



FUEL CELLS AND HYDROGEN
JOINT UNDERTAKING

FCH 2 JU
Financial Workshop

Third parties

Georgiana Buznosu
Legal Officer | FCH 2 JU

Brussels, 21 March 2018

THIRD PARTIES

Overview



Notion of third parties in H2020

Individual overview: linked third parties, subcontractors, contractors, in-kind contributors, international partners

9 case questions



THIRD PARTIES

DEFINITION



What is a third party?

A legal entity which carries out work of the action, supplies goods or provide services for the action, but which did not sign the grant agreement

What types of third parties?

1. Third parties directly carrying out part of the work described in Annex 1: Linked third parties and Subcontractors
2. Other third parties providing resources, goods or services to the beneficiaries for them to carry out the work described in Annex 1: Contractors and In-kind Contributors

3. International Partners



Third parties

Types of third parties in H2020



Linked third parties

Carry out work

Subcontracts

Carry out work

(Purchase) Contracts

Provide resources

In-kind contributions

Provide resources

**NEW:
International Partners**



THIRD PARTIES

Third parties **directly** carrying out part of the work



1. Linked Third Parties

- Must be identified in the GA
- Same costs eligibility criteria as for beneficiaries

2. Subcontractors

- Best value for money and no conflict of interest
- Subcontracting between beneficiaries/ to affiliates / Coordination tasks: not allowed
- Indirect costs are not applicable



THIRD PARTIES

Other third parties



1. (Purchase) contracts necessary for the implementation

- For the purchase of goods, works and services
- Best value for money and no conflict of interest

2. In-kind contributors: free of charge OR against payment

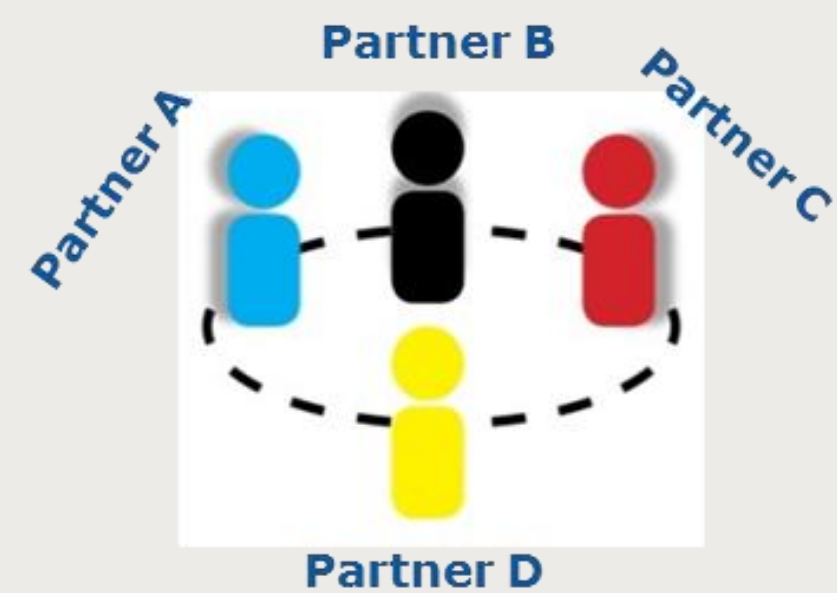
- Only the actual eligible costs of the third party contributing in kind
- What: seconded personnel, contributed equipment / infrastructure / other assets or other contributed goods and services
- Indirect costs: are taken into account if on premises; NOT taken into account if outside premises



THRID PARTIES

NEW type of third party

INTERNATIONAL PARTNERS



- Signatories of the GA
- Partner B has one International Partner



Idea to work together

HOW TO?

- ❖ Will be linked to Partner B
- ❖ PIC number necessary
- ❖ Not Signatory of the GA
- ❖ No EU funding
- ❖ Own (non EU) Budget
- ❖ Action Tasks in the Project
- ❖ No financial reporting
- ❖ No legal link necessary

THIRD PARTIES

GENERAL OVERVIEW



Types of third parties	CHARACTERISTICS						
	Does work of the action	Provides resources or services	What is eligible?	Must be indicated in Annex 1	Indirect costs	Selecting the third party	Articles
Linked third party	YES	NO	Costs	YES	YES	Must be affiliated or have a legal link	Article 14
Subcontractors	YES	NO	Price	YES	NO	Best value for money, avoid conflict of interest	Article 13
In-kind contributions by third parties	NO	YES	Costs	YES	YES	Not used to circumvent the rules	Articles 11 and 12
Contractors	NO	YES	Price	NO	YES	Best value for money, avoid conflict of interest	Article 10



SUBCONTRACTING

Case question 1



<https://pollev.com/laurentsamyn066>



**Coordinator A has foreseen a subcontract for the design, hosting and maintenance of the project website. The subcontract is explained and included both in the Annex 1 – the DoA and in the Annex 2 – the Estimated Budget
Are indirect costs applicable to the subcontract?**

A YES

B NO



SUBCONTRACTING

Case question 2



<https://pollev.com/laurentsamyn066>



Coordinator A, a body governed by public law, has foreseen a subcontract for the design , hosting and maintenance of the project website. The subcontract is explained and included both in the Annex 1 – the DoA and in the Annex 2 – the Estimated Budget. Does the coordinator as a contracting authority have to follow public procurement law?

