

Procurement Guidance for Horizon Europe Grant Recipients

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1. Introduction

EIT Climate-KIC and our partners acceding to the EIT Grant Agreement under the Horizon Europe legal framework subscribe to follow principles and requirements regarding procurement/subcontracting of the EIT grant. This guide is intended to offer supplementary and practical guidance for the procurement/subcontracting practices of EIT Climate-KIC partners with regard to the EIT Grant.

1.1 Framework

By signing the Accession Form and Task Confirmation Letter (TCL), EIT Climate-KIC partners in receipt of the EIT Grant, assume the rights and obligations under the Grant Agreement (by way of accession) and Partnership Agreement (as incorporated by reference in the TCL). Partners are therefore encouraged to thoroughly review and understand subcontracting/procurement requirements contained or implied therein as well as specific obligations in the [Horizon Europe Regulation](#)¹ and the [EU Financial Regulation](#)² (in particular Title VII), which provide the legal basis for such requirements.

Partners are also encouraged to review the Annotated Model Grant Agreement for Horizon Europe as updated from time to time as available on the European Commission website. This is a “user guide” that aims to “help users understand and interpret their Grant Agreements”. The Partnership Agreement is also available on the EIT Climate-KIC partner portal.

1.2 Aims of this document

This document aims to:

- Offer supplementary and practical guidance on the key procurement/subcontracting principles that EIT Climate-KIC partners should follow and be able to demonstrate to help them comply with the Horizon Europe Grant Agreement
- Inform partners when assessing compliance of their existing procurement policies/manuals to Horizon Europe requirements
- Help our partners mitigate adverse audit findings and disallowances
- Share desirable practices regarding subcontracting/procurement

¹ Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013 (OJ 12.5.2021 L 170/1).

² Regulation (EU, Euratom) 2018/1046 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012.

This document is **not** intended to:

- Act as a substitute for contractual requirements (e.g. Horizon Europe Grant Agreement)
- Be comprehensive
- Act as a procurement policy (or as a substitute for one)
- Provide legal advice to partners
- Prescribe specific procedures/thresholds to be followed
- Inform procurement/subcontracting associated with other funders

1.3 Disclaimer

The information provided by EIT Climate-KIC in this document is of a general practical nature and should not be construed, treated or relied upon as legal advice to partners in receipt of the Horizon Europe / EIT grant. It is provided without any representations or warranties, express or implied, as to their suitability, legal effect, completeness, accuracy and/or appropriateness.

EIT Climate-KIC disclaims all liability for the acts or omissions of Horizon Europe / EIT grant recipients based on the content in this document. Under no circumstances will EIT Climate-KIC be held liable for any direct, indirect, incidental or other type of loss or injury resulting from your use of this content.

Appropriate legal advice should be taken from qualified counsel before taking or refraining from any action related to the content of this document. Only your individual attorney can provide assurances that the information contained herein – and your interpretation of it – is applicable or appropriate to your particular situation. This is not a substitute for specific advice relevant to particular circumstances. Each partner/grant recipient who uses this guidance remains – at all times – solely responsible for its own procurement actions and ensuring they are compliant to the EIT Grant Agreement terms and conditions and EIT KIC Partnership Agreement (PA) conditions with EIT Climate-KIC. EIT Climate-KIC does not warrant that this document will be kept up to date.

EIT Climate-KIC partners vary greatly by industry, sector, scale and regulatory environment. As such, we are not attempting to offer a one-size-fits-all approach to procurement. Some partners may already comply with the principles and suggestions illustrated in this document as a result of other influential factors.

EIT Climate-KIC cannot guarantee eligibility of reported costs. As such, we clearly state: EIT Climate-KIC is not responsible for any cost rejection/disallowances incurred by partners.

EIT Climate-KIC shall not be part of any partner/grant recipient procurement procedures.

Contracting authorities within the EU Public Procurement Directive (e.g. Directive 2014/24/EU, etc.) on public procurement are also subject to the applicable national public procurement law. This document does not offer detail on this requirement. Partners that this requirement applies to should seek further guidance elsewhere to ensure compliance.

By using this document, you agree to hold EIT Climate-KIC harmless for any damages and/or losses that you may incur as a result of or in connection with your use of this document or any ancillary services provided to you by EIT Climate-KIC.

2. Procurement principles

2.1 Subcontracting

Subcontracting in the context of the Horizon Europe grant includes (sub)contracts for goods, works or services that form part of action tasks. Note that “purchase costs” are other types of purchases (more limited in scope than “subcontracting”) may also require application of procurement principles. Note that only limited parts of the action can be subcontracted. See the Annotated Model Grant Agreement for specific language, definitions and examples.

