



## FUSION FOR ENERGY

The European Joint Undertaking for ITER and the Development of Fusion Energy  
**THE GOVERNING BOARD**

**DECISION OF THE GOVERNING BOARD OF THE EUROPEAN JOINT  
UNDERTAKING FOR ITER AND THE DEVELOPMENT OF FUSION  
ENERGY ENDORSING THE REPORT ON THE AD-HOC GROUP ON FUSION  
FOR ENERGY FUNDING SCHEMES**

THE GOVERNING BOARD OF FUSION FOR ENERGY

HAVING REGARD to the minutes of its sixth meeting and the decisions described therein<sup>1</sup>,

WHEREAS an ad-hoc group was established by the Governing Board with the mandate to review a number of matters associated with the Fusion for Energy funding schemes;

HAS ADOPTED THIS DECISION:

*Single Article*

The Report of the Ad-Hoc Group on Fusion for Energy Funding Schemes annexed to this Decision is hereby endorsed.

Done at Brussels, 31 October 2008

For the Governing Board

**Carlos Varandas**

Chair of the Governing Board

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<sup>1</sup> F4E(07)-GB06-Minutes RESTRICTED Final 31/10/2008

## **REPORT OF THE AD-HOC GROUP ON THE FUSION FOR ENERGY FUNDING SCHEMES**

Carlos Varandas on behalf of the Ad-Hoc Group

Barcelona, October 2008

### **1. BACKGROUND**

During its fifth meeting held on July 8<sup>th</sup> 2008, the Governing Board established an Ad-Hoc Group (AHG) with the following Terms of Reference:

- To identify the activities that may require funding of demonstration activities at >40% of eligible costs;
- To propose schemes that would allow funding of demonstration activities at >40% of eligible costs (e.g. grants, procurement, or others);
- To study possible conflicts of interest that arise when organizations are involved in preparatory phases of a procurement;
- To examine the issues of liability and access to knowledge.

The AHG members were Carlos Varandas (Chair), Didier Gambier, Karl Tichmann, Derek Stork and Serge Paidassi.

The AHG had two meetings on July 23<sup>rd</sup> in Brussels and September 17<sup>th</sup> in Rostock, Germany. The first meeting was also attended by Philippe Corr ea (on behalf of Didier Gambier) and Vassilis Koutsouris (Expert from EC).

### **2. ACTIVITIES ASSOCIATED WITH GRANTS THAT MAY REQUIRE F4E FUNDING AT MORE THAN 40% OF THE ELIGIBLE COSTS**

First of all, the AHG tried to identify possible categories of activities associated with Grants that may require F4E funding at a rate higher than 40%, with possible involvement of industry. Those categories are the following:

- Upgrades of existing facilities and construction of new facilities;
- Realization of the R&D required to enable EU to manufacture the components for the TBM experiments; in this particular case there is a continuous need to use Euratom Associates and industry in a parallel and/or sequential way. Integration is a key element of this programme;
- Manufacturing and testing of mock-ups, creation of manufacturing designs, creation of assembly schemes;

- Development of diagnostics where purchase of hardware/various components is necessary.

The AHG has therefore investigated various possible schemes, some of which are novel, which could satisfy the requirements.

### 3. INSTRUMENTS, TOOLS AND SCHEMES

#### 3.1. Introduction

Under the current Fusion for Energy framework, a variety of instruments, tools and schemes are or might be available for funding grants and procurements (Figure 1):

