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# IPA 2011- WBIF – Infrastructure Project Facility Technical Assistance 3

PFG Meeting, Brussels, 19-20 May 2015

WBIF Practical Issues II

# WBIF Practical Issues II

## Legal Basis for Beneficiary Contributions

- Key Issues identified at TA implementation stage
  - Lack of formal notification of grant award and TA implementing agent to Beneficiary
  - No process for Beneficiary Financial Contributions
  - Lack of “Grant Conditionalities”

# Project Grant Award Notification

- Issue

The issue concerns the lack of formal documentation to provide an auditable record of the approval of grant awards and notification to the Beneficiary (in response to the PGAF application), and to provide the legal basis for Beneficiary Financial Contribution and Contribution in kind e.g. provision of facilities, release of documentation and records etc.

- Example 1 – No Formal Notification of IPF to the Beneficiary

Transport	WB9-MKD-TRA-01	Motorway A4 Skopje - Blace, section Stenkovec interchange Blace	former Yugoslav Republic of Macedonia	EBRD	1.000.000	1.000.000	
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(extract from Minutes of 8<sup>th</sup> WBIF SC)

1. Formal notification from WBIF SC to Beneficiary in response to PGAF and/or NIPAC to Beneficiary notification?
2. Conditionalities attaching to the grant e.g. Release of available design documentation?

- Example 2 – No Formal Notification of Partial Grant Award

Energy	WB8-HR-ENE-11	FS, ESIA & CBA – regulation & development of the Sava river	HR	EBRD	1.500.000	1.500.000	
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(extract from Minutes of 7<sup>th</sup> WBIF SC)

1. Formal notification from WBIF SC to Beneficiary in response to PGAF and/or NIPAC to Beneficiary notification?
2. Formal notification that only a part award has been made – PGAF application was for EUR 2m, leaving a EUR 500k funding gap to deliver the approved ToR. Any notification as to Beneficiary requirement to provide the EUR 500k, and what mechanism was to be adopted?
3. Approved ToR were developed for EUR 2m TA, with the note:

*“The PGAF approval value was submitted with a request for 2,000K, and was reduced in contract award to 1,500K on the basis that any remaining funding requirements would be via HEP RVNP’s own resources”.*

Mechanism ? Legal Obligation?

# Project Grant Award Notification

- Impact

- Uncertainties as to the identity of the TA Implementing Agent
- Delays to implementation

- Solution

- Beneficiaries should receive a formal notification from the WBIF Secretariat, where the project and associated main requirements, obligations etc are outlined e.g. this may concern informative documentation the Beneficiaries should make available, issue permits, licenses, etc and conditionalities related to grant award and, if applicable, any financial contribution to the project.

# Project Grant Award Notification



## Example 2

### Proposed formal Notification to Beneficiary in response to PGAF Application

#### Notification Letter States:

1. Beneficiary
2. Amount of Grant Award
3. IPF Implementing Agent and contract
4. Grant Conditionalities
5. Scope of TA

#### NOTIFICATION OF GRANT AWARD

**Project Reference:** WB8-HR-ENE-11

**Project Title:** Feasibility Study, Environmental and Social Impact Assessment and Cost Benefit Analysis – regulation of the Sava River in Zagreb

Approved by: WBIF Steering Committee

Approval Date: 6 December 2012

Beneficiary	Grant Award Type	Beneficiary Co-financing requirement	Assigned Implementing TA Agent
Ministry of Economy, Ulica grada Vukovara 78, 10000 Zagreb: Mr. Radimir Čačić, Minister, e-mail: radimir.cacic@mingo.hr / HEP d.d. / HEP RVNP d.o.o., Ulica grada Vukovara 37, 10000 Zagreb: Mr. Leo Penović, General manager, e-mail: leo.penovic@hep.hr	EUR 1,500,000 Technical Assistance - provided by the assigned Implementing TA Agent	EUR 500,000	Mott MacDonald IPF Consortium  (under Service Contract no. 2012/293-208 between the EU represented by the European Commission and Mott MacDonald Ltd)

#### Conditions of Grant Award

The ultimate Beneficiary HEP shall secure co-financing of EUR 500,000 and provide written commitment to the WBIF Steering Committee for the provision of such co-financing when required to meet project implementation needs, and to secure the mechanism through which this financing can be made available to the Implementing TA agent or other parties as prior agreed with the WBIF Steering Committee for the implementation of parts of the agreed scope of services.

#### Scope of Grant

The scope of services shall be as presented in the assessed Project Grant Application Form as further elaborated in the Terms of Reference agreed with the lead IFI and DG Enlargement.

Signed .....

Date .....



# Beneficiary Financial Contributions

- Issues

The issue concerns if and when budgets for IPF projects are either insufficient (at the time of implementation) and the Beneficiary is willing to contribute, or if and when the Beneficiary wishes to contribute to project budgets from the outset. In both instances, the Beneficiary needs a legal basis to be able to contribute these funds.

- Impact

- Uncertainties as to how the Beneficiary financial contribution is to be made (the Sava River example 2)
- Delays in implementation

- Solution

- Post-WBIF SC formal notification to Beneficiary
- Approved WBIF Procedure and Mechanism for Beneficiary Contributions

# Beneficiary Financial Contributions

- Solution – some proposed mechanisms (based on Example 2 Sava River ongoing issue)
  - Is the Beneficiary Financial Contribution co-financing or financing of part of the approved ToR?
  - Implications for compliance with public procurement regulations
  - Decision on basis of Financial Contribution should be agreed prior to commencement of TA.

