

PRAG



Procurement And Grants for European Union external actions - A Practical Guide

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Unsuccessful applicants should be informed without delay, and in any event no later than 15 calendar days after information has been sent to the successful applicants, in writing using the appropriate template (Annex E9).

They may receive, at their request, further information regarding the evaluation of their own proposal (any weakness, poor or insufficient description of the action, budget not matching the proposed activities, overall lack of consistency, etc.)

As a rule, all applicants should be notified the outcome of the evaluation of their applications within 6 months following the submission deadline of the full application.

2.10. Modifying contracts

For modifications of grant contracts, please refer also to section 6.8.

Contracts may need to be modified if the circumstances of project implementation have changed since the contract was signed. However, the subject matter of the contract cannot be altered. Contracts can only be modified during their execution period. Any changes to the contract must be made officially by means of an administrative order or an addendum in accordance with the General Conditions. Substantial changes to the contract must be made by means of an addendum. Such an addendum must be signed by the contracting parties (and, under an indirect ex-ante management, approved and endorsed by the European Commission). The contractor may simply notify the contracting authority of changes of address, changes of bank account, and changes of auditor (in the case of service contracts); this does not affect the contracting authority's right to oppose the contractor's/beneficiary's choice of bank account or auditor.

2.10.1. General principles

The following general principles must always be complied with:

Contracts cannot be amended after the end of the execution period. Note that the execution period of the contract is generally longer than the implementation period. For definition of the execution period of the contract and implementation period, see Annex A1.

Any modification extending the period of implementation must be such that implementation and final payments can be completed before the expiry of the Financing agreement (if any) under which the initial contract was financed.

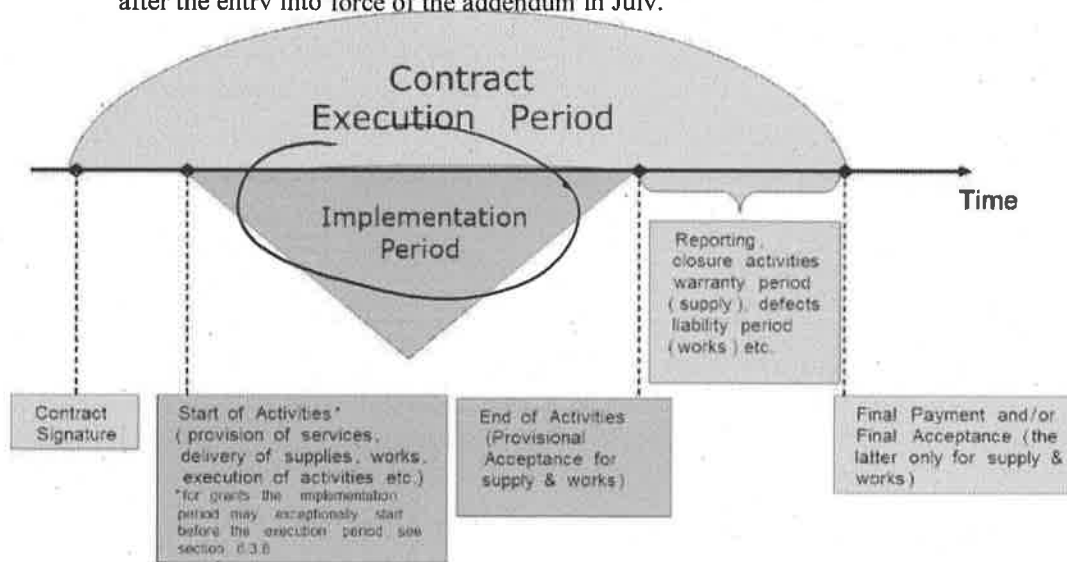
A contract can be amended through an administrative order or addendum under the conditions provided for in the contract itself. In exceptional circumstances, the amendment may have a retroactive effect provided the execution period has not expired but the contractor or grant beneficiary will only receive confirmation that the contracting authority has agreed to its request once the addendum has been duly signed or an administrative order has been issued. The contractor or grant beneficiary bears the financial risk of any costs incurred or goods and services provided before the addendum or administrative order has been issued, because the contracting authority has the right to refuse to sign the addendum or issue the order. Only once the addendum or order enters into force may the contractor or grant beneficiary claim payment for the costs, goods or services.

Examples:

- i. A contractor reports an urgent need to replace a key expert in March, which is accepted in an

addendum in April. The amendment enters into force in April, acknowledging the change as from March. The contractor is only entitled to ask for payment for the work carried out in March *after* the entry into force of the amendment.

- ii. In a grant, the implementation period expired in May and the grant beneficiary requests a 1 month extension in June. If the Contracting Authority accepts the justification, including for the late request, and issues an addendum in July, the implementation period will be extended by 1 month from May to June. Costs incurred from May to June would only become eligible after the entry into force of the addendum in July.



