



**FUSION
FOR
ENERGY**

GENERAL TENDER CONDITIONS

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1. INTRODUCTION

This document contains the **General Tender Conditions** applicable to selection of candidates and calls for tender for open, restricted, competitive dialogue, competitive procedure with negotiation, innovation partnership and negotiated procurement procedures.

This document must be complemented by:

- the **invitation to participate** (first step of the restricted procedure, competitive procedure with negotiation, innovation partnership, negotiated procedure with publication and the competitive dialogue - selection phase);
- the **invitation to tender / negotiate / dialogue** (only step in the open procedure and second step of the restricted, competitive procedure with negotiation, innovation partnership, negotiated procedures and competitive dialogue respectively);

detailing the Specific Tender Conditions for each call, also referred to as '*Invitation*' in the rest of this document.

The General Tender Conditions and *Invitation* together make up the complete documentation to enable economic operators to prepare their

- **request to participate** (selection phase);
- **submission** (competitive dialogue);
- **tender**;

also referred to as '*Submission*' in the rest of this document.

Following the publication of a Contract Notice in the Official Journal of the European Union (OJEU), the *Invitation* can be downloaded from the Fusion for Energy (F4E) [Industry and Associations Portal](#)¹.

If you have created an account you will be informed about the launch of the procedure, modification to a published call (for example, extension of the submission deadline) and answers to submitted questions, published on the F4E [Industry and Associations Portal](#).

Creating an account via the F4E [Industry and Associations Portal](#) is free of charge and does not involve any commitment to dispatch or hand-deliver a *Submission*.

2. PROCUREMENT RULES

F4E procurement rules are defined by the Financial Regulation of F4E (F4E FR) according to which:

- Title V of the General Financial Regulation (GFR), and
- the Rules of Application (RAP),

¹ In case of a procurement procedure in two stages (with selection of candidates), the *Invitation* will be dispatched by email to the selected candidates.

shall apply to procurement within F4E, subject to the derogations set out in Articles 85a to 85f and Article 86 F4E FR. The above documents are available on the official [F4E website](#) (refer to section 10 below for the complete reference).

Except when otherwise specified in the *Invitation*, participation in F4E procurement procedures as a tenderer² is open on equal terms to economic operators (legal or natural persons) that are **nationals of or are established in the territory of a [F4E Member](#)**.

Establishment means the actual pursuit of a genuine economic activity by an economic operator formed in accordance with the law of a [F4E Member](#) and having its registered office, central administration or principle place of business within the territory of a [F4E Member](#).

For UK candidates or tenderers only:

Please be aware that after the UK's withdrawal from the EU and Euratom, candidates or tenderers from the UK will only have access to F4E's procurement procedures if this will be provided by legal provisions in force at that time (e.g. subject to the outcome of the negotiations between the EU and the UK, a cooperation agreement between Euratom and the UK). In case such access is not provided, candidates or tenderers from the UK will be rejected from the procurement procedure.

3. PROCUREMENT PROCEDURES

The type of procurement procedures are listed under Article 104 GFR and further developed under Articles 127 to 137 RAP, of which Fusion for Energy F4E foresees to make use of the following:

- Open procedure
- Restricted procedure
- Negotiated procedure
 - without publication of a Contract Notice, under the circumstances defined in Article 134 RAP
 - without publication of a Contract Notice, on the basis of a single tender for contracts for supplies and services, the result of which is intended to be used for the purposes of research, experiment, study or development within the context of the implementation of F4E's operational tasks (Art. 85 (d) F4E FR) (below the Directive thresholds)
 - following publicity on the internet or a contract notice (below the Directive thresholds)
- Competitive dialogue
- Competitive procedure with negotiation
- Innovation partnership

² See definition in section 9.3. By analogy, the same rule applies to "group leader" (section 9.5) and "group member" (section 9.6). This is not applicable to subcontractors.

4. COMPLIANCE WITH REQUIREMENTS

Dispatching or hand delivering a *Submission* implies:

- that the economic operator **accepts all requirements** as stipulated in the General Tender Conditions and the *Invitation* (including all annexes) and,
- that the economic operator **undertakes to comply with the applicable environmental, social and labour law obligations** established by European Union law, national legislation, collective agreements or the international environmental, social and labour conventions listed in Annex X of Directive 2014/24/EU.

