

NEMZETI FEJLESZTÉSI
MINISZTERIUM

Iktatószám:	70/7016
Érkezett:	2016 JUN 15.
Észak-Balatonai Térség Regionális Települési Szilárdhulladék-kezelési Önkormányzati Társulás:	

NEMZETI FEJLESZTÉSI MINISZTERIUM
KÖRNYEZETI ÉS
ENERGIAHATÉKONYSÁGI OPERATÍV
PROGRAMOKÉRT FELELŐS HELYETTES
ÁLLAMTITKÁRSÁG
SZABÁLYOSSÁGI ÉS PÉNZÜGYI
FŐOSZTÁLY

CZAUN JÁNOS

Elnök

ÉSZAK-BALATONI TÉRSÉG REGIONÁLIS
TELEPÜLÉSI SZILÁRDHULLADÉK-KEZELÉSI
ÖNKORMÁNYZATI TÁRSULÁS

8200 Veszprém,
Házgyári út 1.

TÁRGY: A 2002/HU/16/P/PE/017
azonosítószámú, „Észak-Balatonai Térség
Regionális Települési Szilárdhulladék-
gazdálkodási Rendszer Megvalósítása – I.
ütem” című projekt kapcsán az Európai
Bizottság projektzárást előkészítő levelének,
valamint a záró projektfenntartási jelentés
elfogadási feltételének megküldése

IKTATÓSZÁM: SZPF / 5191 / 2016 -NFM

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TISZTELT ELNÖK ÚR!

015. június 11-én az Európai Bizottság megküldte részünkre a tárgyi projekt zárásával kapcsolatos Ares(2015)2445089 iktatószámú levelét, egyúttal tájékoztatást adva a projekttel kapcsolatosan tervezett pénzügyi korrekció mértékéről. A Bizottság levelét ezúton továbbítjuk.

Tájékoztatom továbbá, hogy tárgyi projekt kézhez vett záró projektfenntartási jelentését megvizsgáltuk, és megállapítottuk, hogy részletesen tartalmazza a létesítményekre vonatkozó szükséges információkat.

Felhívjuk azonban figyelmét, hogy záró projektfenntartási jelentés lévén, a fennálló pénzügyi korrekciós összeg visszafizetéséig nem áll módunkban a dokumentumot jóváhagyni. A korrekció mértéke az Európai Bizottság 2015. június 11-én kelt Ares(2015)2445089 iktatószámú zárást előkészítő levele alapján az Irányító Hatóság által 2016. május 30-án megállapított szabálytalanság értelmében 16 588,36 eurónak a Támogatási Szerződés 19.3 pontja alapján a jegybanki alapkamat mértékének megfelelő éves kamattal növelt összege.

Felhívjuk továbbá szíves figyelmét, hogy az 1164/94/EK rendelet II. melléklet G. cikkének értelmében, az adott projektre vonatkozó utolsó kifizetést követő 3 éven keresztül szükséges a dokumentumok megőrzése. Ez alatt az időszak alatt az Európai Bizottság ellenőrizheti azokat. Jelen projekt esetében a Bizottság 2015.11.05-én utalta a végső egyenleget, így a dokumentumok megőrzési ideje 2018.11.05-ig tart.

Segítő együttműködését előre is köszönöm.

Budapest, 2016. június „9. „

Tisztelettel:

Máté József
főosztályvezető

Melléklet: Az Európai Bizottság 2015. június 11-én kelt Ares(2015)2445089 iktatószámú levele



Annex 1

Explanation on ineligible expenditure

On the basis of the information available to them, the Commission services consider that the amount of EUR 18 431,50 within the project „North Balaton Regional Municipal solid Waste Management System" CCI 2002HU16PPE017 is not eligible for the following reasons:

Finding 1: unjustified extension of the service contract

The supervising Engineer contract has been signed on 30.12.2005 for amount of EUR 195 000. Subsequently the contract was modified three times. The second modification dated 18.12.2007 concerned the extension of the project implementation from 8 quarters to 17 quarters, with the increase of the final value to EUR 257 500. Eventually, EUR 251 650 has been paid for the contract (meaning additional cost of EUR 56 650 above the original contract).

