

ANNEX III

EC & National Requirement

The following EC requirements apply:

1. STRUCTURAL FUND REGULATIONS

- 1.1 Council Regulations 1260/99 (General Regulation), 1784/99 (ESF Regulation) and 448/2004 (Eligibility) apply to this project. Other Regulations notified by the Commission from time to time may also apply to this project. The Managing Authority will ensure that any future regulations/ guidelines are brought to the attention of stakeholders through amendments/ additions to the Manual of Procedures.

2. EUROPEAN COMMUNITY STATE AID RULES

Principles

- 2.2 The European Commission has considerable powers to monitor, control and restrict the forms and levels of aid given by all Member States to their industries. The principles underlying State Aid are set out in Article 87 of the EC Treaty. Detailed guidance on State Aid rules can be obtained from the State Aid Monitoring Board (Ministry of Finance) and the Commission on the application of the rules. All State Aid (other than those covered by de minimis provisions – see below) must be notified to and approved by the Commission in advance of implementation, otherwise it is illegal.
- 2.3 **All aid schemes** must in addition be notified to the State Aid Monitoring Board (Ministry of Finance) as per requirement of the National Legislation (LN210/2004). All aid under de minimis and other block exemptions granted under Malta's Single Programming Document 2004-2006 must be notified to the State Aid Monitoring Board (SAMB).

Notification

- 2.4 Where a project will use public expenditure (including structural funds) either directly or indirectly to provide subsidised benefits to the private sector, eg grants to firms for investment, R&D, training and a reduced cost business consultancy, the assistance provided to the project will normally need to conform to EC State Aids rules and be formally approved by the EC, unless granted under de minimis.

De minimis

- 2.5 There is a threshold below which aid need not be notified to the Commission (although it still should be notified to SAMB as per point 2.3 above). This de minimis threshold applies if the project will not allow any private sector organisation to receive more than 100k Euros of state aid over a three year period taking account of all state aid that such organisation/s may receive from any source of public funding (including EU funds).
- 2.6 This threshold does not apply to the following sectors: agriculture, fisheries, transport, shipbuilding, coal, steel and to export aid which are regulated by their own provisions (seek information from SAMB).
- 2.7 It is to be recalled that it is the obligation of any organisation granting aid under de minimis to ensure that the threshold has not been exceeded. Projects that include an element of aid to businesses and are proposing to operate a de minimis scheme must be mindful of the need to:
- (a) seek confirmation that those who are to receive the assistance are within the definitions of a small and medium size enterprise (SME) if grant is for SMEs. If SME assistance is covered under a block exemption the de minimis rule may not apply;
 - (b) obtain declaration in writing of an enterprise's receipt of state aid from SMEs over the last three years; and
 - (c) provide enterprise participating in the project with a record of the cash value of any assistance provided.

Further information may be available from the **State Aid Monitoring Board**

Contact Person: Dr Yana Haber
Tel: 21252757
Email: yana.haber@gov.mt

Contact Person: Dr Lawrence Galea
Tel: 21223878
Email: lawrence.j.galea@gov.mt

Audit and Control

- 2.8 Projects (especially schemes) are subject to controls and checks by State Aid Monitoring Board, the Managing Authority, Intermediate Bodies, Paying Authority and audit institutions (local and European). Final Beneficiaries are to ensure that relevant data is notified to SAMB in accordance with LN 210 of 2004 and that data is kept at their end at company level.

3. PUBLIC PROCUREMENT

- 3.1 The European Community rules on Procurement apply to contracts that are financed or part financed by Structural Funds and also in the case of contracts funded by local funds. The Directives have been transposed into Maltese Legislation under LN 299 of 2003 and its amendment LN 377 of 2004. Within the coverage of the Directives set out below, contracts above certain limits are required to be advertised in the Official Journal (OJ) of the European Communities. Bids for contracts must be assessed on an objective basis and contract awards should be published in the OJ. Grant will be reclaimed if it is subsequently found that the procurement rules have not been observed.

Schedule III organisations are responsible for conducting their own procurement process but are still required to follow and abide by the National Legislation. These organisations are to keep copies of tender, evaluation report and contracts and copy the Department of Contracts for reference, after the process has been concluded. Any tendering processes are subject to audit checks.