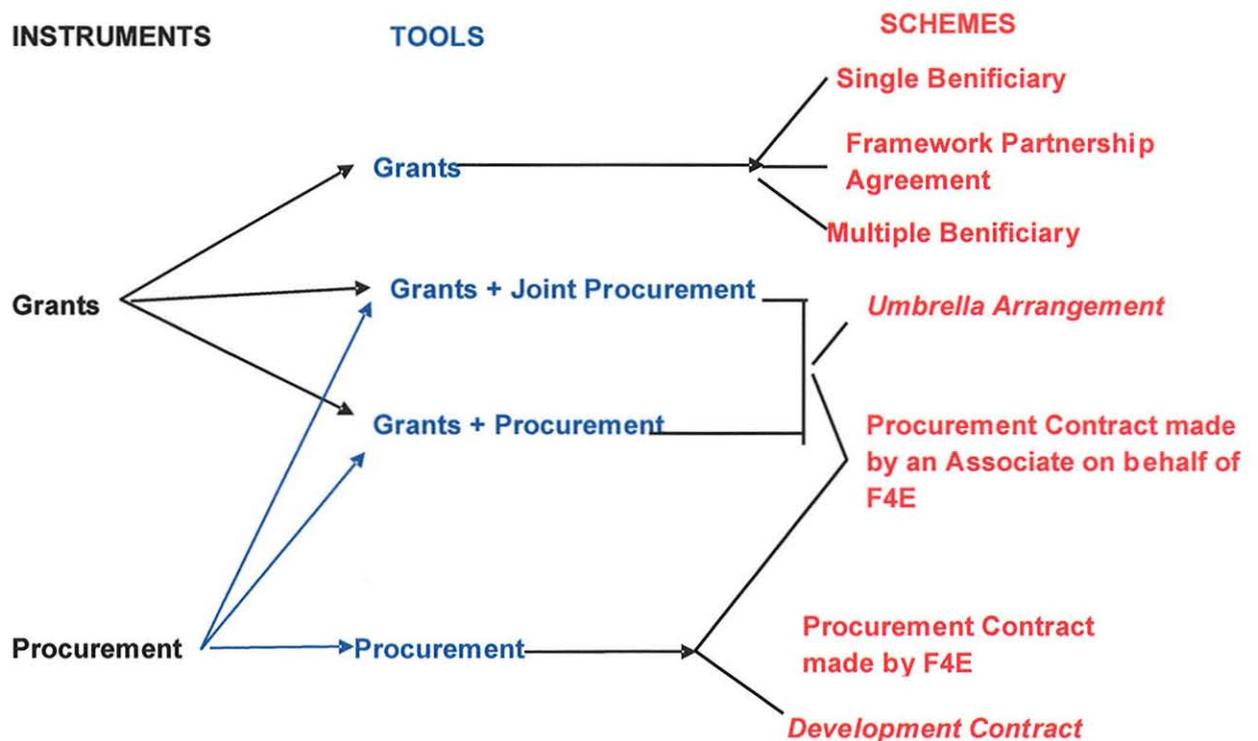


Figure 1 – The F4E Instruments, Tools and Funding Schemes (schemes in italic are “new”)

- *Instruments*

The F4E Financial Regulations foresee two Instruments for funding the F4E activities:

- Grants
- Procurement
- *Tools*

These Instruments could be combined in several different ways, depending on the characteristics of the activities to be carried out:

- *Grants.*
- *Combination of a grant with a supply contract.* This tool is used when the performance of the grant tasks requires the involvement of industry. Under this combination, there are two subcategories:
  - *Grant+Joint Procurement (responsibility: F4E and typically Euratom Associate(s));*
  - *Grant+Procurement (responsibility: F4E).*
- *Procurement.*

### 3.2. Grants

An Information Note from Fusion for Energy, submitted to the AHG first meeting and presented in Annex I, explains in detail the conditions for Grants<sup>2</sup>. This tool is adequate for pure R&D activities and F4E will contribute with a basic funding up to 40% of the eligible costs.

Grants could be implemented through:

- Single Beneficiaries Grant Agreements;
- Multiple Beneficiary Grant Agreements;
- Framework Partnership Agreements, foreseen in Article 147 of the F4E's Implementing Rules.

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<sup>2</sup> The annex covers the current situation giving the context for the modifications that are proposed in this report.

Within these grants, subcontracting and third parties can be included although it should be noted that the scope of their activities are limited. The following permutations are possible:

- Single Beneficiary;
- Single Beneficiary + Subcontractors;
- Single Beneficiary + Subcontractors + Third Parties;
- Multiple Beneficiaries.
- Multiple Beneficiaries + Subcontractors;
- Multiple Beneficiaries + Subcontractors + Third Parties.

Negotiations between Fusion for Energy and the Beneficiary involve agreement on the maximum financial contribution by F4E, in compliance with the Implementing Rules, F4E work-programme and budget.

