

Consortium Agreement

GPP 2020: Promoting green public procurement (GPP) in support of the 2020 goals

Contract N°: IEE/12/844/SI2.644760

Funding programme: Intelligent Energy for Europe (IEE)

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1. Introduction

The GPP 2020 project is supported by a grant from the Intelligent Energy for Europe (IEE) programme of the European Commission (EACI). The purpose of this Consortium Agreement is to regulate the internal management procedures of the project consortium. This document supplements the provisions of the Grant Agreement and its Annexes.

2. Parties

This Consortium Agreement is made between the following Project Parties:

ICLEI European Secretariat GmbH

Leopoldring 3

79098 Freiburg

Germany

the beneficiary acting as co-ordinator of the consortium (the '*coordinator*')

(*'beneficiary n. 1'*)

Beschaffungsamt des Bundesministeriums des Innern

Procurement Agency of the Federal Ministry of the Interior

Brühler Strasse 3

53119 Bonn

Germany

(*'beneficiary n. 2'*)

Ecosistemi s.r.l.

Viale Liegi 32

00198 Roma

Italy

(*'beneficiary n. 3'*)

Provincia di Roma

Via IV Novembre 119/a

00187 Roma

Italy

(*'beneficiary n. 4'*)

Laboratorio Nacional de Energia e Geologia I.P.

National Laboratory of Energy and Geology

Rua da Amieira

4466-901 S. Mamede de infesta

Portugal

(*'beneficiary n. 5'*)

OesteCIM, Comunidade Intermunicipal do Oeste
OesteCIM, West Portugal Intermunicipal Community
Av. General Pedro Cardoso
9 Apartado 811
2500-922 Caldas da Rainha
Portugal
(*'beneficiary n. 6'*)

Umanotera, Slovenska fundacija za trajnostni razvoj
Umanotera, The Slovenian Foundation for Sustainable Development
Resljeva 20
SI-1000 Ljubljana
Slovenia
(*'beneficiary n. 7'*)

Ministrstvo za finance
Župančičeva ulica 3
SI-1000 Ljubljana
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Ministerie van Infrastructuur en Milieu
Ministry of Infrastructure and the Environment
Rijkswaterstaat Dienst Infrastructuur
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The Netherlands
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Batenlastendienst Ministerie
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3521 BJ Utrecht
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PROGRAM ZA RAZVOJ UJEDINJENIH NARODA
UNITED NATIONS DEVELOPMENT PROGRAMME
Radnička cesta 41/8
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Croatia
(*'beneficiary n. 11'*)

Ecoinstitut SCCL
Torre dels Pardals 69 ent. 4a
08032 Barcelona
Spain
(*'beneficiary n. 12'*)

Departament de Territori i Sostenibilitat – Generalitat de Catalunya
Ministry of Territory and Sustainability – Catalanian Government

Avinguda Josep Tarradellas 2-6
08029 Barcelona
Spain
(*'beneficiary n. 13'*)

Interdisziplinäres Forschungszentrum für Technik, Arbeit und Kultur (IFZ)
Inter-university Research Centre for Technology, Work and Culture
Schloegelgasse 2
8010 Graz
Austria
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Bundesbeschaffung GmbH (BBG)
Federal Procurement Agency (FPA)
Lassallestrasse 9b
1020 Wien
Austria
(*'beneficiary n. 15'*)

Aktiebolaget Svenska Miljöstyrningsrådet
The Swedish Environmental Management Council
Vasagatan 15-17
111 20 Stockholm
Sweden
(*'beneficiary n. 16'*)

Consip SPA
Via Isonzo 19E
00198 Roma
Italy
(*'beneficiary n. 17'*)

Institut Català d'Energia
Catalan Energy Institute
Pamplona 113
08018 Barcelona
Spain
(*'beneficiary n. 18'*)

3. Preamble

With this Consortium Agreement, the Parties wish to supplement the provisions of the Grant Agreement and its annexes. It concerns:

- The Grant Agreement approved and signed by the European Commission and the responsible Project Coordinator (ICLEI European Secretariat GmbH)
- Annex I – Description of the Action
- Annex II – Estimated budget of the action
- Annex III – Reporting requirements

- Mandates conferring powers of attorney from the co-beneficiaries to the co-ordinator
- Any other annexes and changes made to the Grant Agreement

4. Definitions

Words beginning with a capital letter shall have the meaning defined herein:

“Commission”, “European Commission” or “EC” – means the Commission of the European Communities.

