

SIXTH FRAMEWORK PROGRAMME: FREQUENTLY ASKED QUESTIONS

I. PARTICIPATION / ELIGIBILITY:

- Participation without funding:

In FP5 it was possible for participants from EU member countries to participate in funded projects, but not to receive funding. Is this also possible in FP6? If yes, which responsibilities and obligations would a participant have if they receive no funding? (For example, in FP5, no cost statements are needed from the partner).

In FP6 it is possible for legal entities from EU countries to participate without receiving funding. Their costs will be taken into account for calculating the total cost of the project but not the Community financial contribution. For these cases, the contract can include the special clause for such contractors, indicating that it is not subject to financial audits and audits on accounting and management principles referred to in Article II.29.1. As a consequence, Section 1 of Part B of Annex II (eligible costs of the project, direct costs, indirect costs, cost reporting models, receipts of the project Community financial contribution, reimbursement rates, audit certificates, interest yielded by pre-financing provided by the Commission, payment modalities) do not apply to those contractor(s). Also, such contractors would not be subject to any financial collective responsibility provisions applicable to the project.

-Evolution of consortium:

When and under what conditions are competitive calls necessary?

Competitive calls are necessary when it is foreseen in the technical annex to the contract (Annex I) that a budget is allocated to as yet unidentified contractors (and only for Integrated Projects (IP) and Networks of Excellence (NoE)). In these cases, a competitive call must be launched by the consortium to notify the research community. Proposals are evaluated and the new contractors are proposed to the Commission. The terms and conditions for carrying out the call are enumerated in Article 3 of Annex III to the contract for these instruments.

- Physical persons:

Must all participants be part of a legal entity? If yes, can physical persons be subcontractors?

A physical person can be a contractor. In that case, as a physical person, you must use the AC cost model. However, this is limited to persons working as individuals in a research contract. Some SMEs are legally speaking physical persons but have accounting systems and employees. These entities should use one of the cost models available to SMEs (FCF or FC).

Physical persons may also act as subcontractors. In that case the contractor with whom they are associated will have chosen them following the open bid system, awarding the sub-contract on the basis of the best quality/price ratio.

- Is there a partner status in FP 6 similar to assistant contractor in FP5?

No. There is only one type of contractor, all with equal rights and obligations. This does not mean that all partners have to have an equal share of the work in the project but that their rights and obligations as contractors are the same.

Nothing prevents the contractors internally, through their consortium agreement, to grant each another particular roles or responsibilities such as those relating to management activities, organisation of meetings, or leadership of work packages. However, these would have no effect on collective and individual obligations of each contractor towards the Commission.

However, the co-ordinator has some additional obligations under the contract. These relate to ensuring the accession of all the contractors to the contract, communication between the consortium and the Commission, receiving and distributing the Community financial contribution and keeping accounts to that end.

II. CONSORTIUM AGREEMENT (CA):

1) Since consortium agreements are mandatory for certain instruments, particularly IPs and NoEs, can the co-ordinator pay pre-financing to participants without the CA having been signed?

The payment of the pre-financing is made by the Commission to the co-ordinator based on one of the three options established by Article 8.2 of the contract:

The Community financial contribution is paid within 45 days of one of the following:

- a) the date of entry into force of the contract;
- b) the date the Commission is informed of the accession of the last contractor required to constitute the minimum number of participants established by the Rules for Participation, as detailed in the call for proposals to which the project is related; or
- c) the last date the Commission is informed of accession to the contract of all the contractors.

The second issue is the distribution of the pre-financing by the co-ordinator among the contractors. Where the pre-financing is paid on the basis of the first option above, Article 8.1.c states: *However, the initial pre-financing shall not be distributed to the contractors until the minimum number of contractors required by the Rules for Participation have acceded to the contract.* In this case, the co-ordinator may distribute the EC contribution to the other partners **only** after the minimum number of participants has been reached.

In all cases, Article 8.1.c will state that: the *coordinator* shall distribute the *Community* financial contribution without unjustified delay.

"Unjustified delay" usually means any provision established by the consortium agreement or any special clause of the contract (for example relating to prior provision of a bank guarantee or other financial security). The coordinator will allocate each tranche of the Community financial contribution between the contractors in accordance with the provisions of the contract and any relevant decisions of the consortium (the latter cannot contradict the provisions of the contract).

2) Can the co-ordinator pay the advance payment to partners only when their activities start within the project (for example when their tasks start)?