### **3.3. Grants+Joint Procurement**

This tool is applicable when some activities should be realized in parallel to the R&D under a Grant by means of a joint procurement contract (see Article 81 of the F4E financial Regulations and Article 83 of F4E Implementing Rules). The contracting authority vis à vis industry is composed by F4E and typically the Euratom Associate. Both would have to agree beforehand and among others on the conditions of such joint procurement, their respective roles, the co-funding scheme and the ownership regime. As far as the co-funding scheme is concerned, the F4E part could be up to 75% of the costs depending on the importance of the works to be funded, the nature of the expected results or their lasting benefits for the Euratom Associate' s activities.

The need for Joint Procurement and the F4E funding rate would need to be assessed on a case-by-case basis and, in particular, to ensure that no additional administrative burdens are introduced.

The AHG recommends that Fusion for Energy in consultation with the Commission explores the modalities<sup>3</sup> of Joint Procurement in more detail, in particular by identifying cases in which this instrument could be applicable.

### **3.4. Grants+Procurement**

This tool is used when some activities should be realized in parallel to the R&D under a Grant by means of a separate procurement contract. This case is expected to apply where the hardware development/prototyping is highly specific to the ITER programme and would bring no benefit to the Euratom Associate's programme or another organisation, yet where the procurement is not yet at the stage where it would be used directly by ITER. In this case when F4E decides it is not suitable to proceed with a joint procurement, F4E can launch the public procurement operation under its sole responsibility and for its own benefit, paying 100% of the costs. If necessary, F4E may use the services of an Euratom Associate or other public body via a specific service contract for the assistance in the preparation and execution of the public procurement operation (art. 38 of F4E FR) and have the procurement typically made by an Euratom Associate for F4E<sup>4,5</sup>.

### **3.5. Development Contract**

This scheme means global operation under public procurement contract *with the Euratom Associate or other public body as a possible member of a consortium with industry*

Under this scheme, F4E would be the sole contracting authority for the procurement. The consortium will be responsible for the whole chain of activities. There are various ways to deal with both legal and management aspects of such an operation in order to

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<sup>3</sup> In particular, the guidelines for establishment of the F4E funding rate and the definition of co-ownership.

<sup>4</sup> The final responsibility for the control of proper execution of the contract remains in F4E and, therefore, cannot be externalized to third parties,

<sup>5</sup> The F4E FR and IR do not foresee the possibility that non-public bodies could make procurement on behalf of F4E.

give enough flexibility to this operation and preserve the public interest. Eventually, the use of specialized “architect-engineer” firms for advice would be suitable. The issue of conflict of interest of the Euratom Associate or other public body has to be addressed in case the latter will participated in preliminary works preceding the call for tender (see section 5).

**3.6. Umbrella Arrangement**

This scheme means global co-operation *where the Euratom Associate or other public body remains on the side of the contracting authority.*

Under this scheme (which by definition eliminates also any conflict of interest) the Euratom Associate or other public body might be engaged in long term cooperation with F4E under a specific umbrella arrangement. Both parties determine their rights and obligations in order to be able to pursue their respective public missions<sup>6</sup>. The Euratom Associate or other public body ensures effective technology transfer to the selected industry and could also ensure an effective monitoring of the contract execution on behalf of F4E.

Although the F4E Implementing Rules foresees framework partnership agreements for Grants, and framework contracts for procurement, there is as yet no instrument foreseen in the F4E framework that allows grants and procurement to be combined under a single agreement here called “umbrella”.

Therefore, the AHG recommends Fusion for Energy to further study in consultation with the Commission the possibilities for implementation of such umbrella arrangements and those cases in which it could be exploited and report back to the Governing Board.

**3.7. Procurement**

Procurement can be implemented through:

- o Supply contracts or framework contracts;

<sup>6</sup> When Associates can prove the activity involved is related to a public mission.

- Services contracts or framework contracts;
- Work contracts or framework contracts;
- (Contracts for the purchase or the rental of a building)

with the following main combinations:

- Contractor;
- Contractor + Subcontractors;
- Grouping of Contractors in a consortium that has a distinct Legal Personality (EEIG or equivalent).
- Grouping of Contractors in a consortium that has no distinct Legal Personality.

