evaluation of Energy efficiency trends; - Giving an analysis of the already available documentation - For each building involved carrying out <ul style="list-style-type: none"> o Detailed site surveys o Needs assessment o Risk assessment and risk management - Providing an assessment of the current consumption characteristics - Providing an evaluation of the site survey results - Selection of modernisation measures - Writing the energy efficiency and building modernisation part of the detailed feasibility study - Designing and elaborating the technical annex of the energy efficiency measures for the Service Provider procurement 	<p>Site surveys and evaluation of the site survey results</p> <p>Needs assessment Analysis of the available documentation, Assessment of the current consumption characteristics</p> <p>Selection of modernisation measures</p> <p>Technical annex of the energy efficiency measures for the Service Provider company procurement</p> <p>Risk assessment</p>	<p>792,000</p>
<p>Energy system integration preparation (with specific relevant experience especially on the Hungarian energy system)</p>	<p>All</p>	<ul style="list-style-type: none"> - Designing the integration of the built out project elements into one integrated energy system - Close cooperation with all the other technical experts - Writing the relevant parts of the detailed feasibility study and of the technical annex of the Service Provider company procurement. 	<p>Grid connection planning</p> <p>IT and control model</p> <p>Telecommunication model</p> <p>End-point device model</p> <p>PV integration model</p> <p>Energy storage model</p> <p>Public lighting modernisation model</p> <p>System integration model</p> <p>Project targets and Scheduling the implementation phase</p> <p>Technical annex of the control center and telecommunication</p>	<p>198,000</p>

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			items for the Service Provider company procurement	
RES generation preparation	PV systems	<ul style="list-style-type: none"> - Surveying, design and build up of photovoltaic generation - Writing the relevant parts of the detailed feasibility study and of the technical annex of the service Provider company procurement 	<p>Site survey and evaluation of the site survey results</p> <p>Needs assessment</p> <p>Selection of measures</p> <p>PV integration model</p> <p>Risk assessment and risk management</p> <p>Solar power generation trends</p>	118,800
Energy sector preparation	All	<ul style="list-style-type: none"> - Needs assessment in its field, determining the timeframe and the exact geographical scope of the project, having regulatory and policy compliance - Watching and analysing power market trends - Risk assessment and risk management - Elaborating on Smart grid system trends - Creating the end-point device model - Carrying out grid connection planning - Writing the relevant parts of the detailed feasibility study and of the technical annex of the Service Provider company procurement 	<p>Business model</p> <p>Technical annex of the control center for the Service Provider procurement</p> <p>Needs assessment</p> <p>Regulatory and policy compliance</p> <p>Power market trends</p> <p>Risk assessment and risk management</p> <p>Smart grid system trends</p> <p>End-point device model</p>	264,000
Public lighting preparation	Street lighting	<ul style="list-style-type: none"> - Public lighting revision of already existing design documentation - Planning the new systems - Writing the relevant parts of the detailed feasibility study and of the technical annex of the Service Provider company procurement 	<p>Public lighting modernisation trends</p> <p>Site survey:</p> <p>Public lighting modernisation model</p> <p>Technical annex of the public lighting for the Service Provider company procurement</p>	44,000
Storage preparation	Storage	<ul style="list-style-type: none"> - Planning and counselling regarding electricity storage project elements - Writing the relevant parts of the detailed feasibility study and of the technical annex of 	<p>Energy storage trends</p> <p>Energy storage model</p> <p>Technical annex of the energy storage for the Service Provider company procurement</p>	74,250

		the Service Provider company procurement		
IT preparation	Smart grid systems	<ul style="list-style-type: none"> - All survey, counselling and design that is required for the building out of the smart grid centre and the smart grid system - Also helping the project manager and the project leader in any it related matter - Writing the relevant parts of the detailed feasibility study and of the technical annex of the Service Provider company procurement 	<p>IT and control model</p> <p>System integration model</p> <p>Technical annex of the control center for the Service Provider company procurement</p>	66,000
Telecommunication preparation	Smart grid systems	<ul style="list-style-type: none"> - All survey, counselling and design that is required for the building out of the smart grid centre and the smart grid system - Also helping the project manager and the project leader in any telecommunication related matter - Writing the relevant parts of the detailed feasibility study and of the technical annex of the Service Provider company procurement 	<p>Telecommunication model</p> <p>Technical annex of the telecommunication for the Service Provider company procurement</p>	37,125
Economic and financial work	All	<ul style="list-style-type: none"> - Carrying out various economic and financial analysis from the assessment of the financing conditions to the creation of a working business model for the project - Also helping the project manager and the project leader in any economic and / or financial related matter - Writing the relevant parts of the detailed feasibility study and of the technical annex of the Service Provider company procurement, along with the detailed business plan. 	<p>Needs assessment</p> <p>Assessment of the financing conditions</p> <p>Project targets</p> <p>Loan analysis</p> <p>Financial resource mapping and action plan</p> <p>Analysis of external costs and benefits</p> <p>Business model</p>	90,000

<p>Environmental issues</p>	<p>All</p>	<ul style="list-style-type: none"> - Analysing the environmental protection needs and responsibilities of the project - Also helping the project manager and the project leader in any environmental protection related matter - Writing the relevant parts of the detailed feasibility study and of the technical annex of the Service Provider company procurement 	<p>Assesment of environmental impacts</p> <p>Analysis of external costs and benefits</p>	<p>15,000</p>
<p>Other related preparation</p>	<p>All</p>	<ul style="list-style-type: none"> - Creating stakeholder analysis; - Creating financial resource mapping and action plan - Writing the relevant parts of the detailed feasibility study 	<p>Stakeholder analysis</p> <p>Financial resource mapping and action plan</p>	<p>15,000</p>

Indicative implementation timetable for the Project Development Services, indicating the link between the Project Development Services and the Investment Programme

Expected start date of ELENA is 01 January 2019

Year 1:

- All seconded staff expected to be in place 1-2 months after ELENA signature. This will be agreed under employment transfer contracts i) between Kaposvár and MFK for the MFK staff and ii) between Kaposvár and the 5 other Municipalities for the seconded Municipal staff (part time and full time).
- Kaposvár will publish the tenders for the selection of external experts and will sign employment contracts with them. All external experts are expected to be in place within 6 months after ELENA signature
- Feasibility Study work started e.g site surveys, market and background studies, energy audits
- Preparation of the procurement work for the Service Provider company started

Year 2:

- Feasibility Study work is finalised with final technical and business model work completed
- Tender published by Kaposvár for the Service Provider company
- Work begun on the model contract that will be signed between each of the 6 Municipalities and the Service Provider company
- Work begun on the financing contract that will be signed between the financing institution and the Service Provider company
- Service Provider company chosen by Kaposvár (on behalf of all of the other municipalites)
- Contract arrangements between the Service Provider Company and municipalities will begin. At least one contract will be signed.

Year 3

- Service Provider company chosen and contract arrangements with municipalities will be finalised
- Contracts signed between the Service Provider company and each of the 6 Municipalities

There will be a penalty clause included in the contracts signed between the Service Provider company and the Municipalities. This is to ensure that the Service Provider company is legally obliged and committed to carrying out the agreed investments. Therefore these contracts are seen as a legal commitment to invest and can be considered as eligible to count towards the leverage factor for ELENA.

Description of the existing or planned structure/organisation of the Project Development Services supporting the preparation of the Investment Programme

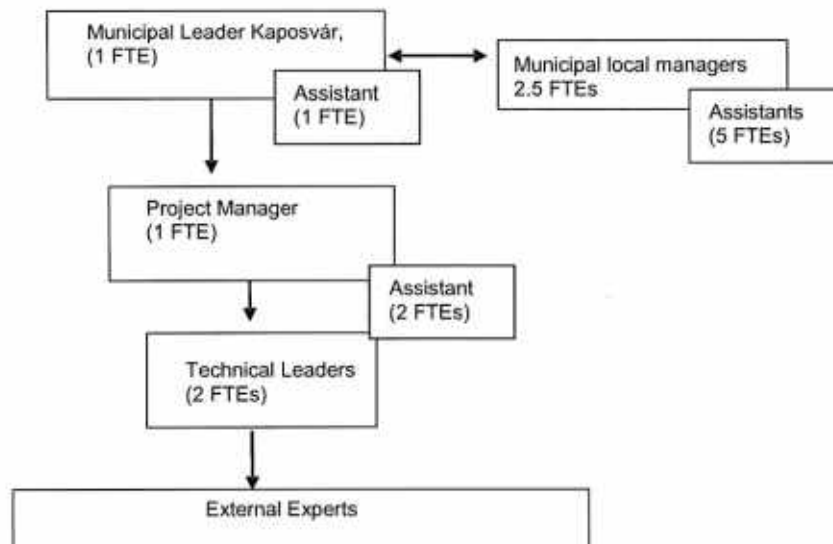
A consortium of 6 municipalities has been formed for the KaposGrid Smart Urban Energy Project (KaposGrid). This includes Kaposvár, as the leader of the consortium and the municipalities of Dunaújváros, Szombathely, Tatabánya, Veszprém and Zalaegerszeg. The main office of the PCM will be located in Kaposvár. The Municipal local managers will remain in their local offices but will be managed by the Municipal Leader Kaposvár.

All of the external experts will be tendered for and procured by Kaposvár. Each of the external experts under ELENA will invoice the Municipality of Kaposvár.

The tender for the Service Provider company will be published by the Municipality of Kaposvár.

The Municipal leader will consult with the Municipal local managers on the hiring of external experts and the choice of the Service Provider company. The Municipality of Kaposvár is responsible for the final decision.

Mayor decisions require the agreement of all Municipalities. However if there is a disagreement, Kaposvár has the power to make a decision on behalf of the Municipalities to move the project forward as described in the Consortium Agreement. The exact decision making procedures are described in the revised Consortium Agreement, which is due to be signed in January 2019.



Applicant's commitment to facilitate dissemination of experiences and results

The KaposGrid Project will disseminate the experiences and results throughout the Hungarian city networks, the Covenant of Mayors and others. In addition, they will disseminate the results via press releases, website and media articles. The dissemination activities will not be funded by the ELENA facility.

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3. Presentation of Investment Programme
Location of the planned Investment Programme
The investment programme will take place in 6 municipalities Kaposvár, Dunaújváros, Szombathely, Tatabánya, Veszprém and Zalaegerszeg.
Description of the planned Investment Programme
<p>The objectives of the KaposGrid project are to:</p> <ul style="list-style-type: none"> • Retrofit up to 68 municipal buildings including an upgrade of the lighting stock • Install 32 MW of building integrated solar PV • Upgrade over 23,000 public lighting lampposts in 4 of the Municipalities • Install 6 Storage units totalling 22MW/55MWh storage <p>Each participating party in KaposGrid will join a Balancing Group and the contract to be part of this group will outline each party's specific role, responsibilities, commitments and benefits.</p> <p><u>Buildings</u></p> <p>The buildings have been already identified and the relevant Municipality has agreed to their retrofit. These have been picked from previous preliminary energy audits/checks and a corresponding list of modernisation measures have been agreed. The detailed technical specifications need to be developed through detailed energy audits and the exact specifications for the buildings will be determined from the feasibility study and design.</p> <p>Each building will have smart meters installed in order to monitor its demand profile. These buildings will each be individually automatically controlled to optimise electricity consumption. They will be controlled primary by their own smart building management systems and also connected to the Smart Grid Centre. Load may be dropped if needed (although it must be noted that these buildings will not have large controllable loads for significant demand side management).</p> <p>There is a minimum of 20% energy savings targeted for the municipal buildings. The main energy saving measures are related to heating and lighting. One of the reasons these buildings were chosen as part of this programme was so that they could get renovated and be cross-subsidised by the other components.</p> <p><u>Building integrated solar PV</u></p> <p>The project aims to focus on sustainability and on clean technologies by installing PV generation. The PV will be building integrated installed on the roofs or walls of the buildings or installed on light structures such as parking lots.</p> <p>Many of the above buildings will have the planned 32 MW of building integrated solar PV.</p> <p><u>Streetlighting</u></p> <p>The project aims to upgrade over 23,000 public lighting lampposts. Street lighting measures will take place in Kaposvár, Tatabánya, Veszprém and Zalaegerszeg, meaning mostly the replacement of the remaining lamp bodies with energy efficient lamps. Some will require new lamp posts as well.</p> <p>There is a 30%-40% energy saving target.</p>

Install 6 Storage units totalling 22MWh/69MWh storage

There will be 6 Li-ion battery units connected in each of the 6 Municipalities. These storage units are the key balancing part of the smart grid system. The project will initially install PV, but the aim, in the long run, is to incorporate more renewable energy sources and more demand side units.

Each battery will have their own Battery Management System (BMS) connected to the public distribution electricity network. This BMS will be used to store power generated during the off-peak periods. Relevant cost benchmarks will be considered at the tender stage.

Smart Grid Centre

The Smart Grid Centre is where all of the energy supply and trading is controlled from. It receives generation, consumption and storage data through an ICT network and end-point devices. The building itself is planned to be as energy efficient and as smart as possible.

The Smart Grid Centre will determine the necessary balancing within the Balancing Group using the metered information and other data (e.g market prices, weather forecast, contractual settings, etc.) and use this for the energy settlement. The data from each battery BMS will be transmitted to the Smart Grid Centre and energy traders will sell the stored power in the ancillary services market. The smart grid working together with the batteries should provide the flexibility and quick response time required for bidding in the ancillary services market.

KaposGrid

The KaposGrid will join all of the above generation, storage and demand units in the 6 municipalities in what is called a Balancing Group. The main objective of the KaposGrid project is to balance generation and consumption in the Balancing Group in the most efficient way in order to provide reduced energy costs for the participating municipalities. There is also an aim to collect the data through this regional smart grid system in order to monitor municipal energy consumption. The data received in the Smart Grid Centre will be processed and presented in various report formats via a user interface for the system operator, decision makers, municipal representatives. This will mostly be used by municipal leaders to gain more knowledge on the energy usage patterns of their municipal buildings.

The regulatory framework for the KaposGrid project operation is already in place. Post ELENA and during implementation, the licences required by the Service Provider company will be applied for and are expected to be issued within 3 months of application.

Description of the approach to implement the Investment Programme

The main implementation steps of the investment programme are the following:

Tender process for a Service Provider company

Kaposvár will publish a tender for a Service Provider company on behalf of the 6 municipalities. During the tender process the Service Provider company will submit a bid based on a plan to implement the measures that have been outlined in the detailed technical work (e.g energy audits) that were carried out under ELENA. There will not be a duplication of work or a need to repeat these studies again (e.g. no need to repeat energy audits for the same buildings).

Contracts between Service Provider company and each Municipality

This Service Provider company will enter into a contract with each of the 6 participating municipalities, and these contracts will contain a commitment to invest and a penalty clause to protect against non-delivery. The contracts have to be done separately because of the regulatory framework regarding energy service provision and the legal standing of municipalities.

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In these contracts, there will be a commitment to reduce municipal energy costs. Each Municipality will pay a fixed Service Fee to the Service Provider company for their energy needs and maintenance of any relevant energy equipment units e.g the PV units. This Service Fee should be lower than their current energy costs as power in the Balancing Group should be settled more efficiently and thus more cheaply. This fixed price Service Fee will be negotiated during the tendering phase for the Service Provider company as the level of the Service Fee will be part of the award criteria. There will also be revenue from entering the ancillary services market which will help to make the Service Fee cheaper to Municipalities than their current energy costs.

Financing

The Service Provider company concludes 1 financing contract in its own name with the specific development financial institution, i.e the municipalities do not take out loans.

Set up a Balancing Group

Each participating party in KaposGrid will join a Balancing Group and the contract to be part of this group will outline each party's specific role, responsibilities, commitments and benefits. . The Balancing Group contracts will be the responsibility of the Service Provider Company.

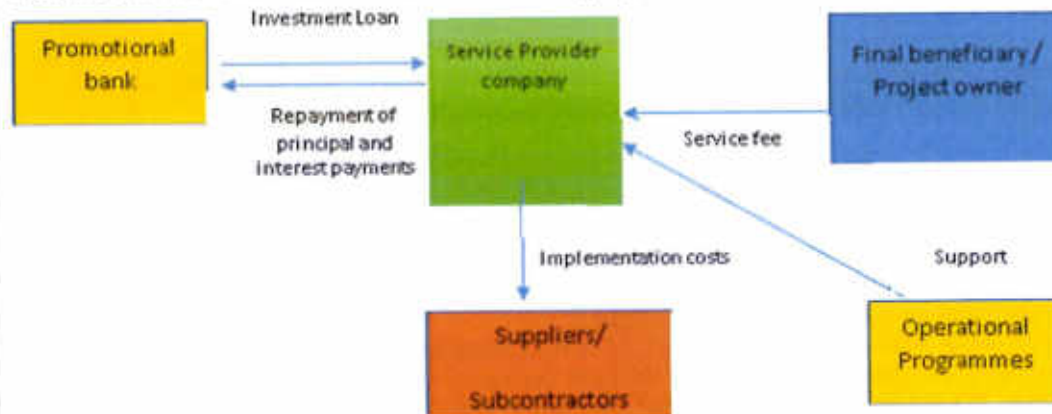
Implementation

The Service Provider company will have to procure all of the necessary suppliers for implementation in each Municipality, run the Smart Grid centre and carry out the energy trading role. The Service Provider company will procure the suppliers required for the works itself.