A YES

B NO



SUBCONTRACTING

Case question 3



<https://pollev.com/laurentsamyn066>



Coordinator A did not foresee any other subcontract than the design of the website. At the end of the RP 1, it reports an 'unforeseen subcontract' in the Financial Report for the following services: review of deliverables to be submitted on behalf of the consortium, and verification of their completeness and correctness before passing them on to the FCH 2 JU.

Can the costs of an 'unforeseen subcontract' be eligible?

A YES

B NO



SUBCONTRACTING

Case question 4



<https://pollev.com/laurentsamyn066>



Coordinator A did not foresee any other subcontract that the design of the website. At the end of the RP 1, it reports an 'unforeseen subcontract' in the Financial Report for the following services: review of deliverables to be submitted on behalf of the consortium, and verification of their completeness and correctness before passing them on to the FCH 2 JU.
Is this specific subcontract eligible?

A YES

B NO



PURCHASE CONTRACTS

Case question 5



<https://pollev.com/laurentsamyn066>



Beneficiary B has foreseen a budget of 210.000 € for consumables and supplies necessary for the project implementation. B wishes to purchase from Beneficiary C of the same project one item – safety equipment – budgeted for 30.000€.
Is the purchase cost for the safety equipment eligible?

A YES

B NO



LINKED THIRD PARTIES. PURCHASE CONTRACT

Case question 6



<https://pollev.com/laurentsamyn066>



Beneficiary B will work together with affiliate company X. X is participating in the project as linked third party and has foreseen in their budget (Annex 1 and Annex 2) only personnel costs. Beneficiary B usually purchases wires from X. The budget of B foresees a total of 13.000€ for purchase of wires.
Can Beneficiary B purchase the wires from linked third party X as budgeted?

A YES

B NO



LINKED THIRD PARTY

Case question 7



<https://pollev.com/laurentsamyn066>



5 months after the start of the project, Beneficiary B would like to add another linked third party to the project. Beneficiary B owns X - a French company, but also owns company Y - a US company.

Can company Y be added as a linked third party to the project?

A YES

B NO



IN KIND CONTRIBUTOR AGAINST PAYMENT

Case question 8



<https://pollev.com/laurentsamyn066>



A researcher is seconded to Coordinator A by a legal entity (a public research center). This researcher works for A on its premises. The public research center charges the researcher's costs (salary + social security of 70.000 €) to A, who reimburses it. The invoice from the public research center includes its own indirect costs. Are the indirect costs of the public research center eligible?

A YES

B NO



IN KIND CONTRIBUTOR FOR FREE

Case question 9



<https://pollev.com/laurentsamyn066>



The same public research centre makes available for free to Coordinator A the use of infrastructure for testing activities.

This infrastructure is used by Coordinator A not only in the project but also for other research activities (it is not specific only to this project).

Can Coordinator A declare the costs of the public research center for the proportional use of the infrastructure as costs?

A YES

B NO





FUEL CELLS AND HYDROGEN
JOINT UNDERTAKING

Georgiana Buznosu

Legal Officer

Georgiana.Buznosu@fch.europa.eu

For further information

www.fch.europa.eu

www.hydrogeneurope.eu

www.nerghy.eu



@fch_ju



Fch-ju@fch.europa.eu



FCH JU

FINANCIAL WORKSHOP

SUBCONTRACTING

CASE QUESTION 1:

Coordinator BEAUTY has foreseen a subcontract for the design , hosting and maintenance of the internal and external website, explained and included both the Annex 1 – the DoA and in the Annex 2 – the Estimated Budget.

Answer:

NO

If necessary to implement the action, the beneficiaries may award subcontracts covering the implementation of certain action tasks described in Annex 1.

Subcontracting costs are **EXCLUDED** from the calculation of indirect costs (article 6.2.E. 'Indirect costs' of the MGA)

FINANCIAL WORKSHOP

SUBCONTRACTING

CASE QUESTION 2:

Coordinator BEAUTY, a body governed by public law, has foreseen a subcontract for the design , hosting and maintenance of the internal and external website, explained and included both the Annex 1 – the DoA and in the Annex 2 – the Estimated Budget.

Answer:

YES!

Why?

Beneficiaries that are ‘contracting authorities’ or ‘contracting entities’ (within the meaning of the EU public procurement Directives 2014/24/EU and 2014/25/EU35) must moreover comply with the [applicable national law on public procurement](#). These rules normally provide for a special procurement procedure for the types of contracts they cover.