Yes, if it has been agreed by the consortium. The coordinator will notify the Commission of Interest accrued on this pre-financing.

III. NEGOTIATION and Contract Preparation Forms

1) In the CPF IP A.2.c form, the first clause (a) states that the organisation "Has stable and sufficient sources of funding ... to provide any counterpart funding necessary." What is the implication of this clause for a non-EU participant and for participants using the AC cost model?

- For participants not receiving EU funding there is no obligation to identify the counterpart funds. It is presumed that they make their own arrangements to ensure that they can cover the estimated costs. The capacity of that contractor to carry out the work should be confirmed.

- For participants using the AC cost model, the Community grant covers all those **additional** eligible costs which may be reimbursed according to the contract but not all costs incurred in the project. Such participants must identify the other resources that they will contribute to the project and estimate the cost of those other resources (e.g. permanent personnel, infrastructures; etc.) and report on this during the life of the project.

2) What is meant by: Contractors using additional cost (AC) reporting model must indicate clearly the other own resources that they intend to contribute to the project (i.e. in addition to the eligible costs that will be funded by the Community contribution) and give an approximation of the value of these resources?

Contractors using the AC model must indicate all the resources and their estimated costs related to the project and not only the "additional direct costs" (i.e. the eligible costs additional to the normal recurring costs of the contractor that are associated directly to the project and are not covered by any other sources of funding) even if only the additional costs are eligible.

For example, the costs of permanent staff carrying out work on the project do not constitute additional costs and are not reimbursed by the EC contribution. However, one has to indicate the use of this resource on the project and indicate the estimated value to the project.

IV. TYPES OF ACTIVITIES:

What are the different types of activities foreseen for different projects?

See part 2.3 of the Guide to Financial issues relating to indirect actions of FP6.

What are the reimbursement rates for the different types of activities?

See the table in part 4 of the Executive Summary and part 3.1.3.2 of the Guide to Financial issues relating to instruments of FP6.

Even though the Commission reimburses certain activities at certain rates are we obliged to reimburse each partner that amount for activities carried out?

The members of the consortium can decide how to distribute the financial contribution received from the Commission. This may be in strict accordance with the reimbursement rates made by the Commission or may be in accordance with the consortium's preferences. Whatever the choice, it is important that it is clearly indicated in the consortium agreement in order to avoid problems.

V. COSTS AND EC CONTRIBUTION:

1) What is the funding policy in EU projects in the FP6 for non-profit organisations (non-governmental)?

There are no constraints on participation of such entities. However, the nature and extent of funding they receive depends on the cost model used, which in turn is determined by the nature of the legal entity and its accounting practices.

Public bodies that are non-commercial or non-profit organisations, which do not have an accounting system that allows the share of their direct and indirect costs relating to the project to be distinguished, may opt for the additional cost model.

In this model, the contractor charges 100% of eligible direct **additional** costs* (AC) and a flat rate for indirect costs. The flat rate is a fixed contribution equal to 20% of all eligible direct additional costs minus costs of sub-contracts. As an exception to this rule, AC contractors can charge, but only to the management of the consortium activity, costs of permanent personnel to the extent that they can identify their actual costs. However, the flat rate for indirect costs does not apply to these costs as they are not additional.

(*Direct additional costs are eligible costs additional to the normal recurring costs of the contractor that are associated directly with the project and are not covered by any other sources of funding).

Direct additional costs of personnel can include:

- Personnel with a temporary contract to work under the Community contract concerned;
- Personnel with a temporary contract to complete a doctorate;

-Personnel whose employment contract depends wholly or in part on additional external financing. In this case, costs charged to the project must exclude all costs covered by normal recurring financing.

a) COST MODELS

- Choice of cost model

1) How to choose a cost model?

Access to a cost model depends on the type of legal entity concerned and its accounting system:

-All legal entities can use the full cost model (FC) model with the exception of physical persons;

-Physical persons use the additional cost model (that is individuals participating in the project as individuals – not SMEs that are not incorporated)

-Non-commercial or non-profit organisations established either under public law or private law and international organisations may choose one of the additional cost (AC), full cost flat rate (FCF) or FC models. However, only those non-commercial or non-profit organisations established either under public law or private law and international organisations which do not have an accounting system that allows the share of their direct and indirect costs relating to the project to be distinguished may opt for the AC model.

-Legal entities defined as SMEs have the choice between the FC and FCF model.

2) What are the differences between the three models?

-The FC model allows all direct and indirect costs to be charged to the project. Costs are reimbursed at different rates according to the activity and instrument.

