

# Call for expression of interest for the establishment of a list of prospective individual experts to act as adjudicators for disputes arising from Operational Contracts of Fusion for Energy.

**REF: F4E-ADJ-CALL-2021**

## **1. Background**

### **What is Fusion for Energy?**

The European Joint Undertaking for ITER and the Development of Fusion Energy (hereinafter “Fusion for Energy” or “Joint Undertaking”) has been established by the Council of the European Union<sup>1</sup> with three objectives:

- Providing Europe’s contribution to the ITER International Fusion Energy Organisation as the European Domestic Agency;
- Providing Europe’s contribution to the Broader Approach agreement between Euratom and Japan (JT60-SA, IFMIF-EVEDA and IFERC projects) as the Implementing Agency;
- Preparing for the construction of demonstration fusion reactors (DEMO).

Further information on the organisation and activities of Fusion for Energy can be found on its web site at: <http://fusionforenergy.europa.eu/>

### **What is “Adjudication”?**

A number of Operational Contracts<sup>2</sup> of Fusion for Energy includes a specific dispute settlement mechanism starting with “Adjudication”, based on FIDIC contract provisions.

Adjudication is a procedure by which any party to a construction contract has a right to have a dispute decided by an adjudicator. This process is intended to be quicker and more cost effective than litigation or arbitration. The adjudicator(s) must generally decide the dispute in a very short time and the decision adopted is binding.

The panel of adjudicators should consist of highly qualified experts (primarily engineers) specialised in the field of the subject matter of the dispute.

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<sup>1</sup> OJ L 90/58 of 30.3.2007

<sup>2</sup> Operational Contracts are contracts awarded by Fusion for Energy in order to obtain the supply of movable or immovable assets, the execution of works or the provision of services for the implementation of the F4E's international tasks related to the construction of ITER and the implementation of the Broader Approach and Demo.

## **2. Tasks of the Experts**

Fusion for Energy hereby invites applications from individuals with a view to establishing a list of individual independent experts who may be called upon to act as adjudicators in order to provide technical expertise related to their technical area for the resolution of claims. In addition, the adjudicators may be requested to attend a number of information sessions/training days to maintain sound knowledge of overall progress of the contracts and ensure early detection of any potential disagreement with Contractors.

The list shall be valid for a period of five years from the date of publication of this call on the official website of Fusion for Energy.

## **3. Technical Areas of Expertise**

Interested candidates are expected to have and be able to demonstrate solid professional experience in one or more of the following areas of activities:

- 1- Complex civil construction
- 2- Construction of nuclear buildings
- 3- High and medium voltage power supplies
- 4- Heating & current drive systems
- 5- Construction law
- 6- Engineering contract law

Prospective experts may apply to one or more areas of activities.

## **4. Conditions of Appointment**

Experts on the list who possess the appropriate expertise and competences for the task in question and in accordance with the principles of non-discrimination, equal treatment and absence of conflict of interests may be appointed by Fusion for Energy.

Appointment of an expert shall take place through signature of a contract between the expert as a natural person and Fusion for Energy. Fusion for Energy does not intervene in any agreements between the expert and his/her current employer.

Experts are entitled to a compensation for each full day of work amounting to **950 Euros per day**<sup>3</sup>.

In addition, if the experts are required to carry out the tasks away from their place of residence, they shall be entitled to a flat rate subsistence allowance and reimbursement of travel expenses according to the rules defined in the Contract.

For any given expert, the total of all payments (for both compensation and reimbursement of subsistence and travel expenses) to be made throughout the duration of the list (5 years) shall not exceed **€ 139 000** (one hundred and thirty-nine thousand Euros).

The detailed contractual information and the rules for reimbursement of travel and subsistence expenses are available in the model contract published on F4E's website.

## **5. Exclusion Criteria**

Candidates shall be excluded from participation if they are in one of the situations of exclusion referred to in article 136 of the Financial Regulations<sup>4</sup>:

- a) They are bankrupt, subject to insolvency or winding-up procedures, where their assets are being administered by a liquidator or by a court, where they are in an arrangement with creditors, where their business activities are suspended, or where they are in any analogous situation arising from a similar procedure provided for under Union or national law ;
- b) It has been established by a final judgment or a final administrative decision that they are in breach of their obligations relating to the payment of taxes or social security contributions in accordance with the applicable law;
- c) It has been established by a final judgement or a final administrative decision that they are guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which they belong, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:
  - (i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of eligibility or selection criteria or in the performance of a contract;

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<sup>3</sup> The Expert may decline to receive a compensation, especially if that were to be inconsistent with his contractual or other legal obligations.

<sup>4</sup> REGULATION (EU, EURATOM) 2018/1046 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 July 2018 repealing Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union.