- 3.2 Organisations that are not financed or supervised by public sector bodies and commercial organisations in the private sector may not be covered by the procurement rules **but are nonetheless expected to use fair and open practices including competitive tendering when letting contracts for which they intend to claim Structural Funds.**
- 3.3 Public Sector Bodies (government departments, authorities, agencies, commissions, corporations, local councils) must follow the public procurement legislation as per section 3.1 above. The relevant procurement procedures are outlined in the Manual of Procedures available on request from the Department of Contracts.
- 3.4 The Procurement rules are complex and the following list is not exhaustive or conclusive but merely provides a very brief description. The following description is not intended to provide guidance on how the Legal Notice should or should not be applied. If there is any doubt concerning the application of the procurement rules, applicant should seek advice from the Department of Contracts (ad hoc meetings). In general, where doubt remains (after consultation with experts) about the application of the procurement rules, it may be better to err on the side of caution and apply the procurement process.

Contracting – General Guidelines

- 3.5 The Applicant should avoid the splitting of contracts as this may be considered an irregularity. In the case of projects where goods/ services/ works cannot be supplied by a single company/ consortium the use of one tender with several lots is recommended.
- 3.6 The Applicant should draft the tender dossier. The specifications/ bill of quantities/ terms of Reference should be competitive and transparent.
- 3.7 The Applicant should set up individual meetings with the Department of Contracts to discuss contracting and tendering process
- 3.8 No recruitment (fulltime/ permanent) is permissible but only contracting of personnel as agreed in the project document or amended in letter of offer (the latter supersedes the former). Contracting of personnel should be made through a call for applications as per national requirements of relevant national legislation/ procurement regulations in case of contracting of service companies.
- 3.9 Contracts are to clearly state the payment stages throughout the project implementation. In this respect the Bank name, bank account number as to where payments should be made and account holder should be indicated (no cheques will be issued but only deposits directly to bank accounts).

- 3.10 Any contracts outside of LN299 of 2003 are not considered eligible under the Structural Funds Programme for Malta 2004-2006.
- 3.11 Contracts/ letter of acceptance have to be issued in Maltese Liri (LM), exceptions must be authorized in advance by the Ministry of Finance (MFIN). Tender dossiers should specify that offers are to be made in LM.
- 3.12 Compliance with community policies, particularly environment legislation, equal opportunities and information society must be indicated in tender dossier and Letter of Offer/ Acceptance/ Contract.
- 3.13 In the draft Tender dossier the Applicant should give a detailed breakdown of costs (to allow the identification of non-eligible costs) including the VAT element as a distinct component of the total cost.
- 3.14 The Tender dossier should include all specific details as outlined in the Manual of Procedures issued by the Department of Contracts.
- 3.15 Schedule III organizations that do not fall or are exempted from passing through the Department of Contracts (DoC) should follow the same procedure as outlined in sections 3.5 – 3.15 if and when required.
- 3.16 Further information may be obtained from the EU Unit, Department of Contracts:

Contact Person: Mr Dennis Attard

Tel: 21247682

Email: dennis.a.attard@gov.mt

Contact Person: Mr Bernard Bartolo

Tel: 21220212 ext 129

Email: bernard.a.bartolo@gov.mt

4. ENVIRONMENTAL IMPACT

- 4.1 All projects awarded Structural Funds must comply with EC and National Environmental legislation. Funds may be withheld until necessary approvals/ permits including planning permission, have been obtained.

- **Structural Fund Regulations:** 1260/1999, 438/2001 and 448/2004
- **Environment Protection Act:** Laws of Malta - Chapter 435
- **Development Planning Act:** Laws of Malta – Chapter 356
- **Environment Impact Assessment:** LN204 of 2001

- 4.2 Furthermore, the Applicant must note that Environment is a cross cutting theme and all efforts should be made by the Applicant to include an environment dimension within the project. Further information may be available from **Malta Environment and Planning Authority:**

Contact Person: Ms Krista Falzon (*Environment*)

Tel: 22901583

Email: krista.falzon@mepa.org.mt

Contact Person: Mr Alex Camilleri (*Planning*)

Tel: 22901105

Email: alex.camilleri@mepa.org.mt

5. EQUAL OPPORTUNITIES

- 5.1 The Applicant must note that Equal Opportunities is a cross cutting theme and all efforts should be made by the Applicant to include this element within the project. Further information may be available from the **National Commission for the Promotion of Equality for Men & Women:**

Contact Person: Ms Sina Bugeja

Tel: 25903850

Email: sina.bugeja@gov.mt

6. INFORMATION SOCIETY

- 6.1 The Applicant must note that Information Society is a cross cutting theme and all efforts should be made by the Applicant to include this element within the project. Further information may be obtained from **e-Malta Commission:**

Contact Person: Mr Claudio Grech

Tel: 21 250 685

Email: emalta@gov.mt