Implementation activities will include:

- legal activities related to the contracting procedure of the Municipalities with the Service Provider company
- tendering of suppliers by the Service Provider company
- gaining relevant licences
- implementation of the smart grid system
- implementation of storage investments
- implementation of PV investments
- implementation of energy efficiency investments
- implementation of street lighting investments

The role and relations of the Service Provider company is shown below in Figure 2:



See Figure 3 which shows the role of each party throughout the lifetime of the programme. Note the Final Beneficiary/project owners refers to each of the 6 participating Municipalities.

Post implementation

After the termination of the Service Provider contract, the Service Provider company will hand over the investment elements to the Municipalities free of charge (according to the priority buyer's option contract which will be the annex to the Service Provider contract) and then the municipalities can decide if they want the Service Provider company to go on with the operation of the system in the framework of a service contract or they will have a service contract with another company.

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Expected results in terms of increase in energy efficiency, decrease in energy consumption, renewable energy production and reduction of greenhouse gas emission

The expected contributions to 2020 and 2030 energy objectives are:

- Energy Efficiency –12 GWh (about 90% from gas savings)
- Renewable Energy –34.2 GWh
- CO₂ reductions –15 300 CO₂ eq t.

Expected other relevant results

There are 15 FTE expected to be required from the winning Supplier Provider Company so these would be jobs retained or perhaps some new positions. The overall investment programme is substantial and over 2000 FTEs could be expected during the construction phase. Most of these would be from the building renovations and the PV installations.

Expected overall investment cost

The total amount of investment is estimated at EUR 182m. This will be divided between the 6 municipal contracts between the Service Provider Company and Kaposvár, Dunaújváros, Szombathely, Tatabánya, Veszprém and Zalaegerszeg

Investment component in 6 Municipalities	Total investment cost (EURm)	% of total investment cost
EE in public buildings	83.4	46%
Storage	53.8	29%
PV systems	37.9	21%
Street lighting	3.7	2%
Smart grid system	3.3	2%
TOTAL	182.1	

Preliminary financing plan for the Investment Programme

The financing plan of the project has been created in consultation with the envisaged promotional bank.

FINANCING OF INVESTMENT	(EURm)
Investment loan (Promotional Bank)	178.9
Funding from the national OPs	3.2
Total	182.1

Preliminary implementation timetable for the Investment Programme

The competitive dialogue process is expected to take up to a year and during the negotiations with the winning bidder, the details of the municipality contracts should be agreed. This is estimated to be concluded in the third year. However, some initial works are planned to begin with the initial contracts completed in year 2, namely the building retrofits. PV installations are planned in year 3.

Note deliverables overlap with the tasks that are being undertaken under ELENA

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Year	Main deliverables
Year 1	<ul style="list-style-type: none"> • All tenders for external experts should be published • All employment contracts should be signed with Kaposvár • Work begins on the detailed Feasibility study – <ul style="list-style-type: none"> - Background material, market surveys and site surveys should be completed - At the end of year 1 the exact geographical scope and breakdown of the investment programme should be known e.g exact buildings for retrofit, locations and size of the PV units, location and size of the batteries, number of streetlights and state of the lighting stock,
Year 2	<ul style="list-style-type: none"> • Work continues on the Feasibility study <ul style="list-style-type: none"> - Technical models completed. These will give the detailed technical data required for the energy efficiency measures required in the buildings, - Smart grid models completed. These will give the detailed technical data required for grid planning, IT, telecommunications, smart metres/end point devices, PV, batteries and all of the other components. • The business model will be completed • The feasibility study will be validated by the national bank who has expressed interest in financing the overall programme. This feasibility study will be the basis for the selection procedure of the Service Provider Company chosen through the tender process. • The tender for the Service Provider company will be published. • The model contract for use between the Service Provider company and the municipalities will be approved and agreed by the Municipalities • The competitive dialogue process will take place to choose the winning Service Provider company • Contracting between Service Provider company and some of the 6 municipalities commence. These will detail legal committed investments of up to EUR 26m • Works started on up to 10 of the public buildings to be retrofitted
Year 3	<ul style="list-style-type: none"> • Contracting between Service Provider company and the 6 municipalities are signed. These will detail legal committed investments of up to EUR 156m

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4. Overview table: Milestones presentation for measuring leverage factor

Reporting time (end of year)	Estimated budget Project Development Services			Milestones for Investment Programme Implementation (indicate here the part of the total Investment Programme which is planned to be launched at the indicated reporting time)						Cumulative Leverage factor
	Staff costs [in EUR]	External experts / sub- contracts [in EUR]	Annual Sub-total [in EUR]	Short description of area, technologies concerned ¹	Identification of investor ²	Estimated total costs (of energy saving investment measures) [in EUR]	Estimated annual final electrical and thermal energy saved for EE projects ³ [in GWh]	Estimated annual final energy production by RES ⁶ [in GWh]	Estimated annual reduction of CO ₂ eq [in t]	
Year 1	300 000	503 858	803 858	-		0	0	0,00	0	0
Year 2	300 000	2 015 434	2 315 434	EE, Smart grid, RES, Street lighting, Storage		26 014 280	electrical: 0.76 thermal: 1.44	0,00	653	9
Year 3	300 000	0	300 000	EE, Smart grid, RES, Street lighting, Storage	Service Provider company	156 085 680	electrical: 4.56 thermal: 8.70	34,16	14 647	59
TOTALS ⁴	900 000	2 519 292	3 419 292	EE, Smart grid, RES, Street lighting, Storage		182 099 960	electrical: 5.32 thermal: 10.14	34,16	15 316	59
Interim report (month 18)	450 000	1 511 575	1 961 575	EE, Smart grid, RES, Street lighting, Storage		13 007 140	electrical: 0.38 thermal: 0.72	0,00	0	7

¹ Specifying which main area concerned (i.e. EE, RES, transport or urban infrastructure) and which technology(ies)/measure(s) implemented

² Indicate the final investor, the one who will order the work to be carried out

³ Indicate the main type of energy saved or produced (thermal or electrical)

⁴ Total of estimated budget should be the same as in budget table or in Investment Programme presentation

Annex II : Estimated budget of Project Development Services

Direct staff costs			
Categories of staff to work on the project (e.g. senior expert, expert, junior expert; project assistant etc.)	Monthly salary (EUR)	Number of work months on project	Direct Staff costs (EUR)
	(A)	(B)	(A x B)
1 Project Manager MFK	3,160	36	113 760
3 Technical Leaders MFK (part and full time)	2 258	72	162 576
3 Project assistant MFK (part and full time)	1,807	72	130 104
1 Municipal leader Kaposvár	1,937	36	69 732
1 Assistant Kaposvár	1,291	36	46 476
5 Local Municipal project managers Dunaújváros, Szombathely, Tatabánya, Veszprém, Zalaegerszeg (part and full time)	1,613	90	145 170
5 Local Assistant Dunaújváros, Szombathely, Tatabánya, Veszprém, Zalaegerszeg	1,290	180	232 182
Subtotal direct staff costs			900 000
External experts / subcontracts			
Type of activities / support	Expected Man-days (days)	Expected daily rates (EUR)	Total (EUR)
	(A)	(B)	(A x B)
Legal services	405	500	202 500
Public procurement services	704	500	351 875
Quality Control and validation services	270	500	135 000
Technical expertise services	3109	550	1 709 675
Economic and financial expertise services	180	500	90 000
Other related expertise services	60	500	30 242
Subtotal external experts / subcontracts			2 519 292
ESTIMATED TOTAL ELIGIBLE COST			
Direct staff costs			900 000
External experts / subcontracts			2 519 292
TOTAL eligible costs [in EUR]			3 419 292
FUNDING			
Requested funding from ELENA facility [in EUR]; maximum 90%	90.0%		3 077 363
Own funding [in EUR]	10.0%		341 929
Other sources [EUR]	0.0%		0
TOTAL funding [in EUR]			3 419 292
Within the ELENA facility eligible costs are defined as follows:			
<ul style="list-style-type: none"> • costs of external experts contracted by the EIB or the Beneficiary according to the national procurement rules • additional staff hired by the Beneficiary (e.g. to set up project implementation units) to manage and provide Project Development Services. The cost of additional staff assigned to the action should comprise actual salaries plus social security charges and other statutory costs included in the remuneration, provided that this does not exceed the average rates corresponding to the beneficiary's usual policy on remuneration. 			
No other costs are eligible.			

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Changes between cost categories:

The total budget initially accepted at the start of the project cannot be increased. Overspending must be taken over by the beneficiary. Changes within each cost category or in relation to the different subcontracting services are possible without any approval. Changes affecting the budget which entail transfer of cost from one category (direct staff costs or external experts / sub-contracts) to another, and which do not exceed 10% of the total budget may be unilaterally decided by the Final Beneficiary, only once over the contract duration and as long as they are immediately notified to the Bank.



Annex III : Eligibility rules for the Project Development Services and the planned Investment Programme

The following eligibility criteria will be applied to the Project Development Services, the identified planned Investment Programme and needs to be respected by the Final Beneficiary.

1. Eligibility of areas covered

Project Development Services shall only be provided for the development of Investment Programmes, within the following areas (in line with the Horizon 2020 work programme 2016-2017 for "secure, clean and efficient energy" and "smart green and integrated transport").

- (a) Energy efficiency and distributed renewable energy. Projects could cover one or more of the following areas:
- public and private buildings, including social housing, and street and traffic lighting, to support increased energy efficiency (refurbishment of buildings aimed at significantly decreasing energy consumption (both heat and electricity) – such as thermal insulation, efficient air conditioning and ventilation, efficient lighting);
 - integration of renewable energy sources (RES) into the built environment – such as solar photovoltaic (PV), solar thermal collectors and biomass;
 - investments into renovating, extending or building new district heating/cooling networks, based on high efficiency combined heat and power (CHP) or RES, along with decentralised CHP systems (building or neighbourhood level);
 - local infrastructure including smart grids, information and communication technology infrastructure for energy-efficiency, energy-efficient urban equipment, inter-modal transport facilities and refuelling infrastructure for alternative fuel vehicles.
- (b) Urban transport and mobility in urban/suburban agglomerations and other densely populated areas. Projects could cover one or several of the following areas:
- Investments to support the use and the integration of innovative solutions going beyond the current state of the art for alternative fuels in urban mobility, e.g. in vehicles and in refuelling infrastructure for alternative fuel vehicles and other actions to support the wide-scale use of 'alternative fuels' in urban areas.
 - Investments to introduce at a wide scale new, more energy-efficient transport and mobility measures in any modes in urban areas.

2. Excluded sector

According to the request of the European Commission, the following areas shall be excluded from the Project Development Services:

- stand-alone renewable energy systems, not integrated in buildings, e.g. wind farms, stand-alone PV, concentrated solar power, hydropower and geothermal electricity production;
- long-distance transport infrastructure;
- large industrial facilities (falling under the ETS directive)⁵, and reduced greenhouse gas emissions due to industry delocalisation.

3. Costs under Investment Programmes

The Investment Programme shall consist of coherent and clearly defined capital investments needed for the realisation of a project or several projects to save energy or increase the use of renewable energies or improve the performance of urban mobility. Those investments comprise all elements of a permanent nature (whether tangible or intangible) that are necessary for achieving the results that the project is designed to deliver. The total investment cost of a Programme includes studies and engineering, civil works, equipment and installation. In case of leasing contracts the value of the leased assets is considered as an investment cost. Financing costs, future operation and maintenance costs or future energy purchase are not considered as investment costs.

⁵ Consolidated version of Directive 2003/87/EC - <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02003L0087-20140430&from=EN>

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Annex IV : Technical implementation reports and financial statements

1. Dispatch of information: designation of the person responsible

The information below has to be sent to the Bank under the responsibility of:

Company	Kaposvár Megyei Jogú Város Önkormányzata (Municipality of Kaposvár)
Contact person	Ms Katalin Kovács
Title	Environmental Development Director
Function / Department	Kaposvár City of Country Rank Mayor's Office Environmental Development Directorate
Address	7400 Kaposvár, Kossuth tér 1.
Phone	+36-82/501-522, +36-30/622-6177
Fax	n/a
Email	kovacskatalin@kaposmenti.hu

The above-mentioned contact person(s) is (are) the responsible contact(s) for the time being. The Beneficiary shall inform the EIB immediately in case of any change.

2. Regular reporting on the implementation of the Project Development Services

The Beneficiary shall inform the Bank of any significant changes in the cost, timing or definition of the work programme activities.

Document Type	Time Period to be covered	Information to be provided	Deadline (due)
Naming Convention			
Inception Report INCEPREP	From contract starting date to end of month 3	A detailed work programme of the PDS <i>(Refer to template in A.1 below)</i>	<i>At month 4 (3+1) after contract starting date</i>
Progress Report 1 PR 1	From contract starting date to end of month 6	<i>(Refer to templates in A.2 below)</i>	<i>at month 7 (6+1) after contract starting date</i>
Progress Report 2 PR 2	From contract starting date to end of month 12	<i>(Refer to templates in A.2 below)</i>	<i>at month 13 (12+1) after contract starting date</i>
Interim Report (i.e. Progress Report 3) INTERIMREP	From contract starting date to end of month 18	should reflect the actual costs, details and results of PDS <i>(Refer to templates in A.3 below)</i>	<i>at month 19 (18+1) after contract starting date</i>
Progress Report 4 PR 4	From contract starting date to end of month 24	<i>(Refer to templates in A.2 below)</i>	<i>at month 25 (24+1) after contract starting date</i>
Progress Report 5 PR 5	From contract starting date to end of month 30	<i>(Refer to templates in A.2 below)</i>	<i>at month 31 (30+1) after contract starting date</i>

3. Final Report on implementation of the Project Development Services

The Beneficiary shall deliver to the Bank the following information on projects completion and possible initial operations at the latest by the deadline indicated below.

Document Type	Time Period to be covered	Information	Deadline
Naming Convention			
Final Report FINALREP	From contract starting date to end of month 36 <i>(the whole PDS duration)</i>	This Information should reflect the actual costs, details and results of the PDS and be provided chronologically <i>(Refer to template in A.4 below)</i>	Normally at month 37 (36+1) after contract starting date

Language of reports	English or French
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Appendices:

- A.1 Inception Report – Detailed work programme of the ELENA TA
- A.2 Bi-annual Progress Report
- A.3 Interim Report including financial statement
- A.4 Final Implementation Report including financial statement

A.1. INCEPTION REPORT – DETAILED WORK PROGRAMME

Name of Project Development Services (PDS):

ELENA Contract reference:

Reporting period: [Contract starting date dd-mm-yyyy] + 3 months

1. The work programme of the PDS.
 2. Updates on the implementation of the PDS, this includes:
 - Progress on hiring or allocation of staff needed for the PDS (status on the procedure for additional staff hired, external services contracted etc.)
 - Changes in relation to initial programme and their justification; tasks, schedule and pre-established milestones
 - Identified issues, if any, affecting the implementation of the PDS work programme
-

Date of report:



A.2. BI-ANNUAL PROGRESS REPORT

Name of Project Development Services (PDS):

ELENA Contract reference:

Reporting period: from [Contract starting date dd-mm-yyyy] to [end of month 6 dd-mm-yyyy]
 or
 from [Contract starting date dd-mm-yyyy] to [end of month 12 dd-mm-yyyy]
 or
 from [Contract starting date dd-mm-yyyy] to [end of month 24 dd-mm-yyyy]
 or
 from [Contract starting date dd-mm-yyyy] to [end of month 30 dd-mm-yyyy]

1. Work progress of the PDS
 - Progress and achieved results against initial objectives of the PDS work programme and identified issues, if any, affecting its implementation. This includes:
 - Progress on hiring or allocation of staff needed for the PDS (e.g. status of the procedure(s) for the hiring of additional staff and/or for the contracting of external services, etc.)
 - When available, copies of consultants' reports, studies or other subcontracted activities such as terms of reference (ToRs) and published calls for external services
2. Work progress on the Investment Programme
 - Progress and achieved results against initial objectives of the Investment Programme (e.g. achieved investments or published tender for an investment during this reporting period)
 - Include a description of the PDS work performed in relation to any investments or published tender
3. Identified problems and risks for the implementation of the Investment Programme (including PDS beneficiary's description of these problems/risks, and corrective actions taken or to be taken)
4. Contracts of technical assistance (i.e. external experts/subcontracts) committed/completed during the reporting period, linked to the started/planned investments (use attached Table A.2.1.a)
5. Description of the internal technical assistance committed/completed during the reporting period in relation to the started/planned investments (use attached Table A.2.1.b).
6. Updated list of completed/committed and planned investment projects during the reporting period, with the reference to the work performed by the Project Development Services. (use attached table A.2.2.).
7. Any changes to the planned activities under the Project Development Services or to the Investment Programme in comparison to the original work programme, and other useful information
8. Financial statement (for the covered six month period) (use attached table A.2.3.)

Date of report:

A.2.1.a Contracts of Technical Assistance (external experts / subcontracts) committed/completed during the reporting period

External subcontract	Name of external consultant / subcontractor	Short description of work performed	Expected total costs of subcontracts [EUR]	Duration of subcontracts [start and end date]	Procurement procedure applied	Tender publication reference (e.g. OJEU publication)	Comments
External TA (ETA) Please use code and reference numbers as this is required for Table A.2.2) e.g. ETA 1							
ETA 2							
etc.							
TOTAL							

A.2.1.b Internal Technical Assistance committed/completed during the reporting period

Internal Technical Assistance	Name of staff employed	Short description of work performed	Duration of assistance provided (start and end date)	Comments
Internal TA (ITA) Please use code and reference numbers as this is required for Table A.2.2) e.g. ITA 1				
ITA 2				
etc.				



A.2.2. Updated list of (1) completed/committed investment projects; and (2) planned investment projects.

