



# **Aid programme for investment in the demonstration and validation of emerging marine renewable energy technologies**

## **Terms and conditions**

**2020**

Ente Vasco de la Energía  
Alda. Urquijo 36-1ª planta  
48011 BILBAO  
Telephone: 94 403 56 00

## Aid programme for investment in the demonstration and validation of emerging marine renewable energy technologies

### 1. Purpose of the programme, description and nature of the aid

1.1. In accordance with the objectives of the Energy Policy of the Basque Government, as set out in the document Energy Policy of the Basque Country 2030 (3E2030), the mission of the Department of Economic Development and Infrastructure is to contribute, through the provision of the required public driver mechanisms, to greater efficiency in energy consumption and to the delivery of a more competitive, more sustainable and more secure energy system by reducing environmental impact, the amount of energy required for consumption and dependence on external resources.

To do so, and with the aim of promoting actions requiring investment in the demonstration and validation of emerging marine renewable energy technologies in the Autonomous Community of the Basque Country (hereinafter, “ACBC”), this aid programme for investment in the demonstration and validation of emerging marine renewable energy technologies (hereinafter, “aid programme”) has been published.

The funds allocated to this aid programme amount to **EUR two and a half million (€2,500,000)**, as per the credit provisions set out in the budget of Ente Vasco de la Energía (Basque Energy Agency, hereinafter “EVE”) for the period 2019-2021. The budget allocation for 2019 is **EUR five hundred thousand (€500,000)**.

1.2. In compliance with Article 8 of the General Subsidies Act 38/2003, of 17 November (hereinafter “GSA”), the Board of Directors of EVE agreed, in a meeting held on 3 January 2020, to approve the Strategic Subsidies Plan of EVE for 2020, amongst other things.

1.3. All aid granted within the framework of this aid programme shall be considered as non-refundable subsidies. This call for applications for the aid programme has sufficient budgetary provision in the EVE budgets for the financial year 2020.

1.4. This aid programme and the subsidies that may be awarded through it are compatible with the internal market under Section 3, Article 107 of the Treaty on the Functioning of the European Union, and are exempt from the obligation to notify the Commission, as established in Article 108 of that same treaty.

The Exemption Regulation is a basic element of state aid policy in the respect that it identifies those cases of aid which the European Commission considers compatible with the internal market and do not therefore require prior approval, so that the legality of those cases is solely conditional on compliance with the material requirements of the Regulation and various formal procedures. The Exemption Regulation, in force since 1 July 2014, exempts 13 categories of state aid from notification. In turn, each of these 13 categories is sub-divided into a large number of authorised schemes. In particular, the Exemption Regulation covers, amongst other types of aid, regional aid, aid for SMEs, SME access to funding and aid for research and development and innovation, amongst others.

The aid provided for under this aid programme generally falls within the scope of Commission Regulation (EU) 651/2014, of 26 June 2014 (hereinafter “Regulation 651/2014”), declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (DOUE 2014 L 187), and in particular, in the Article as set out below:

**Article 25** “Aid for research and development projects”.

1.5. For the purposes of this aid programme and pursuant to the provisions of Articles 1 and 2 of Appendix 1 of Regulation 651/2014, an enterprise is considered to be:

*“any entity, irrespective of its legal form, engaged in an economic activity (understood as any activity consisting of offering goods and services in a given market). This includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity”.*

The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.

**1.6.** For the purposes of this aid programme and pursuant to the provisions of Article 3 of Appendix 1 of Regulation 651/2014:

1. An “autonomous enterprise” is any enterprise which is not classified as a partner enterprise within the meaning of Paragraph 2 or as a linked enterprise within the meaning of Paragraph 3.

2. “Partner enterprises” are all enterprises which are not classified as linked enterprises within the meaning of Paragraph 3 and between which there is the following relationship: an enterprise (upstream enterprise) holds, either solely or jointly with one or more linked enterprises within the meaning of Paragraph 3, 25% or more of the capital or voting rights of another enterprise (downstream enterprise).

However, an enterprise may be ranked as autonomous, and thus as not having any partner enterprises, even if this 25% threshold is reached or exceeded by the following investors, providing that those investors are not linked, within the meaning of Paragraph 3, either individually or jointly to the enterprise in question:

a) public investment corporations, venture capital companies, individuals or groups of individuals with a regular venture capital investment activity who invest equity capital in unquoted businesses (business angels), provided the total investment of those business angels in the same enterprise is less than EUR 1,125,000;

b) universities or non-profit research centres;

c) institutional investors, including regional development funds; and

d) autonomous local authorities with an annual budget of less than EUR 10 million and less than 5,000 inhabitants.