The following key principles should be applied to procurement activities involving the Horizon Europe Grant Agreement funding. Note that best value for money and no conflicts of interest are critical principles for all procurement involving the Horizon Europe Grant Agreement funding.

2.2 Best value for money

The award of subcontracts must be best value for money (or if appropriate the lowest price). This broadly means the receipt of high quality goods, services and/or works at a reasonable cost (e.g. the best price-quality ratio). “Value” in this context does not only refer to just price and quality must also be addressed.

Good practices:

- Awarding contract to a supplier that displays an optimum combination of whole life costs and the quality of the outcome
- Requesting quotation from multiple potential suppliers in accordance with the partner’s procurement policy (where this otherwise complies with Horizon Europe Grant Agreement requirements)
- Being able to evidence that competitive pricing has been achieved with multiple supplier quotes
- Being able to evidence delivery
- Use of a scorecard (or equivalent) for moderate and high value contracts that includes a weighted comparison of cost and quality between bids to conclude the successful bidder and reasons for selection
- Clearly listing scope of goods/services in requests for quotation

Poor practices to avoid:

- Being unable to evidence or defend the value for money of a procurement/subcontract
- Excluding best value for money from procurement processes

i Example

Partner ABC's procurement policy stated that for a particular value contract, three quotations would be requested. When the procurement was later reviewed by an auditor, Partner ABC were only able to evidence the quote for the successful supplier. As such, the auditor was unable to verify that the principle of best value for money was followed.

2.3 No conflicts of interest

All partners must take measures to prevent any situation where the impartial and objective implementation of the EIT Grant Agreement could be compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect interest (conflict of interest). For an example, partners can review EIT Climate-KIC's Strategy & Policy Conflicts of Interest & Gifts, available at <https://www.climate-kic.org/policies/>.

Good practices:

- Implementing a policy and process to manage and mitigate conflicts of interests
- Ensuring potential conflicts are disclosed, assessed and do not influence a procurement procedure
- Removing/recusing potentially conflicted persons from a procurement procedure

Poor practices to avoid:

- Allowing contract award decisions to be influenced by a conflict of interest
- Awarding procurement contracts on the basis of family, emotional life, political or national affinity, economic interest or any other direct or indirect interest
- Awarding procurement contracts to conflicted parties (e.g. awarding a services contract to a close friend of the CEO)

Example

Partner ABC's colleague conducts an open procurement for coaches that was shared online. One of the quotes received is a family member of the colleague. This colleague is at risk of a conflict of interest for reasons involving family and would need to take steps to declare the potential conflict in accordance with Partner ABC's policy and procedures. Partner ABC would need to take action to ensure the impartial and objective implementation of the grant agreement is not compromised.

Example

Partner ABC submitted a proposal for funding in response to EIT Climate-KIC's call for proposals. Their proposal stated they would be supported by two named third-party organisations. Partner ABC then recorded those costs as subcontracting during reporting but was unable to evidence how they were procured. This was at risk of disallowance as the two third-party organisations were not appointed using the principles of best value for money and no conflicts of interest.

If **subcontracting was appropriate** in this instance, subcontractors could have been appointed using a diligent procurement (in accordance with funder terms) conducted by Partner ABC prior to being named in the proposal. Or alternatively, the proposal could have avoided naming any third parties, and Partner ABC conducted a diligent procurement to appoint subcontractors following the terms of the Grant Agreement.

2.4 Competition

Procurement procedures should be opened up to a number of economic operators to enable competition and the receipt of competitive quotations. This helps ensure contracts offer value for money. Further, procurement procedures should not be used in any ways to prevent, restrict, distort or artificially narrow competition.

Good practices:

- Ensuring procurement processes include competitive quotation (this may be applied on a tiered basis and following the proportionality principle)
- Requesting quotes from three or more economic operators
- Advertising contracts (see further to the proportionality principle – see Section 2.8)

Poor practices to avoid:

- Having no requirement or process to ensure competitive quotes are received
- Not being able to demonstrate a competitive quotation process for moderate to high value procurement contracts

Example

Partner ABC had a Procurement Policy that, for a particular contract value, required a request of multiple quotes. Partner ABC subcontracted to a supplier at this value without competitive quotation, under the argument of direct award. The explanation provided by Partner ABC was rejected as it did not show strong and solid justification for direct award.

2.5 Equal Treatment

In the context of procurement, Equal Treatment implies that all economic operators are subject to the same rules and conditions – treated equally. Furthermore, prospective suppliers bidding in this environment have the certainty that the rules apply to everybody in the same way.