Use this template for Energy projects and two separate tables for (1) and (2)

Investment Project (IP) ⁶ identification code	Name of IP	Technical Assistance identification code (from Tables A.2.1.a and A.2.1. b)	Short description of area / technology concerned ⁷	Identification of investor ⁸	Estimated total costs [in EUR]	(Planned) Contract signature Date	(Planned) Date of publication of the public tender (e.g. OJEU publication)	Implementation plan (start and end date of works)	Estimated annual final energy saved for EE projects ⁹ [in GWh]	Estimated annual final energy production by RES [in GWh]	Estimated annual reduction of CO ₂ eq. [in t]	Estimated employment created [in FTE]	Comments
Please use code and reference numbers													
IP xxx		Internal Technical Assistance (e.g. ITA 1)											
IP xxx		External Technical Assistance (use the naming convention from Table A.2.1.a (e.g. ETA xx2)											
TOTAL													

⁶ IP = Investment Project
⁷ Specifying which main area concerned (i.e. EE, RES, transport or urban infrastructure) and which technology(ies)/measure(s) implemented
⁸ Indicate the final investor, the one who will order the work to be carried out
⁹ Indicate the main type of energy saved or produced (thermal or electrical)

13/12/2018


A.2.3. Financial Statement n°

European Investment Bank ELENA - European Local Energy Assistance Financial Statement					
Name of Project Development Services (PDS):					
ELENA Contract reference:					
Reporting period from: dd-mm-yyyy to dd-mm-yyyy					
Currency used: (three letter abbreviation)					
STAFF COSTS (Justification for labour costs may be requested by the Bank)					
Line N°	Name	Category name (e.g. senior expert, engineer, etc.)	Number of man-hours (A)	Hourly rate (B)	Staff costs amount (A x B)
1					
2					
Total			0.00		0.00
AND/OR					
Line N°	Name	Category name (e.g. senior expert, engineer, etc.)	Monthly Salary (A)	No. of months worked (B)	Staff costs amount (A x B)
1					
2					
Total			0.00		0.00
The cost of staff assigned to the action, comprising actual salaries plus social security charges and other statutory costs included in the remuneration, provided that this does not exceed the average rates corresponding to the beneficiary's usual policy on remuneration.					
EXTERNAL EXPERTS / SUBCONTRACTING					
Line N°	Name of Subcontractor	Description of the work undertaken	Invoice N°	Date of invoice [dd-mm-yyyy]	Amount
1					
2					
3					
Total					0.00
TOTAL ELIGIBLE COSTS FOR THE PERIOD					
Direct staff costs					0.00
External Experts / Subcontracting					0.00
Total					0.00

A.3. INTERIM REPORT

Name of Project Development Services (PDS):

ELENA Contract reference:

Reporting period: from [Contract starting date dd-mm-yyyy] to [end of month 18 dd-mm-yyyy]

1. Work progress of the Project Development Services (PDS)
 - Progress and achieved results against initial objectives of the work programme including:
 - Detail description of PDS activities presented in Table A.3.1.a and Table A.3.1.b. Please indicate for which planned investments these activities have been performed,
 - When available, please provide copies of consultants' reports, studies or other subcontracted activities such as terms of reference (ToRs) and published calls for external services
2. Work progress on the Investment Programme
 - Progress and achieved results against initial objectives of the Investment Programme (i.e. achieved investments or published tender(s) for an investment during this reporting period.
 - Include a description of the PDS work performed in relation to preparation of these investments and/or published tender)
3. Identified problems and risks to the implementation of the Investment Programme (including PDS beneficiary's description of these problems/risks,, and corrective actions taken or to be taken)
4. Contracts of technical assistance (external experts/subcontracts) committed/completed during the reporting period in relation to the started/planned investments (Use attached Table A.3.1.a)
5. Description of the internal technical assistance committed/completed during the reporting period in relation to the started/planned investments (Use attached Table A.3.1.b).
6. Updated list of completed/committed and planned investment projects during the reporting period with the reference to the work performed by the PDS (Use attached table A.3.2.).
7. Changes in the planned activities under the PDS or in the Investment Programme and other useful information
8. Calculation of the leverage factor achieved
9. Other useful comments or information's
10. Request for changes in work programme and/or budget allocation (according to needs indicate the request for changes already presented or to be presented in parallel to the interim report)
11. Supporting documents to provide (when available, copies of consultants' reports, studies or other subcontracted activities such as terms of reference (ToRs) and published calls for external services; (including published calls for tenders for external services); political decisions (by council or board) for launching the tenders or framework contracts and the investment programme)
12. Financial statement (for the covered 18 month period - use attached table A.3.3.)
13. Outlook (main achievements and milestones planned for the next six months)

Date of report:

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A.3.1.a Contracts of Technical Assistance (external experts / subcontracts) committed/completed during the reporting period

External subcontract	Name of external consultant / subcontractor	Short description of work performed	Expected total costs of subcontracts [in EUR]	Duration of subcontracts (start and end date)	Procurement procedure applied	Tender publication reference (e.g. OJEU publication)	Comments
External TA (ETA) Please use code and reference numbers as this is required for Table A.3.2							
e.g.: ETA 1							
etc.							
TOTAL							

A.3.1.b Internal Technical Assistance committed/completed during the reporting period

Internal Technical Assistance	Name of staff employed	Short description of work performed	Duration of assistance provided (start and end date)	Comments
Internal TA (ITA) Please use code and reference numbers as this is required for Table A.3.2				
e.g.: ITA 1				
etc.				

A.3.2. Updated list of (1) completed/committed investment projects; and (2) planned investment projects.

Use this template for Energy projects and two separate tables for (1) and (2)

Investment Project (IP) ¹⁰ identification code	Name of IP	Technical Assistance identification code	Short description of area / technology concerned ¹¹	Identification of investor ¹²	Estimated total costs [in EUR]	Contract signature Date	Date of publication of the public tender (e.g. OJEU publication)	Implementation plan (start and end date of works)	Estimated annual final energy saved for EE projects ¹³ [in GWh]	Estimated annual final energy production by RES [in GWh]	Estimated annual reduction of CO ₂ eq. [in t]	Estimated employment created [in FTE]	Comments
Please use code and reference numbers		(from Tables A.3.1.a and A.3.1.b)											
IP xxx		Internal Technical Assistance (ITA 1)											
IP xxx		External Technical Assistance (ETA 2)											
TOTAL													

¹⁰ IP = Investment Project

¹¹ Specifying which main area concerned (i.e. EE, RES, transport or urban infrastructure) and which technology(ies)/measure(s) implemented

¹² Indicate the final investor, the one who will order the work to be carried out

¹³ Indicate the main type of energy saved or produced (thermal or electrical)

A.3.3. Financial Statement n°

European Investment Bank ELENA - European Local Energy Assistance Financial Statement					
Name of Project Development Services (PDS):					
ELENA Contract reference:					
Reporting period from: dd-mm-yyyy to dd-mm-yyyy					
Currency used: (three letter abbreviation)					
STAFF COSTS (Justification for labour costs may be requested by the Bank)					
Line N°	Name	Category name (e.g. senior expert, engineer, etc.)	Number of man-hours (A)	Hourly rate (B)	Staff costs amount (A x B)
1					
2					
Total			0.00		0.00
AND/OR					
Line N°	Name	Category name (e.g. senior expert, engineer, etc.)	Monthly Salary (A)	No of months worked (B)	Staff costs amount (A x B)
1					
2					
Total			0.00		0.00
The cost of staff assigned to the action, comprising actual salaries plus social security charges and other statutory costs included in the remuneration, provided that this does not exceed the average rates corresponding to the beneficiary's usual policy on remuneration.					
EXTERNAL EXPERTS / SUBCONTRACTING					
Line N°	Name of Subcontractor	Description of the work undertaken	Invoice N°	Date of invoice [dd-mm-yyyy]	Amount
1					
2					
3					
Total					0.00
TOTAL ELIGIBLE COSTS FOR THE PERIOD					
Direct staff costs					0.00
External Experts / Subcontracting					0.00
Total					0.00
FUNDING					
Requested funding from ELENA (max. 90%)			in %	0.0%	
Own funding			in %	0.0%	
Other sources			in %	0.0%	
Total					0.00

Statement by the beneficiary

We certify that:

- the above costs correspond to the resources employed for the work under the agreement and that those resources were necessary for the work,
- the costs were incurred and fall within the definition of eligible costs,
- where necessary, authorisations have been obtained from the EIB, and
- all the documents supporting the allowable costs reported above, including the time records are available for the purposes of audit by the EIB, EC and its authorised representatives or the Court of Auditors and reflect the costs actually incurred.

Date:

Signature:



A.4. FINAL REPORT

Name of Project Development Services (PDS):

ELENA Contract reference:

Reporting period: from [Contract starting date dd-mm-yyyy] to [end of month 36 dd-mm-yyyy]

1. Work progress
[Achieved results against initial objectives of the work programme, sectors covered]
 2. Final list of technical assistance contracts
(Use attached table A.3.1.a and A.3.1.b)
 3. Final list of the implemented investment projects
[Detailed list of measures and projects and partners implementing the Investment Programme]
(Use attached table A.3.2.)
 4. Calculation of the leverage factor achieved and compliance with set objective
 5. Financial statement
[For the whole duration of the Project Development Services]
(Use attached table A.3.3.)
 6. Other useful comments or information
 7. Supporting documents to provide
[When available, copies of consultants' reports, studies or other subcontracted activities such as terms of reference (ToRs) and published calls for external services; (including published calls for tenders for external services); political decisions (by council or board) for launching the tenders or framework contracts and the investment programme]
 8. Conclusions
[Lessons learnt and to pass over to other local authorities, next steps planned in the implementation of the Investment Programme]
-

Date of report:

A.4.1 FINAL REPORT – annex

Name of Project Development Services (PDS):

ELENA Contract reference:

Reporting period: from [Contract starting date dd-mm-yyyy] to [end of month 36 dd-mm-yyyy]

Tendered, contracted and implemented investments at the end of the reporting period						
EE in buildings [EUR]	Transport [EUR]	Public lighting [EUR]	District heating [EUR]	RES [EUR]	Smart grid [EUR]	Other EE [EUR]

Outcomes expected at the end of the reporting period			
Energy saving [GWh/y]	RE production [GWh/y]	GHG reduction [t CO2 eq/y]	Job creation [FTE]

Sources of financing of the investment programme [yes/no]					
Equity	Debt	ESCO/EPC	3rd party financing	Grants/subsidies/ tax rebates	Energy supplier obligations

Types of technical assistance supported [yes/no]						
Feasibility and market studies	Project management	Business plan and financing scheme	Energy audits	Preparation of tendering procedures and contractual arrangement	Financial engineering	Stakeholder and community mobilisation

Annex V : Fiche for requesting ex-ante comments on the terms of reference (ToRs) of large sub-contracts

Introduction:

In the case the Final Beneficiary would need to launch a service contract / subcontract concerning external services for a total amount higher than 221 000 Euro (excluding VAT), the terms of reference for the sub-contract have to be available for prior comments by the EIB. The present fiche needs to be properly filled in and sent to the EIB / ELENA facility with the supporting documents (see below). The Bank will provide an answer to the request within fifteen working days.

Name of Final Beneficiary:

Name of Project Development Services (PDS):

ELENA Contract reference:

1. Reasons for undertaking the external expertise / subcontracts
2. Short description of work to be performed
3. Estimated value of the service contract / subcontract
4. Planned time table of the external services
5. Supporting document requested
 - terms of reference

Date of expedition of request:

Annex VI : Reference to ELENA - Horizon 2020 funding & legal disclaimer

Instructions for displaying the Horizon 2020 programme banner

The visual identity

The European Commission introduced a single visual identity in order to have a recognisable image and a more coherent voice when communicating and to reduce costs. In this context, EU programmes should phase out their existing logos and no new logos will be created for upcoming programmes.

The names of programmes, such as Horizon 2020 shall be used as verbal brands, i.e. references to them will be made without a regulated visual mark or logo.

Article 38 "Promoting the Action — Visibility of EU Funding" of the Horizon 2020 Annotated Model Grant Agreement provides communication guidelines. See the document at:

http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/amga/h2020-amga_en.pdf

Beneficiaries of EU funding shall use the European emblem in their communication to acknowledge the support received under EU programmes, mentioning "Co-funded by the Horizon 2020 Programme of the European Union" in their communication.

The EU emblem

The name of the EU programme (in this case Horizon 2020) can appear with the EU emblem. However, no graphical mark (i.e. logo) shall be created using the EU emblem and name of the programme. The minimum height of the EU emblem shall be 1 cm.

If used on websites, please link the EU emblem image, together with the Horizon 2020 name, to the webpage of the ELENA facility (www.eib.org/elena).

For more information on visual identity, all versions of the EU emblem and the rules governing their correct use, please consult the European Commission's guidelines for beneficiaries and other third parties available at:

http://ec.europa.eu/dgs/communication/services/visual_identity/pdf/use-emblem_en.pdf

Please find below some practical examples of how to proceed:

- PDS websites: please display the EU emblem image, together with the Horizon 2020 name, in the header or footer of all sub-sites, including any national sub-websites, and the disclaimer in the footer of your homepage.
- Reports/brochures: please use your PDS logo (if available), the EU emblem image, together with the Horizon 2020 name, and the disclaimer.
- Published papers: we recommended that you add a short text acknowledging that the Horizon 2020 Programme is co-funding at the end of the paper.
- Slides: please use your institution or company logo and the EU emblem image, together with the Horizon 2020 name on slides, e.g. on the first slide, presented at conferences, workshops, etc.

Please do not hesitate to contact the ELENA team in case of any questions about publications related to Project Development Services supported by ELENA, or to provide you with a banner designed for the Horizon 2020 programme.

Instructions for displaying the correct legal disclaimer

In addition to the branding of the Horizon 2020 Programme, you will also need to display the following legal disclaimer on any written information produced for your Project Development Services or for any related event:

The sole responsibility for the content of this [webpage, publication etc.] lies with the authors. It does not necessarily reflect the opinion of the European Union. Neither the European Investment Bank nor the European Commission are responsible for any use that may be made of the information contained therein.

Le contenu de cette [page web, publication, etc.] n'engage que la responsabilité de son auteur et ne représente pas nécessairement l'opinion de l'Union européenne. Ni la Banque européenne d'Investissement ni la Commission européenne ne sont responsables de l'usage qui pourrait être fait des informations qui y figurent.

Die alleinige Verantwortung für den Inhalt dieser [Webseite, Publikation usw.] liegt bei den AutorInnen. Sie gibt nicht unbedingt die Meinung der Europäischen Union wieder. Weder die Europäische Investitionsbank noch die Europäische Kommission übernehmen Verantwortung für jegliche Verwendung der darin enthaltenen Informationen.

El contenido de esta [página web etc.] sólo compromete a su autor y no refleja necesariamente la opinión de la Unión Europea. Ni el Banco Europeo de Inversiones ni la Comisión Europea son responsables de la utilización que se podrá dar a la información que figura en la misma.

(...)

This disclaimer can be written in small font size and it can be put in places, which are less prominent than those used for the main logo, e.g. at the bottom of websites or in the editorial information of publications. But it is important that it is actually being displayed somewhere.