Regarding items of 'Dual Use'³, dispatching or hand delivering a *Submission* implies that the tenderer accepts to inform F4E if its proposed service or supply involves any dual use item. Should this be the case, dispatching or hand delivering the *Submission* also implies that the tenderer

- commits to comply with all applicable laws/regulations for the export control of dual use items; and
- declares that is not included on any sanction list, denied entity list, person list, debarred list or embargo list published by the relevant national competent authorities and that the tenderer undertakes to inform Fusion for Energy without delay of any change in this situation which may occur after the date of submission of the tender.

Failure to accept or comply with the requirements as stipulated in the General Tender Conditions, the *Invitation* and its annexes, may lead to rejection of the *Submission*, without further evaluation, unless otherwise foreseen in the *Invitation*.

4.1. Completeness and clarity

The *Submission* must be **signed by an authorised representative** of the tenderer, including **all requested administrative, technical and financial documentation** and must be **clear** (without ambiguous statements), **concise** and **perfectly understandable** so that there can be no doubt as to the words and figures.

4.2. Acceptance of contractual conditions

Economic operators **shall** accept the draft contract (annexed to the *Invitation*) without any modification or reservation and waive their own contractual terms, except when otherwise specified in the *Invitation* and within the limits therein specified.

Total or partial disagreement with the contract, imposition of or negotiation on own contractual terms may lead to rejection of the *Submission* without further evaluation, unless otherwise foreseen in the *Invitation*.

³ 'Dual use' shall mean items, including software and technology, which can be used for both civil and military purposes.

4.3. Language and communication

Procurement Documents will be, by default, available in English. Any communication associated with a procurement procedure shall be in **English**, except when otherwise specified in the *Invitation*.

4.4. Validity

As part of their *Submission*, economic operators shall confirm compliance with the validity period of the *Submission* stipulated in the *Invitation*.

5. DISPATCH OR HAND DELIVERY

The deadline for dispatching or hand delivery of a *Submission* is indicated in the *Invitation* (including information related to submission by e-mail, when applicable).

Failure to dispatch or hand deliver a *Submission* (containing all required information and documents) within the specified submission deadline shall lead to rejection of the *Submission* without further evaluation.

5.1. Dispatch by post or by courier service

Unless otherwise foreseen in the *Invitation*, a *Submission* may be dispatched by registered mail with acknowledgement of receipt or by courier service. In this case **the *Submission* must be dispatched no later than 23:59 on the specified date of the submission deadline**. Proof of compliance with the submission deadline will be constituted by the date of the postmark or the date of the deposit slip of the courier service.

5.2. Delivery by hand

Unless otherwise foreseen in the *Invitation*, a *Submission* may be hand delivered at the premises of F4E during working hours. In this case, **the *Submission* must be delivered at F4E reception no later than on the specified date of the submission deadline and during F4E working hours**. A receipt, signed and dated, including the exact time of delivery, must be obtained from F4E as proof of submission.

The address for both dispatch and hand delivery is:

Fusion for Energy

To the attention of [the relevant Contracts and Procurement Officer]⁴
C/ Josep Pla 2
Torres Diagonal Litoral Edificio B3
ES-08019 Barcelona
SPAIN

F4E working hours are from 09:00 to 17:00, Monday to Friday. F4E is closed on Saturdays, Sundays and [F4E holidays](#).

5.3. Dispatched by e-mail

By derogation to the two previous sections, submission by electronic mail (e-mail) may be allowed if foreseen in the *Invitation*. In this case, the delivery modalities (including information regarding submission deadlines, copies, labels and envelopes) will be provided in the *Invitation*.

5.4. Alteration and withdrawal before the specified deadline

A *Submission* may be altered **prior** to the specified submission deadline. The tenderer must clearly and unambiguously indicate which *Submission* is final and valid.

Withdrawals shall be notified via letter and are irrevocable.