Good practices:

- Sharing the same information equally with economic operators (e.g. when requesting quotation)
- Apply the same rules and conditions to all economic operators
- Giving economic operators the same amount of time to participate (also see Proportionality Section 2.8)
- Publishing contract award criteria equally to all economic operators

Poor practices to avoid:

- Providing one economic operator more information than another
- Giving preferential treatment or an unjustified advantage to an existing supplier

2.6 Transparency

The objective of transparency is to ensure a system of openness in procurement. In practice, this may include advertising procurement contracts (subject to the proportionality principle – see Section 2.8) and demonstrating transparency throughout the process.

Good practices:

- Advertising medium to higher value contracts on a website
- Sharing sufficient information in requests for quotation (or equivalent) that demonstrate transparency, non-discrimination, etc. and encourage bidding (e.g. scope, requirements, T&Cs, timelines, award criteria, etc.)
- Executing contracts that demonstrate clarity on pricing, services, delivery, authorisation (e.g. signing as per relevant authority), etc.

Poor practices to avoid:

- Restricting competition for higher value subcontracts
- Sharing information unequally with bidders
- Changing award criteria after receipt of quotes

2.7 Non-discrimination

Following the EU principle, bidders should not be discriminated against on the basis of nationality, trademarks, patents, origin and more. Subcontracts should enable equal access for economic operators.

Good practices:

- Enabling uninhibited access for bidders
- Recognising formal qualifications across member states
- Ensuring good/service descriptions in procurement documents do not discriminate
- Using non-brand specific descriptions or using the term “or equivalent”

Poor practices to avoid:

- Discrimination on goods/services based on brand, make, patents, origin, etc.
- Very short time limits for responses to requests for quotation or equivalent
- Side conversations or unequal sharing of information with select economic operators during procurement procedures

2.8 Proportionality

The principle of proportionality derives from the Treaty on the Functioning of the European Union (TFEU), under the free movement of goods, freedom of establishment and the freedom to provide

services. When applied to procurement, this implies the underlying processes for procurement should be proportional to the value and complexity of the goods/services/works.

Good practices:

- Using a tiered procurement policy where the level of detail and diligence in the procurement process is proportional to the contract value.
- Estimating total contract value before conducting a procurement, including the cost of options
- Being able to evidence the processes (e.g. documents such as requests for quotation/proposal, advertisements, scorecards, quotes, etc.)
- Ensuring multiple quotes are requested for contracts of moderate to high value

Poor practices to avoid:

- Letting moderate to high value contracts with minimal clarity or documentation
- Artificially splitting or subdividing contracts to get around tiers or enhanced due diligence

Example

Partner ABC's procurement policy did not require a procurement process for subcontracts below GBP 60 000. Partner ABC subcontracted the EIT Grant under direct award "based on previous experience". The costs were deemed ineligible by an auditor as the best value for money principle was not ensured.

2.9 Documenting Processes

Partners are encouraged to retain written records of the procurement process and services delivery for auditing purposes. These may be requested by EIT Climate-KIC, EIT, the European Court of Auditors, or the European Anti-Fraud Office in the interests of safeguarding the EU's financial interests or other as indicated in the grant agreement/TCL. Records should be retained for minimum periods as indicated in the relevant grant agreement, TCL or as otherwise required (e.g. national law, etc.).

Partners should ensure consistency and transparency between reported and actual costs for subcontracting. In particular, invoiced amounts and reported amounts should match. Further, amounts must pertain to the grant period.

i Example

Partner ABC performed subcontracting in line with their Procurement Policy. At the audit, Partner ABC were unable to provide evidence of the services provided. The audit determined that project deliverables and working papers are not sufficient to prove the complete delivery of the services. Nor were auditors able to confirm the delivered services according to the original contract or confirmed order.

i Example

Partner ABC subcontracted services between Q4 2020 and Q1 2021 pertaining to the 1st January 2020 to 31st December 2020 grant year. Costs relating to delivery in Q1 2021 were deemed not related to the action, as they were not incurred during the project period.

i Example

Partner ABC awarded a procurement contract for services to another EIT Climate-KIC Horizon Europe grant recipient. The costs were deemed ineligible in the audit, as the costs should have been reported by the other grant recipient.*

*This example demonstrates a non-compliance to the EIT grant conditions (as described in the Annotated Grant Agreement).

i Example

Partner ABC subcontracted services during a grant year but withheld payment until receipt of the grant payment. The costs were deemed ineligible as they had not been incurred.