“Consortium Coordinator” or “Coordinator” – means ICLEI European Secretariat GmbH.

“Partner” – means all co-beneficiaries included within the above-mentioned Grant Agreement. All partners are at the same time parties to this Consortium Agreement.

“Party” – means any of the consortium members listed in the section “2. Parties”. All parties are at the same time partners in this project.

“Defaulting Party” – means a Party which a two-thirds majority of the project consortium has identified to be in breach of this Consortium Agreement and/or the Grant Agreement.

“GPP 2020” – means the GPP 2020 project, which is the subject of the above-mentioned Grant Agreement.

“Project Reports” – mean the periodic narrative and financial reports and the final narrative and financial reports and all documents to be submitted to the Commission, in accordance with the provisions of the Grant Agreement.

5. Subject

This Consortium Agreement addresses issues of management and conflict resolution that relate to the implementation of the GPP 2020 project in accordance with the Description of the Action – Annex I to the Grant Agreement. It covers only those issues that are not explicitly covered in the Description of the action or the Grant Agreement.

6. General provisions

6.1 General clauses

No Party shall, without the prior written consent of the other Parties, assign or transfer any of its rights and obligations under this Consortium Agreement. Such consent shall not be unreasonably withheld.

The Consortium Coordinator and other Parties shall not be entitled to act or to make legally binding declarations on behalf of any other Party.

In case of conflict between this Consortium Agreement and the Grant Agreement, the latter will have precedence.

All project documents, official correspondence, meetings and communications with the EC and other parties shall use the English language.

Any notice to be given under this Consortium Agreement shall be in writing addressed to the Parties outlined in Section 2 of this Agreement.

6.2 Changes to the Consortium Agreement

Any changes to the Consortium Agreement must be agreed in writing by all members of the Consortium, signed by all the parties and annexed hereto.

Each Party shall be responsible for securing permissions or approvals from any third party as may be required in order to give effect to any variation to the Consortium Agreement.

6.3 Duration of Consortium Agreement

This Consortium Agreement will enter into force on the same date as the Grant Agreement. The Consortium Agreement will be in force until all Parties' obligations have been carried out as described in the Description of the Action or its subsequent modifications. On the full completion of the project and the transfer of all payments this Consortium Agreement will automatically terminate. If the contractual obligations – along with the corresponding financial spending – were not exhausted within the duration of the Grant Agreement, this Consortium Agreement will continue to be in force until the Consortium Coordinator confirms in writing the satisfactory completion of the project. This Consortium Agreement will also be automatically terminated upon early termination of the Grant Agreement.

6.4 Accession to the Consortium Agreement

Parties will accede to this Consortium Agreement by signing it and returning it to the Consortium Coordinator.

6.5 Termination/withdrawal from the Consortium Agreement

The Parties may terminate this Agreement by mutual consent at any time during the stated duration of the project specified in the Grant Agreement on such terms as the Parties may agree. In case of the withdrawal of a Party from the Consortium, the Consortium Agreement will be terminated upon signature of the *Agreement of Withdrawal* by the Consortium Coordinator and the concerned Party. In case of breach of obligations by a Party, the Consortium Agreement and the responsibilities defined by the Grant Agreement and Annexes will be terminated when a two-thirds majority of Parties vote in confirmation of the Breach, with each Party holding one vote. The voting procedure will be conducted by email, with a maximum of 30 calendar days provided for consideration. The Consortium

Agreement can only be considered terminated when all outstanding financial liabilities are settled. The Party leaving the consortium may not disclose any information of a sensitive nature.

A withdrawal or termination of a Party's function within the project and this Consortium Agreement does not exempt it from its responsibilities outlined in the Grant Agreement or this Consortium Agreement in respect of that part of the work that has already been carried out (or should have been carried out) up to the date of withdrawal or termination.

In case of the withdrawal of a Party from the Consortium, or if their participation is terminated, any claim on reimbursement of the work completed up to that point will depend on the quality of the work carried out, and the extent to which it is completed, as determined by the Consortium Coordinator, and not on the costs incurred by that Party. In case of disagreement concerning the value of the reimbursement between the Coordinator and the Party concerned, a decision will be taken by a two thirds majority of Parties, with each Party holding one vote. The voting procedure will be conducted by email, with a maximum of 30 calendar days provided for consideration.

