

## Lesson 1

# Choosing the right contract

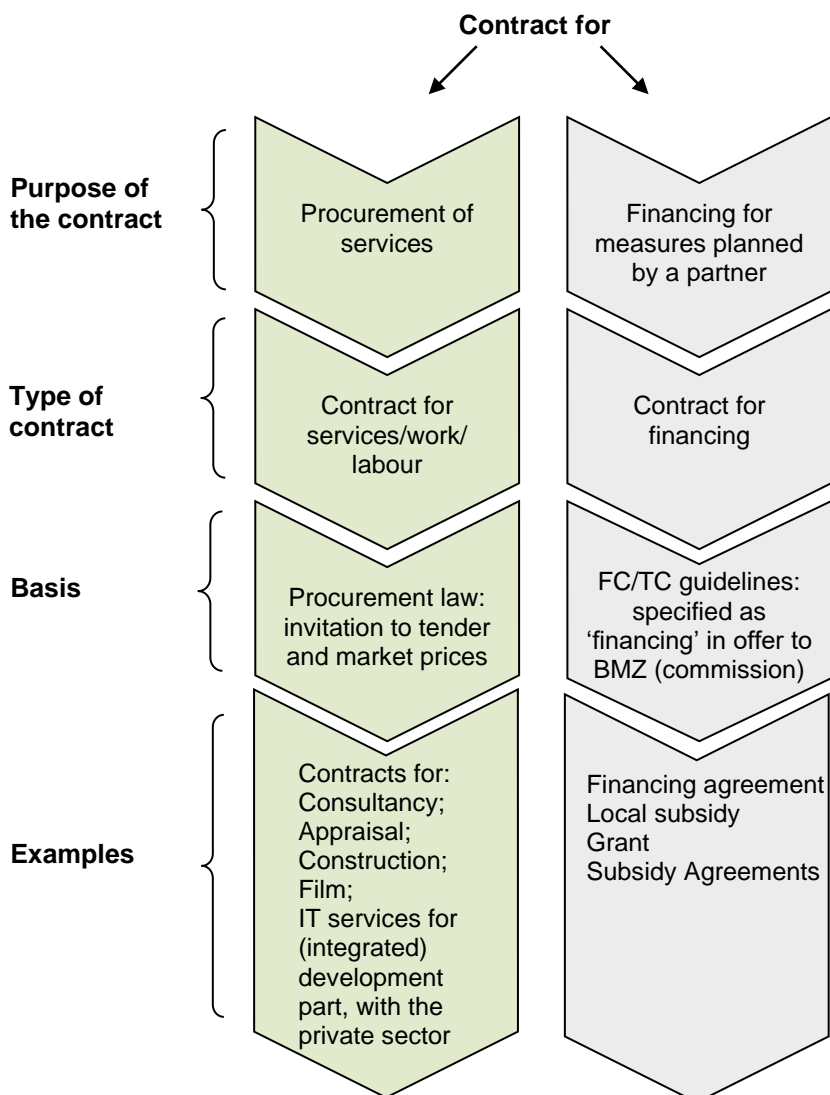
In this lesson you will learn more about:

- choosing the right contract
- the difference between the procurement of services for GIZ and agreements to finance measures being implemented by other organisations
- the difference between a contract for services and a contract for work/labour
- the difference between financial contributions and local subsidies
- the different types of agreements and contracts and the specimen used by GIZ

## 1.1 Different types of contract: Financing or procurement of services/labour/work

When concluding a contract, we firstly need to identify its purpose. Do we want to engage someone to provide a service? Do we want someone to produce something for us, a study or a brochure for instance? These would be a form of procurement, and you would need to observe certain procedures for awarding the contract i.e. invitations to tender and competitive tendering procedures. Or do we want to make a financial contribution to a measure planned by another organisation, e.g. one of our project partners, an intermediary or a target group? This involves providing funds and therefore constitutes a financial contribution. The type of contract concluded depends on the answers to these questions.

The following diagram illustrates the differences. More information on this important distinction can be found in P+R.



### 1.1.1 Type of contract – Procurement of services or work/labour

In a running GIZ Project, certain services (e.g. advice, moderation or training) or work/labour (e.g. publications and studies) may be needed and external experts are engaged to perform them. Contracts with appraisers and consultants are typical examples; IT and construction contracts and contracts for (integrated) development partnerships with the private sector (DPPS, IDPPS) another.

Contracts with appraisers are signed with individuals. The appraiser must be a freelance expert. The precise content of the contract is specified in the terms of reference, which define the beginning, nature, scope and end of the service/work/labour or a specific product (e.g. a study) to be provided. The terms of reference clarify whether the contract is for services or for work/labour.