✶ No changes to the contract may alter the award conditions prevailing at the time the contract was awarded.

Following this logic, major changes, such as a fundamental change to the terms of reference or to the technical specifications, cannot be made by means of an addendum or an administrative order.

A request for changes to the contract must not automatically be accepted by the contracting authority. There must be justified reasons for modifying a contract. The contracting authority must examine the reasons given and reject requests which are not fully substantiated.

Modifications to contract amounts may entail changes for the financial guarantees linked to the contract.

The purpose of the addendum or administrative order must be closely connected with the nature of the project covered by the initial contract.

Requests for contract modifications must be made (by one contracting party to the other) in time to allow the addendum to be signed by both parties before the expiry of the execution period of the contract.

Where the change to the contract extends activities already under way, it requires a negotiated procedure and compliance with some conditions (see points 3.2.4.1.c), 4.2.5.1.c), and 5.2.5.1.c) for contract-specific information about negotiated procedures and sections 3.5., 4.6., and 5.7. for contract-specific information on changes to contracts).

In other circumstances the change can be processed by means of simple addendum, with no need to undertake a negotiated procedure. The relevant modifications are the following:

- a) additional works, supplies or services by the original contractor that have become necessary and that were not included in the initial procurement, when changing contractor is not feasible for technical reasons (eg. compatibility with existing equipment, services or installations) or changing contractor would cause substantial duplication of costs for the contracting authority. Any increase in price, including the net cumulative value of successive modifications, cannot exceed 50 % of the initial contract value;
- b) modifications needed because of circumstances which a diligent contracting authority could not foresee, provided that any increase in price does not exceed 50 % of the initial contract value;
- c) modifications meeting the following cumulative conditions:
 - the value of the modification is below EUR 300 000 for service and supply contracts, and EUR 5 000 000 for works contracts; and
 - the value of the modification is limited to 10 % of the initial contract value for service, and supply contracts, and 15 % of the initial contract value for works contracts; and
 - the net cumulative value of several successive modifications does not exceed the thresholds under points i) and ii) above;
- d) all other modifications which do not alter the minimum requirements of the initial procurement irrespective of their value when the resulting modification in the value is the outcome of the strict application of the procurement documents or contractual provisions.

Cases such as administrative changes, universal succession and application of revision clauses or options are considered not to alter the minimum requirements of the initial procedure. Modifications which are the result of the application of contractual provisions (e.g. price revision clauses, measurement of works) or concern administrative details (e.g. change of address, replacement of

auditor) do not need an addendum or administrative order.

Reference to the initial contract value does not take into account price revisions.

All kind of modifications listed above apply also to specific contracts under framework contracts. Moreover, cases under points a), c) and d) also apply to the framework contract itself.

2.10.2. Preparing an addendum

The contracting authority drafts an addendum as follows:

- 1) Use the templates for an addendum provided in Annex B16, Annex C12, Annex D11, and Annex E10.

All references in the proposed addendum to article numbers and/or annexes to be amended must correspond to those in the initial contract.

Any addendum modifying the budget must include a replacement budget showing how the full budget breakdown of the initial contract has been modified by this (and any previous) addendum (see Annex B17, Annex C13, Annex D12, and Annex E3h7).

If the budget is modified by the proposed addendum, the payment schedule must also be modified accordingly, taking into account any payments already made in the course of the contract.

The payment schedule must not be modified unless either the budget is being modified or the contract is being extended.

- 2) Prepare a dossier comprising the following items:

- a) An explanatory note (see the model in Annex A6) providing the technical and financial reasons for the modifications in the proposed addendum;
- b) A copy of the request for (or agreement to) the proposed modifications;
- c) The originals of the proposed addendum, which is based on the standard addendum and includes any revised annexes.

DIRECT MANAGEMENT,

INDIRECT MANAGEMENT WITH EX-POST CONTROLS:

- 3) Sign and date all the originals of the addendum and initial all pages of the Special Conditions.

INDIRECT MANAGEMENT WITH EX-ANTE CONTROLS:

- 3) Send the addendum dossier to the Delegation of the European Union for endorsement (initialling all pages of the Special Conditions) to confirm the EU financing. No endorsement by the Delegation is required in certain cases referred to in the Practical Guide to procedures for Programme Estimates

- 4) Send the signed originals of the addendum to the contractor, who must countersign them within 30 days of receipt and return two originals to the contracting authority together with the possible financial guarantee required in the addendum.

DIRECT MANAGEMENT:

- 5) On receipt of the signed originals from the contractor, the contracting authority checks that it/they correspond(s) strictly to those sent originally.