The Procurement procedures of Fusion for Energy are broadly similar to the European Directives for Public Procurement (for example, 2004/18) used by many other organizations and therefore are not described in detail in this document.

#### **4. ELIGIBLE COSTS IN GRANTS**

The AHG has analyzed three categories of possible eligible costs in Grants:

- Small Value Procurement
- Management expenses
- Work of staff of one Beneficiary at the location of another Beneficiary or at a specific facility.

##### **4.1. Small Value Procurement**

The AHG has analyzed the possibility of F4E funding at 100% of small value procurements in Grants. Although some members of the AHG are very sympathetic with this idea mainly due to reduction of bureaucracy, the AHG has decided not to recommend the implementation of this possibility in order to keep some similarity with the Contracts of Association<sup>7</sup>.

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<sup>7</sup> For the typical low values of these procurements, the AHG do not see any overriding reason to deviate from the general rule of cost-sharing.

#### 4.2. Management Expenses

Under the current framework, for both single and multiple beneficiaries, Fusion for Energy can reimburse up to 100% of the management costs with the limit that it cannot exceed 7% of the Fusion for Energy financial contribution.

The AHG took note that the limitation to 7% for the reimbursement of management expenses is not applied in the model contracts of the current Seventh Framework Programme. At the same time, the AHG recognized that such expenses are principally for the management of joint work and hence should not be claimed where there is a unique beneficiary<sup>8</sup>.

Therefore, the AHG invites the F4E Director to propose to the Executive Committee that the limit of 7% for the reimbursement of management expenses for Multiple Beneficiary Grant Agreements be removed, and to clarify the conditions for the reimbursement of management expenses for Single Beneficiary Grant Agreements

The AHG thinks that the Fusion for Energy contribution to the management expenses under Grant Agreements is clearly a matter of negotiation within the financial ceiling of each grant as laid down in the Work Programme.

#### 4.3. Work of staff of a Beneficiary at the location of another Beneficiary or at a specific facility

In the execution of Grant Agreements, in particular involving a Beneficiaries working at the location of another Beneficiary or at a specific facility located in a, the full support of travel and subsistence expenses for personnel to perform the project is very important.

The AHG notes the possibility for this expenditure to be supported through “other specific activities”.

The AHG invites the F4E Director to present to the Executive Committee proposals for the implementation of this scheme.

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<sup>8</sup> Unique beneficiary means that in a Single Beneficiary Grant there is only one institution (Euratom Associate or firm) working, in opposition to a case with sub-contractors or third parties linked to the beneficiary within the meaning of Article I.6 of the model Grant Agreement (cf. section 3.2) where several institutions can work in a Single Beneficiary Grant.

## 5. CONFLICTS OF INTEREST

In the discussions on the involvement of industry and the research laboratories, the issue of conflict of interest was discussed for those actors that would be involved both in the preparation of build-to-print specifications and in the manufacturing of the final components to be shipped to ITER.

F4E will need the assistance of the Euratom Associates and other organisations in the elaboration of the build-to-print specifications from the functional specifications to be given by ITER.

The Euratom Associates or other organisations may want to be involved in the phase of the final construction of the component concerned.

The legal framework of the procurement directives and of the established case-law of the European Court of Justice gives the following boundaries for conflicts of interest:

- Contracting authorities may, using a technical dialogue, seek or accept advice which may be used in the preparation of the specifications provided however that such advice does not have the effect of precluding competition<sup>9</sup>;
- The principle of equal treatment and of proportionality is violated if actors that carried out research, studies or development in connection with the development of specifications are automatically excluded from competing for the subsequent contract, even if they could establish that they had not obtained an unfair advantage capable of distorting competition;<sup>10</sup>
- An actor who has carried out certain preparatory work is not necessarily in the same situation as regards participation in the procedure for the award of that contract as a person who has not carried out such works. Therefore, it cannot be maintained that the principle of equal treatment requires that that actor be treated in the same way as any other tenderer.<sup>11</sup>
- Equal treatment for all tenderers is also ensured where there is a procedure whereby an assessment is made, **in each specific case**, of whether the fact of carrying out certain preparatory works has conferred on the person who carried out that work a competitive advantage over other tenderers.<sup>12</sup> For reasons of fair treatment of those involved in preparation of the tendering (Associates, Industry, Individuals), this assessment has to be done before the preparatory work is started and communicated to the actors.
- With regard to potential conflicts of interest related to members of the F4E bodies and committees (e.g. Governing Board, Executive Committee and TAP), it is noted

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<sup>9</sup> Recital 8 of the "Public Procurement Directive" 2004/18/EC, OJ L 134 of 30.04.2004, p.115.