# Beneficiary Financial Contributions

## Option 1 – Beneficiary Financing of parts of the approved ToR scope

Re.	Scope of TA Implementing Agent assignment	Legal basis	Co-financing modality	Critical issues / likely conditionality on Beneficiary
<b>Case 1</b>	Sub-division of TA scope to be presented in the Project Grant Application Form; IPF TA Implementing Agent does not execute all planned activities in the approved ToR; WBIF Grant award covers in full the part of the approved ToR to be undertaken by the TA Implementing Agent.	PGAF, Notice of Grant Award, including nominating the IPF TA Implementing Agent, and approved ToR.	Beneficiary procedures; parts of the services under its own responsibilities for procurement, contract award and service provider management.	Two or more separate ToR are prepared: one for the IPF TA Implementing Agent, and one or more for the service providers to be directly contracted by the Beneficiary. The ToR will identify the interfaces between the components assigned to IPF TA Implementing Agent and those assigned to other service providers, as well as the required mechanism of cooperation.  Beneficiary should establish a Project Management Unit to manage the envisaged procurement and ensure the required cooperation with the IPF TA Implementing Agent.

**Example for Sava River project, Croatia:** An SEA Report (350k) and a Geology Study (130 k) could have been planned under separate ToR. Since the SEA Report provides inputs for economic analysis of non-market impacts required for CBA, and geology study provides inputs for technical design, separate delivery of these outputs which are inputs for the IPF TA Implementing Agent, should had been carefully planned in order not to jeopardise the TA Implementing Agent work plan.



# Beneficiary Financial Contributions

## Option 2 – Beneficiary Co-financing the entire approved ToR scope

Re.	Scope of TA Implementing Agent assignment	Legal basis	Co-financing modality	Critical issues / likely conditionality on Beneficiary
<b>Case 2</b>	Full scope under Project Grant Application Form, Notice of Grant Award and approved ToR; execution of all activities assigned to IPF TA Implementing Agent			
	<b>Option 1</b>	PGAF and ToR plus Co-financing memorandum between WBIF and Beneficiary, stipulating co-financing modalities and nominating the IPF TA Implementing Agent	Beneficiary sends the entire cash contribution to WBIF upfront, further to signature of the co-financing memorandum, but subject to reconciliation of actual out-turn costs, and in case of underspend return to Beneficiary of any unused funds.	Legal, accounting and financial issues to be managed by WBIF, including WBIF reporting on treasury management to Beneficiary.  Beneficiary may require to take part in the sub-project monitoring mechanism.
	<b>Option 2</b>	PGAF and ToR plus Co-financing Memorandum between WBIF and Beneficiary, stipulating co-financing modalities and nominating the IPF TA Implementing Agent.  Independent auditor expenditure verification report for sub-project (also verifying expenditures of IPF TA Implementing Agent).	Beneficiary provides its cash contribution to the nominated IPF TA Implementing Agent, based on IPF TA Implementing Agent invoices to its Contracting Authority, supported by evidence of amounts approved and paid by Contracting Authority (backed by certification issued by independent auditor of expenditure verified for the sub-project).	The IPF TA Agent, who is not a party to the Financing Memorandum (although nominated in such Memorandum) is to seek a payment from a third party, which introduces additional commercial risk for the IPF TA Implementing Agent.  Increased expenditure verification costs.
	<b>Option 3</b>	PGAF and ToR plus (Commercial) contract between IPF TA Implementing Agent and Beneficiary.	Beneficiary provides its cash contribution to the nominated IPF TA Implementing Agent, based on commercial contract between IPF TA Implementing Agent and Beneficiary linked to specific deliverables contained within the approved ToR for the sub-project.	Risk of not meeting the public procurement rules of Beneficiary country, which leaves the IPF TA Implementing Agent potentially exposed to risk of non-compliance (irregularity in public procurement by Beneficiary country) and non-payment.  Identification of specific deliverables under the ToR and association with co-financing amount not possible in all cases.

**Example for Sava River project, Croatia (Option 3):** IPF TA Implementing Agent and Beneficiary have been unable to identify a proper co-financing mechanism so far, although a commercial contract was drafted and discussed in the last 8 months. Main bottlenecks are: Beneficiary is subject to the public procurement rules, which make difficult the signature of direct agreements with commercial private companies beyond very small amounts (>30,000 euro); the legal nature of the contract remains unclear; is it a service agreement or a co-financing agreement? If the latter it should be co-signed by WBIF and Beneficiary rather than by the Beneficiary and IPF TA Implementing Agent.

# Grant Award Conditionalities

- Issues identified/experienced
  - Lack of “Grant Conditionalities”
  - No mandatory obligation on Beneficiary to provide key documents e.g. land ownership record, permit for investigations and future construction of works
- Impact
  - Uncertainties and delays in implementation e.g. awaiting issue of permits for ground investigation (leading to eventual grant cancellation)
  - Potential use of grant funds on projects subsequently suspended or cancelled
- Solution
  - Post-WBIF SC formal notification to Beneficiary to state obligations, including any pre-requisites to starting the TA (issues of identifying Conditionalities during Screening & Assessment stages)

## WBIF-IPF 3 Consortium



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