Position of the Member State

In the Final Report p. 26 explains that the modification results from the need of alignment with the Commission Decision B(2006)6491 of 05.12.2006 which extended the project end date to 31.12.2010.

Position of the Commission

The Commission services consider that no satisfactory justification is provided which would prove the additional services unforeseeable; thereby they are in breach of Article 31(4)a of Directive 2004/18/EC which stipulates when contracting authorities may use the negotiated procedure without publication of a contract notice:

(a) for additional works or services not included in the project initially considered or in the original contract but which have, through unforeseen circumstances, become necessary for the performance of the works or services described therein, on condition that the award is made to the economic operator performing such works or services:

— when such additional works or services cannot be technically or economically separated from the original contract without major inconvenience to the contracting authorities,

— when such works or services, although separable from the performance of the original contract, are strictly necessary for its completion.

In this context, the Commission would like to underline this provision must, however, be interpreted strictly and the burden of proving the actual existence of exceptional circumstances justifying a derogation lies on the person seeking to rely on those circumstances³.

Furthermore, the Commission notes that the “unforeseen” circumstances do not refer only to circumstances that cannot be foreseen, such as disasters or natural or man caused (*major force*) catastrophe, but also to circumstances not foreseen to the awarding bodies at the time of awarding the contract. However, with respect to the latter, what is taken

³ Judgement of 10 March 1987 in Case 199/85 *Commission v Italy* (ECR 1987 p. 01039, paragraph 14); Judgment of 27 October 2005 in joined Cases C-187/04 and C-188/04 *Commission v Italy* (not yet published, paragraph 24 with further references).

into account is what a diligent awarding body carrying out its activities normally should foresee⁴.

Since the above conditions are not met, a correction of 25% of the value of these additional services (ie. EUR 56 650) has to be applied, according to the "Guidelines for determining financial corrections to be made to expenditure co-financed by the Structural Funds and the Cohesion Fund for non-compliance with the rules on public procurement"⁵, irregularity No 22. It leads to a correction of **EUR 14 162,50** (EUR 56 650 * 25%), which should be deducted from the expenditure declared to the Commission. It corresponds to a correction of EUR 7 081,25 on Cohesion Fund assistance.

Finding 2: unjustified extension of the service contract

The services contract for PR services has been signed on 01.03.2007 for amount of EUR 166 500. It has been modified on 01.05.2009, whereby the final value increased to EUR 183 576 due to the extension of the implementation phase (increase by EUR 17 076).

Position of the Member State

In relation to this contract, findings were detected by the Winding-up Body (see pp. 10-11 of the Winding-up Report). The corresponding correction of EUR 26 523,45 was implemented (Final Report p. 27).

However, the noted-above finding on public procurement for which the corresponding financial correction has already been applied related to the original contract and not to its modification and award of the additional services.

Position of the Commission

As for the finding 1 above, also in this case the Commission services consider that no satisfactory justification is provided which would prove the additional services unforeseeable; thereby they are in breach of Article 31(4)a of Directive 2004/18/EC.

Therefore, a correction of 25% of the value of the additional services (ie. EUR 17 076) has to be applied, according to the "Guidelines for determining financial corrections to be made to expenditure co-financed by the Structural Funds and the Cohesion Fund for non-compliance with the rules on public procurement", irregularity No 22. It leads to a correction of **EUR 4 269** (EUR 17 076 * 25%), which should be deducted from the expenditure declared to the Commission. It corresponds to a correction of EUR 2 134,50 on Cohesion Fund assistance.