3. “Linked enterprises” are enterprises which have any of the following relationships with each other:

a) an enterprise has a majority of the shareholders’ or members’ voting rights in another enterprise;

b) an enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory board of another enterprise;

c) an enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;

d) an enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders’ or members’ voting rights in that enterprise.

There is a presumption that no dominant influence exists if the investors listed in the second Sub-paragraph of Paragraph 2 are not involving themselves directly or indirectly in the management of the enterprise in question, without prejudice to their rights as shareholders.

Enterprises having any of the relationships described in the first Sub-paragraph through one or more other enterprises, or any one of the investors mentioned in Paragraph 2, are also considered to be linked.

Enterprises which have one or other of such relationships through a natural person or group of natural persons acting jointly are also considered linked enterprises if they engage in their activity or in part of their activity in the same relevant market or in adjacent markets.

An “adjacent market” is considered to be the market for a product or service situated directly upstream or downstream of the relevant market.

4. Except in the cases set out in Paragraph 2, second sub-paragraph, an enterprise cannot be considered an SME if 25% or more of the capital or voting rights are directly or indirectly controlled, jointly or individually, by one or more public bodies.

5. Enterprises may make a declaration of status as an autonomous enterprise, partner enterprise or linked enterprise, including the data regarding the thresholds set out in Article 2. The declaration may be made even if the capital is spread in such a way that it is not possible to determine exactly by whom it is held, in which case the enterprise may declare in good faith that it can legitimately presume that it is not owned as to 25% or more by one enterprise or jointly by enterprises linked to one another. Such declarations are made without prejudice to the checks and investigations provided for by national or Union rules.

1.7. The purpose of this aid programme is to provide support for actions for the demonstration and validation of technological developments in the field of marine renewable energies, which form part of what is understood under Regulation 651/2014 as experimental development in R&D projects.

- As laid out in Point 2.86 of the Commission Regulation 651/2014, experimental development means acquiring, combining, shaping and using existing scientific, technological, business and other relevant knowledge and skills with the aim of developing new or improved products, processes or services. This may also include, for example, activities aiming at the conceptual definition, planning and documentation of new products, processes or services.

Experimental development may comprise prototyping, demonstrating, piloting, testing and validation of new or improved products, processes or services in environments representative of real life operating conditions where the primary objective is to make further technical improvements on products, processes or services that are not substantially set. This may include the development of a commercially usable prototype or pilot which is necessarily the final commercial product and which is too expensive to produce for it to be used only for demonstration and validation purposes.

Experimental development does not include routine or periodic changes made to existing products, production lines, manufacturing processes, services and other operations in progress, even if those changes may represent improvements.

- Demonstration actions means actions involving the experimental testing of a technology, system or method under conditions as similar as possible to reality, with the end goal of their subsequent incorporation into the market.
- As laid out in Point 2.90 of the Commission Regulation 651/2014, effective collaboration means collaboration between at least two independent parties to exchange knowledge or technology, or to achieve a common objective based on the division of labour where the parties jointly define the scope of the collaborative project, contribute to its implementation and share its risks, as well as its results. One or several parties may bear the full costs of the project and thus relieve other parties of their financial risks. Contract research and provision of research services are not considered forms of collaboration.
- As laid out in Point 2.95 of the Commission Regulation 651/2014, innovation support services means the provision of office space, data banks, libraries, market research, laboratories, quality

*labelling, testing and certification for the purpose of developing more effective products, processes or services.*

- 1.8. Projects applying for aid under Regulation 651/2014 shall be required to provide evidence that support from this aid programme will have an incentive effect (Article 6.2 of Regulation 651/2014). To this effect, aid shall be considered to have an incentive effect:
- if the beneficiary has submitted an application for aid before starting work on the project or activity potentially eligible for aid, and if the application for aid contains at least the information set out in Article 6.2 of Regulation 651/2014.

Therefore, applications for projects or works which began prior to the application for aid shall not be accepted, where “start of project” or “start of works” is understood as set out in the definition in Article 2 (23) of Regulation 651/2014.