If any Party enters into bankruptcy or liquidation or any other arrangement for the benefit of its creditors, if necessary and appropriate the other Parties shall be entitled to take over the fulfilment of such Party's obligations and to receive subsequent payments under the Grant Agreement. Such a reallocation of tasks must be approved by the European Commission. In such an event all rights and obligations under the Grant Agreement and this Consortium Agreement shall be redistributed among the remaining Parties.

6.6 Default and remedies

Each Party undertakes all reasonable endeavours to ensure the highest level of performance for the GPP 2020 project in terms of quality and timely implementation, administrative obligations (e.g. reporting) and financial management. Upon notification or discovery that it has submitted defective or incorrect information to another Party or the Coordinator at any time during performance of the Project, a Party will promptly correct and redeliver such information at its own expense.

On request of one or more Parties the Consortium may decide by a two-thirds majority vote whether a Party is in breach of its obligations under the Grant Agreement or this Consortium Agreement, with each Party holding one vote. The voting procedure will be conducted by email, with a maximum of 30 calendar days provided for consideration. If a breach is confirmed the Consortium may request the Consortium Coordinator that the Defaulting Party remedies its breach of obligations within a reasonable period. The Project Coordinator is then entitled to withhold any payment until the Party in breach fulfils its obligations in a satisfactory manner.

If the delay caused by the breach causes financial losses to the other Parties the Defaulting Party must pay financial compensation for the losses. This would include interest paid on loans taken due to delayed receipt of payment. The most prominent example to such a situation is when pending payments to the consortium are reduced because of missing input from a partner. The procedure for this is described in the section "Financial Provisions" of this Agreement.

In the event that the breach is irremediable or is not remedied within the period set by the Project Consortium, then the other Consortium Parties may decide by a two-thirds majority vote to terminate the concerned Party's Grant Agreement and this Consortium Agreement, following a minimum of 30 calendar day's written notice by the Project Coordinator. The voting procedure will be conducted by email, with each Party holding one vote, and with a maximum of 30 calendar days provided for consideration.

In case of termination of a Party's participation in the Project Consortium its tasks and work packages shall be assigned if appropriate to one or more of the other remaining Consortium Members. Such reallocation of tasks should be done by the consent of a two-thirds majority of the remaining Consortium. The voting procedure will be conducted by email, with each Party holding one vote. Only if the tasks cannot be suitably redistributed within the existing Project Consortium should a new partner be sought for by the project co-ordinator. Any reallocation of tasks within the Project Consortium should be approved by the European Commission in writing.

Each Party will notify the other Parties in writing of any Force Majeure event as soon as possible. The Parties shall discuss in good faith the possibilities of a transfer of tasks affected by the event. Such discussions shall commence as soon as reasonably possible. If such a Force Majeure event is not overcome within 6 weeks of such notification, the transfer of tasks shall be carried out through a consultative process within the remainder of the Project Consortium.

7. Managerial provisions

7.1 Co-ordination and management

The management of the Project will be implemented through the following entities:

- *Consortium Partners.* All Consortium Partners have equal rights and obligations for the strategic development of the project. The most important forums for exercising these rights and obligations are the partners' meetings.
- *Work Package Leaders.* These Project Partners are in charge of the strategic and technical implementation of the work packages entrusted to them.
- *Consortium Coordinator.* The Consortium Coordinator is in charge of day-to-day project management activities relating to the whole consortium and acts as a single contact point for the European Commission. The Consortium Coordinator ensures that the Project is implemented in a quality and timely manner in line with the contents of the Description of the Action.

Each Party hereby undertakes all reasonable endeavours to perform all of its obligations under the Grant Agreement and this Consortium Agreement in an active and timely manner. Parties will in particular ensure the submission to the Coordinator of the deliverables outlined in the Description of the Action, keeping to the work schedule and observing the financial guidelines.

7.2 Powers and responsibilities

Each Party undertakes reasonable endeavours to supply to the Consortium Coordinator all information or documents that the Consortium Coordinator may need to fulfil obligations related to this Consortium Agreement, the Grant Agreement or a request from the European Commission. In particular, information and documents required by the Grant Agreement, shall be submitted via the Consortium Coordinator.

The information shall be delivered in the respective document formats and/or standards which the Coordinator may require.

If one or more of the Parties is late in the submission of Project deliverables, cost statements, reports or other information, the Coordinator shall submit the other Parties' Project deliverables, cost statements, reports or other information to the European Commission within the timeframe defined in the Grant Agreement. The Coordinator shall notify and consult the European Commission in such cases.