(ii) entering into agreement with other persons or entities with the aim of distorting competition;

(iii) violating intellectual property rights;

(iv) attempting to influence the decision-making process of the contracting authority during the award procedure;

(v) attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;

d) It has been established by a final judgement that they are guilty of the following:

(i) fraud, within the meaning of Article 3 of Directive (EU) 2017/1371 of the European Parliament and of the Council<sup>5</sup> and Article 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995;

(ii) corruption, as defined in Article 4(2) of Directive (EU) 2017/1371 of the European Parliament and of the Council or active corruption within the meaning of Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of EU Member States, drawn up by the Council Act of 26 May 1997, or conduct referred to in Article 2(1) of Council Framework Decision 2003/568/JHA or corruption as defined in other applicable laws;

(iii) conduct related to a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA<sup>6</sup>;

(iv) money laundering or terrorist financing within the meaning of Article 1(3), (4) and (5) of Directive 2015/849 of the European Parliament and of the Council<sup>7</sup>;

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<sup>5</sup> Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198 28.7.2017, p. 29)

<sup>6</sup> Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organized crime (OJ L 300, 11.11.2008, p. 42).

<sup>7</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC

(v) terrorist-related offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA, respectively, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 4 of that Decision;

(vi) child labour or other offences concerning trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council;

e) They have shown significant deficiencies in complying with main obligations in the implementation of a legal commitment financed by the Union's budget, which has: (i) led to its early termination of a legal commitment; (ii) led to the application of liquidated damages or other contractual penalties; or (iii) been discovered by a Contracting Authority, OLAF or the Court of Auditors following checks, audits or investigations;

f) It has been established by a final judgment or final administrative decision that they have committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95;

g) It has been established by a final judgment or final administrative decision that they have created an entity in a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations in the jurisdiction of the registered office, central administration or principal place of business;

h) for the situations referred to in points (c) to (g) above the person is subject to:

(i) facts established in the context of audits or investigations carried out by the European Public Prosecutor's Office after its establishment, the Court of Auditors, the European Anti-Fraud Office (OLAF) or the internal auditor, or any other check, audit or control performed under the responsibility of an authorising officer of an EU institution, of a European office or of an EU agency or body;

(ii) non-final judgments or non-final administrative decisions which may include disciplinary measures taken by the competent supervisory body responsible for the verification of the application of standards of professional ethics;

(iii) facts referred to in decisions of entities or persons being entrusted with EU budget implementation tasks;

(iv) information transmitted by Member States implementing Union funds;

(v) decisions of the Commission relating to the infringement of Union competition law or of a national competent authority relating to the infringement of Union or national competition law; or

(vi) decisions of exclusion by an authorising officer of an EU institution, of a European office or of an EU agency or body.

Experts shall provide a declaration on honour to be found on Fusion for Energy website, stating that they are not in one of the situations of exclusion listed above. In case of doubt, they may be requested to provide supporting evidence of non-exclusion.

## **6. Selection Criteria**

In order to be selected and being included in the list of experts, candidates must fulfil the following minimum requirements:

Candidates shall:

- (a) have skills and knowledge appropriate to the areas of activities in which they might be asked to act as adjudicators;
- (b) have excellent command of English (both written and oral), while some knowledge of French is advantageous;
- (c) have prior experience in adjudication or arbitration proceedings;
- (d) have proven experience in international and multi-cultural environment;
- (e) have and be able to demonstrate solid professional experience in one or several of the areas of activities mentioned under Section 3 of this Call for Expression of Interest.

Before any contract of appointment, Fusion for Energy may request the selected expert to provide supporting documents related to its education and professional experience (i.e. copy of university degree and certificates of working experience) to demonstrate fulfilment of the selection criteria.

## **7. How to Apply**

Applications shall be sent via e-mail to [f4e-adjudicators@f4e.europa.eu](mailto:f4e-adjudicators@f4e.europa.eu)

In order to be eligible, candidates shall indicate the area of expertise for which they apply as per Section 3. Technical Areas of Expertise and shall provide a complete application consisting of:

- Updated CV
- Declaration on Honour on Exclusion Criteria (signed and dated)

The list is drawn up for a 5-year period from the date of publication of this call. Applications may be submitted at any time, up until the last 3 months of validity of the list.

## **8. Data Protection**

Any personal data provided by the expert shall be processed by Fusion for Energy as described in the Personal Data Protection Policy available at <https://fusionforenergy.europa.eu/privacy-policy/>

## **9. Transparency (ex-post)**

A list of experts (name and subject of the tasks executed) who have concluded a contract following the procedure set out at point 4 shall be published on the website of the contracting authority.

If an expert has concluded a contract of more than €15 000, the name, the locality (region of origin), amount, and subject of the contract shall be published on the website of the contracting authority no later than 30th June of the year following contract award. The information shall be removed two years after the year of contract award.