-The FCF model allows all direct costs to be charged to the project with a flat rate to cover indirect costs. Direct costs are reimbursed at different rates according to the activity and instrument.

- The AC model allows only eligible **additional** direct costs to be charged to the project with a flat rate to cover indirect costs. These costs are reimbursed at 100% in all instruments. (The exception is for Networks of Excellence where costs must exceed the grant for integration and may result in costs being reimbursed at less than 100% depending on the composition of the consortium, the costs incurred, and the amount of the grant for integration.)

(For the reimbursement rates per activity and per cost model see the table in part 4 of the Executive Summary and part 3.1.3.2 of the Guide to Financial issues relating to instruments of FP6.)

3) Where a legal entity has a MIXED accounting system (composed of one which allows to distinguish indirect costs and another which doesn't allow it) can we choose the AC model?

In this case, so long as the direct costs of the project can be identified, the FCF model can be used. Where it is not possible to distinguish the share of the direct and indirect costs to this project it is possible to use the AC model, so long as the legal entity meets the criteria for its use.

b) PERSONNEL

1) How does one calculate the productive hours per year?

All eligible costs must be determined in accordance with the contractor's usual accounting principles.

As far as productive hours are concerned, contracting parties must calculate their specific productive hours according to their normal procedures (taking into account national holidays, illness, training, etc.).

2) Can the Commission fund permanent personnel when the AC model is applied?)

Article II.20 of Annex II (General conditions) to the FP6 model contract stipulates that:

"Contractors using the additional cost model may charge to the project only those direct costs that are additional to their recurring costs. Any such direct additional costs specifically covered by contributions from third parties are excluded. Direct costs of personnel shall be limited to the actual costs of the personnel assigned to the project where the contractor has concluded with the personnel:

- A temporary contract for working on Community RTD projects,
- A temporary contract for completing a doctorate,
- A contract which depends, in full or in part, upon external funding additional to the normal recurring funding of the contractor. In that case, the costs charged to this contract must exclude any costs borne by the normal recurring funding."

Therefore, a contractor using the AC model may charge the cost of permanent staff involved in the project providing they have a contract which depends in full or in part upon external funding additional to the normal recurring funding of the contractor.

For example, a researcher has a permanent employment contract but the work carried out covers only part of the time that researcher can work during the week. The researcher's salary is € 5000 for carrying out this part-time employment. The full-time equivalent for the same post however is € 6000. If mentioned in the employment contract, the researcher can have an additional salary of up to € 1000 to carry out additional tasks up to the maximum permitted. In such cases, part or all of the difference (€1.000), depending on the amount of time actually spent on the FP6 project, may be considered as an additional direct eligible cost.

In such cases, it is important that:

- The employment contract (or any related document) clearly states that the amount that the person receives for working on a contract funded by external sources, when added to the person's part-time salary, does not exceed the full-time equivalent. There is a distinction between working time and salary for the time related to the recurrent costs of the employee and the part subject to external funding.

AND

- The additional salary is effectively paid.

The terms and conditions of the contract with your personnel must be in accordance with national legislation.

3) How should partners input personnel costs from third countries?

If a legal entity established in a third country may participate without receiving any EC funding, it has to calculate the person months and costs according to its usual accounting and management principles. This input should be identified in the technical annex to the contract (Annex I) and the budget estimated for that contractor's costs will be included as part of the total costs of the project (but not part of the estimated maximum EC contribution).

If a legal entity established in a third country may receive EC funding, it is treated like any other contractor: it must meet all the provisions of the contract including those concerning the eligible costs (Articles II.19, II.20, II.21, II.22 and II.25 of the FP6 model contract).

4) Where personnel of a sister company performs management tasks of the coordinator, are these eligible costs under the contract?

Even though two companies are affiliated they are separate legal entities and only one of them is a contractor. Therefore, work carried out by a sister company is considered to be subcontracting.

Generally speaking management costs cannot be subcontracted. However, certain minor costs can be subcontracted by their nature; or even if they relate to the management activity. (For example, the audit certificates of an external auditor are by definition subcontracts; the subcontracting of the organisation of a workshop or seminar might also be acceptable, etc.)

These costs could be treated as subcontracting (if they meet the criteria for subcontracting – i.e. not core tasks, included in Annex I, etc.) or these could potentially be considered as resources made available to the contractor from third party if they meet the criteria established by the model contract (i.e. prior agreement, identified in Annex I, etc.).