**NOTE** – If the activity to be performed under contract cannot be delimited, is not of a freelance nature and does not have a set duration or scope with specific terms of reference, but instead involves a job description, receiving directions and instructions from GIZ and integration into the working structure of GIZ, the person in question will need to be given an employment contract. Please clarify with a local lawyer what the appropriate local form of contract is in this case. Any mistakes here could prove very costly for GIZ.

**(This topic will be discussed in more detail in lesson 2.)**

Contracts with appraisers and consultants are usually **contracts for services** or **contracts for work/labour**. These contract categories are defined by law. Some of the typical differences are shown in the following table:

	Contract for services	Contract for work/labour
<b>Input</b>	Measurable on basis of time spent	Measurable on basis of degree of completion
<b>Suitable for acceptance test</b>	No	Yes
<b>End of input</b>	Expiry of designated time	Acceptance
<b>Provision of input</b>	Personal	Non-personal
<b>Remuneration</b>	<b>On basis of time</b>	<b>Lump sum</b>
<b>Payments</b>	Periodic	According to progress of work
<b>Defective performance</b>	Termination of contract, compensation	Subsequent performance, cancellation, price reduction, compensation for damage or additional costs

Examples of contracts for services and contracts for work/labour are shown on the next page.





#### 1.1.1.1 Contracts for services

In the case of a **service contract**, the contractor undertakes to *render a service*, i.e. merely to take certain actions or operate in a certain way. There is no undertaking to achieve a tangible or measurable result.

A typical example is a consulting contract. The contractor cannot be held liable for the success of his/her advisory services because the acceptance and implementation of his/her advice depend greatly on the person(s) being advised.

A typical example is the work of an advisor, trainer or moderator. Here, the nature and scope of the services provided can and must be defined.

## Contract for services

<p>1</p>  <p>I need someone to moderate our office workshop. I think it will run for three days, so I'll need a moderator for this long.</p> <p>Service is measured on the basis of <b>time spent</b></p>	<p>2</p>  <p>The workshop must be held by Mr Smith, who really is an expert in team-building.</p> <p>Service is <b>personal</b> – you'll want the promised expert/trainer with the agreed skills. You can't just find someone else to do the job instead.</p>
<p>3</p>  <p>So... the moderator will receive a fee for the number of days worked plus any travel expenses. Mr Smith will be expected to go through the AB exercise with participants and present the Z method.</p> <p><b>Remuneration</b> On a time basis, i.e. at regular intervals, depending on length of assignment</p> <p><b>Payments</b> Time-based, periodic, i.e. at regular intervals, depending on length of assignment</p> <p><b>Defective performance</b> Contract can be terminated if work is not performed according to the terms of reference/contract.</p>	<p>4</p>  <p>The moderator did moderate our workshop as agreed. So he will be paid as agreed.</p> <p><b>Acceptance test?</b> No, the job has been done (or not done) according to the terms of reference, but the results (i.e. participants apply the Z method) do not depend on the expert's input in a clearly definable way. The contractor is liable for providing the advisory/moderation service (i.e. presenting the Z method), not for the result.</p> <p><b>End of input</b> Expiry of time, i.e. workshop over, report written, job done.</p>





### 1.1.1.2 Contract for work/labour



By contrast, in a **contract for work/labour** the contractor undertakes to create a work that can be formally accepted by GIZ and then used for other purposes.

A typical example is the preparation of a study, which is submitted as a tangible result of the work at the end of the contract term. As with a contract for services, the remuneration is agreed in advance taking into account for example how many days are required to produce the study, whether travel is necessary and whether printing costs etc. will be incurred. A lump-sum fee is agreed on this basis. This fee is paid in full when the complete work is submitted provided that the terms of reference have been fulfilled. A major advantage of this type of contract is that any defects must be remedied at no extra cost to GIZ if the result submitted does not comply with the standards which were laid out in advance in the terms of reference. Equally, since both sides agreed to the lump sum fee, the contractor cannot subsequently demand a higher fee, e.g. if the work took longer than anticipated. GIZ cannot simply pay the contractor less if fewer days are required either. The price of the work can only be modified if changes are made to the terms of reference