<sup>10</sup> ECJ, Case C-21/03, *Fabricom v. Etat belge*, §§ 32 – 36.

<sup>11</sup> ECJ, Case C-21/03, *Fabricom v. Etat belge*, §§ 28 – 31.

<sup>12</sup> ECJ, Case C-21/03, *Fabricom v. Etat belge*, § 32.

that specific measures and guidelines have been adopted by the Governing Board and are not considered further.<sup>13</sup>

While not considered by the AHG, it is noted here that a recommendation on conflicts of interest has been adopted by the Executive Committee at its sixth meeting on 28<sup>th</sup> February (Ref: F4E(08)-EC07-02) following extensive deliberations and is attached as annex II for information.

The AHG recommends to F4E to show exemplary cases/situations in which probable reactions would be foreseeable, without prejudice to the assessment of each specific case.

## 6. LIABILITY

### 6.1. Grants

The AHG discussed the liability clause (Article II.41) of the model Grant Agreement, which had caused some concern to some Euratom Associates.

For Grants it is recognized that Fusion for Energy is asking for the best effort of the beneficiaries and sharing of costs to obtain the results. As such the AHG agrees that the principles, which should be incorporated into a rewording, are:

- The beneficiaries are not to be held liable for any damage arising from the use by Fusion for Energy (or subsequently by ITER) or other F4E contractors of the foreground or any products or services that are generated from a Grant<sup>14,15</sup>;
- The beneficiaries are to be held liable for any damage arising from the use they make themselves separately from the Grant Agreements with F4E of the foreground or any products or services that are generated from a Grant.

The AHG recommends that legal experts of Fusion for Energy and the Commission review the wording of the present Model Grant Agreements to ensure that they reflect properly the above principles and invite the F4E Director to make a proposal to the Executive Committee for their amendment.

<sup>13</sup> F4E(07)-GB01-04.6 Decision of the Governing Board on Confidentiality, Independence and Managing Potential Conflicts of Interest [http://fusionforenergy.europa.eu/documents/Decision\\_8.pdf](http://fusionforenergy.europa.eu/documents/Decision_8.pdf)

<sup>14</sup> F4E cannot guarantee that any third party including its contractors will not raise a direct claim against the beneficiaries.

<sup>15</sup> The AHG was informed that F4E intends to explore in consultation with the Commission a possibility that the beneficiaries liability for the results *vis a vis* F4E will be limited by the F4E contribution.

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## 6.2. Procurement

Under procurement it is expected that the contractors will have full/partial/unlimited/limited liability as it will suit the F4E needs.

## 7. CONSORTIA

For Grants and Procurement, Fusion for Energy may propose to applicants to form a consortium, but this is seen as a grouping of legal entities with a mutual agreement to regulate their internal management. This issue of the form of Consortium Agreement is under full responsibility of the applicants.

In case a grouping of beneficiaries has legal personality (an European Economic Interest Group (EEIG) or equivalent under national law) this would be treated as a Single Beneficiary, although the extra management cost associated with joint work will be eligible for funding by F4E.

Some clarification on the wording “consortia”, “groupings” (permanent or with a specific objective) need to be issued as there are differences of interpretation at national and European level.

Management costs related with consortia and “groupings” created for Grants are eligible for F4E reimbursement.

The AHG ask the F4E Director to prepare a note explaining the administrative modalities for joint participation in the F4E activities.
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## 8. AUDITS

With regard to certificates on financial statements concerning Grants, it was confirmed that Fusion for Energy does not require an independent auditor to certify the financial statements for public bodies. This should therefore not constitute a significant additional administrative or financial burden on the beneficiaries.

However, Fusion for Energy has always the possibility to promote audits to any contract, whatever its type is, conducted by either F4E Service or an external firm.