The Parties agree to abide by the following overall code of conduct:

- To fully respect and comply with all provisions of the Grant Agreement and this Consortium Agreement.
- To support the Consortium Coordinator in fulfilling their tasks and thus to respect and comply with his instructions made on the basis of his duties.
- To endeavour to meet all deadlines set within the course of the Project as described in the Description of the Action and to promptly notify the Coordinator and other concerned Parties of any delay in performance.
- To prepare and present the reports to be submitted to the Commission under the Grant Agreement in accordance with the internal time schedules set up by the Consortium Coordinator and in accordance with the formats required, as far as this is reasonably practicable.
- To seek to ensure the accuracy of any information and material supplied within the framework of the Project, as described in the Description of the Action.
- To seek to minimise changes in Project personnel and to notify the Consortium Coordinator of any anticipated changes in advance.
- To inform all Parties as soon as is practical of any changes in contact information or means of communication.

Each Party shall endeavour to ensure the accuracy of any information or materials it supplies and promptly correct any declared errors.

7.3 Follow-up and supervision

Each Party undertakes to follow the implementation schedule and budget specified in the technical provisions of the Grant Agreement (Annex I). In case of changes incurred during the implementation of the Project, the following steps will be undertaken to maintain the implementation schedule and avoid cost escalation or deviation that might create problems with the Commission:

- As soon as difficulties such as deviations and delays from the work programme arise, inform and initiate discussion with the Consortium Coordinator.
- Discuss remedies at progress meetings.

- If needed, discuss remedies in optional extraordinary meetings

The ultimate responsibility of taking such measures lies with the Consortium Coordinator.

7.4 Settlement of disputes

In case any differences arise within the Project Consortium, these should first be attempted to be resolved by an internal consortium discussion. If consensus fails at the end of such discussions a simple majority agreement must be concluded within the Consortium.

If the dispute or difference cannot be solved amicably in a period of 90 calendar days, it shall be finally settled either by mediation or by arbitration according to the rules of the Belgian Center for Arbitration and Mediation (CEPANI). The mediation shall take place in Brussels. The Parties undertake not to put an end to the mediation before the introductory statement made by each Party in joint session. The results of the arbitration will be binding upon the Parties concerned. The European Commission will be informed about the results of the arbitration.

Should the mediation fail to bring about a full agreement between the Parties putting an end to the dispute, sole competent courts will be the courts of Freiburg im Breisgau, Germany.

8. Financial provisions

In line with the budget figures outlined in the Detailed Budget of the Action included in Annex II of the Grant Agreement, each Party shall bear its own costs for the implementation of the Project, and be solely responsible for the provision of the necessary funding for the action, beyond the financial support to be expected by the European Commission.

The financial contribution of the European Commission will be distributed according to the progress of implementation of tasks in accordance with the Description of the Action and the Estimated Budget of the Action, as defined in Annexes I and II to the Grant Agreement, any amendments to the Grant Agreement as signed by the Coordinator, and the guidance received from the European Commission.

The Consortium Coordinator shall receive all payments made by the European Commission.

The Consortium Coordinator will transfer and advance payment to all Parties. Further payments will be made by the Consortium Coordinator to all parties after receipt of payment from the Commission following the acceptance of the Interim and Final reports, based on the accepted costs and the co-funding rate. The outstanding balance of payments will be transferred following the final payment from the Commission based on approval of the Final Report.

The total amount paid by the Commission as the final grant will not in any circumstances exceed 75% of the estimated total eligible costs indicated in the Grant Agreement. The remaining 25% of the estimated total eligible costs will be subject to co-funding by the Consortium Partners. Each Consortium Partner has a different percentage of co-funding, indicated in Annex II of the Grant Agreement. Final payment from the Commission may vary according to the actual reported costs.

All payments will be made in EURO. The Project Coordinator shall notify each Party promptly of the date and amount to be transferred to its respective bank account and provide relevant supporting information. Payments can only be released by the Project Coordinator upon presentation of a justified and written request for payment, based on a template sent out by the Project Coordinator.

In accordance with the Grant Agreement (Financial Provisions), each Partner shall keep accurate and regular accounts of the implementation of the action using an appropriate accounting and double-entry bookkeeping system. This system shall be run in accordance with the accounting and bookkeeping policies that apply in the country concerned. Accounts and expenditure relating to the action must be easily identifiable and verifiable.

