

4th IST Coordinators Day on Project Management

28 November 2006, 9:30 – 17:00

Amendments to FP6 contracts



Introduction

- An amendment to a contract is a contractual document that **modifies some provisions of the initial contract**.
- An amendment is needed when the changes to provisions of the contract could **affect the rights or obligations** of one or more contractors, or of the Commission.
- Amendments of FP6 contracts are normally implemented through an exchange of letters. The content of both letters must demonstrate the agreement between the parties.
- Amendment guidelines including model requests are available on the EUROPA website.



Form of the amendments

1. Form of the amendments

➤ 1.1. Contractual provisions

↪ **Article 10 paragraph 1 of the contract:** *“Any request for amendment to the contract shall be submitted **in accordance with article 11**. Proposals for amendments submitted **by the coordinator are requested on behalf of the consortium**. The coordinator shall ensure that adequate **proof for the consortium’s agreement** to such a request exists and is made available in the event of an audit.”*

↪ **Article 10 paragraph 3:** *“All amendments to the contract shall be **in writing**.”*

↪ **Article 11 paragraph 1:** *“Requests for amendments and any communication foreseen by the contract shall identify the nature and details of the request or communication and be submitted in writing by means of registered mail with acknowledgement of receipt to the following addresses: ...”*



Form of the amendments

➤ 1.2. The amendment request

↪ Initiative

- the coordinator acting on behalf of the consortium (+proof of the consortium's agreement to be kept by the coordinator)
N.B. Any amendment request signed by the coordinator commits the consortium. The written request should explicitly state that the request is made on behalf of the consortium.

↪ Sending formalities

- by registered letter with acknowledgement of receipt
- to the address provided in Article 11

↪ Signature

- the legally authorised representative(s) of the coordinator



Form of the amendments

Content

- In order to be valid, the request must:
 - list all the modifications required
 - be worded in a clear and non-ambiguous way
 - enclose all the supporting documents related to the requested changes, if necessary (banking details, new CPFs and legal documents for new contractor, letter of withdrawal or letter of opinion of a contractor)
- Coordinators are invited to use the **model letter** included in the amendment guidelines



Form of the amendments

➤ 1.3. Approval or rejection of the request

- ↪ Art. 10 paragraph 2 of the contract: "*The Commission shall undertake to approve or reject any request for an amendment **within 45 days of its receipt**. The absence of a response from the Commission within 45 days of receipt of such a request, or any other period provided for in the contract, **does not constitute approval of the request**, except for any modification or evolution of the consortium as foreseen in Article 3.*"
- ↪ The request will be approved or rejected by the Commission within 45 days of receipt
- ↪ No tacit approval of the request, except for any modification or evolution of the consortium



Form of the amendments

◇ 1.3.1 Approval by the Commission

- ↪ Letter of agreement confirming all modifications requested, signed by the Commission, will be sent to the coordinator
- ↪ The amendment enters into force upon date of signature by the Commission unless another date is requested and agreed



Form of the amendments

◇ 1.3.2 Rejection of an amendment request

↪ When

- Non-valid request (ex: not signed by legal authorised representative, supporting documents are missing)
- The Commission does not agree with the request proposed but could agree with a new request including some modifications
- The Commission does not accept the requested modifications

↪ How

- Letter from the Commission advising it has received a non-valid request
- Letter from the Commission rejecting a request and providing a model request with acceptable changes
 - Consortium can propose new request based on modifications indicated by the Commission
- Letter of rejection from the Commission

It is recommended to contact the Project Officer before submitting an amendment request!



Content of the amendments

➤ 2.1. List of changes subject to amendment

(covered by the model letter for the request)

- Change of start date of the project
- Duration of the project
- Community contribution
- Reporting periods
- Frequency of submission of the audit certificates
- Complementary pre-financing
- Intermediate pre-financing percentage
- Addition or removal of one or more special clauses
- Change of banking details
- Modification of Annex I
- Evolution of the consortium
 - Addition
 - Withdrawal
 - Transfer of rights and obligations
- Change of coordinator
- Removal of one or more legal entities from list of contractors (Article 1.2.) due to their non-accession
- Acronym and/or title of the project
- Modification of payment modalities



Content of the amendments

➤ 2.2. Evolution of the consortium

The request for the addition of a new contractor must include

- ↪ the form B, duly signed
- ↪ together with
 - the CPF, duly completed and signed
 - the modified Annex I
 - the justification for selecting this contractor
- ↪ a letter explaining the proposed change, as appropriate



Content of the amendments

The request for withdrawal of a contractor may arise in accordance with Articles II.15.1 to II.15.3.

- Request from the contractor itself (Art.II.15.1) via the coordinator 60 days before the end of the project.
- Request from the consortium to terminate the participation of a contractor, including
 - ↪ Justification for doing so
 - ↪ Proposal for reallocation of the tasks
 - ↪ Letter of opinion from contractor concerned

N.B. Specific rules apply for the change of the coordinator



Content of the amendments

➤ 2.3. Modification of Annex I

For IPs and NoE, the annual update of the implementation plan/joint programme of activities is subject of a contract amendment.

The final version of the updated Annex I taking into account recommendations from the annual review including the updated contract preparation forms, has to be attached to a formal amendment request to be submitted to the Commission by the coordinator on behalf of the consortium.

In the case of a suspension of the project, the lifting of such suspension may be requested in the amendment request which shall include a revised Annex I.