## 9. VAT

There are several different situations concerning VAT among the Euratom Associates and other organisations. Since this item is not an eligible cost for F4E funding, the AHG believes that this issue should be carefully studied.

The AHG recommends that the F4E Director in consultation with the Commission study implementing procedures that might minimize the impact of VAT cost in the Euratom Associates and other organisations.

## 10. TERMINATION OF CONTRACTS BY F4E

The termination of contracts by F4E at any time may create problems with industry. The AHG does not see a real problem on this procedure because certainly F4E will make careful use of this tool. In addition, the provisions of the Model Grant Agreement provide for adequate compensation (see e.g. Article II.34 of the Model Single Grant Agreement).

## 11. RECOMMENDATIONS

*The AHG invites the Governing Board:*

- *To endorse this report*
- *To ask the F4E Director to implement the recommendations in collaboration and/or agreement with the Executive Committee*
- *To ask the F4E Director to report in one year from now on results of the implementation of the present funding schemes aiming at its possible revision.*

## ANNEX I

### **INPUT DOCUMENT PREPARED BY FUSION FOR ENERGY FOR THE FIRST MEETING OF THE AD-HOC GROUP ON F4E FUNDING SCHEMES<sup>16</sup>**

#### **Introduction**

Fusion for Energy has two main tools for carrying out its tasks as the Domestic Agency for ITER: grants and procurement. The purpose of this information note is to explain in simple terms grants and on which terms organizations can participate in them.

#### **What are grants?**

Grants provide means by which F4E provides a financial contribution to a project carried out by external organizations in furtherance of the objectives of F4E. Under grants there is a sharing of the costs, responsibilities and benefits.

In the case of EFDA Associates, the work being conducted should fall outside the work being supported through the Contracts of Association to avoid the risk of double funding.

With procurement, on the other hand, F4E obtains a product or service it needs in return for payment with the best value for money or lowest price. The differences between procurement and grants are explained in the table annexed to this note.

#### **When are grants used?**

While there are no specific rules, it is clear that grants are preferentially used by F4E for supporting R&D and demonstration activities while procurement will be used for supply and service contracts where F4E must have ownership.

Areas where grants are proposed to be used in the 2008 F4E Work Programme include diagnostics, additional heating and current drive systems, remote handling, optimization of fabrication techniques, tritium plant activities and some activities in support of licensing.

#### **Who can participate in grants?**

Grants are fully open to the participation of all types of public and private organizations in the European Union and Switzerland including research organizations, EFDA Associates, universities and industries.

One or more organizations may apply for a grant and in most cases F4E will require that an agreement be concluded between the members of the consortium. In the case of

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<sup>16</sup> An updated version of this document should be elaborated as soon as the recommendations of the present report are implemented.

multiple organizations, a coordinator is appointed who acts as the contact person for F4E.

### **How are grant opportunities published?**

Each year the grants that are foreseen to be launched by F4E are described in the Work Programme which includes a description of the objectives, an indicative budget and their priority. The Work Programme is publicly available on the F4E internet site.

[http://fusionforenergy.europa.eu/2\\_2\\_governing\\_board\\_en.htm](http://fusionforenergy.europa.eu/2_2_governing_board_en.htm)

Normally grant opportunities are published by a call for proposals issued via the F4E website unless it can be justified that there is a case of unforeseen urgency or that there is only one organization capable of carrying out the work e.g. possessing unique test facilities.

### **How are grant applications evaluated?**

In the call for proposals F4E will describe the selection and award criteria. The former is used to assess that the organization(s) have the capacity to carry out the action while the latter is to assess the quality of the proposal and the organizations.

The award criteria usually include the relevance and quality of the proposal, the organization of the proposed work and its management, as well as the cost-effectiveness of the action. Weightings and minimum thresholds for these criteria are normally used.

On the basis of the results of the evaluation, a list is drawn up according to the overall score and highest ranked is awarded a grant according to the available budget which was foreseen in the call for proposals and the Work Programme.

When the financial contribution of F4E to the grant exceeds 200 kEuro or that the Director considers the risks to be above a certain level, the Executive Committee is invited to approve the procedure for awarding the grant before its signature by the Director.