Each Partner shall ensure that their Financial Statements submitted as part of the interim and final reports can be properly and easily reconciled to the Partner's accounting and bookkeeping system and to the underlying accounting and other relevant records. For this purpose the partner shall prepare and keep appropriate documentation, supporting schedules, analysis and breakdowns for inspection and verification.

The Parties shall deliver all relevant financial data about budget expenditure to the Coordinator. The format of these data has to comply with the requirements of the European Commission and any formats agreed upon by the Project Consortium.

Each Party shall be solely liable for its financial data. No other Party, including the Consortium Coordinator or their representatives acting within the scope of this Consortium Agreement may change these data without express written permission of the Party concerned.

Parties who spend less than their respective share of the Budget will be funded only in respect of the amount spent and the costs accepted by the European Commission.

If serious concerns about the financial soundness of one or several Parties arise the Consortium Coordinator has the authority to require the appropriate assurances that the corresponding Party is able to fulfil the financial obligations with regards to the Grant Agreement and this Consortium Agreement.

Until this is provided, the Consortium Coordinator may withhold the disbursement of the financial contributions of the European Commission to this Party.

Furthermore, the Consortium Coordinator has the right to retain a pending payment to a specific Party, if this Party is late in submitting, or refuses to provide deliverables, as defined in the Description of the Action and the Grant Agreement.

If for whatever reason a Party fails to claim resources in Financial Statements and then consequently the cash flow of all other partners is affected negatively through delayed payments from the European Commission, the defaulting Party is obliged to compensate the losses of the other Parties from its pre-financed budget, or from the retainer held by the Consortium Coordinator, as outlined in Section 8, if no pre-financed budget remains.

If during project implementation serious deviations develop against the originally planned budget, the concerned Parties (and always including the Consortium Coordinator) should first attempt to work out a remedy. In all cases such modifications of the budget cannot increase the overall Project budget and must be approved by the European Commission. If an agreement cannot be reached by all concerned Project Parties (for example because of a reduction of a Party's budget due to budget shifts to another Party in the Consortium), the Consortium Coordinator has the right to make a decision. This process will include a full review of the tasks to be undertaken by the affected parties. However, in order to maintain the integrity of the Project Consortium all efforts should be made to reach a suitable compromise to all Parties. If day-to-day distance communications do not yield suitable results, the semi-annual Consortium meetings should act as the main forum for consensus building.

9. Provisions regarding intellectual property rights, dissemination and use

For the purposes of this Agreement Intellectual Property Rights ("IPR") shall mean all intellectual property rights including but not limited to copyright, patents, trade marks, proprietary software, design rights and all similar protections together with all other intellectual property rights (whether registered or unregistered) including but not limited to those in, computer programs and technical know-how.

Any Intellectual Property Rights created during or resulting from the Project ("Foreground Rights") shall be the property of each Party which contributes substantially to their development.

The Parties agree to respect the Intellectual Property Rights of the other Parties.

All Intellectual Property Rights which a Party introduces to or utilises in connection with the Project for the purposes of the Project whether such IPR is owned by or licensed to that Party ("Background Rights") will remain the property of the owner of those rights.

In addition to the obligations specified in the Grant Agreement, each Party agrees not to contribute to the project implementation with any deliverable, activity or information that constitute a breach of the Intellectual Property rights of a Third Party.

Parties leaving the Project can use any intellectual property developed within it until that point and in line with the specifications above. If a Party leaves the Project Consortium in an involuntary manner, it has no rights to use any intellectual property developed within the Project.

10. Declaration of Accession

PROVINCIA DI ROMA, represented for the purpose hereof by **CLAUDIO VESSELLI, DIRECTOR OF ENVIRONMENTAL DEPARTMENT**, or their authorised representatives, established in VIA IV NOVEMBRE, 119/a, acting as its legal authorised representative, hereby consents to become a beneficiary (beneficiary n. 4) to Contract N°: IEE/12/844/SI2.644760 (relating to the project "GPP 2020") concluded between the Commission of the European Communities and ICLEI European Secretariat GmbH established in Leopoldring, 3, Freiburg 79098, Germany and accepts in accordance with the provisions of the aforementioned grant agreement all rights and obligations of a beneficiary.

Done in 2 copies, of which one shall be kept by the Coordinator and one by **28/06/2013**.

PROVINCIA DI ROMA

Name of the legal representative:

Claudio Vesselli

Signature of the legal representative

Date

Stamp of the organisation

ICLEI European Secretariat GmbH

Name of the legal representative:

Wolfgang Teubner

Signature of the legal representative

Date

Stamp of the organisation