5) How detailed should the 'working time to be charged' (part 6.1.1 Guide to Financial Issues) be recorded? Is it sufficient if the researcher records the hours?
i.e. She/he worked so many months on an EU-project?

Working time to be charged must be recorded throughout the duration of the project through any effective tool (including time sheets), in accordance with the contractor's normal accounting rules. The person in charge of the work designated by the contractor should certify the records. An estimation is insufficient.

Employees normally record time sheets on a daily basis while the certification of the person in charge could be done monthly. Certified time sheets must include the person's identity and her/his time spent on the project. If the person is working in

different "activities" under the contract it is necessary to be able to distinguish among the tasks as they relate to each activity. In addition, a full overview of the working time should be possible in the event of an audit (i.e. for persons working part-time on the project it should be possible to determine where their time was spent when not on the project).

Costs claimed for personnel time must be actual, not averages, and recorded on the contractor's account (income statement, balance sheet) not just on internal (management) accounts.

6) Can we claim overtime costs for research personnel?

If overtime is actually paid and if it is the policy of the organisation to pay overtime then it is possible **if** the overtime is necessary to the project. Generally speaking though, except for certain technical staff, overtime is not paid.

7) Should in-house consultants be treated as subcontractors as the costs of these will normally be recorded in the accounts as 'services/supplies'?

If so, would this also imply the necessity for competitive tender and best value for money?

This depends on the accounting principles of the contractor: if they are treated as subcontractors on the accounts then they are subcontractors, if they are treated as personnel then they are not subcontractors.

If they are subcontractors then the provisions of the model contract apply. It has been proposed that the contractual requirement for "competitive tender" for subcontracting be replaced by the words "to the best bid". If this amendment is approved by the Commission then a corrected version of the contract will be placed on the web site.

c) SUBCONTRACTING

1) In what cases can a contractor subcontract?

As a general rule contractors must have the capacity to carry out the work themselves (Article II.6 of the FP6 model contract). Subcontracting is a derogation to this general rule and is limited to specific cases.

A. Conditions related to activities subcontracted:

- Subcontracts may relate only to a limited part of the project (Article II.6, 2, a of the FP6 model contract): "They may only cover the execution of a limited part of the project. Therefore, generally core elements of the project can not be subcontracted".

- Article II.6, 2, b of Annex II of the FP6 model contract states that: "recourse to the award of subcontracts must be justified having regard to the nature of the action and what is necessary for its implementation".

- Even though certain services may be performed by a subcontractor, the contractor maintains full responsibility for carrying out the project, retains the intellectual property generated, if any, and must ensure that certain of provisions of the model contract are reflected in the agreement with the subcontractor. (Article II.6, 2, a of Annex II (General conditions) to the FP6 model contract).

B. Conditions placed upon the subcontractor:

-The subcontractor must be a legal entity.

-Subcontracts are carried out only by third parties (Article II.1, 27 of Annex II of the FP6 model contract). Subcontracting between contractors is not possible, except in very particular cases (It might be the case where a different independent department of one contractor, not involved in the project, has provided a service to another contractor). However, this should be avoided to the extent possible.

-Any subcontractor, whose costs will be claimed under the project, must be made to the [best bid based on price/quality] and in compliance with the national legislation of the contractor concerned (see: Article II.6, 2 of Annex II of the FP6 model contract and see point 7 under Personnel above regarding amendment to the contract).

2) Is a subcontractor considered as a participant?

No, a subcontractor is a third party carrying out tasks identified in Annex I or other minor tasks not relating to the core work of the project, by means of a subcontract with one or more of the contractors. (Article II.1.27 of Annex II of the FP6 model contract).

3) Who pays the subcontractor?

As a third party, the subcontractor is not reimbursed by the Commission directly but by the contractor on the basis of the agreement concluded between the contractor and the subcontractor. Once the subcontractor is paid by the contractor, this contractor will be able to claim the reimbursement of that subcontracting expense to the Commission as a form of direct eligible cost.

4) What is the reimbursement rate for subcontracts? Is it right that a partner - using the Full cost Model - is getting max. 50% of its sub-contractor's costs reimbursed?

As direct eligible costs, the reimbursement rate of subcontracting cost will depend on the type of activities under which the cost of the subcontract has been incurred and the instrument in which the contractor is participating. (See *the table in part 4 of the Executive Summary and part 3.1.3.2 of the Guide to Financial issues relating to instruments of FP6*)

5) Is the cost of VAT levied on a subcontract in an FP6 project an eligible cost?