### **How much can F4E reimburse?**

With grants F4E pays a proportion of the eligible costs that are incurred by the organizations in carrying out the action. In general, costs are considered eligible when they are real and for the purposes of the grant. Ineligible costs include taxes, interest, debt service charges, etc.

The maximum percentage of eligible costs that F4E may reimburse depends upon the activity in question as shown in the following table:

<i>Type of Activity</i>	<i>Maximum Funding Rate of Eligible Costs</i>
Research & Development	40%
Demonstration	40%
Other specific activities	100%
Management activities	100%

For the purpose of deciding the types of activities that fall into the above categories, the following working level definitions can be used:

- R&D activities are those associated with the planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new components, processes or services or for bringing about a significant improvement in existing components, processes or services.
- Demonstration activities are those associated with the acquiring, combining, shaping and using of existing scientific and technological and other relevant knowledge and skills. The activities may comprise producing drafts, prototypes, pilot projects, mock-ups, designs and drawings.
- Other specific activities are those that are not covered by any of the above categories of activities and could include, for example, activities related to intellectual property protection, dissemination activities, organisation of project meetings, quality assurance, etc.
- Management activities include the legal, financial and administrative management necessary to implement the action including obtaining certificates on the financial statements and on the methodology and costs relating to financial and technical audits. The management of the consortium agreement is also included

Note that the model grant agreement defines the maximum level of management activities that can be reimbursed by F4E at 7% of the total F4E financial contribution to the grant over the whole duration of the project.

EFDA Associates are expected to declare their actual costs in a way that is consistent with their Contracts of Association.

#### **On what basis are indirect costs (overheads) paid?**

In order to ensure the widest applicability, F4E has adopted the reimbursement scheme for indirect costs (overheads) used by the European Commission's Framework Programme. The organizations may:

- Declare their actual eligible costs (direct & indirect) upon which basis the percentage reimbursement is applied according to the activity; or
- Declare their actual direct costs plus a flat rate for indirect costs of up to 20% of the direct costs (minus subcontracting and third party costs)

Some organisations do not determine their indirect costs at a detailed level (e.g. by centre or department). In such cases F4E may accept simplified methods when they are in accordance with their usual accounting and management principles and practices;

**What about subcontracting?**

Organizations participating in a grant can subcontract minor parts of the work to external organisations. Subcontracting has to be agreed with F4E in advance and must be done transparently with due regard to national procurement rules.

Assuming the above conditions are met, subcontracting is considered as an eligible cost for F4E and reimbursed subject to the maximum funding limits described above according to the type of activity that is being subcontracted.

**What are Framework Partnership Agreements?**

Framework Partnership Agreements (FPA) are long term agreements between F4E and one or more organizations in which common objectives are laid down possibly including an agreed work programme.

On the basis of a FPA, specific grant agreements can be concluded between F4E and one or more of the organizations without a call for proposals. FPAs are normally in place for up to 4 years but of course the specific grant agreements can extend beyond this period.

**How does F4E reimburse costs?**

Once the grant is signed between F4E and the organization(s), a pre-financing (“float”) may be paid by F4E. After that the organization(s) provide the deliverables/milestones and statements of the costs incurred in carrying out the action according to the schedule.

Assuming the deliverables and milestones are accepted, F4E reimburses the organizations through the coordinator via interim payments. Above certain financial thresholds, the cost statements are accompanied by reports from independent external auditors.

At the end of the action, a final report will be submitted and once it is accepted F4E will pay the final balance subject to the maximum funding rates and the amount of the F4E financial contribution written in the grant agreement.



Note that public bodies and international organisations are not required to provide audit reports from external organizations and can instead nominate a person from within their organization to undertake this task.

#### **What are the reporting requirements?**

The exact reporting requirements will be adapted to the nature of the project and the deliverables/milestones in question but will generally consist of regular interim reports and a final report, which usually coincide with the cost statements described above.

#### **Who owns the generated intellectual property?**

In general, the intellectual property (IP) generated in the frame of the grant agreement will belong to the organization(s) undertaking the action and F4E will have access-rights. When the IP has the potential to be exploited, the organizations will ensure that it is protected.