5.5. Copies, labels and envelopes

This section is not applicable to dispatch by e-mail.

A *Submission* must include:

- 1 signed hard copy marked “original”, and
- 1 electronic copy identical to the original on separate hard support

The *Submission* shall be placed inside an outer sealed envelope (or box) containing the following inner envelope(s)⁵:

- A sealed inner envelope for administrative documents
- A sealed inner envelope for the technical offer
- A sealed inner envelope for the financial offer

as per the content of the *Submission* specified in the *Invitation*.

The **outer sealed envelope** shall be labelled:

⁴ as indicated in the *Invitation*

⁵ In a two-step procedure (mainly restricted, some negotiated procedures and in competitive dialogue), the first envelope shall be submitted for the first step of the procedure and the two others (technical offer and financial offer) in the second step, once the candidate has been invited to submit a tender.

Name and address of the tenderer
Procurement Procedure F4E-XXX-0000
LOT XXX (if applicable)

NOT TO BE OPENED BY THE MESSENGER/COURIER SERVICE
NO ABRIR POR EL SERVICIO DE MENSAJERIA O DE CORREO

The **inner sealed envelopes** shall be labelled:

Procurement Procedure F4E-XXX-0000
LOT XXX (if applicable)

Administrative Documents

This envelope shall contain the administrative documents as required in the *Invitation*.

Procurement Procedure F4E-XXX-XXX
LOT XXX (if applicable)

Technical Offer

This envelope shall contain the technical offer as required in the *Invitation*.

Procurement Procedure F4E-XXX-XXX
LOT XXX (if applicable)

Financial Offer

This envelope shall contain the financial offer as required in the *Invitation*

6. CONTACTS WITH F4E

For all procurement procedures, the F4E contact point is the Contracts and Procurement Officer.

Without prejudice to the contact allowed under the competitive dialogue and the negotiated procedures, contacts between F4E and the candidates or tenderers are prohibited throughout the procedure, save in the circumstances defined below.

6.1. Before the submission deadline

Requests for extension of the specified submission deadline, requests for additional information, general questions and clarifications shall be submitted in writing:

- via the F4E [Industry and Associations Portal](#) for
 - invitations to participate (restricted procedures, competitive procedures with negotiation, negotiated procedures and competitive dialogue);
 - calls for tender, in case of open or negotiated procedures;
- via e-mail for all other cases, or when specifically indicated in the *Invitation*.

F4E is not bound to reply to requests for additional information made less than six working days before the specified deadline. Nevertheless, if a request for additional information was issued in good time and F4E did not provide the additional information within six days before the submission deadline, the submission deadline will be extended. In urgent cases the additional information can be provided no later than four days before the submission deadline.

Additional information, provided on F4E's own initiative, will be communicated simultaneously to all participating economic operators.

An information meeting **may** be held to answer submitted questions regarding an on-going procurement procedure. In such case, meeting minutes will be communicated simultaneously to all economic operators.

6.2. After the submission deadline

After the *Submission* has been opened, clarifications may be required by F4E in connection with the *Submission* or to correct obvious clerical errors or to ask for missing information or documents. In such cases, F4E may contact the candidate or tenderer, however such contact may not lead to alteration of the terms of the *Submission* or the negotiation of the technical or financial offer (unless this is allowed by the type of procedure). Candidates or tenderers shall refrain from contacting F4E on their own initiative.

Contact with candidates or tenderers at this stage are by electronic means. However, if deemed necessary, F4E may seek technical clarification from candidates or tenderers through on-site visit(s). In these cases, access by F4E to their site/offices/facilities shall be granted.

6.3. Negotiation and dialogue

Negotiation or dialogue with tenderers or selected candidates is carried out through electronic means and/or meetings.

