



Building a consortium exercise

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Example 1



Annex 1, work package 4, project task 4.3

Carrying out of 1000 laboratory tests

The consortium carries out directly 500, the other 500 will be done by an external (non project partner) organisation.

How to qualify? Which legal rules will apply?

SOLUTION



We are afraid it is not possible to give a conclusive answer to your question since the reply would depend, at least partially, on the specific case. For example, let's suppose that the action task described in Annex 1 is to carry out 1000 laboratory tests. The consortium carries out directly 500 but decides to externalise the other 500. This would be a subcontract even if the "full task" has not been implemented by the external service provider.

Example 2

Annex 1, work package 3, project task 3.5

Development of a prototype

Prototype is composed of several elements, amongst others:

- 1) a tailor-made stainless steel container
- 2) a new electronic device that needs to be designed and fabricated to be integrated in the prototype.

Both elements will be externalised.

How to qualify? Which legal rules will apply?

SOLUTION



We are afraid it is not possible to give a conclusive answer to your question since the reply would depend, at least partially, on the specific case. For example, let's suppose that the action task described in Annex 1 is to carry out 1000 laboratory tests. The consortium carries out directly 500 but decides to externalise the other 500. This would be a subcontract even if the "full task" has not been implemented by the external service provider.

Another example might be the development of a prototype identified as an action task in Annex 1. Let's suppose that this prototype is composed of several elements among which there is a tailor-made stainless steel container and a new electronic device that needs to be designed and fabricated to be integrated in the prototype. If these two elements are externalised, the tailor-made stainless steel container would be normally considered as a purchase of goods needed for the action task (developing the prototype). In contrast, designing and fabricating the new electronic device would be considered as subcontracting as it is part of the action task (developing the prototype).

As you can see, if it is the entire "task" or only "part of the task" what is externalized does not determine in itself if this is to be regarded as a subcontract or as a purchase of goods or services.

Example 3



University A ==> **University B** (Project Partner)

Professor Dolittle for 3 month

a) no legal link between A and B; Prof Dolittle will do laboratory work for the project on premises of B.

University A *charges the real costs of Dolittle (3 x EUR 1800/month)*

How to qualify? Which legal rules will apply?

b) University A charges € 200 more each year

How to qualify? Which legal rules will apply?

Solution



- a) In kind contribution against payment
seconded personnel = University B cost reporting: personnel costs

 - b) Contracts/subcontracts;
- if University B reports only € 1.800/month as costs and does not report the € 200 => could be in kind contribution against payment (discussion at Legal NCP meeting; **ask PO!**)