The ELENA Team is available for any further assistance which you may require: elena@eib.org

Annex VII : ELENA PDS Factsheet

Location	The investment programme will be implemented in the Transdanubian region in the west of Hungary.
Beneficiary	The applicant is the Municipality of Kaposvár.
CoM signatory	The Municipality of Kaposvár is a member of the Covenant of Mayors since December 2015.
Sector	Energy efficiency in buildings and streetlighting, building integrated PV, storage and a smart grid system.
Total PDS cost	EUR 3 419 292
ELENA contribution	EUR 3 077 363
Project Development Services (PDS) financed by ELENA	<p>A consortium of 6 municipalities has been formed for the KaposGrid Smart Urban Energy Project (KaposGrid). This includes Kaposvár, as the leader of the consortium and the municipalities of Dunaújváros, Szombathely, Tatabánya, Veszprém and Zalaegerszeg. ELENA is mainly requested to provide the support necessary for the preparation of a public procurement process for a Service Provider Company that will install and manage all of the components in the KaposGrid project.</p> <p>A Project Co-ordination and Management company (PCM) will be set up. The following 5 work packages request ELENA support:</p> <ul style="list-style-type: none"> • Tendering for the hiring of the external experts • A detailed feasibility study - the preparation of the detailed feasibility study involves a series of activities that detail every aspect of the project (e.g data for the business plan, governance structure, the operational working structure of the project, detailed technical specifications, financial modelling etc) • A detailed business plan • Public procurement documentation for the implementation phase, so that the Service Company can be procured • Preparation of the contracts between the Service Provider Company and the municipalities and the financing contract <p>These tasks will require part-time experts for:</p> <ul style="list-style-type: none"> • Legal services • Public procurement services • Quality and Assurance services • Technical expertise services • Economic and financial expertise services • Other related expertise services
PDS Timeframe	From January 2019-December 2021

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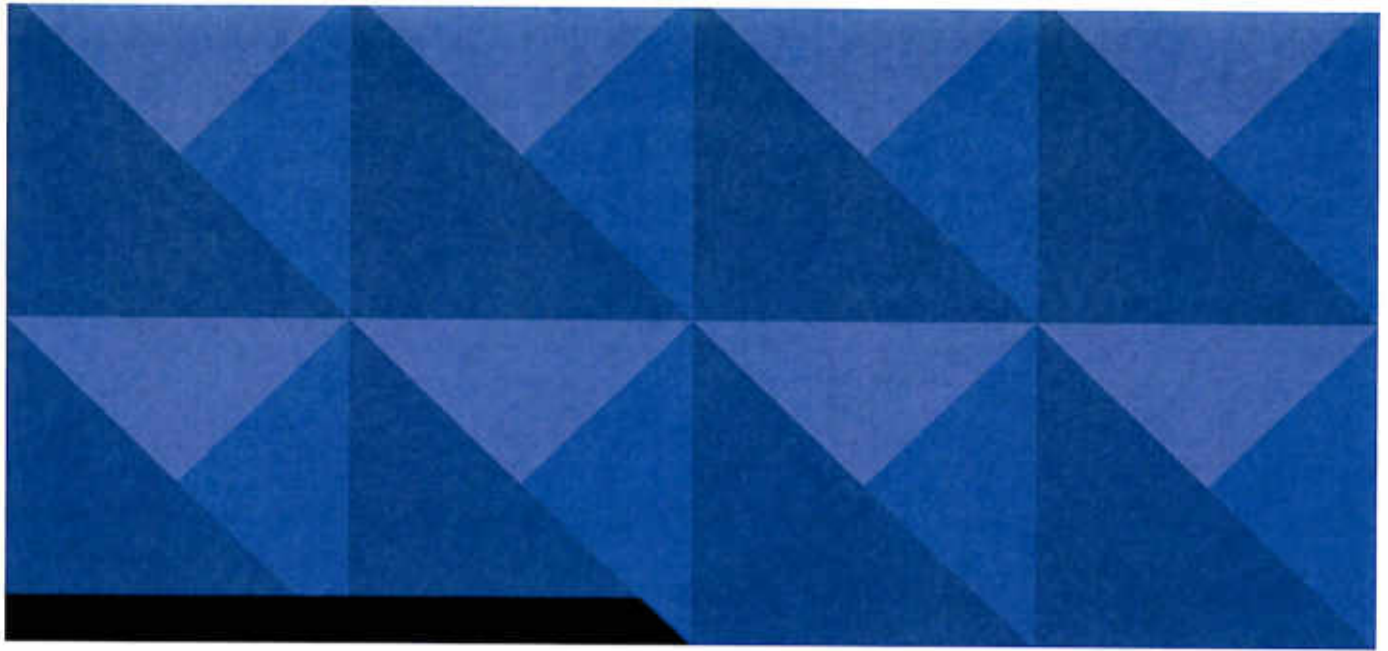
Investment programme description	<p>The investment programme incorporates a Smart Grid Centre along with energy efficiency measures for public buildings and streetlighting, building integrated PV and batteries for storage. KaposGrid will join the generation, storage and demand units in what is called a Balancing Group. The main objective of the KaposGrid project is for the participating municipalities to use energy more efficiently in order to reduce municipal energy costs.</p> <p>The aims of the KaposGrid smart grid project are to:</p> <ul style="list-style-type: none"> ▪ Retrofit up to 68 municipal buildings, including an upgrade of the lighting stock ▪ Install 32 MW of building integrated solar PV ▪ Upgrade over 23 000 public lighting lampposts in 4 of the Municipalities ▪ Install 6 Storage units totalling 22MW/55MWh storage
Investment to be mobilized	The total amount of investment is estimated at EUR 182m
Description of the approach to implement the Investment Programme	The 6 Municipalities that are involved have signed a Consortium Agreement committing to the investment programme. With input from the other 5 Municipalities, Kaposvár Municipality plans to use ELENA to prepare the detailed specifications to tender for a Service Provider company to carry out the works on behalf of them all.
Expected results	<p>The expected contributions to 2020 and 2030 energy objectives are:</p> <ul style="list-style-type: none"> ▪ Energy Efficiency –12 GWh (about 90% from gas savings) ▪ Renewable Energy –34.2 GWh ▪ CO₂ reductions –15 300 CO₂ eq t.
Leverage factor (Minimum 20)	The expected leverage factor is 59
Market replication potential	This project will involve a group of 6 Municipalities working together. The project team hopes it will be a role model for other Hungarian and European municipalities, in particular for showing how municipalities can work together and for how storage can be integrated into a system. However there is a strong coordination aspect to this project and the model could only be replicated if this could be managed effectively. This is why a lead Municipal leader and Project Manager is important.
Status	On-going
Contact person at Beneficiary	Ms Katalin Kovács, kovacskatalin@kaposmenti.hu

Annex VIII : EIB Guide to Procurement



European Investment Bank Guide to Procurement

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Guide to Procurement

for projects financed
by the EIB



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**Guide to Procurement
for projects financed by the EIB**

September 2018

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INTRODUCTION

The purpose of this Guide to Procurement is to inform the promoters of a project whose contracts are financed in whole or in part by the European Investment Bank ("the Bank") - or are financed under loans guaranteed by the Bank - of the arrangements to be made for procuring works, goods and services required for the project.

This Guide applies specifically to those components of a project identified for Bank's financing. However, in order to ensure the overall feasibility of the project, the Bank requires that procurement of the other project components does not compromise the project's technical, economic and financial viability.

The terms "open, restricted and negotiated procedures, and competitive dialogue" are used in this Guide with the meaning defined by European Union (EU) Directives on procurement (see definitions set out in Annex 1).

This Guide will be updated as deemed necessary by the Bank.

Version dated September 2018.



1. GENERAL ASPECTS

1.1. The Bank's Policy

The main elements of the Bank's policy on procurement are:

- The Bank will ensure that its funds are employed as rationally as possible. This requires that the works, goods and services procured under its financing are of appropriate quality, and acquired at economic prices and in a timely manner. This is generally best achieved through open international competition. It is consistent with the Bank's statute and accords with the interests of promoters.
- In projects located within the European Union (EU), and in those Candidate Countries (with which negotiations are already in progress for their accession to the EU) and Potential Candidate Countries that have already incorporated the relevant EU legislation, the Bank requires that the applicable EU Law on public procurement, in particular the relevant EU procurement Directives concerning competitive tendering on the basis of fair and non-discriminatory terms, be complied with, particularly as concerns **open or restricted procedures** with publication in the Official Journal of the European Union (OJEU).
- In all other countries outside the Union, the Bank requires that the main mechanisms of the EU Directives on procurement be followed, with the necessary procedural adaptations. These mechanisms may be summarised as open international competition, non-discrimination of tenderers, fairness and transparency of the process, and selection of the economically most advantageous offer. Thus, **open or restricted procedures** with publication in the OJEU is the Bank's preferred method. The actual choice of procurement procedures ultimately has to take into account a range of considerations, relating in particular to the commercial nature and interests of the promoter; the sector involved; the nature of the works, goods and services to be procured; the technology to be used; the size of individual components; the timetable for implementation; the number of firms potentially able to undertake the work or provide the supplies or services; the competitiveness of the market; etc. In the case where open or restricted procedures are not followed, promoters must, to the satisfaction of the Bank, justify their decision to use a different procedure; they must prove that the prices for the works, goods or services are commensurate with those obtained for equivalent investments in the light of market conditions and that, at the very least, any differences in cost can be explained by specific verifiable factors.

1.2. Eligibility of Contractors and Suppliers of Goods and Services

In the usual case of projects (both inside and outside the Union) financed by the Bank's "own resources" (funds raised mainly through the Bank's borrowings on capital markets), firms originating from all countries of the world are eligible to tender for works, goods and services contracts.

In some specific cases of projects outside the Union, the Bank's financing comes from third parties, and the origin of firms eligible to participate in the procurement may then be partly restricted. Details of such restrictions are provided in section 3.2.



The Bank shall not provide or otherwise make funds available, directly or indirectly, to or for the benefit of an individual or entity that is subject to financial sanctions imposed by the EU¹, either autonomously or pursuant to the financial sanctions decided by the United Nations Security Council on the basis of Article 41 of the UN Charter.

In addition, individuals or firms may not be eligible to tender in application of section 1.4 on Ethical Conduct.

1.3. Bank and Promoters: Respective Roles

Promoters are fully responsible for implementing projects financed by the Bank, in particular for all aspects of the procurement process, from drafting tender documents and awarding contracts through to implementing contracts. The involvement of the Bank is confined solely to verifying whether or not the conditions attached to its financing are met.

The Bank may advise or assist promoters in the procurement process, but is not a party to the resulting contracts. The Bank has the right and obligation to ensure that, in the case of projects inside the Union, EU provisions in this field or, in the case of projects outside the Union, the relevant criteria with regard to the proper management of its financing are respected, and that the procurement process is fair and transparent and the tender selected is economically the most advantageous. The rights and obligations of the promoter vis-à-vis the tenderers for works, goods or services to be furnished for a project are governed by the local legislation and tender documents published by the promoter, and not by this Guide.

1.4. Ethical Conduct

It is the Bank's policy to require that promoters, as well as tenderers, contractors, suppliers and consultants under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. The Bank reserves the right to take all appropriate action in order to enforce this policy.

Moreover, the Bank is committed to ensuring that its loans are used for the purposes intended and its operations are free from Prohibited Conduct (including but not limited to, fraud, corruption, collusion, coercion, obstruction, money laundering and terrorist financing²).

In pursuance of this policy as set out in EIB's Anti-Fraud Policy, if it is established to the required standards³ that a project-related party⁴ has engaged in Prohibited Conduct in the course of a procurement process or implementation of a contract (to be) financed, the Bank:

- a) May seek appropriate remediation of the Prohibited Conduct to its satisfaction;
- b) May declare ineligible such project-related party to be awarded the contract; and/or
- c) May withhold the Bank's no objection to contract award⁵ and may apply appropriate contractual remedies, which may include suspension and cancellation, unless the Prohibited Conduct has been dealt with to the satisfaction of the Bank.

¹ Pursuant to Chapter 2 of Title V of the TEU and the objectives of the Common Foreign and Security Policy set out in Article 21 of the TEU and Article 215 of the TFEU.

² See the EIB's Anti-Fraud Policy for definitions (<http://www.eib.org/en/infocentre/publications/all/anti-fraud-policy.htm>).

³ In accordance with the EIB's Investigation Procedures.

⁴ See the EIB's Anti-Fraud Policy.

⁵ For contracts subject to prior review in operations outside the EU.

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Furthermore, within the framework of its Exclusion Policy, the Bank may declare such project-related party ineligible to be awarded a contract under any EIB project or to enter into any relationship with the Bank.

1.5. Conflict of Interest

Conflict of interest occurs when the impartial and objective exercise of the functions of the promoter, or the respect of the principles of competition, non-discrimination or equality of treatment with regard to the procurement procedure or contract, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest. The concept of conflict of interest covers any situation where staff members (or consultants acting on behalf) of the promoter who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure or contract execution.

Promoters must take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures or contracts so as to avoid any distortion of competition and to ensure the impartial and objective exercise of the functions of the promoter and equal treatment of all tenderers or contractors.

The assessment of whether or not there is a conflict of interest has to be carried out on a case by case basis, considering the actual risk of conflict based on the specific circumstances of the case at stake. The individual or entity in question should declare whether they have any conflict of interest and, if so, present supporting evidence which might remove or remedy a conflict of interest.

In cases where a conflict of interest cannot be effectively remedied by other less intrusive measures, the Bank requires promoters to exclude from participation in an EIB-financed procurement procedure or contract any tenderer or contractor affected by such a conflict of interest.

1.6. Transparency of Bank Activities

The Bank is committed to achieving the highest possible level of transparency. It follows a Transparency Policy⁶, which is an integral part of its Corporate Responsibility Policies. The Transparency Policy sets out the rules under which the public may access information held by the Bank. While in accordance with the Policy, the Bank is committed to a presumption of disclosure, it also has a duty to respect professional secrecy in compliance with the relevant legislation and standards.

1.7. Environmental and Social Policies

The EIB aims to add value by enhancing the environmental and social sustainability of all the projects that it is financing and as such all projects must comply with the environmental and social requirements of the Bank. The promoters are responsible for preparing, implementing and operating projects financed by the Bank and for the fulfilment of Bank environmental and social requirements.

⁶ <http://www.eib.org/en/infocentre/publications/all/eib-group-transparency-policy.htm>



In their procurement activities, promoters are encouraged to contribute to the protection of the environment, human well-being, human rights, gender equality, combating climate change and promotion of sustainable development, whilst ensuring that they comply with the core policy principles as set in this Guide. Tenderers and (sub-) contractors are required to comply with applicable labour laws and national and international standards of health and safety, including those contained in any relevant International Labour Organization (ILO) conventions and international standards and agreements on environmental protection. The Bank's environmental and social policies are available on the Bank's website⁷.

1.8. Procurement Complaints

Procurement complaints may be either (i) against a Promoter's action; or (ii) against a Bank's action.

1.8.1. Complaints against Promoter's action

The Bank requires that Promoters review, take the necessary actions and respond in a timely manner to complaints addressed to them related to the procurement process of an EIB-financed contract and originating from any person or entity having or having had an interest in obtaining the contract.

Moreover, the EIB generally requires that review procedures for remedies acceptable to the Bank are available to any person or entity having or having had an interest in obtaining the contract and (at risk of) being harmed by an alleged infringement from applicable procurement rules. In the case of public procurement, such review procedures are normally provided through the competent national remedy mechanisms⁸.

1.8.2. Complaints against Bank's action

Any member of the public may refer a complaint to the EIB in respect of an instance of maladministration in the Bank's procurement due diligence. The Bank's Procurement Complaints Committee reviews the Bank's position relative to complaints arising from tendering of EIB-financed contracts for goods, works and consultant services in case a complaint against Bank's action has been received.

If the complainant is not satisfied with the Bank's outcome, or response, it is entitled to escalate its complaint to the European Ombudsman for alleged maladministration by the Bank.

Further details with regard to the process to be followed by tenderers for procurement complaints are provided in Annex 8 to the Guide.

⁷ <http://www.eib.org/infocentre/publications/all/environmental-and-social-principles-and-standards.htm>

⁸ This should be distinguished from the Bank's own due diligence of procurement decision for projects located outside the European Union described in this Guide

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2. OPERATIONS WITHIN THE EUROPEAN UNION

2.1. Operations to which EU Directives apply

Within the Union, procurement is covered by national legislation implementing EU Law, in particular EU Directives on procurement as they may be amended from time to time⁹. It constitutes the legal framework for procurement in EU Member States. It is the role of the relevant national and EU authorities to ensure that procurement is carried out in line with this legal framework.

For those promoters who fall under the EU Directives on procurement¹⁰, whether they are public or private institutions or companies, the Bank will:

- Require the promoter, at the project appraisal stage, to ensure that the applicable procurement Directives concerning competitive tendering, on the basis of fair and non-discriminatory terms are complied with under the project; one essential step is the publication of a Procurement Notice in the OJEU when this is required; and
- Take further steps during project implementation, to the extent necessary, to control compliance with applicable procurement Directives in order to ensure the rational employment of the Bank's funds, protect the soundness of the project and reduce the risks involved.

When the Bank finances multi-scheme operations where the details of all sub-projects are not known at appraisal (case of **Framework Loans**), it requires the promoter to ensure that the procurement of works, goods and services relating to the sub-projects that the Bank finances will be undertaken in accordance with the applicable legal framework.

When the Bank makes a loan to an intermediary institution/fund manager (case of **Multi-Beneficiary Intermediated Loans or Funds**), it requires such intermediary institution to take all the requisite measures to ensure that the procurement by the final beneficiaries of works, goods and services relating to the sub-projects that the Bank finances will be undertaken in accordance with the applicable legal framework.

When the Bank provides a guarantee to an intermediary institution to cover partly either its existing portfolio, in order for the intermediary institution to be able to originate an eligible new portfolio, or a guarantee directly to a new portfolio, the Bank requires such intermediary institution to take all the requisite measures to ensure that the procurement procedures carried out by the final beneficiaries under the project financed by the Bank will comply with the applicable national legislation implementing EU Law.

When the Bank finances a project developed under a concession or a public-private partnership (PPP) scheme, it requires that the concession/PPP award process by the relevant public contracting authority complies with the applicable legal framework¹¹.

⁹ In certain autonomous regions of EU Member States, regional procurement law may also apply.

¹⁰ In particular, Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement, Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors, Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts; European Parliament and Council Directive 2007/66/EC of 11 December 2007 regarding Remedies, amending Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts; and European Parliament and Council Directive 2009/81/EC of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC. A full list of EU legal instruments concerning procurement can be found at the website: https://ec.europa.eu/growth/single-market/public-procurement/rules-implementation_en.

¹¹ For further guidance, see in particular Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, the Commission Interpretative Communication on Concessions under Community Law,

2.2. Operations to which EU Directives do not apply

In all its operations, the Bank aims at the effective use of its resources and ensures that the criteria of economy and efficiency are applied consistently.

For public contracts that are not covered by the EU Directives (e.g., public contracts, the amounts of which are below the thresholds of the Directives), the Bank requires promoters to ensure that procurement complies with the relevant principles of the EU Treaty (in particular the principles of transparency, equal treatment and non-discrimination on the basis of nationality) and applicable national legislation¹².

For contracts other than public contracts, promoters (most frequently private) operating in sectors where EU Directives do not apply can satisfy the criteria of economy and efficiency in their procurement by recourse to commercial practices other than open or restricted procedures.

In any event, the Bank satisfies itself that promoters follow suitable procurement procedures, ensuring an appropriate selection of works, goods and services offered at competitive prices and in a timely manner. Contracts awarded by promoters must be negotiated impartially and accord with the project's best interests.

OJEU C 121 dated 29 April 2000, and the Commission Interpretative Communication on the Application of Community Law on Public Procurement and Concessions to Institutionalised Public-Private Partnerships (IPPP), OJEU C(2007)6661 dated 5 February 2008.