## Contract for work/labour

<p><b>1</b></p>  <p>I want someone to design and print a new information leaflet for the GIZ office in line with the company's design rules.</p> <p>Work/labour is assessed on the basis of the degree of completion.</p>	<p><b>2</b></p>  <p>It doesn't matter who does it as long as I get it on Friday and I get what we agreed.</p> <p>Work/labour is <b>non-personal</b>. Getting the agreed product is more important than who does the work.</p>
<p><b>3</b></p>  <p>So... they say they need 30 working days plus EUR 200 worth of materials to do the job. That's EUR 3,200 in total. Seems OK. And that's it! Oh, and I want to see the design before the leaflet is printed.</p> <p><b>Remuneration</b> Lump sum, a 'price' is agreed for the product based on the estimated time needed.</p> <p><b>Payments</b> Based on progress, e.g. 50% for the draft, the remaining 50% when accepting the complete product</p> <p><b>Defective performance</b> We can insist that any defects are remedied or that the contractor makes us a new product if it doesn't comply with the terms of reference. Alternatively, we can accept the imperfect product but pay less than the agreed price.</p>	<p><b>4</b></p>  <p>I received the leaflet yesterday. It was OK, so I'll pay the EUR 3,200. It's not my problem that they took longer than planned.</p> <p><b>Acceptance test?</b> Yes, the 'product' either exists in the agreed form, or it does not. Performance is tangible and verifiable.</p> <p><b>End of input</b> Acceptance of the agreed product/work/labour</p>



### 1.1.2 Financing

Next to buying services or work/labour for its projects and offices, GIZ also passes funds on to its partners, NGOs and other recipients so that they can implement certain measures of their own.

The associated contracts for financing specify how and for what purpose the funds are to be used. The funds are treated as a subsidy, and the recipient is not obliged to pay them back.

NOTE: When drawing up a contract for financing, you must ensure that the funds were also calculated as 'financing' in the offer to BMZ.

When we enter into a contract to provide financing, the recipient of the funds does not owe us any particular services/work/labour. The funds merely need to be spent properly, transparently and according to the purpose agreed upon in the contract. However, if the objective of the measure is not achieved or is achieved in a different way, GIZ is not entitled to demand compensation, remediation or any other action. We are not entitled to any specific result.

The rules on contracts for financing are laid out in P+R at:

<https://gizonline.sharepoint.com/sites/pur/SitePages/Rules.aspx#cat=Finanzierung&p=1>.

There are different kinds of contracts for financing.

#### 1.1.2.1 Financial contributions



In the case of financial contributions, the recipient assumes full responsibility for implementation. GIZ is responsible for proper entry into agreements and the financial processing of the agreement in line with the stipulated purpose.



Financial contributions are granted on the basis of a financing agreement, grant agreement or subsidy agreement.

A financing agreement is concluded when the recipient is GIZ's implementation partner (i.e. the lead executing agency) or one of the lead executing agency's subordinate partner structures.

A GIZ office can enter into and manage financing agreements with a value of up to EUR 100,000 on its own responsibility provided that the rules allow it to do so. This is decided by the country director together with the regional director on the basis of the criteria laid out in P+R.

All agreements valued at or above the EUR 100,000 threshold must be concluded and processed through Head Office.

If the recipient is based in Germany, a subsidy agreement is concluded. By contrast, a grant agreement is concluded in cases where the recipient is based outside Germany but cannot receive funds under a financing agreement. As a general rule, these contracts are concluded at Head Office.

The officer responsible for the commission evaluates the legal and commercial capacity of the recipient to manage a financial contribution properly. A positive assessment of the recipient's capacity to do so is a prerequisite for entering into an agreement. The assessment result must be documented in form 'Commercial and legal eligibility check' before the contract is concluded.

### 1.1.2.2 Local subsidies

Local subsidies are only awarded if the partner/project executing agency does not yet have the capacity to enter into an agreement on a financial contribution.

Local subsidies are direct contributions by GIZ. Consequently, GIZ bears full responsibility for their implementation and correct use and must bear the loss itself in the event of the funds not being correctly used.

The GIZ office must conclude a local subsidy agreement with the locally based contractual partner based on the specimen agreement and in accordance with legislation in the partner country. The recipient's eligibility must be checked and documented prior to concluding the agreement.

The GIZ office enters into and is responsible for managing financial aspects of local subsidy agreements.

GIZ has specimen contracts for

**Contracts for services and work/labour**

- ▣ Contracts with appraisers and consultants
- ▣ Contracts with consulting firms
- ▣ IT contracts
- ▣ Construction contracts
- ▣ Contracts for development partnerships with the private sector

**Contracts for financing**

- ▣ Financing agreements
- ▣ Local subsidies
- ▣ Grant agreements
- ▣ Subsidy agreements

**Keep in mind:**

When planning to conclude a new contract, you need to consider in advance whether you need to conclude a contract to provide financing or a procurement contract.

In the case of procurement contracts, it is important to distinguish between contracts for services and contracts for work/labour.



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