



Name of tender:

**Study on
Value Chain and Manufacturing Competitiveness Analysis for Hydrogen
and Fuel Cells technologies**

Reference number: FCH contract 192

	Question received	Answer of the Contracting Authority
1.	<p>Given that the USA is a signatory to the WTO plurilateral agreement on government procurement, are US companies eligible to bid for this work as (a) sole bidders, (b) partners in a consortium and (c) subcontractors to eligible bidders?</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, Switzerland², 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</p>



		<p>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 of America 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> <p>Regarding subcontracting: As contracting authorities cannot limit subcontracting, economic operators are free to choose their subcontractors from any country. Thus, in principle all economic operators can act as subcontractors of other economic operators who have themselves access to the EU procurement procedures.</p>
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