

SUBCONTRACTING in H2020

What is a subcontract?

Beneficiaries may award subcontracts in order to implement certain action tasks identified in Annex 1. Hence, the action task (i.e. the work to be performed by a subcontractor) must be identifiable in Annex 1. Moreover, the need for a subcontract, taking into account the specific characteristics of the action must be explained. If the need for a subcontract is not foreseen at the moment of the signature of the GA, the coordinator must request an amendment of the GA in order to introduce it in Annex 1 and 2.

Conditions for the award of a subcontract

Subcontracting may only cover a limited part of an action and it must be awarded ensuring best value for money or lowest price, based on business conditions. This means that the subcontractor charges a price, which usually includes a profit. The Subcontractor works without the direct supervision of the beneficiary and is not hierarchically subordinate to the beneficiary. The subcontractors' motivation is pecuniary, not the research work itself. The subcontractor is paid by the beneficiary in exchange for its work.

The best value for money principle does NOT in all cases require competitive selection procedures. However, if a beneficiary did not request several offers, it must demonstrate how best value for money was ensured. For the best price-quality ratio, price is an essential aspect, but it is NOT automatically necessary to select the offer with the lowest price. In order to provide a good analysis of the price-quality ratio, the criteria defining quality must be clear and coherent with the purposes of the action task that is subcontracted. The Institution's usual purchasing procedure has to be applied.

Rights and Responsibilities

Responsibility towards the EU/Euratom for the subcontracted work lies fully with the beneficiary and the beneficiary remains responsible for all its rights and obligations under the GA, including the tasks carried out by a subcontractor. Subcontracts should in particular foresee that intellectual property generated by a subcontractor reverts to the beneficiary.

A Subcontractor has no rights or obligations towards the Commission/Agency or the other beneficiaries (it has no contractual relation with them).

No overhead on subcontracts

The costs of subcontracting are excluded from indirect costs (declared on the basis of the flat-rate of 25% of the eligible direct costs) since the price of the subcontracting may already contain a profit margin/overhead based on the business conditions of the subcontractor.

Relevant articles of the [H2020 Model grant agreement](#): 4.2, 6.2, 13.

Delimitation of contracts, in-kind contributions against payment, subcontracts and implementation by linked third parties.

| Article 10 Contracts to purchase goods, works or services | Article 11 In-kind contributions against payment | Article 13 Subcontracts | Article 14 Implementation by linked third parties |
|---|---|--|--|
| Contractual link. | Contractual link | Contractual link. | The beneficiaries have a legal link with the linked third parties not limited to the action and not based on a contract for the purchase goods, works or services or the implementation of specific action tasks. |
| These contracts do not cover the implementation of action tasks, but they are necessary to implement action tasks by beneficiaries. | Third parties contributing in-kind make available some of their resources to a beneficiary without this being their economic activity (<i>i.e. seconding personnel, contributing equipment, infrastructure or other assets, or other goods and services</i>). | Subcontracts concern the implementation of action tasks; they imply the implementation of specific tasks which are part of the action and are described in Annex 1. | They must fulfil the same conditions for participation and funding under H2020 as beneficiaries (for instance, be established in an EU Member State, H2020 associated country or third country listed in General Annex A to the Main Work Programme). |
| Do not have to be indicated in Annex 1. | Must be indicated in Annex 1 | Must be indicated in Annex 1. | Must be indicated in Annex 1 |
| The price for these contracts will be declared as ‘other direct costs’ — column D in Annex 2 — in the financial statement; they will be taken into account for the application of the flat-rate for indirect costs. | The eligible costs are the amounts that the beneficiary pays to the contributors according to their agreements, within the limit of the third party’s costs (the amounts to be paid to the contributors usually exclude a profit margin but if they do, the profit margin is not eligible). | The price for the subcontracts will be declared as ‘direct costs of subcontracting’ — column B in Annex 2 — in the financial statement; they will not be taken into account for the application of the flat-rate for indirect costs. | The eligible costs are only the costs of the linked third party, no profit is allowed (neither for the linked third party nor for the beneficiary). |

Specifications of contracts, in-kind contributions against payment, subcontracts and implementation by linked third parties

| | Works on action tasks? | Provides resources or services for action? | What is eligible? | Must be indicated in Annex 1? | Indirect costs? | Selecting the third party | GA Articles |
|--|--|---|--------------------------------|--------------------------------------|------------------------|--|--------------------|
| Linked third party | YES | NO | Costs | YES | YES | Must be affiliated or have a legal link | Article 14 |
| Subcontractor | YES | NO | Price | YES | NO | Must be best value for money, avoid conflict of interest | Article 13 |
| Third party providing in-kind contribution | NO | YES | Costs | YES | YES | May not be used to circumvent the rules | Articles 11 and 12 |
| Contractor (selling, equipment, good or service) | NO | YES | Price | NO | YES | Must be best value for money, avoid conflict of interest | Article 10 |
| Third parties receiving financial support | The third parties participate in the action as recipients. | | Amount of support given | YES | NO | According to the conditions in Annex 1 | Article 15 |

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| Is the agreement with the TP based on "business conditions"? | | | |
| NO <i>(The price charged does <u>not</u> contain <u>profit margin</u>)</i> | | YES <i>(The price charged to the beneficiary includes a <u>profit margin</u>)</i> | |
| Is the TP Implementing an action task? | | Is the TP Implementing an action task? | |
| NO <i>The TP makes resources available (without this being its economic activity)</i> | YES <i>The TP implements an action task under the supervision of the PI</i> | NO <i>The TP implements an ordinary contract needed to carry out the action</i> | YES <i>The TP implements itself a specific action task of Annex I without the direct supervision of the beneficiary and it is not hierarchically subordinate to the beneficiary</i> |
| <input type="checkbox"/> Are the costs INCURRED by the beneficiary? | | <input type="checkbox"/> Does the TP have an established legal relationship with the beneficiary? | |
| NO <i>Costs are incurred only by the TP (NOT recorded in beneficiary accounts) BUT charged by beneficiary</i> <input type="checkbox"/> IN KIND CONTRIBUTION FREE OF CHARGE | YES <i>Costs are incurred by beneficiary (recorded in beneficiary accounts) and charged by beneficiary</i> <input type="checkbox"/> IN KIND CONTRIBUTION AGAINST REIMBURSEMENT USED IN THE PREMISES OR NOT USED IN THE | NO <i>The TP has NO established link</i> <input type="checkbox"/> <i>Then, it is not a TP but a BENEFICIARY</i> | YES <i>TP has an established legal relationship with the beneficiary which is BROAD and not specifically created for the work in the project</i> <input type="checkbox"/> LINKED THIRD PARTY |
| | | <input type="checkbox"/> CONTRACT (Other Goods and Services) | <input type="checkbox"/> SUBCONTRACT |

* For in-kind contributions against payment that are NOT used on the beneficiary's premises but on the third party's premises, the amount charged by the third party and paid by the beneficiary may be eligible up to the direct costs actually incurred by the third party increased by a flat-rate of 25% on these costs.