#### **What are grant rules based upon?**

The basic rules for grants are laid down in the F4E Financial Regulation and its Implementing Rules as adopted by the Governing Board. Further information is contained in the model grant agreement as adopted by the Executive Committee.

The rules for grants used by F4E stem from those used by the European Commission in the Framework Programmes for Research and Technological Development and have been adapted to reflect the specific mission of F4E.

#### **Nomenclature**

In order to better understand grants, in particular when reading the Financial Regulation and Implementing Rules, it is worth making the equivalence of the nomenclature used for grants with those of procurement:

- Applicant  $\equiv$  Tenderer
- Beneficiary  $\equiv$  Contractor
- Grant Agreement  $\equiv$  Contract
- Framework Partnership Agreement  $\equiv$  Framework Contract
- Call for Proposals  $\equiv$  Call for Tender or Call for Expression of Interest

Table illustrating the main differences between grants and procurements

Procurements	Grants
<b>Purpose</b>	
The procurement is for the purpose of acquiring a product or service which F4E needs for its own activities.	The grant supports actions needed by F4E which also fall within the scope of the beneficiary's activities and interests.
<b>Ownership</b>	
Since the product or service has been purchased and paid for by F4E, in general it belongs to F4E in its entirety.	Ownership as a rule is with the beneficiary of the grant but provides F4E with full access rights.
<b>Financial Contribution</b>	
F4E usually pays 100% of the contract price according to the best value for money or lowest price.	F4E usually pays a proportion of the eligible costs of the action.
<b>Mutual Obligations and Monitoring</b>	
<p>The contract imposes reciprocal obligations on the F4E and on an economic operator, with the operator providing F4E with a product or service it has ordered.</p> <p>F4E monitors the provision of the product, service or work it has ordered.</p>	<p>The grant agreement imposes certain conditions but the imposition of liability and liquidated damages is limited and for special circumstances only.</p> <p>F4E monitors the technical implementation of the action and the use of the financial contribution.</p>
<b>Profit</b>	
F4E pays the economic operator. It is natural that the operator's remuneration should include an element of profit.	The grant must not have the purpose or effect of producing a profit for the beneficiary.
<b>Procedures</b>	
Tenders are received as part of an open, restricted, competitive dialogue or negotiated procedure.	Grant applications are normally received in response to a call for proposals unless specified otherwise in the Work Programme.

**ANNEX II**

**RECOMMENDATION OF THE EXECUTIVE COMMITTEE ON  
EQUAL ACCESS TO TENDER SPECIFICATIONS**

The Executive Committee notes that the activities to be contracted out by Fusion for Energy (F4E) in preparation for the manufacturing of components for ITER may be broadly divided into the following two categories:

- R&D Preparatory Activities for the definition of the technical requirements for a forthcoming fabrication tender including, for example, R&D and conceptual design activities (supported mainly via grants);
- Pre-Procurement Preparatory Activities for the definition of the technical specifications for a forthcoming fabrication tender including the production of detailed designs and build-to-print drawings (supported via procurement).

The Committee has examined the situation when research organisations or industries that have been a party to a contract or grant agreement for Preparatory Activities may be excluded from tendering for an associated fabrication contract due to a conflict of interest under Article 84a of the F4E Financial Regulation.

The Committee notes that preparing “neutral” technical specifications according to Article 116(1) of the F4E Implementing Rules of the Financial Regulation is of utmost importance to ensure the widest possible participation of research organisations and industries with key technical knowledge.

The Committee notes that case law from the European Court of Justice shows that no general rule can be laid down to allow or exclude tenderers that have participated in grants or procurements for Preparatory Activities to participate in tenders for contracts. A case-by-case analysis is necessary and F4E is invited to implement appropriate safeguards in conformity with the above case law to benefit from R&D Preparatory Activities.

The Committee understands that F4E will state clearly in the call for tender or request for proposals for Preparatory Activities if, it deems it necessary that beneficiaries of grants or their subcontractors will have to be excluded from participating in tenders for the award of future procurement contracts.

The Committee encourages F4E to make optimal use of its grant and procurement procedures at its disposal and, in particular, notes that the competitive dialogue allows technical solutions for particularly complex contracts to be finalised on the basis of a dialogue with a group of selected tenderers before launching the call for tender.