¹² For further guidance, see the Commission Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives, OJEU 2006/C 179/02 dated 1 August 2006.

3. OPERATIONS OUTSIDE THE EUROPEAN UNION

3.1. General

The cooperation agreements and financial protocols agreed upon between the European Union and countries outside the EU lay down the conditions under which the Bank can mount operations either in the form of loans from its own resources (originating mainly from the Bank's borrowings on capital markets) or under resources from third parties managed by the Bank on behalf of the Commission or the Member States. In all cases, the Bank requires that the main mechanisms of the EU Directives on procurement, as described in Sub-section 1.1, be followed, with the necessary procedural adaptations:

Candidate and Potential Candidate Countries are progressively incorporating EU Directives in their legislation. In this Guide, they fall under chapter 3, Operations Outside the European Union, until the deadline when they are committed to applying the EU Directives on procurement as agreed during their negotiations with the EU to the extent that they have transposed these Directives into their national legislation at that moment. Then they fall under chapter 2, Operations Inside the European Union.

3.2. Eligibility of Providers of Works, Goods and Services

3.2.1 Financing from Own Resources

In operations financed from the Bank's own resources (subsidized or non-subsidized), tenders are open to nationals of all countries. However there may be restrictions in the case of a joint co-financing (see article 3.2.3 below).

3.2.2 Financing under Resources from Third Parties

Tenders financed by funds made available under the Investment Facility created by the Cotonou Agreement (ACP-EU Partnership Agreement, signed in Cotonou on 23 June 2000) are open to nationals of all countries.

In other cases of financing a contract under resources from third parties (or from a combination of the Bank's own resources and resources from third parties), eligibility of tenderers, goods and services is governed by the rules applicable to the corresponding financing instrument. These rules are summarised in Annex 4.

3.2.3 Co-financing from Own Resources

The Bank may co-finance projects with other financial instruments and institutions, particularly some instruments of the European Commission, the World Bank Group (IBRD, IDA and IFC), regional development banks such as the European Bank for Reconstruction and Development (EBRD), the African Development Bank (AfDB), the Asian Development Bank (ADB), the Inter-American Development Bank (IDB), as well as bilateral aid agencies of EU countries and various banks from other countries, etc.



Such co-financing can be arranged on a joint or parallel basis:

- In **joint co-financing**, two separate financiers, who may have different eligibility rules with regard to the origin of works, goods and services, agree to finance the same contract. In this case, the Bank will make its participation conditional upon having the other co-financier open its eligibility as much as possible, but at least to all the works, goods and services originating from the European Union and the beneficiary country. In the case of a co-financing with EU budgetary instruments, the eligibility is generally restricted to that of the EU instrument; and
- In **parallel co-financing**, each separate project component or contract is financed by a single financier. In this case, the procedures adopted by each co-financier apply to those components or contracts that it finances. The Bank's eligibility rules with regard to the origin of works, goods and services would therefore apply only to the Bank-financed components or contracts.

3.3. Description of Procurement Procedures

3.3.1. General

The procurement procedures for Bank's projects outside the Union are consistent with the provisions of the Bank's statute, the Treaty on the Functioning of the European Union, the above-mentioned cooperation agreements and financial protocols, and the relevant decisions of the European Court of Justice.

The procedures are based on the following:

- The development objective entrusted to the Bank, and specifically the Bank's fundamental task to contribute, through its operations, to economic progress in the countries concerned, implying not only careful selection of projects but also, at the implementation stage, access to the appropriate technology at the most advantageous cost;
- The main mechanisms, procedures and rules incorporated in the relevant EU Directives, as appropriate to the specific operations and countries concerned; and
- The duty of the Bank, as the European Union's long-term financial institution, to ensure that the application of the rules on procurement gives companies from Member States an equitable chance of participating in the works and the provision of goods and services for implementing the project components that the Bank finances.

See Annex 1 for a definition of specific procurement terms.

3.3.2. International Procurement Procedures

These procedures derive from the EU Directives as they may be amended from time to time:

- **Open procedures** allow all interested parties (contractors or suppliers as the case may be) to submit tenders. They involve strict requirements for international notification (including publication in the Official Journal of the European Union); clear and comprehensive tender documents; and fair and transparent tendering, evaluation and award practices.

Specific provisions applicable to open procedures, which reflect best international practices, are described in section 3.7.

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- **Restricted procedures** provide that only those candidates invited by the promoter may submit tenders. They are similar to open procedures regarding the tendering stage (involving clear and comprehensive tender documents, and fair and transparent tendering, evaluation and award practices). The selection of candidates follows:
 - either an international notification (including publication in the OJEU) and the list of candidates is prepared through a formal pre-qualification exercise;
 - or the list of candidates is established through a system of qualification of contractors and suppliers established and maintained through publication in the OJEU respecting the principles of fairness, transparency, and non-discrimination. The said list should not be closed for long periods and should be revised regularly to allow new actors to apply for qualification.
- **Competitive dialogue** is a procedure which may be used for particularly complex contracts, for which the promoter is not objectively able to prepare formal tender documents like in the open or restricted procedures. The contract notice must be published internationally (including in the OJEU). The promoter opens a dialogue with selected candidates in order to define the means best suited to satisfy his needs.
- **Competitive procedure with negotiation** follows a similar sequence of steps as in the competitive dialogue. However, unlike competitive dialogue, minimum specifications and requirements are to be set and promoters negotiate with qualified tenderers with the objective of improving the content of the initial and all subsequent tenders, except for the final tenders, which are to be assessed against the original minimum requirements.
- **Negotiated procedure without publication** allows promoters to consult candidates of their choice and negotiate the terms of the contract with one or more of them. The selection of candidates is directly established by the promoter, who, to the extent possible, should invite at least three qualified candidates from at least two different countries to negotiate.

3.3.3. National Procurement Procedures

For small contracts and particular works that, if within the EU, would not fall under the scope of the EU Directives, other procedures may be more appropriate:

- **National competitive bidding** (with publication only in the local press) follows the normal procedures of the country of the promoter. Tender documents are normally in the official language of the country; the national currency is generally used for the purposes of tendering and payments; and tender prices are normally inclusive of all applicable local duties and taxes.
- **Shopping** and **direct contracting** allow promoters to negotiate prices and other conditions with several local contractors or suppliers or only one of them.
- **Force account** (also called **direct labour**) is not really a procurement procedure since it consists of the carrying out of works using the promoter's own workforce and equipment. This may be the only practicable method for constructing some kinds of works, or providing the appropriate in-house services, such as basic design, R&D (research and development), etc.

3.4. Selection of Procurement Procedures

3.4.1. Operations in the Public Sector

Outside the EU, the Bank defines operations in the public sector as those carried out by:

- o In all cases: public authorities;
- o In addition, in the case of gas, heat, electricity, water, transport, exploration for or extraction of oil, gas, coal or other solid fuels, ports and airports, telecommunications, and postal services:
 - public undertakings operating in markets which are not liberalised, and
 - privately-owned entities that have been granted special or exclusive rights without a competitive process and operate in markets which are not liberalised.

A precise definition of the public sector is given in Annex 5.

All other operations are considered to belong to the private sector.

In order to ensure economy, efficiency, non-discrimination and transparency in procurement, the Bank requires that, in all appropriate cases, contracts in public sector operations are procured following open or restricted procedures with publication in the OJEU. Exceptions are only warranted on the grounds of special circumstances, relating to the nature of the project or the promoter, the estimated value of the contract, or other factors peculiar to the context of the project. In all cases, the procedures adopted must be fully justified by the promoter, acceptable to the Bank, in the best interest of the project, and consistent with the principles spelt out under article 3.3.1 above.

No proposed contract may be split up with the intention of evading the application of this Guide. In particular, splitting the works in several small contracts with the only purpose of favouring domestic contractors is not acceptable to the Bank, unless the promoter can prove that this would be more advantageous for the objectives of economy and efficiency of project implementation.

To these ends, the Bank requires promoters operating in the public sector to adopt appropriate procedures to procure works, goods and services (except consultancy services, for which procurement procedures are described in section 4) consistent with the following principles:

- **Open procedures** with publication in the OJEU (and the international and national press) are the most common form of procurement for public contracts.
- **Restricted procedures** with publication in the OJEU (and the international and national press) are recommended for large or complex public contracts warranting pre-qualification of contractors or suppliers. In cases where a technical dialogue between the promoter and tenderers is useful, it is advisable to use the two-stage system described in Annex 1.
- **Competitive dialogue** with publication in the OJEU (and the international and national press) may be used for particularly complex contracts where the promoter is not objectively able to define the technical means capable of satisfying the needs or objectives, or is not able to specify the legal or financial make-up of the project.
- **Competitive procedure with negotiation** and publication in the OJEU (and the international and national press) is best suited when negotiations may be necessary to



guarantee that works, supplies and services are perfectly adapted to the promoter's specific needs and may be used when:

- the nature of the works or services or the risks involved do not allow an overall pricing;
 - the intellectual or financial nature of the services do not allow to use the selection rules of open or restricted procedures or competitive dialogue; or
 - the works are performed solely for purposes of research, testing or development.
- **Negotiated procedures** with the list of candidates directly established by the promoter may be used in exceptional cases:
 - where no (suitable¹³) tenders/applications have been submitted in response to an Open Procedure or a Restricted Procedure, provided that the initial conditions of the contract are not substantially altered; or
 - where the works, supplies or services can be supplied only by a particular firm and no reasonable alternative or substitute exists, and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement and:
 - competition is absent for technical reasons; or
 - exclusive rights, including intellectual property rights, are to be protected; or
 - insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the promoter, the time limits for the more competitive procedures cannot be complied with. The circumstances invoked to justify extreme urgency shall not in any event be attributable to the promoter; or
 - for additional deliveries by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations where a change of supplier would result in incompatibilities or disproportionate technical difficulties in operation and maintenance.
 - **National competitive bidding** may be appropriate for contracts, which, by their size, nature or scope, are unlikely to attract foreign competition. These circumstances occur when:
 - the contract values are small;
 - works are scattered geographically or spread over time;
 - works are labour intensive; or
 - the advantages of open or restricted procedures are clearly outweighed by the administrative or financial burden involved.
 - **Shopping** is appropriate for procuring readily available off-the-shelf goods or standard specification commodities that are small in value; as much as possible, offers from at least three suppliers should be requested.
 - **Direct contracting** may be justified if only one contractor or supplier can fulfil a contract in a satisfactory manner and at the most advantageous cost.
 - **Force account** may be justified where:
 - services involve the intellectual property of the promoter;

¹³ A tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the Promoter's needs and requirements as specified in the procurement documents.



- quantities of work involved cannot be defined in advance;
- works are small and scattered or in remote locations;
- works are required to be carried out without disrupting ongoing operations;
- the promoter is clearly in a favourable situation to carry out the works at an attractive price (e.g. railway track laying); or
- there are emergencies requiring prompt action.

To be acceptable to the Bank, **national procedures** (covering national competitive bidding and shopping) must ensure economy, efficiency and transparency, and be broadly consistent with the principles underlying this Guide. If eligible foreign firms wish to participate in national procedures, they must be allowed to do so. The additional Bank requirement is that each tenderer or contract beneficiary must sign a Covenant of Integrity (see section 3.6 and Annex 3).

The threshold below which **national procedures** can be used will vary according to the nature of the project, the experience of the promoter and local conditions. The threshold will be agreed for each type of works, goods or services between the promoter and the Bank on a project-by-project basis. Except for consultancy services (see chapter 4), this threshold should not exceed: 5 million euro for works and 200,000 euro for goods and services, except electricity, gas, water and transport where it is 400,000 euro and telecommunications where it is 600,000 euro (all excluding the Value Added Tax, VAT, or equivalent direct taxes).

3.4.2. Operations in the Private Sector

Promoters operating in the private sector (i.e. outside the operations defined in Annex 5) normally satisfy the objectives of economy and efficiency by following established commercial practices. The Bank thus does not require that they follow the above public procurement procedures. For example, the less rigid, less costly and faster negotiated procedures (generally consisting of an international enquiry among a short-list of suppliers followed by negotiations) often prove to be more effective. Nevertheless, wherever appropriate, the Bank will encourage such promoters to publish a tender notice in the OJEU and adopt open or restricted procedures, particularly for large contracts. In such cases it may be necessary to introduce appropriate safeguards to ensure that the legitimate confidentiality interests of the promoter and other commercial contracting parties are fully respected in the procurement process.

In any event, the Bank sees to it that promoters follow fair and transparent procurement procedures ensuring an appropriate selection of works, goods and services offered with an appropriate quality, at competitive prices and in a timely manner. The offer selected must be economically the most advantageous. Contracts awarded by promoters must be negotiated impartially and accord with the project's best interests. In this case, the Bank ensures that, as far as possible and depending on the magnitude of the contract, at least three qualified firms from at least two different countries are consulted. The Bank will also ensure that there is no discrimination on the basis of tenderer's nationality.

If a company is a shareholder of the promoter (or the promoter is a shareholder of a company or if the promoter and a company have the same shareholders) and a contract is awarded by the promoter to this company (as contractor, manufacturer or otherwise) under a Bank-financed project, the Bank verifies that contract costs are in line with the initial estimates and with current market prices, and that the contractual conditions are fair and reasonable. The Bank will not finance works, goods or services for which the costs are considered to exceed market levels.



3.4.3. Concession Operations

Where the Bank is participating in financing a project developed under a BOT (Build, Operate, Transfer) or similar concession scheme which enjoys special or exclusive rights, or other state concession such as a recognized monopoly, the Bank's approach is as follows:

- If the concessionaire has been selected following a formal international tender procedure (which may include several stages but has been the subject of an adequate international publicity) acceptable to the Bank, and has explicit responsibility for carrying out the works and providing the services under his concession, the works, goods and services covered by the Bank's financing are considered by the Bank as operations in the private sector and can be procured according to the relevant provisions of this Guide.
- If the concessionaire has not been selected through a formal international tender procedure, but the Concession Agreement is considered by the Bank to be economically reasonable in terms of price, quality and risk-sharing, the Bank will review the selection process to check that the concession was awarded through a transparent process in line with the principles of the EU Treaty, implying that the three following criteria are met:
 - i) there was adequate international publicity to allow for international competition;
 - ii) the process was fair and non-discriminatory; and
 - iii) the process followed can be traced.If this is the case, the works, goods and services covered by the Bank's financing are also considered by the Bank as operations in the private sector and can be procured according to the relevant provisions of this Guide.
- If the Concession Agreement is considered by the Bank to be economically reasonable in terms of price, quality and risk-sharing, but the review found that some of the above criteria are not fulfilled, the Bank may, on an exceptional basis, still consider supporting the project should it find that the project "added value"¹⁴ is sufficiently strong to outweigh the deviations. In that case:
 - in the areas of gas, heat, electricity, water, transport, exploration for or extraction of oil, gas, coal or other solid fuels, ports and airports, telecommunications, and postal services - if the concessionaire has been granted special and exclusive rights without a competitive process and operates in a market that is not liberalised¹⁵ - the Bank will consider the works, goods and services covered by the Bank's financing as operations in the public sector, which have to be procured according to the relevant provisions of this Guide;
 - in other areas, notably when several concessionaires operate in a liberalised market, private procurement procedures may be accepted by the Bank on a case-by-case basis, depending on the degree of compliance with the three above criteria and taking into account the co-financing arrangements.

When private procurement procedures are accepted, the Bank will encourage the concessionaire to publish a General Notice in the OJEU regarding the part of his investment programme to be carried out outside his own organisation.

In the case of a Private Initiative in a Public-Private Partnership, also called "unsolicited proposal" (a private investor bears the entire cost of preparing a project which will then be put to international tender by the public promoter), the Bank may accept that this private investor

¹⁴ The project "added value" encompasses the following three aspects: (i) the alignment of the project with the Bank's overall objectives and priorities; (ii) the quality and soundness of the project; and (iii) the EIB contribution to the project.

¹⁵ As defined in Annex 5.

benefit from limited compensation incentives in the tender procedure, provided that these incentives do not affect the transparency, fairness and competitiveness of the tender process.

3.4.4. Specific Operations

- **Framework Loans:** when the Bank finances multi-scheme operations where the details of all sub-projects are not known at appraisal, it requires the promoter to ensure that the procurement of works, goods and services relating to the sub-projects that the Bank finances will be undertaken in accordance with the provisions of this Guide. In public sector schemes operations, the Bank, based on its assessment of the schemes and of the technical and organisational capacity of the promoter to meet the requirements of this Guide, will determine and agree with the promoter its procurement due diligence, mainly related to procurement plans and prior and ex-post reviews by the Bank.
- **Multiple Beneficiary Intermediated loans (case of Mid-Cap Loans and Loans for SMEs):** when the Bank makes a loan to an intermediary institution (usually a financial institution providing loans to small and medium-scale enterprises), it requires such intermediary to take all the requisite measures to ensure that the procurement by the final beneficiaries of works, goods and services relating to the sub-projects which the Bank finances is the most economically-advantageous option, following appropriate procedures in view of the circumstances and the local legislation. When open or restricted procedures are involved, these must be undertaken in line with the provisions of this Guide.
- **Share capital operations:** in certain regions outside the EU, the Bank may finance the share capital of a public or private company. In this case, the Bank agrees with the promoter on which particular contracts its financing will be disbursed, and requires that the promoter follow procurement procedures in the same fashion as for the direct financing of projects. However, in case of a purely financial assistance (such as the strengthening of a company's capital), where there is no directly associated procurement of works, goods and services, the above does not apply.
- **Funds:** When the Bank participates in a fund, it requires such fund to take all requisite measures to ensure that contracts for the implementation of the projects financed by the Bank are procured as follows:
 - **Public sector projects:** the procurement should follow appropriate procedures in line with the principles of the EU Directives on (public) procurement. These principles may be summarised as open international competition, non-discrimination of bidders, fairness and transparency of the procedure, and selection of the economically most advantageous offer.
 - **Private sector projects:** procurement should follow fair and transparent procedures which satisfy the criteria of economy and efficiency. This can be achieved by following established commercial practices. Contracts must be negotiated impartially and be in the project's best interests.
 - **Concession projects:** where the Fund invests in projects developed under Build, Operate, Transfer (BOT) or similar concession schemes such as Public-Private Partnerships (PPP), or other state concessions such as recognised monopolies, the procurement of the concession by the relevant public contracting authority should meet the following criteria:
 - the concession is awarded through a transparent process in line with the principles of the EU Treaty, implying that there was adequate advertising to open up the concession to international competition, and that the procedure was fair and non-discriminatory and can be reviewed; and

- the concession agreement is economically reasonable in terms of price, quality and risk-sharing.