Total financial correction (EUR):

	on expenditure	on assistance
Finding 1	14 162,50	7 081,25
Finding 2	4 269,00	2 134,50
	18 431,50	9 215,75

⁴ Judgement of 10 March 1987 in Case 199/85 *Commission v Italy* (ECR 1987 p. 01039, paragraph 14); Judgment of 27 October 2005 in joined Cases C-187/04 and C-188/04 *Commission v Italy* (not yet published, paragraph 24 with further references).

⁵ COCOF 07/0037/02-EN



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
REGIONAL AND URBAN POLICY
The Director-General

Brussels,
REGIO.DGA2.TF.01/AW

**Subject: 2002HU16PPE017 "North Balaton Regional Municipal solid Waste Management System"
Preparation of closure of Cohesion Fund project**

Please note that all correspondence should mention the registration number which you find in the top right corner.

Your Excellency,

Following the final claim sent by your authorities by letter of 28.06.2012 concerning the above mentioned project, I write to inform you about the elements which, as far as the Commission services are informed, should form the basis of the closure statement (see detailed calculation on the attached table).

1. By its Decision DL(2003)1781 of 04 July 2003, as last amended by Decision B(2006)6491 of 05 December 2006, the Commission has approved a financial assistance of **EUR 12 957 000**.
2. The commitments amount to **EUR 12 957 000**.
3. The payments amount to **EUR 10 365 600**.
4. The balance commitment amounts to **EUR 2 591 400**.
5. The declared expenditure amounts to **EUR 25 537 431,50**, of which **EUR 18 431,50** is not considered eligible (see explanations in Annex I), leaving as eligible expenditure **EUR 25 519 000**.
6. The contribution due amounts to **EUR 12 759 500**.
7. Balance to be paid: **EUR 2 393 900**.
8. Balance of the assistance to be decommitted: **EUR 197 500**.

His Excellency Mr Péter GYORKOS
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Hungary to the
European Union
Rue de Trèves 92-98
1040 Bruxelles

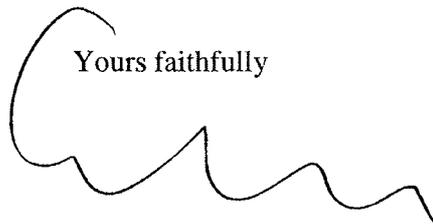
This letter will, however, be without prejudice to decisions to recover a part of the assistance (in case of irregularities or lack of conformity with the decision granting the aid¹ or of infringement procedures²) and to corrections which may be necessary following the findings of any audit of the expenditure declared. I remind you in this context that pursuant to Article G(3) of Annex II of Regulation (EC) No 1164/94, as last amended by the 2003 Act of Accession, the responsible bodies and authorities are required to keep available all relevant documents during three years following the last payment by the Commission or following date of this letter from the Commission regarding closure.

Please reply within two months of the date of receipt of this letter on the payment and on the decommitment proposed. The payment procedure will be suspended during that period.

Since closure may have negative implications for the final beneficiar(y/ies), I would ask you expressly to ensure that they are duly informed and given the opportunity of making known their views concerning the particulars on which this proposed closure is based. I would be grateful if you would keep me informed of this matter.

In case no reply is received within the time limit indicated above or if your authorities or the final beneficiar(y/ies) do not agree with the assessment set out above, the Commission will according to Article H of Annex II of Regulation (EC) N° 1164/94 as last amended by the 2003 Act of Accession and Article 17 to 20 of Regulation (EC) N°1386/02, reduce assistance on the basis of the elements indicated above and initiate the procedure for the above payment.

Yours faithfully



Walter Deffaa

Contact: Contact: Agnieszka Wicha, Telephone: +32 2298.10.69,
agnieszka.wicha@ec.europa.eu

Enclosure: Annex 1. Explanation on ineligible expenditure
Annex 2. Calculation sheet

Copy: Nandor Filep, Paying Authority
Noemi Dalnoky, Managing Authority

¹ According to Article G and H of Annex II of Regulation (EC) No 1164/94 as amended by the 2003 Act of Accession

² Under Article Art 258 of TFEU.