FINANCIAL WORKSHOP

SUBCONTRACTING

CASE QUESTION 3:

Coordinator BEAUTY did not foresee any other subcontract that the design , hosting and maintenance of the website.

At the end of the RP 1, it adds an ‘unforeseen subcontract’ in the Periodic Report for the following services: review of deliverables and any other documents to be submitted for on behalf of the consortium, and verification of their completeness and correctness before passing them on to the FCH 2 JU.

Answer:

YES!

Why?

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.

However the FCH 2 JU may approve costs related to subcontracts not included in Annex 1 and 2 without formally amending the GA (‘simplified approval procedure’). The new subcontract must be **included and explained in the technical periodic report** (in the section ‘unforeseen subcontractor’). Beneficiaries that rely on the ‘simplified approval procedure’ bear the full risk of non-approval and rejection of costs by the FCH 2 JU.

FINANCIAL WORKSHOP

SUBCONTRACTING

CASE QUESTION 4:

Coordinator BEAUTY did not foresee any other subcontract that the design , hosting and maintenance of the website.

At the end of the RP 1, it adds an 'unforeseen subcontract' in the Financial Report for the following services: review of deliverables and any other documents to be submitted for on behalf of the consortium, and verification of their completeness and correctness before passing them on to the FCH 2 JU.

Answer:

NO.

Why?

Coordination tasks of the coordinator (e.g. distribution of funds, review of reports and others tasks listed under Article 41.2(b)) — **Can NOT be subcontracted** – Article 41.2.b) MGA.

Other activities of the coordinator may in principle be subcontracted.

FINANCIAL WORKSHOP

CONTRACTS (PURCHASE OF GOODS / WORKS / SERVICES)

CASE QUESTION 5:

Beneficiary BP4ALL has foreseen a budget of 210.000 € for consumables and supplies necessary for the project implementation. One item – safety equipment for 30.000€ - is foreseen to be purchased from beneficiary WBUS.

Answer:

NO.

Why?

Purchases between beneficiaries are in principle **not** accepted. If a beneficiary needs supplies from another beneficiary, it is the **latter beneficiary that should charge** them to the action. (Otherwise there is the risk that the grant is used to charge commercial profit margins.)

Purchases between beneficiaries will only be accepted in **exceptional** and properly justified cases (e.g. beneficiary A is the usual supplier of beneficiary B for a generic consumable that beneficiary B needs for the action). .

FINANCIAL WORKSHOP

LINKED THIRD PARTIES

CASE QUESTION 6:

Beneficiary PM will work together with affiliate HM OG. HM is participating to the project as linked third party and has fore seen in their budget (Annex 1 and Annex 2) only personnel costs. Beneficiary PM usually purchases wires from HM and their budget foresees a total of 13.000€ for purchase of wires.

Answer:

NO.

Why?

Linked third party does not charge a price, but **declares its own costs** for implementing the action tasks.

Purchases between beneficiary/affiliate are in principle not accepted. If a beneficiary needs supplies from its affiliate, it is the latter that should charge them to the action.

FINANCIAL WORKSHOP

LINKED THIRD PARTIES

CASE QUESTION 7:

5 months after the start of the project, beneficiary PM would like to add another linked third party to the project. Beneficiary PM owns HM, a French company, but also owns company Three, an US company.

Answer:

NO.

Why?

Linked third parties 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).

Company Three is established in a third country that is [not eligible for funding](#) under Article 10 of the Rules for Participation Regulation No 1290/2013.

FINANCIAL WORKSHOP

In-kind contributor against payment

CASE QUESTION 8:

A researcher is seconded to coordinator BEAUTY by a legal entity (a public research center). This researcher works for BEAUTY on its premises. The public research center charges the researcher's costs (salary + social security charges of 70.000 €) to the coordinator who reimburses it.

Answer:

NO.

WHY?

The indirect costs of the third party are either:

☐ **NOT taken into account: if the resources (in-kind contribution) are used on the beneficiary's premises .**

or

☐ taken into account: if the in-kind contributions are NOT used on the beneficiary's premises (but, for instance, on the third party's premises).

FINANCIAL WORKSHOP

In-kind contributor for free

CASE QUESTION 9:

The use of infrastructure for testing activities is made available for free (without any payment) to coordinator BEAUTY by a legal entity (a public research center). This infrastructure is used by the coordinator not only in the project but also for other research activities (it is not specific only to this project).

Answer:

YES.

WHY?

The beneficiaries may declare the costs of the third party for the in-kind contribution, if the eligibility conditions set out are fulfilled. The costs must be recorded in the accounts of the third party. Normally, only the direct costs actually incurred by the third party may be declared.

NOTA BENE: Free of charge in-kind contributions may also have to be declared as receipts— capped by the amount declared as third party costs for the contribution: are considered ‘receipts’: in-kind contributions provided by third parties free of charge specifically to be used for the action, if they have been declared as eligible costs (i.e. not money, but an in-kind contribution free of charge given by a third party (a donor) specifically for being used for the action covered by the GA)