In such case, the concessionaire can procure the works, goods and services under the concession using appropriate procurement procedures for private sector projects as described above.

- **Loans guaranteed under the Investment Facility (Cotonou Agreement):** if the Bank guarantees the repayment of a loan made by another lender, the works, goods and services financed under the said loan must be purchased following procedures which ensure transparency of the procurement process, fairness with regard to the tenderers, and selection of the economically most advantageous offer along the principles of articles 3.4.1 and 3.4.2 above. The Bank may request that the competition be opened to an adequate number of suppliers of works, goods or services (for example through an international advertisement of the Procurement Notice).

3.4.5. Specific Case of Joint Co-financing

In the case of joint co-financing between Multi- or Bilateral Financial Institutions or other international organisations, procurement of jointly co-financed contracts may be carried out, with the agreement of the Bank, under the rules of another co-financing institution or organisation (the Co-financing Institution), as long as they meet the Bank's minimum requirements and standards:

- The Co-financing Institution opens its eligibility along the principles of section 3.2 above;
- Calls for tenders receive an adequate publicity to ensure wide international competition; and
- Procurement rules conform with internationally-accepted practices respecting the principles of non-discrimination of tenderers, fairness and transparency of the process, and contract award to the most economically advantageous offer.

In addition, the Bank may decide to entrust the Co-financing Institution to monitor the procurement of jointly co-financed contracts on its behalf.

Furthermore, the Bank may decide to entrust the Co-financing institution to appraise and/or monitor the project on its behalf. In such case, the Co-financing Institution is fully in charge of overseeing project procurement and applies its own rules to all the project components, provided the above principles are respected¹⁶.

3.5. Bank Review of Procurement Decisions

The Bank, as part of its project appraisal, will assess the project and the technical and organisational capacity of the promoter, and will determine its procurement due diligence.

During the project appraisal stage, the promoter should seek and obtain the Bank's agreement on the procurement plan covering at least the scope of the project to be financed by the Bank with information, such as the choice of procedures appropriate for the project, timetable, technical specifications, publication of Procurement Notices, time allowed for the preparation of tenders, etc.

¹⁶ In the specific case of projects outside the EU under the "Mutual Reliance Initiative" between EIB, AFD and KfW, one of the three co-financing partners, called the Lead Institution, is entrusted by the two others to appraise and/or monitor the project on their behalf. In such case, the Lead Institution is fully in charge of overseeing project procurement and applies its own rules as agreed with the EIB.

3.5.1. Public sector operations

The procurement plan agreed with the promoter should reflect the Bank's review requirements as detailed below.

The promoter should launch a procurement process, once the Bank has agreed with the corresponding procurement plan (and any substantial updates). In case the Bank has been involved in the project component after the promoter started the tender procedure, the procurement plan would be reviewed ex-post to ensure it still meets the requirements of this Guide.

Prior review: All International Procurement Procedures are subject to prior review by the Bank. Prior review means that Promoters must send to the Bank the relevant documentation and seek the Bank's concurrence prior to all major decisions regarding procurement, as follows:

- The Procurement Notice, the documents relating to the pre-qualification stage (if this takes place), and the tender documents must be sent to the Bank for information and possible comments before being published or given to potential tenderers;
- The pre-qualification of tenderers or the list of candidates directly established by the promoter prior to the notification of candidates (if any), the evaluation of bids (at each evaluation stage) and the proposed decision on the award of contracts must obtain the non-objection from the Bank based on appropriate documents;
- In case the procurement procedure foresees negotiations, the minutes of the negotiations and any related amendment to the original technical specifications/terms of reference or conditions of contracts prior to the notification of the proposed award decision must be sent to the Bank;
- After the contract signature, any contract modification the cumulative effect of which causes an increase from the original contract price by more than 15% prior to its conclusion must be sent to the Bank.

In the case of contract termination, the promoter is required to inform the Bank of its intention to terminate the contract and the grounds for such termination. The Bank reserves the right to withdraw its financing of the contract in case the contract termination was not justified and/or was conducted in breach of the contractual provisions.

Prior review by the Bank follows a risk-based approach where high-risk contracts are subject to review by an inter-directorate committee before the non-objection is issued to the promoter.

Ex-post review: All contracts not subject to international procurement procedure are subject to ex-post review by the Bank as set out in the procurement plan. This means that promoters may conduct procurement without the prior involvement of the Bank. The promoter will regularly provide the Bank with an updated procurement plan completed with information about the contracts' award decision, signature and level of competition. The promoter will retain the full documentation for each such contract and make it available to the Bank upon request as part of ex-post reviews to be conducted by the Bank or its auditors. The Bank reserves the right to withdraw its financing of contracts whose ex-post review reveals a breach of this Guide.

During project implementation, the Bank will monitor the procurement implementation by the promoter and may adjust its due diligence based on the promoter's performance.

3.5.2. Private sector operations

In private procurement, the promoter should ensure that the procurement practices, award decisions and contracts are in line with the provisions of this Guide applicable to operations in the private sector (3.4.2.). The Bank will satisfy itself that the works, goods and services to be financed are appropriate for the project and are or will be procured at fair market prices in line with the principles of economy and efficiency, and under contracting conditions that are reasonable in relation to prevailing market practice.

3.5.3. Concession operations

When the promoter is the public authority in charge of the selection of the concessionaire, the Bank's procurement review of concession and PPP selection processes will be the same as for public sector operations (3.5.1.).

The Bank's due diligence in relation with the procurement performed by the concessionaire will be conducted in accordance with the type of operations (public or private) identified as above in 3.4.3.

In cases where the promoter is a tenderer (or a Special Purpose Vehicle (to be-) created by the tenderer upon award of the concession contract) participating in the concession selection process run by the public authorities, it is advisable that the public authorities ensure early involvement of the Bank in the PPP to allow the Bank to verify that the conditions attached to its financing as described in this Guide are met. In principle, the Bank makes itself available to all interested tenderers on a non-exclusive basis, without any obligation on the tenderers to include the Bank in their tender structures (unless they are required to do so in the procurement documents). In such cases, the Bank commits to restricting access to information made available to it as part of its review of the concession award process, in full respect of the principle of confidentiality, and to put in place adequate measures, including confidentiality undertakings, as needed.

The requirements covering the review by the Bank of procurement decisions are outlined in Annex 2.

3.6. Prohibited Conduct - Covenant of Integrity

As noted in section 1.4, the Bank is committed to ensuring that its loans are used for the purposes intended and its operations are free from prohibited conduct (including but not limited to, fraud, corruption, collusion, coercion, obstruction and money laundering and terrorist financing). In particular, in countries outside the EU, the Bank will, as a general rule, require that promoters:

- Require any tenderer for works, goods or services, as a condition of admission to eligibility, to execute and attach to its tender a Covenant of Integrity in the form indicated in Annex 3; and
- Insert in tender documents and contracts a clause that grants the promoter, the Bank and auditors appointed by either of them, as well as any authority or European Union institution or body having competence under European Union law, the right to inspect and copy the books and records of the tenderer, contractor, supplier or consultant in connection with any Bank-financed contract.

The Bank reserves the right not to finance any contract in which tenderers/contractors have not issued to the promoter the Covenant of Integrity signed by a duly authorised person.

For contracts awarded prior to the Bank's involvement in the project, the promoters are encouraged to include the Covenant of Integrity.

The requirement for a Covenant of Integrity may be waived for those private sector promoters who can satisfy the EIB that they have implemented anti-fraud standards at least equivalent to the Bank's policy.

3.7. International Procurement Procedures

3.7.1. General Aspects

As a general rule, the Bank requires public contracts to be awarded following open or restricted procedures with publication of a Procurement Notice in the OJEU. Any exception must be justified by the promoter and approved by the Bank.

The various steps of the procurement procedure to be followed by the promoter are normally as indicated below:

- Publication of a Procurement Notice inviting tenders (or pre-qualification of tenderers) in the OJEU and other media with the indication that the Bank may finance the contract;
- Decision on the list of pre-qualified tenderers and notification to candidates (for restricted procedures);
- Dispatch of tender documents to potential tenderers;
- Receipt, public opening and evaluation of tenders;
- Award of contract, notification of the result to all other bidders, and publication of an Award Notice in the OJEU; and
- Implementation of the contract.

When following open or restricted procedures, promoters should apply the rules and incorporate the provisions set out below.

3.7.2. Publication of the Procurement Notice

The Bank requires the promoter to publish a Procurement Notice in the OJEU. If necessary, the Bank will assist in arranging such publication on behalf of the promoter.

In the case of a direct call for tenders without prior pre-qualification, the notice must mention at least (see standard form in Annex 6):

- Promoter's title, project's name and reference to the Bank's potential financing;
- Description of the works or nature of the supplies or services to be furnished;
- Projected timetable;
- List of tender evaluation criteria in decreasing order of importance;
- Place where tender documents can be obtained;
- Final date for receipt of tenders; and
- Date and place of public opening of tenders.

The Bank also encourages the placing of Procurement Notices in other international media or local publications. In this case, these must appear not before but preferably at the same time as in the OJEU, and with the same conditions and wording.

Should the promoter already have started the tender procedure for a project component before the Bank's involvement, the Bank may still accept to finance this component in spite of the

absence of publication in the OJEU, provided the promoter can demonstrate that the publicity of the tender has been sufficient to foster wide international competition.

3.7.3. Pre-qualification in Restricted Procedures

In restricted procedures, the promoter has to select those candidates that will be invited to submit tenders. The selection of the candidates must be carried out following a formal pre-qualification process open to all interested firms and advertised in the OJEU. Such pre-qualification exercise is usually necessary for large or complex contracts.

The pre-qualification factors, which should be referred to in the Procurement Notice and specified in the pre-qualification documents, should be based on the capability and resources of the prospective tenderers to perform the particular contract. Factors that are normally considered are the candidates':

- Experience and past performance on previous contracts;
- Capabilities with respect to personnel, equipment and construction or manufacturing facilities; and
- Financial position.

The promoter should inform all candidates of the pre-qualification decision, including a summary of the relevant reasons for that decision.

In all respects other than notification and selection of candidates through a pre-qualification process, restricted procedures are the same as open procedures.

3.7.4. Tender Documents

Tender documents must be drafted in such a way as to permit wide international competition. They must also fully comply with the rules set out in this Guide.

Promoters may use the tender documents and conditions of contracts originating from their country's legislation provided that they are drafted in such a way as to permit wide international competition and are in accordance with the provisions of this Guide. Alternatively, promoters may consider using internationally-recognised standard procurement documentation and conditions of contract such as those prepared by Multilateral Development Banks or FIDIC (Fédération Internationale des Ingénieurs-Conseils), provided that they are revised to be compatible with the provisions of this Guide, as set out in Chapter 1 and section 3.7.

The sale price of tender documents should be in line with the cost of their production and eventual shipment.

If any modifications to the tender documents are made during the tendering period, the promoter must send them to all tenderers and provide adequate time to respond.

Tender documents should include provisions dealing with the applicable law and the settlement of disputes. International commercial arbitration may have practical advantages and the Bank encourages promoters to use it as appropriate.

The time allowed for the preparation of tenders should depend on the magnitude and complexity of the contract. Normally, it should be at least six weeks from the time when tender documents are made available to potential tenderers. Where large works or complex items of equipment are involved, the period must be extended accordingly. In such case, the promoter is encouraged to organise explanatory briefings and on-site visits to make it easier for tenderers to understand the subject of the tender. If tenderers raise specific questions on the

tender documents, the promoter must answer them within a week. In any event, all tenderers must be treated equally and fairly.

The tender documents should include a statement to the effect that tenderers should alert the promoter in writing, with a copy to the Bank, in case they should consider that certain clauses or technical specifications of the tender documents might limit international competition or introduce an unfair advantage to some tenderers.

3.7.5. Language

The Procurement Notice, pre-qualification documents (if any), tender documents, and the tender evaluation report should be prepared in one of the official languages of the European Union (preferably in English or French).

In specific cases, the original tender documents may be drawn up in the language of the country (which may also be adopted as the legally binding version in the event of litigation), with the proviso that the promoter prepares and makes available to the Bank and the tenderers a certified translation of the main parts of the tender documents. All correspondence and discussions with the foreign tenderers and the Bank relating to the tender must use the EU language utilised for translating the tender documents. Tenderers should be allowed to tender in this EU language.

3.7.6. Technical Specifications

Promoters must use European Union or international standards and specifications such as those issued by the International Standard Organization, wherever these are applicable and appropriate, and apply them consistently across the tender documents. If particular standards, national or other, are adopted, the tender documents must state that standards guaranteeing a level of quality or performance equivalent or superior to those indicated will also be accepted. Reference to trademarks or other specific designations that would lead to discrimination between suppliers must be avoided. If such reference is necessary to explain the nature of the products required, the tender documents must specify that any other product of equal or superior quality or performance is acceptable.

3.7.7. Tender Prices for Works, Goods and Services

When a public promoter (or a private promoter exempted from import duties) calls a tender for the supply of goods, tender prices should be requested on the basis of CIF (port of destination), or CIP (place of destination) for all goods offered from abroad, and EXW (ex-works, ex-factory, or off-the-shelf) for locally available or manufactured or assembled goods, including those previously imported. The evaluation for the supply of goods should exclude import duties and taxes payable on imported goods and the value added tax or similar taxes on locally supplied goods, but should include all costs associated with the supply, delivery, handling and insurance of the goods to the final destination.

Tender prices for works and services contracts to be substantially executed in the purchaser's country may be requested inclusive of all duties, taxes and other levies. The evaluation and comparison of tenders will be on this basis and the selected contractor would be responsible for all duties, taxes and levies in the performance of the contract.

3.7.8. Currency

Promoters may wish to restrict, with the agreement of the Bank, the tender currency to a specific, internationally tradable currency. Otherwise, tenderers should be allowed to express

their tenders in any currency traded internationally, or a combination of these for the foreign exchange component of the contract, but must accept to be paid in local currency for the local component of the contract. In this case, tenderers must justify the percentage of foreign exchange that they request in their tender.

Payments under the contract shall be made in the currency or currencies in which the selected tender is expressed. When the tender price is required to be stated in a single currency, but the tenderer has requested payment in other currencies expressed as a percentage of the tender price, the exchange rates used for purposes of payments shall be those specified by the tenderer in the tender, so as to ensure that the value of the various portions of the tender (in other currencies) is maintained without loss or gain. The tender documents must include clear provisions for price escalation, if any.

For the purpose of tender evaluation and comparison, tender prices will be converted to a single currency, selected by the promoter, using the selling (exchange) rates for the currencies of the tender price quoted on an internationally-recognised currency exchange market) for a date selected in advance and specified in the tender documents, provided that such date should not be earlier than 30 days prior to the date specified for the opening of the tenders¹⁷.

3.7.9. Local Preference for Goods

Except for operations in Candidate Countries, Borrowers may grant a 15% margin of preference for goods manufactured or produced in the country (defined as having at least a 30% local content ex-factory). Bidding documents must clearly indicate such preference. The comparison is then made between the price (net of taxes and duties at the place of delivery) of the imported good increased by 15% and the price (net of the value added tax or similar taxes) at the place of delivery of the locally manufactured good. The Bank does not allow for preference to be given to works (even if they include the supply of goods) or services originating in the beneficiary country.

3.7.10. Tender Evaluation Criteria

The tender evaluation may be based on:

- Either the lowest price of the compliant and technically responsive tenders; or
- The most economically advantageous tender, applying a number of criteria adapted to the contract in question: e.g. price, payment terms, construction or delivery period, technical merit (proposed staff, equipment, construction method and planning, technical characteristics, etc.), environmental characteristics, technical compatibility with other equipment, availability of service and spare parts, operating costs, maintenance costs, etc.

The evaluation criteria selected must be indicated in the Procurement Notice and quantified in the tender documents. The evaluation criteria specified in the tender documents must be applied in whole, without omission or addition, in the evaluation of tenders. In case no criterion should be indicated, the lowest price only will apply.

¹⁷ The date should normally not be later than the original date prescribed in the tender documents for the expiry of the period of tender validity. However, where the payment provisions in the contract entail a few significant payments at specific predictable dates in the future (e.g. CIF supply contracts), the promoter may wish to specify the use of quoted forward exchange rates for the estimated dates of the payments for the evaluation, and enter into forward currency contracts for these payments at the time of award, in order to hedge the risks of currency fluctuations. The forward dates and the currency exchange market to be used must be clearly specified in the tender documents.

Exceptionally, the tender documents may specifically request the tenderers to submit financing proposals. In such case, the documents should include a clear methodology to evaluate them. In addition, the Bank recommends that tenderers also make a proposal without financing.

