



	<p style="text-align: center;">Name of tender:</p> <p style="text-align: center;">Fuel cells and hydrogen market and policy observatory</p> <p style="text-align: center;">Reference number: FCH / OP / Contract 216</p>	
	<p>Question received</p>	<p>Answer of the Contracting Authority</p>
<p>1.</p>	<p>With regard to the call for tenders mentioned in the subject, we would have the following request for clarification.</p> <p>According to the tender specifications, point 1.1, “Participation in this procurement procedure is open on equal terms to all natural and legal persons coming within the scope of the Treaties, as well as to international organisations. It is also open to all natural and legal persons established in a third country which has a special agreement with the Union in the field of public procurement on the conditions laid down in that agreement. Where the plurilateral Agreement on Government Procurement concluded within the World Trade Organisation applies, the participation to this procedure is also open to all natural and legal persons established in the countries that have ratified this Agreement, on the conditions it lays down.”</p> <p>The OJ notice 2018/S 152-348173 specifies under point IV.1.8 that the GPA does not apply.</p> <p>These two statements seem to be in contradiction. Can the contracting authority therefore please clarify whether legal entities incorporated in the US (but who operate in an EU member state) are eligible to submit a tender?</p>	<p>The WTO Agreement on Government Procurement (GPA) grants access to procurement procedures launched by the European Commission, the European External Action Service (EEAS) and the Council on their own account to economic operators established in: Armenia, Canada, Chinese Taipei, Hong Kong, Israel, Japan, Korea, the Netherlands with respect to Aruba, Moldova, Montenegro, New Zealand, Singapore, Switzerland, Ukraine and the United States.</p> <p>Appendix I to the GPA indicates that only the European Commission, the EEAS and the Council are concerned as contracting authorities. The FCH 2 JU is not a part of the GPA.</p> <p>As a result, the procurement procedures launched by the FCH 2 JU are not open to the economic operators established in the third countries mentioned above.</p> <p>Pursuant to Article 119(1) Financial Regulation: “Participation in procurement procedures shall be open on equal terms to all natural and legal persons coming within the scope of the Treaties and to all natural and legal persons established in a third country which has a special agreement with the Union in the field of public procurement under the conditions laid down in that agreement.” In case there is no such agreement, or the agreement does not apply to the kind of contracts put out to tender, economic operators of third countries are not entitled to participate.</p>



		<p>As a result, due to the fact that there is no international agreement covering the right of economic operators established in the United States to participate in public procurement procedures launched by the FCH 2 JU, such economic operators are not entitled to participate as tenderers or as joint tenderers.</p>
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