



**FUSION
FOR
ENERGY**

13th ILO meeting

ILOs' questions transmitted before meeting

29th September 2011 – Cadarache

Reminder: Requests for information relating to ongoing procurement procedures by ILO shall not be treated by F4E

Contractual condition in general (CH ILO) bis, from 12th ILO meeting

Implementation of petitions from Industry and ILO's in the new Model Contracts of F4E. The example chosen to illustrate our petitions is the model contract for OPE 305. Indeed, since the 11th ILO meeting on April 15, 2011, only one Call for Tender using the Open Procedure has been issued. This call (OPE 305) was even issued on the day preceding our meeting (April 14th, 2011). The remarks in the attached table may therefore not be applicable to really "future" Calls for tender. Nevertheless, this table illustrates the present situation and confirms our wish for reform. Out of the 5 petitions mentioned here, only 1 has been implemented by F4E. In particular, we'd appreciate seeing the word "Generally" d1 disappear from the comment to the 5th petition.

F4E answer (update): OFC-322 (port Integration) illustrates that F4E has taken into account the agreed changes: limit of Liability, Annex on nuclear liability, LD's.

Slide 2

d1

ask Jean-René what it refers to exactly
davalme, 23/09/2011

Limit of liability (UK ILO) bis, from 12th ILO meeting

ILOs comment: It's very encouraging to see that F4E have started to listen to industry and have moved on some of the issues. Nevertheless, the limitation of the Contractors liability is still not in a form acceptable to many organisations. The cap needs to be expressed as applying in contract, in tort or otherwise. We are not seeking to cap anything that cannot be capped under the law but we are looking for a comprehensive and enforceable limit.

F4E answer (update):

OFC-322 illustrates a reasonable cap (limit to the value of one Specific contract with threshold of 3M€)

Indirect & Consequential Damages (UK ILO) **bis**, from 12th ILO meeting

ILOs comment: F4E are resisting the requests for an exclusion of consequential & indirect losses. This is at odds with the ITER IO position who have now started to include a clause in their contracts. This will become more of an issue for industry as contract values increase and we move out of consultancy and into design, manufacture & construction.

F4E answer **(update)**

F4E has taken into account the request (ex OFC-322: IO explicitly excluded from the third party claim, except gross negligence) d2

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d2

see with Legal office if II.2.7.1 referring to II.2.1.1 does limit to the value of contract, or not.
davalme, 23/09/2011

Nuclear indemnity (UK ILO) bis, from 12th ILO meeting

ILO comment: Draft contracts are being issued with no nuclear indemnity. The RH contract included a clause stating that an IO indemnity would be provided but this clause was deleted when a copy of the indemnity was requested. Again, this will and is becoming more of a concern as the project progresses towards construction.

F4E answer (unchanged)

The clause was in a Framework contract which is not the legal instrument where it could be.

If applicable, it could be part of task agreements.

ILO question (UK ILO): 'open procedure'. I understand that your procedure allows you, after cancellation, to adopt a 'negotiated procedure' with only those who submitted a non compliant bid. Had the right procedure been adopted from the start then we would have seen more organization willing to submit a tender?

F4E answer: article 100.2.c (ii) of the IR explains that a negotiation consecutive to an Open procedure is possible only if [...] *the Joint Undertaking invites all the tenderers that satisfied the selection criteria and submitted tenders in accordance with the formal requirements of previous procedure.*

Miscellaneous (1/2)



ILO question (UK ILO): in the recent Tender for the 'Port Plug Integration' work program, companies have raised concerns which I have already been sent you. Please would you provide some answers so that companies can decide whether to bid or not.

F4E answer: *Requests for information relating to ongoing procurement procedures by ILO shall not be treated by F4E. Companies must ask their questions directly on the Portal through the Q&A tool*

ILO question (UK ILO): IDM access lost

F4E answer: selfadmin@iter.org has sent an automatic email the 21/08/2011 concerning expiration accesses. Please contact IO on the subject.

Miscellaneous (2/2)



ILO question (Spain ILO): could we have the list of F4E staff with countries and positions?

F4E answer: F4E needs the precision and motivation of such requests which goes beyond ILO attributions (a priori such requests could be limited by the rules on personal data). BI will specify this request.

ILO question (Spain ILO): What are the rules of procedure of EXCO and AFC?

F4E answer: For EXCO see F4E website, at page:

<http://f4e.europa.eu/aboutfusion/execcommittee.aspx>

The data will be updated within few days to take into account last changes. Concerning AFC see earlier explanations (Part 1).

End of Part 3

Questions / Comments

Next meeting