3.7.11. Opening of Tenders

In public operations, tenders and associated documents must be opened in public, in the presence of representatives of the tenderers if they wish to attend, on a date and at a place indicated in the Procurement Notice or tender documents. Tenders arriving after the deadline for receipt are not to be opened.

At the opening of tenders, the name of the tenderers and the amount of each tender, including special conditions, rebates and variants if permitted, must be read out aloud and recorded in the minutes of the tender opening. A copy of these minutes must be appended to the tender evaluation report sent to the Bank.

3.7.12. Evaluation of Tenders

The promoter or his representative must scrutinise the tenders for compliance and responsiveness, and correct all arithmetical errors. He must ask the tenderers for any clarification needed to assess the tenders, but no amendment to the substance of the tender or to the price can be accepted after the tender opening.

For large or complex contracts, it is advisable for the evaluation to proceed in two steps (technical then financial) called the two-envelope system and described in Annex 1.

Unsolicited financing offers should not be considered in the evaluation of tenders.

3.7.13. Award and Signature of the Contract

The promoter should inform all tenderers of the contract award decision, including a summary of the relevant reasons for that decision. To ensure that review procedures for effective remedies are available to any concerned tenderer, the contract should not be signed until the expiry of a reasonable time period - the standstill period - from the date on which the contract award decision was sent to the tenderers.

3.7.14. Award Notice

Immediately after the signature of the contract, the promoter must publish an Award Notice in the OJEU. If necessary, the Bank will assist in arranging such publication on behalf of the promoter.

The Award Notice must include the following information (either in the title or in the text):

- Project title and number;
- Lot number and name;
- Publication reference;
- Publication date of the Procurement Notice;
- Promoter's name;
- Reference of the Bank's financing;
- Contract value (only when price is the evaluation criterion);
- Date of award of contract;
- Number of tenders received; and
- Name and address of successful tenderer.

3.8. Environmental and Social Covenant

The Bank requires, as a general rule for financing operations outside the EU, that promoters insert in the procurement documents and contracts the requirement from the tenderers and contractors to fill in and provide an "Environmental and Social Covenant" template in the form provided in Annex 7. The Bank reserves the right not to finance any contract in which tenderers/contractors have not issued to the Promoter the Environmental and Social Covenant signed by a duly authorised person.

For contracts awarded prior to the Bank's involvement in the project, the promoters are encouraged to include the Environmental and Social Covenant.



4. CONSULTANCY SERVICES FINANCED BY THE BANK

This chapter covers work undertaken by consultants in a project financed by the Bank, either through a loan or a grant. Section 3.6 – Prohibited Conduct - Covenant of Integrity, – fully applies to this chapter as well. Regarding Candidate and Potential Candidate Countries, the second paragraph of section 3.1 of this Guide defines whether their operations are considered Within or Outside the EU.

4.1. Projects Located Within the European Union

The rules applicable in this respect to the Bank's activities within the European Union are the relevant EU Directives.

4.2. Projects Located Outside the European Union

The provisions set out below are only valid for Bank operations in the public sector. The general provisions of article 3.4.2 are valid for consultancy services procured under Bank operations in the private sector.

The procedures for selecting consultants/experts and drawing up contracts governing their services must be transparent, and they must also ensure that the work is carried out in the most economically advantageous way, i.e. that the services are of appropriate quality, acquired at economic prices and performed in a timely manner.

The rules applying to Bank activities outside the European Union with respect to the selection of consultants are always guided by the spirit of the EU Directive applicable for similar services within the Union, with the requisite adjustments to take account of the specific conditions relating to the Bank's operations outside the Union.

4.2.1. Description of Procedures

The various procurement procedures are described below:

- Open procedures: international call for proposals (at least via the OJEU, and additionally the press and other media), allowing any consultant or expert interested to submit a proposal for the services required.
- Restricted procedures: call for proposals on the basis of a list that allows only consultants/experts invited by the promoter to submit a bid. The list of pre-qualified candidates must be drawn up by means of an international call for expression of interest open to all consultants and advertised at least in the OJEU. The Bank finds that this procedure is more efficient than the open procedure above.
- Negotiated procedures with the list of candidates established directly by the promoter: analysis of proposals (technical and financial) from consultants/experts selected by the promoter and negotiation of final conditions with one or several of these. Promoters can establish a list of potential candidates (short-list) by using their experience, contacts and/or consultants register.

4.2.2. Selection of Procedures

The procurement procedures to be adopted must conform to the following provisions:

- For an estimated amount of 200,000 euro (excluding VAT) or above (the contractual value taken into account is the supplier's total remuneration), the procedures applicable are:
 - either open procedures with publication in the OJEU; or
 - restricted procedures including an international call for expression of interest in the OJEU.
- For an estimated amount below 200,000 euro (excluding VAT), negotiated procedures with the list of a maximum of seven candidates drawn up on the basis of registers/research/recommendation and with the participation of at least three candidates of at least two different nationalities.
- Exceptions from the above procedures:

Promoters may find it necessary to contact fewer or only one candidate for the following reasons:

- the expertise sought is such that there are only a very few specialists in this field;
- the degree of urgency, duly justified, is such that there is no time for broader research;
- confidentiality and/or continuity are required;
- another procedure has already been conducted without producing any useful results; or
- when a consultant has been or is involved in the early phases of the project, such as feasibility or design studies, and it has been established that continuity is necessary and no additional advantage would be gained from pursuing competitive procedures; this is one of the most common cases and provisions for such an extension should be envisaged in advance and included in the original terms of reference and contract, which preferably should have been awarded following a competitive procedure.

A single reason or a combination of reasons are possible but must always be clearly justified by the promoter and received a prior non-objection from the Bank.

In the case of a contract estimated to be below 50,000 euro, the Bank may accept a contract negotiated with only one company or individual in order to speed up project preparation or implementation.

4.2.3. Evaluation of Consultants Proposals

The evaluation of proposals is based on a series of factors that must be specified, with their respective weights, in the request for proposals issued to consultants. Indicative factors are:

- Consultant's specific experience;
- Understanding of the terms of reference and scope of the services;
- Methodology proposed for the services;
- Qualification and experience of key personnel included to render the services;
- International, regional and local experience; and
- Proposed work programme.

Depending on the characteristics of the task to be performed, price may be considered as a factor, but it should have a lower weight than the other factors as a whole. In certain circumstances, the most efficient way of integrating the price factor in the tender is to indicate the available budget for the services in the request for consultant's proposals, and require that this budget should not be exceeded if the consultant's offer is to be considered.

The promoter's evaluation report must be submitted to the Bank for its non-objection of the proposed award.

4.2.4. Management of the Contract

In common with other contracts awarded within the context of projects financed by the Bank, the promoter is fully responsible for supervising and managing the consultant's services.

ANNEX 1

SPECIFIC PROCUREMENT TERMS AND PRACTICES

A company which submits an offer, called a "**tender**" or "**bid**" is designed by the term "**tenderer**" or "**bidder**", and one which has sought an invitation to take part in a restricted or negotiated procedure by the term "**candidate**".

International Procedures

The terms open, restricted and negotiated procedures, and competitive dialogue, are used here in the sense defined by EU Directives as they may be amended from time to time.

1. "**Open procedures**" are formal procedures whereby all interested companies may submit tenders. They must be advertised at least in the Official Journal of the European Union (OJEU). They involve clear and comprehensive tender documents; and fair and transparent tendering, evaluation and award practices. Outside of the EU these procedures are often referred to as **International Competitive Bidding (ICB)** or **Open Tendering**.
2. "**Restricted procedures**" are formal procedures whereby only those companies invited by the promoter may submit tenders. They must be preceded by a pre-qualification exercise open to all interested companies and advertised at least in the OJEU, in order to select the companies to be invited (or the list of candidates is established through a system of qualification of contractors and suppliers established and maintained through publication in the OJEU). They are similar to open procedures regarding the tendering stage (involving clear and comprehensive tender documents, and fair and transparent tendering, evaluation and award practices). Outside of the EU, these procedures are also referred to as **ICB (including a pre-qualification phase)**.
3. The "**Competitive dialogue**" is a procedure designed for particularly complex contracts where the promoter is not objectively able to define the technical means capable of satisfying the needs or objectives, or is not able to specify the legal or financial make-up of the project and where it considers that direct use of a restricted procedure will not allow the contract to be awarded to the tender offering best value for money. The promoter must set out his needs and requirements, and define the award criteria allowing choosing the most economically advantageous tender. A contract notice is first published in the OJEU. The promoter then selects qualified tenderers among the candidates, and opens a dialogue with them in order to define the means best suited to satisfy his needs. He must ensure equality of treatment of the tenderers, and cannot communicate confidential information of one tenderer to the others. The procedure may take several stages. After informing the tenderers that the dialogue is concluded, the promoter will ask them to submit their final tenders on the basis of the solutions presented and specified during the dialogue.
4. "**Competitive procedure with negotiation**" follows a similar sequence of steps in order to be conducted as in the competitive dialogue. However, unlike competitive dialogue, it requires the promoter to develop specifications of its requirements in advance of inviting submissions from tenderers. That means that its starting point, which is the pre-qualification stage, entails a call for competition via a contract notice and publication of documents including award criteria, specifications and minimum requirements, which can be physical, functional or legal. Promoters negotiate with qualified tenderers the initial and all subsequent tenders submitted by them, except for the final tenders, to improve the content thereof. Where the promoter intends to conclude the negotiations, it shall inform the remaining tenderers and set a common

deadline to submit any new or revised tenders. It shall verify that the final tenders are in conformity with the minimum requirements, assess the final tenders on the basis of the most economically advantageous tender and award the contract. The promoter must ensure equality of treatment of the tenderers, and may not communicate confidential information of one tenderer to the others.

5. "**Negotiated procedure without publication**" is a procedure whereby the promoter consults companies of its choice and negotiates the terms of the contract with one or more of them. The selection of candidates is directly established by the promoter. Outside the EU, in the latter case, these procedures are often referred to as **Limited International Bidding (LIB)**, or **Selective Tendering**.

National Procedures

6. "**National competitive bidding**" follows the normal procedures of the country of the promoter. It is advertised only in the local press. Tender documents are normally in the official language of the country; the national currency is generally used for the purposes of the tendering and payments; and tender prices are normally inclusive of all applicable local duties and taxes.
7. "**Shopping**" and "**direct contracting**" allow promoters to negotiate prices and other conditions with several local contractors or suppliers or only one of them.
8. "**Force account**" (also called "**direct labour**") is not really a procurement procedure since it consists of the carrying out of works using the promoter's own workforce and equipment. This may be the only practicable method for constructing some kinds of works, or providing the appropriate in-house services, such as basic design, R&D (research and development), etc.

Specific Practices under Open or Restricted Procedures

9. For large or complex contracts, it is advisable for the evaluation to proceed in two steps (technical then financial). Tenders are requested according to the "**two-envelope system**", in which both the technical and financial offers are submitted together, but in separate envelopes. In the first step, only administrative and technical documents are opened in public. After review of conformity by the promoter (which may include minimal qualification criteria defined in the tender documents), in a second step the financial offers of only those tenderers that have presented satisfactory documents or have exceeded a pre-determined threshold score in the technical evaluation are opened and read in public.
10. When a technical dialogue between the promoter and the tenderers is useful, a "**two-stage system**" can be followed, whereby the first submission of the tenderers, based on preliminary specifications from the promoter, contains only the technical offers. After a detailed evaluation of technical offers, the promoter amends the initial tender specifications and requests priced tenders only from those tenderers determined to be qualified and technically responsive. The main difference with the "competitive dialogue" is that all final tenders must fulfil the same specifications, thus facilitating tender evaluation.
11. Tendering for "**design-and-build contracts**" is usually a restricted procedure, featuring very general technical requirements, usually stating only the capacities and performance. Tenderers are thus at liberty to put forward the technical solution that appears to them to be the most economical or appropriate, and the evaluation is then carried out on the basis of technical and economic considerations. This type of invitation reduces the work involved in drawing up the initial design used for the tender documents, but calls for far more effort, experience and calculation for the tenderer

when it comes to preparing tenders and, for the promoter, to evaluate and compare tenders, and make the final choice of contractor or supplier.

12. Invitations to tender may be issued in respect of an entire project (e.g. construction of a factory or power plant) including testing and commissioning, or for only part of the same. In the first case, the term used is "**turnkey**" contract, which give the promoter more technical guarantees but which are often more expensive. In the second case, splitting the project into a number of separate contract packages (or lots) is quite complex and it usually takes considerable experience and in-house capacity to coordinate their implementation. Substantial lower costs can, however, be achieved, but responsibility for the technical interface between the various components and the risks of delays, cost overruns and poor overall technical performance is carried by the promoter.



ANNEX 2

REVIEW BY THE BANK OF PROCUREMENT DECISIONS in public sector operations located outside the European Union

As explained in this Guide, the Bank has a policy to leave the entire responsibility of the procurement procedures to the promoter. The Bank limits its intervention to ensuring that its funds are used in the most economic, transparent and efficient way possible. Consequently, the Bank limits its review of the promoters' procurement decisions to the essential steps.

During project appraisal or at loan negotiations, the Bank will discuss and agree with the promoter under which procedures the various project components financed by the Bank will be procured. The following steps will then need to be respected.

International Procurement Procedures

1. The promoter should send the Procurement Notice and tender documents (as well as the pre-qualification documents if any) to the Bank at least twenty days before the expected date of publication of the Notice.
2. As a matter of policy, the Bank does not make a comprehensive review of the tender or pre-qualification documents, which are the entire responsibility of the promoter. However, the Bank may review the main administrative clauses of these documents and make some comments, in particular regarding the (pre-)qualification factors and the tender evaluation criteria. In any case, this will not constitute an approval of the full content of these documents.
3. If necessary, the Bank will review, and organize publication of, the Procurement Notice in the Official Journal of the European Union (OJEU) on behalf of the promoter.
4. In case of a pre-qualification, the promoter must send to the Bank, for its "non-objection", the pre-qualification report and proposed list of pre-qualified candidates. In case of a negotiated procedure without publication, the promoter must send to the Bank for its "non-objection" the list of candidates to be invited to submit a tender, including a note of justification.
5. During the tendering process, the promoter must immediately inform the Bank of any written complaint that he may receive from a tenderer.
6. After analysis of the tenders, the promoter must send to the Bank his evaluation report(s) making a clear recommendation for the next tendering stage (if any) or contract award. The Bank will provide its "non-objection" or appropriate comments.
7. Immediately after the contract is signed, the promoter must send to the Bank the Award Notice to be published in the OJEU by the Bank on behalf of the promoter if necessary.
8. Finally, the promoter must send to the Bank a copy of the signed contract (and the Covenant of Integrity, see Annex 3) prior to his first request for disbursement under the contract.

Other Procurement Procedures

For contracts not subject to international procurement procedures, the Promoter will regularly provide the Bank with an updated procurement plan completed with information about the contracts' award decision, signature and level of competition. The Promoter will keep the full documentation for each of such contracts and make it available to the Bank upon request as part of ex-post reviews to be conducted by the Bank or its auditors. The Bank reserves the

right to withdraw its financing of contracts of which the ex-post review reveals a breach of this Guide.

Specific Case of Contracts for Consulting Services

The Bank reviews the scope of the services and the terms of reference proposed (including procedure selected), the short-listing report explaining how the recommended short-list of consultants has been prepared, the request for proposals, the evaluation report justifying the proposed selection, and the draft consultant's contract, to ensure that it can finance the corresponding services.

1. The promoter must send the terms of reference, the proposed short-list of consultants and a short-listing report (or the Procurement Notice in case an open or restricted procedure is selected), and the request for proposals to the Bank.
2. The Bank will send its "non-objection" or comments on the proposal. In addition, the Bank may review the main administrative clauses of the request for proposals and make some comments, in particular regarding the tender evaluation criteria. In any case, this will not constitute an approval of the full content of these documents.
3. In the case of an open or restricted procedure, the Bank will organize publication of the Procurement Notice in the OJEU on behalf of the promoter as necessary.
4. In case of a restricted procedure, the promoter must send a pre-qualification report to the Bank for "non-objection".
5. After analysis of the offers, the promoter must send to the Bank his evaluation report making a clear recommendation for contract award, and the draft consultant contract. The Bank will provide its "non-objection" or appropriate comments.
6. In case of an open or restricted procedure, immediately after the contract is signed, the promoter must send to the Bank the Award Notice to be published in the OJEU by the Bank on behalf of the promoter as necessary.
7. Finally, the promoter must send to the Bank a copy of the signed contract (and the Covenant of Integrity, see Annex 3, for an international procedure) prior to his first request for disbursement under the contract.

Remark: The non-objection or comments sent by the Bank to the promoter in the course of the procurement process are based on the information provided by the promoter and do not relieve the promoter of his entire responsibility regarding procurement. In particular, the Bank may review its position in the light of new information which might come to its knowledge after it has given its opinion on a specific aspect of the process.



ANNEX 3

COVENANT OF INTEGRITY'S TEMPLATE

"We declare and covenant that neither we nor anyone, including any of our directors, employees, agents, joint venture partners or sub-contractors, where these exist, acting on our behalf with due authority or with our knowledge or consent, or facilitated by us, has engaged, or will engage, in any Prohibited Conduct (as defined below) in connection with the tendering process or in the execution or supply of any works, goods or services for [specify the contract or tender invitation] (the "**Contract**") and covenant to so inform you if any instance of any such Prohibited Conduct shall come to the attention of any person in our organisation having responsibility for ensuring compliance with this Covenant.