Negotiation or dialogue meetings are organised on F4E's initiative and at F4E's premises (except when otherwise specified), in accordance with the following rules:

- The number of negotiation or dialogue meetings is defined by F4E.
- Meeting invitations are dispatched at least seven calendar days before the meeting, unless otherwise agreed.
- Participants, empowered to represent the economic operator, are identified and communicated to F4E prior to the meeting. F4E may limit the number of participants.
- Travel expenses for participation in negotiation or dialogue meetings are not reimbursed by F4E.
- All documentation used by the tenderer or selected candidate during the meetings shall be provided to F4E.
- Minutes of every meeting shall be agreed by both parties.
- Negotiations shall not modify the 'minimum requirements' specified in the procurement documents.
- If negotiations take place in stages (by reducing the number of tenders to negotiate) it will be specified in the *Invitation*.

Unjustified failure to attend a meeting may lead to the rejection of the *Submission* and exclusion of the tenderer or selected candidate.

When, in exceptional cases, there is oral contact between F4E and the tenderers or selected candidates outside of the negotiation or dialogue meetings, these contacts shall be summarised in writing and communicated via electronic means.

The *Invitation* will specify if the contract can be awarded on the basis of the initial tender without negotiation.

7. GENERAL PROVISIONS

7.1. Costs related to *Submissions*

Except when otherwise specified in the *Invitation*, all costs incurred in preparing and dispatching or hand delivering a *Submission* shall be borne by the candidate or tenderer.

7.2. Cancellation of procedure

F4E may at any time, before the contract is signed, cancel the procurement procedure without the candidates or tenderers being entitled to claim any compensation. The cancellation decision will be substantiated and be brought to the attention of the candidates or tenderers.

7.3. Ownership

F4E retains physical ownership of a *Submission* received under a procurement procedure. Consequently, a *Submission* is, in principle, not returned to the candidate or tenderer. Only tenders/requests to participate which have not been opened (of which the candidate/tenderer was duly notified) are sent back to the economic operator, if requested in writing.

7.4. Confidential information

F4E undertakes to protect the candidate's and tenderer's commercial interests by treating all the information contained in their *Submission* as confidential. In particular, it will not disclose any information where such disclosure would hinder application of the law, be contrary to public interest, harm the economic operator's legitimate business interests or distort fair competition.

7.5. Personal data protection

In certain cases, the follow-up of *Submission* will require the recording and further processing of personal data (for example, names, addresses or other data included in CVs of natural persons). This data will be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

Except if mentioned otherwise, replies to questions and requested personal data that are necessary for the purpose of assessing the *Submission*, according to the conditions, will only be processed by the evaluation committee for that purpose on a need-to-know basis and in accordance with the principle of proportionality. Data subjects concerned may, upon request, access their personal data and rectify any inaccurate or incomplete data or request that their personal data is erased or their processing blocked. Should data subjects have any queries

concerning the processing of their personal data, they should address them to the F4E Data Controller (Resources-Controller@f4e.europa.eu). As regards the processing of personal data, data subjects concerned have a right to recourse at any time to the European Data Protection Supervisor.

8. PUBLIC OPENING

When a 'Public Opening' is to be organised by F4E, the date, time and place of the public opening will be indicated in the *Invitation*. The public opening will also be announced in the Contract Notice.

The tenderers and/or their representatives are allowed to attend the public opening provided they are duly accredited (Identification Card and evidence/accreditation linking the representative to the economic operator). Tenderers shall communicate to F4E, at the latest on the date of the submission deadline, the name of the representative(s) of the tenderer attending the public opening. To this end, an attendance list will be prepared beforehand and the representative(s) will be required to duly register at the public opening. A maximum of two representatives per tenderer will be allowed at the public opening.

9. ROLES, DEFINITIONS & OTHER REQUIREMENTS

9.1. Candidate

A candidate is an economic operator or a group of economic operators that has submitted a request to participate in response to an invitation to participate.

9.2. Selected candidate

A selected candidate is an economic operator or a group of economic operators that has satisfied the exclusion and selection criteria of an invitation to participate and is invited to participate in the dialogue or negotiation.

9.3. Tenderer

A tenderer is an economic operator or a group of economic operators that has submitted a tender in reply to a call for tender.

9.4. Contractor

A contractor is an economic operator or a group of economic operators that is a party to a contract with F4E.