INDIRECT MANAGEMENT WITH EX-POST CONTROLS AND INDIRECT MANAGEMENT WITH EX-ANTE CONTROLS:

- 5) On receipt of the signed originals from the contractor, the contracting authority checks that they correspond strictly to those sent originally. One original is kept and the other is sent to the Delegation of the European Union.

The addendum takes effect on the date of the last signature.

- 6) Publish/a notice for modification of contract in the Official Journal of the European Union and on EuropeAid website, when the addendum concerns the addition of activities that were not included in the original contract or have become necessary due to unforeseeable circumstances (i.e. cases of modification through simple addendum under points (a) and (b) of Section 2.10.1.). However, the publication of such notice is not requested when the value of the modification is lower than EUR 300 000 for service and supply contracts, or lower than EUR 5 000 000 for works contracts.

estimate, the difference between the European Union contribution and the total cost of the action must remain within the limits imposed by the guidelines for applicants. The lead applicant may replace a co-applicant or an affiliated entity only in duly justified cases (e.g. bankruptcy of initial co-applicant or affiliated entity). In this case the new co-applicant/affiliated entity must be of a similar nature as the initial one. The lead applicant may adjust the duration of the action if unforeseen circumstances outside the scope of the applicants have taken place following the submission of the concept note and require such adaptation (risk of action not being carried out). In such cases the duration must remain within the limits imposed by the guidelines for applicants. An explanation/justification of the relevant replacement/adjustment shall be included in an accompanying letter or email.

The minimum period from the publication date of the guidelines for applicants to the deadline for submission of concept notes is 45 days. The minimum period from the dispatch of the letter of invitation to submit the full application to the deadline for submission of proposals is 45 days. In exceptional cases, a derogation may be given for a shorter deadline.

6.8. Modifying grant contracts

6.8.1. General principles

See section 2.10.1.

Grant contracts may be amended only by written additional agreements, not by administrative orders. Such additional agreements, including those aiming at adding or removing a beneficiary, shall not have the purpose or the effect of making such changes to the contract that would call into question the grant award decision or be contrary to the equal treatment of applicants.

When using the standard grant contract, the maximum amount of the grant and the maximum percentage of the European Union co-financing may not be increased.

6.8.2. Preparing an addendum

See section 2.10.2.

6.9. Award of contracts & financial support to third parties by grant beneficiaries

6.9.1. Award of contracts

Procurement of services, supplies or works for a grant-funded action: if the implementation of an action or work programme requires the procurement of services, supplies or works by the grant beneficiary, the rules specified in Annex IV of the grant contract must be applied for each procurement contract. Should the grant beneficiary fail to comply with Annex IV, the related expenditures will not be eligible for Union/EDF financing.

However, these contracts may only cover a limited portion of the action.

- the ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000, as amended by the Agreement amending the ACP-EC Partnership Agreement signed in Luxembourg on 25 June 2005 and in Ouagadougou on 22 June 2010, and namely Annex IV to it as revised by Decision 1/2014 of the ACP-EU Council of Ministers of 20 June 2014;
- Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union (Overseas Association Decision).
- Annex V to Decision No 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 concerning the procedural rules on conciliation and arbitration;
- Council Regulation (EC) No 215/2008 of 18 February 2008 on the Financial Regulation applicable to the 10th European Development Fund;
- Council Regulation (EU) No 2015/323 of 2 March 2015 on the Financial Regulation applicable to the 11th European Development Fund.

The following are also applicable:

- The Financing Agreement signed by the EU and the partner country concerned for each EU-funded programme. This sets out the programme objectives and budget.
- This Practical Guide together with the standard documents and templates in the annexes to it.

7.2. Legal framework for grant procedures

7.2.1. Programmes funded by the EU budget:

The following legal framework applies to grant contracts financed by the European Union and concluded in the course of cooperation with third countries:

- Regulation (EU, Euratom) No 966/2012 of 25 October 2012 on the rules applicable to the general budget of the Union (and in particular Title VI of Part One, on grants, and Chapter 4 of Title IV of Part Two, which concerns special provisions for grants in external action), as amended by Regulation (EU, Euratom) No 2015/1929 of 28 October 2015; *Fin Reg*
- Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 laying down detailed rules for the implementation of the Financial Regulation (and in particular Title VI of Part One, on grants, and Chapter IV of Title III of Part Two, which concerns special provisions for grants in external action), as amended by Commission Delegated Regulation (EU) No 2462/2015 of 30 October 2015; *rules for Fin Reg*
- Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down Common Rules and Procedures for the Implementation of the Union's instruments for External Action (CIR); *CIR*
- the regulations or decisions of the Council, referred to as 'basic acts' in the Financial Regulation and this Practical Guide, and other specific instruments relating to the various cooperation programmes. *DCI CSO-LA*

7.2.2. Programmes funded by the EDF

The following legal framework applies to grant contracts concluded under the EDF:

- The ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000, as amended by the