We shall, for the duration of the tender process and, if we are successful in our tender, for the duration of the Contract, appoint and maintain in office an officer, who shall be a person reasonably satisfactory to you and to whom you shall have full and immediate access, having the duty, and the necessary powers, to ensure compliance with this Covenant.

We declare and covenant that neither we nor anyone, including any of our directors, employees, agents, joint venture partners or sub-contractors, where these exist, acting on our behalf with due authority or with our knowledge or consent, or facilitated by us, (i) is listed or otherwise subject to EU/UN Sanctions and (ii) in connection with the execution or supply of any works, goods or services for the Contract, will act in contravention of EU/UN Sanctions. We covenant to so inform you if any instance shall come to the attention of any person in our organisation having responsibility for ensuring compliance with this Covenant.

If (i) we have been, or any such director, employee, agent or joint venture partner, where this exists, acting as aforesaid has been, convicted in any court or sanctioned by any authority of any offence involving a Prohibited Conduct in connection with any tendering process or provision of works, goods or services during the five years immediately preceding the date of this Covenant, or (ii) any such director, employee, agent or a representative of a joint venture partner, where this exists, has been dismissed or has resigned from any employment on the grounds of being implicated in any Prohibited Conduct, or (iii) we have been, or any of our directors, employees, agents or joint venture partners, where these exist, acting as aforesaid has been excluded or otherwise sanctioned by the EU Institutions or any major Multi-lateral Development Bank (including World Bank Group, African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, European Investment Bank or Inter-American Development Bank) from participation in a tendering procedure on the grounds of Prohibited Conduct, we give details of that conviction, dismissal or resignation, or exclusion below, together with details of the measures that we have taken, or shall take, to ensure that neither this company nor any of our directors, employees or agents commits any Prohibited Conduct in connection with the Contract [give details if necessary].

We acknowledge that if we are subject to an exclusion decision by the European Investment Bank (EIB), we will not be eligible to be awarded a contract to be financed by the EIB.

We grant [indicate the name of the Project Promoter], the European Investment Bank and auditors appointed by either of them, as well as any authority or European Union institution or body having competence under European Union law, the right to inspect and copy our books and records and those of all our sub-contractors under the Contract. We accept to preserve these books and records generally in accordance with applicable law but in any case for at least six years from the date of tender submission and in the event we are awarded the Contract, at least six years from the date of substantial performance of the Contract."

For the purpose of this Covenant, Prohibited Conduct has the meaning provided in the EIB's Anti-Fraud Policy¹⁸.

Note: This Covenant must be sent to the Bank together with the contract in the case of an international procurement procedure (as defined in article 3.3.2). In other cases, it must be kept by the promoter and available upon request from the Bank.

¹⁸ EIB's Anti-Fraud Policy for definitions (<http://www.eib.org/infocentre/publications/all/anti-fraud-policy.htm>).



ANNEX 4

ELIGIBILITY FOR OPERATIONS FINANCED UNDER RESOURCES FROM THIRD PARTIES

In some projects outside the Union, the Bank's financing comes from different sources, such as resources deployed under External Mandates of the EU and Trust Funds.

The **general rules** are that:

1. Tenders financed by funds made available under the Investment Facility created by the Cotonou Agreement are open to nationals of all countries.
2. In other cases of tenders financed from resources made available by third parties (or from a combination of EIB's own resources and resources from third parties), eligibility of tenderers, goods and services is governed by the rules contained in the respective legal instruments (Facility for Euro-Mediterranean Investment and Partnership (FEMIP); etc.). In such case, tendering should generally be open to firms, goods and services originating at least from:
 - o countries of the European Union; and
 - o countries party to, or beneficiary from, the Agreement or Convention concerned.

A firm is deemed to originate in a EU or beneficiary country if it has been formed under the law of an EU or beneficiary country and has its office, central administration or principal place of business in an EU or beneficiary country. If it has only its statutory office there, it must at least be engaged in activities that have an effect on, and continuous links with, the economy of EU or beneficiary countries.

At the request of the beneficiary country, firms located in third countries may be authorized by the Bank to participate under derogations admissible pursuant to the Agreement or Convention concerned. Such authorization must be expressly provided for in the documents for the corresponding tender and must be mentioned in any publication relating thereto.

ANNEX 5**DEFINITION OF PUBLIC SECTOR OPERATIONS
OUTSIDE THE EUROPEAN UNION**

1. **In general**, public sector operations are those carried out by "public authorities", meaning State, regional or local authorities, bodies governed by public law, or associations formed by one or more of such authorities or bodies governed by public law.

A "body governed by public law" shall be understood to mean any body which:

- Is established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
- Has legal personality; and
- Is financed in most part by public authorities or is subject to management supervision by public authorities, or has an administrative, managerial or supervisory board in which more than half of the members are appointed by public authorities.

2. **In addition, in the specific case of gas; heat; electricity; water; transport; exploration for, or extraction of, oil, gas, coal or other solid fuels; ports and airports; telecommunications; and postal services**, public sector operations are those carried out by:

- Public undertakings operating in markets which are not liberalised, and
- Privately-owned entities that have been granted special or exclusive rights and operate in markets which are not liberalised.

If this is not the case, the public authorities, public undertakings and privately-owned entities are considered to operate in the private sector.

A "public undertaking" is any undertaking over which public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it (e.g. holding the majority of the subscribed capital), their financial participation therein (e.g. controlling the majority of the votes attached to shares), or the rules which govern it (e.g. appointing more than half of the administrative, management or supervisory board).

"Special or exclusive rights" mean rights which arise from a grant made by a competent authority of the country by way of any legislative, regulatory or administrative provision, the effect of which is to limit the exercise of activities defined in paragraphs 2.1 to 2.9 below to one or more entities, and to substantially affect the ability of other entities to carry out such activities on the same territory under substantially equivalent conditions. Rights granted on the basis of objective, proportionate and non-discriminatory criteria that allow any interested party fulfilling these criteria to enjoy these rights should not be considered special or exclusive rights.

A market is considered "liberalised" when, in the country in which the activity is to be performed, such activity is directly exposed to competition and there is free access for new operators; an independent body should monitor such competition and access. The Bank will determine whether an activity is directly exposed to competition on the basis

of criteria such as the nature of the goods or services concerned, the existence of alternative goods or services, the level of prices, and the actual or potential presence of more than one supplier of the goods or services in question. The promoter should demonstrate that access to the market is free de jure and de facto. The number of suppliers of goods or services concerned may be limited in certain cases by the monitoring body (provided that, in any event, there are at least two suppliers of the goods or services in question) considering the size of the market and the economies of scale involved.

The operations referred to under 2 above are:

- 2.1** As far as gas and heat are concerned:
- The provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat; or
 - The supply of gas or heat to such networks.
- 2.2** As far as electricity is concerned:
- The provision or operation of fixed networks serving to provide a service to the public in connection with the production, transport or distribution of electricity; or
 - The supply of electricity to such networks.
- 2.3** As far as water is concerned:
- The provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water; or
 - The supply of drinking water to such networks.
- 2.4** Contracts or design contests awarded or organised by promoters, which pursue an activity, referred to in paragraph 2.3 and which:
- Are connected with hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents more than 20% of the total volume of water made available by such projects or irrigation or drainage installations; or
 - Are connected with the disposal or treatment of sewage.
- 2.5** The supply of gas or heat, or of electricity, or of drinking water to networks which provide a service to the public by a promoter other than a public authority shall not be considered an activity within the meaning of paragraphs 2.1, 2.2 and 2.3 where:
- The production of this good by the promoter concerned takes place because its consumption is necessary for carrying out an activity other than those referred to in paragraph 2.1, 2.2 and 2.3; and
 - The supply to the public network depends only on the promoter's own consumption and has not exceeded or will not exceed 25% of the promoter's total production of this good, having regard to the average for the last three years.

- 2.6** Activities relating to the operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable.

As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by a competent promoter, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.

- 2.7** Activities seeking to exploit a geographical area for the purpose of:
- Exploring for, or extracting, oil, gas, coal or other solid fuels; or
 - The provision of airports and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway.
- 2.8** The provision or operation of public telecommunications networks or services.
- 2.9** The provision or operation of postal services.

ANNEX 6**STANDARD FORM OF THE PROCUREMENT NOTICE
IN THE OFFICIAL JOURNAL OF THE EUROPEAN UNION (OJEU)****INTERNATIONAL INVITATION FOR TENDERS**

(The necessary adaptations should be made in case of a pre-qualification)

[PROJECT NAME]

[NAME OF PROMOTER]

The *[Name of promoter]* (hereinafter referred to as "the Borrower") has received (or applied for) a loan from the European Investment Bank – EIB (hereinafter referred to as "the Bank") – towards the cost of the *[Name of Project]*. This International Invitation for Tenders relates to the contract for *[Name of the Project Component]*.

This contract will include: *[description of the main contract features in a few lines]*.

This contract is expected to be implemented from *[date of start of services]* to *[date of end of services]*.

The criteria to be used in the tender evaluation are, in decreasing order of importance: *[list of the evaluation criteria]*.

All firms are invited to participate in the tender.

OR

All firms registered in countries eligible to the Bank under the above financing (*[give list of countries]*) are invited to participate in the tender.

Interested eligible Bidders may obtain further information from, and inspect the Bidding Documents at: *[Name, full address, telephone and fax numbers, and e-mail of the place where the bidding documents are available]*.

A complete set of Bidding Documents may be purchased on the submission of an application to the above address, and upon payment of a non-refundable fee of *[amount and currency]* to *[Name and full address of the commercial bank, and number of account]* bearing the name of the project. On request, against a faxed copy of the evidence of the remittance, the Bidding Documents may be sent by courier service if the transport is previously ordered by the Bidder in his country. The Borrower bears no responsibility for the delivery in such a case.

A Bid Security of *[amount and currency]* fulfilling the conditions indicated in the Bidding Documents must accompany all bids.

All bids must be delivered in closed envelopes bearing the mention "Bid for *[Name of the Project Component]*" not later than *[time and date]* at the following address: *[precise Name and Place where bids will be received]*. Bids will be opened immediately in the presence of Bidders' representatives who choose to attend.



ANNEX 7

ENVIRONMENTAL AND SOCIAL COVENANT TEMPLATE

We, the undersigned, commit to comply with – and ensuring that all of our sub-contractors comply with – all labour laws and regulations applicable in the country of implementation of the contract, as well as all national legislation and regulations and any obligation in the relevant international conventions and multilateral agreements on environment applicable in the country of implementation of the contract.

Labour standards. We further commit to the principles of the eight Core ILO standards¹⁹ pertaining to: child labour, forced labour, non-discrimination and freedom of association and the right to collective bargaining. We will (i) pay rates of wages and benefits and observe conditions of work (including hours of work and days of rest) which are not lower than those established for the trade or industry where the work is carried out; and (ii) keep complete and accurate records of employment of workers at the site.

Workers relations. We therefore commit to developing and implementing a Human Resources Policy and Procedures applicable to all workers employed for the project in line with Standard 8 of the EIB's Environmental and Social Handbook. We will regularly monitor and report on its application to [insert name of the Contracting Authority] as well as on any corrective measures periodically deemed necessary.

Occupational and Public Health, Safety and Security. We commit to (i) complying with all applicable health and safety at work laws in the country of implementation of the contract; (ii) developing and implementing the necessary health and safety management plans and systems, in accordance with the measures defined in the Project's Environmental and Social Management Plan (ESMP) and the ILO Guidelines on occupational safety and management systems²⁰; (iii) providing workers employed for the project access to adequate, safe and hygienic facilities as well as living quarters in line with the provisions of Standard 9 of the EIB's Environmental and Social Handbook for workers living on-site; and (iv) using security management arrangements that are consistent with international human rights standards and principles, if such arrangements are required for the project.

Protection of the Environment. We commit to taking all reasonable steps to protect the environment on and off the site and to limit the nuisance to people and property resulting from pollution, noise, traffic and other outcomes of the operations. To this end, emissions, surface discharges and effluent from our activities will comply with the limits, specifications or stipulations as defined in [insert name of the relevant document]²¹ and the international and national legislation and regulations applicable in the country of implementation of the contract.

Environmental and social performance. We commit to (i) submitting [insert periodicity as indicated in the tender documents] environmental and social monitoring reports to [insert name of the Contracting Authority]; and (ii) complying with the measures assigned to us as set forth in the environmental permits [insert name of the relevant document if applicable]²² and any corrective or preventative actions set forth in the annual environmental and social monitoring report. To this end, we will develop and implement an Environmental and Social Management

¹⁹ <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang-en/index.htm>

²⁰ http://www.ilo.org/safework/info/standards-and-instruments/WCMS_107727/lang-en/index.htm

²¹ For instance: ESIA (Environmental and Social Impact Assessment) and ESMP (Environmental and Social Management Plans).

²² For instance: ESIA (Environmental and Social Impact Assessment) and ESMP (Environmental and Social Management Plans).

System commensurate to the size and complexity of the Contract and provide *[insert name of the Contracting Authority]* with the details of the (i) plans and procedures, (ii) roles and responsibilities and (iii) relevant monitoring and review reports.

We hereby declare that our tender price as offered for this contract includes all costs related to our environmental and social performance obligations as part of this contract. We commit to (i) reassessing, in consultation with *[insert name of the Contracting Authority]*, any changes to the project design that may potentially cause negative environmental or social impacts; (ii) providing *[insert name of the Contracting Authority]* with a written notice and in a timely manner of any unanticipated environmental or social risks or impacts that arise during the execution of the contract and the implementation of the project previously not taken into account; and (iii) in consultation with *[insert name of the Contracting Authority]*, adjusting environmental and social monitoring and mitigation measures as necessary to assure compliance with our environmental and social obligations.

Environmental and social staff. We shall facilitate the contracting authority's ongoing monitoring and supervision of our compliance with the environmental and social obligations described above. For this purpose, we shall appoint and maintain in office until the completion of the contract an Environmental and Social Management Team (scaled to the size and complexity of the Contract) that shall be reasonably satisfactory to the Contracting Authority and to whom the Contracting Authority shall have full and immediate access, having the duty and the necessary powers to ensure compliance with this Environmental and Social Covenant.

We accord the Contracting Authority and the EIB and auditors appointed by either of them, the right of inspection of all our accounts, records, electronic data and documents related to the environmental and social aspects of the current contract, as well as all those of our sub-contractors.

Name In the capacity of

Signed

Duly authorised to sign the contract for and on behalf of

Date

Note to the Promoter: This Environmental and Social Covenant must be sent to the Bank together with the contract in the case of an International Procurement Procedure (as defined in Article 3.3.2). In other cases, it must be kept by the Promoter and made available, upon request, to the Bank.

ANNEX 8**PROCUREMENT COMPLAINTS PROCEDURES****A. Complaints against Promoters' action**

The responsibility of dealing with such complaints and deciding on them lies with Promoters. While the Bank is committed to ensuring that only contracts procured in line with its Guide to Procurement will be eligible to be financed by its loans, the role of the Bank is limited to verifying whether the conditions attached to its financing are met. In the event that the Bank determines that the procurement process has not been compliant with its Guide to Procurement, it may decide to withdraw its financing and apply any other possible contractual remedies, as applicable.

Complainants who wish to challenge Promoters' actions or decisions should address their concerns to Promoters and/or the relevant review bodies (normally national remedy mechanisms), in line with applicable provisions. Tenderers are encouraged to make use of these recourses to raise their concerns in a timely manner, and may copy the Bank in such complaints.

B. Requirements for complaints against the Bank's action**1. Who can complain?**

Any party having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement from the Guide to Procurement may submit a procurement complaint to the Bank's Procurement Complaints Committee (PCC)²³. This normally includes any tenderer or potential tenderer.

2. What to complain about?

Complainants may challenge the Bank's decision with regard to the compliance of the procurement process with the Guide to Procurement. Allegations of Prohibited Conduct in relation with a procurement process will be handled by the competent EIB services, in line with the Bank's Anti-Fraud policy.

3. How to complain?

Complaints are to be submitted by mail or electronic mail (procurementcomplaints@eib.org). Complaints addressed to the Bank through other means will be redirected to the Procurement Complaints Committee.

4. When to complain?

Complainants are encouraged to submit complaints prior to the expiry of the standstill period. The attention of tenderers is drawn to the fact that submission of a complaint after the standstill period has expired may result in a situation where the procurement process can no longer be redressed.

²³ Complaints from the other members of the public against the Bank's action will be addressed by the EIB's Complaints Mechanism in line with its policy.

C. Process

Once the Bank has received a complaint, the Bank will acknowledge the receipt of the complaint and inform the Promoter, but will not enter into discussions or correspondence with any tenderer about the details of a complaint during the review process.

- (a) Complaints submitted before the Bank has issued its non-objection to the contract award will be treated by the Bank's services through the Bank's standard due diligence. The substance of the complaint will be considered when the Bank decides whether or not to provide its non-objection to the contract award;
- (b) Complaints submitted after the Bank has provided its non-objection to the contract award and during the standstill period are reviewed by the Procurement Complaints Committee, which examines the case for the Bank to take a final position as to whether to confirm or withdraw the non-objection issued by the Bank. The Bank suspends its non-objection until the PCC has completed its review. The Bank's decision will be taken in less than 30 calendar days from the submission of the complaint. In complex cases this deadline may be extended up to 60 calendar days;
- (c) For complaints received after the standstill period has expired, the procurement process can no longer be redressed. However the PCC will still examine the case to decide whether the Bank will confirm or withdraw its financing of the contract.

Once a final decision is taken, the Bank will inform the Promoter. In parallel, the Bank will also send a substantiated response to the complainant.

Guide to Procurement

for projects financed by the EIB



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