9.5. Joint submission

A joint *Submission* is a request to participate/tender submitted by several economic operators, regardless of the link they may have between them. If awarded the contract, these economic operators will have an equal standing towards F4E in executing the contract. The contract is signed by all economic operators, or by one of them which has been duly authorised by the others.

Any change in the composition of the group after the submission deadline may lead to the rejection of the tender. Any change in the composition of the group after the signature of the contract may lead to termination of the contract.

The group shall nominate one economic operator ('the leader') that will have full authority to commit the group and each of its members, and will be responsible for the administrative management of the contract (invoicing, receiving payments, etc.) on behalf of all other members of the group.

9.6. Group leader

A group leader is the economic operator that, in case of a joint *Submission*, is granted all the necessary powers by the group members to act in the name of the members of the group and on their behalf in connection with the invitation to participate, the call for tender and the contract.

9.7. Group member

A group member is an economic operator that, in case of a joint *Submission*, grants the group leader all the necessary powers to act in its name and on its behalf in connection with the invitation to participate, the call for tender and the contract.

Group members in a joint *Submission* shall assume joint and several liability towards F4E for the performance of the contract as a whole in the event that they are awarded the contract.

9.8. Subcontractor

A subcontractor is an economic operator that enters into a legal commitment with the contractor in order to perform part of the contract. F4E has no legal commitment with the subcontractor and the contractor remains the sole party contractually liable towards F4E for performance of the contract. As a consequence, F4E deals solely with the contractor for all contractual matters (for example, payments). Nevertheless, if so required in the *Invitation*, F4E may request information regarding intended subcontractors and the proportion of tasks to be subcontracted.

F4E may identify in the *Invitation* 'critical tasks' that are required to be performed directly by the tenderer itself or, where the tender is submitted by a group of economic operators, by a member of the group.

If, due to the nature of the contract and specified in the *Invitation*, certain tasks need to be performed *Intra-muros*⁶ by the subcontractor, the tenderer shall specify the name of all subcontractors concerned.

9.9. Third party

A third party is an economic operator that provides capacity to the candidate or tenderer to meet the technical and/or financial selection criteria. Third parties have specific obligations defined in the technical and financial third party undertaking forms. A subcontractor is deemed to be a third party if the candidate or tenderer relies on it to meet the technical and/or financial selection criteria.

9.10. Option

An option is a qualitative or quantitative extra, which is optional for F4E and which F4E has the unilateral right to exercise.

9.11. Lot

A lot is a part of the scope of supply as defined in the *Invitation*, which can be the subject of an individual and separate legal commitment with a contractor.

⁶ Intra-muros is referred to any premises identified by F4E which are not the tenderers premises

9.12. Variant

A variant is any technical or economic solution submitted by a tenderer which presents an equivalent alternative to a model solution described in the technical specification.

10. APPLICABLE DOCUMENTS

1. Council Decision (Euratom) No 2007/198 of 27 March 2007 establishing the European Joint Undertaking for ITER⁷.
2. Financial Regulation of Fusion for Energy adopted by Decision of the Governing Board on 02 December 2015, 'F4E Financial Regulation' (F4E FR).
3. Regulation (EU, Euratom) No 966/2012 of the European Parliament and the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union, as amended by Regulation (EU, Euratom) No 2015/1929 of the European Parliament and the Council of 28 October 2015, 'General Financial Regulation' (GFR).
4. Commission Delegated Regulation (EU, Euratom) No 1268/2012 of 29 October 2012 on the rules of application of Regulation No 966/2012 of the European Parliament and of the Council, as amended by Commission Delegated Regulation (EU) No 2015/2462 of 30 October 2015, 'Rules of Application' (RAP)
5. Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items⁸.
6. Protocol on Privileges and Immunities of the European Union⁹.
7. Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data¹⁰.

Refer to the following websites:

- <http://www.fusionforenergy.europa.eu/procurementsgrants/keyreference.aspx>
- <http://eurlex.europa.eu>

⁷ Official Journal L 90, 30.3.2007, p. 58.

⁸ Official Journal L 134, 29.5.2009, p. 1.

⁹ Official Journal C 84, 30.3.2010, p. 99.

¹⁰ Official Journal L 8, 12.1.2001, p. 1.