It is clear from Article II.19.2.a of the FP6 model contract that VAT is a non-eligible cost. Therefore eligible costs of subcontracting exclude VAT.

For example, where the total price paid for a subcontract is €1,200 (the cost of the services were €1,000 and the V A T €200), the direct eligible cost is € 1,000.

6) Does a subcontractor submit a signed Financial Statement (Form C)?

Subcontractors do not submit Financial Statements. However, the costs incurred by the contractor for subcontracting must be identified in the contractor's Financial Statement. The contractor must ensure that its audit certificate also covers the eligible costs of the amount paid to the subcontractor.

d) RECEIPTS

1) What are receipts and income to a project? What interest is counted as income? Does it relate only to interest earned by the coordinator on payments from the Commission, or does it also include any interest accrued by any of the partners throughout the duration of the project?

Receipts

There are three main kinds of receipts :

- Financial transfers or their equivalent to the contractor from third parties;
- Contributions in kind from third parties;
- Income generated by the project.

The first two cases (financial transfers or contributions in kind), are considered as receipts of the project if the third party has provided them specifically to be used in the project. However, if the use is at the discretion of the contractor they may be considered as eligible costs to the project but not receipts.

Where contributions from third parties are used by the contractor for the project, the latter is required to inform the third party of this use, in accordance with the national legislation or practice in force.

Income

In the case of income generated by the project itself, any income generated by the project itself, including the sale of assets bought for the project (limited to the initial cost of purchase) is considered income to the project (e.g. admission fee to a conference carried out by the consortium; sale of the proceedings of such a conference; sale of equipment bought for the project, etc.)

Interest

Pre-financing remains the property of the Community. As a consequence, in the relevant periodic report, the **coordinator** must declare to the Commission any interest or equivalent benefits (*like what?*) yielded by the pre-financing that it has received by the Commission on behalf of the Commission.

The proposed correction to Article II.27 of Annex II (General conditions) to the FP6 model contract would reflect this.

“ Article II.27

1. In accordance with the provisions of the *Financial Regulation* 15, *pre-financing* granted to *the coordinator* on behalf of the *consortium* remains the property of the *Community*.”

VI. INTELLECTUAL PROPERTY RIGHTS (IPR)

a. Pre-existing know-how

How should pre-existing knowledge be excluded from access in a specific project? Should there be a list excluding all pre-existing know-how except for some specific elements available for the project or should there be a “negative”-list containing explicitly the pre-existing know-how that will be excluded?

Generally speaking everything that is necessary for carrying out the project or necessary for the use of the knowledge generated by the project should be made available under the terms and conditions established by the contract or on more generous terms as agreed by the contractors.

The contract clearly indicates that specific pre-existing know-how can be excluded by means of a separate agreement to which all contractors agree prior to the EC contract coming into force. This means that any exclusion should be specific. The intention is to ensure that the pre-existing know-how necessary for the project will be available if and when it is needed for the project. There is no automatic right to have access to all pre-existing know-how owned by the other contractors. Each contractor has to request access and to show why it is necessary either for them to carry out the project or to use their own project results. Such access can also be limited by conditions set by the contractors concerned e.g. in time, in nature (only for the research carried out under the project), in application (no sublicensing), etc.

It is perhaps useful to recall that the access rights under FP5 contracts were even broader than they are under FP6 and there was no right of exclusion.

Can the exclusion list be revised during the project?

Removing items from the list:

It is possible to remove items from the list of explicit exclusions of pre-existing know-how during the life of the project.

Adding items to the list:

In theory, “side-ground” or pre-existing know-how acquired in parallel with the project cannot be added to a list already existing because it was not excluded prior to the EC contract coming into force. If a contractor excludes specific pre-existing know-how before a new contractor joins the project, does this exclusion apply for all contractors from this day on or only for the new contractor?

The list of specific exclusions can be revised when a new contractor joins the project. The new contractor may also wish to add items to the list. The revised list will apply to the new contractor as well as the existing contractors.

b. Knowledge generated in an NoE

Are the results of the research carried out in a network but not covered by the activities of the joint programme of activity considered to be knowledge and therefore subject to the IPR provisions of the EC contract?

Since the Community financial contribution is to fund the joint programme of activity, if any knowledge is generated by the JPA then it is by definition covered by the provisions of the contract. However, the broader aspects of the network that might be related to joint research activities NOT covered by the JPA, would not be covered by the provisions of the contract, unless they are specifically related to tasks identified in Annex I to the contract and covered by the JPA.