## 2. Beneficiaries

- 2.1. For the purposes of this aid programme, the following entities are eligible to apply for aid:

- a) All legal entities, public or private, carrying out actions provided for under section 4 of these terms and conditions in the ACBC.
- b) In accordance with the provisions of Article 11 of the GSA, public or private consortia, groups or associations of companies without legal personality which carry out actions provided for under section 4 of these terms and conditions in the ACBC. In the case of groups of natural or legal persons, public or private, without personality, not only the group without personality but all the members that form part of it shall be considered beneficiaries, and the regulatory prescriptions of the beneficiaries provided for in these terms and conditions shall apply to each and every one of them.

In these cases, the performance commitments assumed by each member of the group, as well as the amount of subsidy to be applied for by each of them, shall be expressly stated both in the application and in the award decision.

In addition to the aforementioned provisions, the groups shall comply with the obligations imposed on them under Articles 11.3 and 13.2 of the General Subsidies Act 38/2003, of 17 November (hereinafter “GSA”) and under Article 44 of the Revised Text of the Law of Governing Principles of the General Treasury of the Basque Country, and, in accordance with the provisions of Articles 39 and 65 of the GSA, the group may not be dissolved until the statute of limitations provided for in the demonstration and its validation included therein has elapsed.

- 2.2. Pursuant to the provisions of Article 13 of the GSA and Article 50 of the Legislative Decree 1/1997, individual persons or entities complying with the conditions governing the award of the subsidy and meeting the requirements laid down in the terms and conditions of this call for applications may be granted the status of beneficiary.

Evidence of not being affected by any prohibitions to be considered as a beneficiary may be provided through the means provided for under Articles 13.7 of the GSA and 50.6 of the LD 1/1997.

- 2.3. Proof of being up-to-date with all tax, Social Security and, if relevant, subsidy repayments shall be required to be granted the status of beneficiary, prior to the aid being awarded and to preserve the status of beneficiary until the subsidy is paid.

- 2.4. The following shall not be eligible as beneficiaries:

- a) Applicants affected by any of the circumstances provided for in Article 13.2 of the GSA and/or in Article 50.5 of the LD 1/1997, or those who have incurred, or are currently

involved, in criminal or administrative sanction proceedings constituting ineligibility for consideration as a beneficiary.

- b) In compliance with Law 14/2007 (28 December) in relation to the Basque Country Charter for Justice and Solidarity with Impoverished Countries, those organisations whose corporate purpose is wholly or partially the production, commercialisation and funding of arms.
- c) As provided for in Paragraph 4(a) and 4(c) of Article 1 of Regulation 651/2014:
- undertakings subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market; and
  - undertakings in difficulty, as expressed under Paragraph 18 of Article 2 of Regulation 651/2014.

### **3. Budget allocation and time frame for the submission of applications**

The funds allocated to this aid programme will be **EUR two and a half million (€2,500,000)**, as per the credit provision prescribed in the budget of EVE for the period 2020-2022. The amount of funds allocated for 2020 is **EUR five hundred thousand (€500,000)**.

The total value of aid for the financial year 2020 shall not exceed the sum of EUR 500,000. The total amount allocated for each of the 2021 and 2022 financial years will be EUR 1,000,000.

The period for submitting applications for the aid programme shall begin on the day immediately following publication of these terms and conditions in the Official Gazette of the Basque Country (hereinafter the “OGBC”), and shall finish when the budget allocated to this effect has been exhausted.

In any case, irrespective of budget availability, the period for submitting applications for aid shall finish on 31 October 2020.

Calculation of the periods under consideration is governed by Article 30 of Law 39/2015, of 1 October, governing Common Administrative Procedure of Public Administration (hereinafter “Law 39/2015”).

Exhaustion of available budget shall be publicly notified in the OGBC and on the EVE website ([www.eve.eus](http://www.eve.eus)).

All applications submitted which, though duly completed and being processed, are unable to be accepted because the budget allocation has been exhausted, shall be rejected on those grounds by decision of the General Manager of EVE, unless agreement has been reached to increase the budget allocation prior to the application being rejected, in which case the application shall continue to be processed.

### **4. Eligible actions and amount of aid**

Under this aid programme, actions considered as eligible for aid are those undertaken in energy efficiency and described in section 4 of these terms and conditions, conducted by applicants in the ACBC and both executed and invoiced between the date subsequent to submission of the corresponding application for aid under this programme and 31 December 2020 (Article 2.23 of Regulation 651/2014). For the financial years 2021 and 2022, the annual phases detailed in each application submitted and approved shall be executed and invoiced within the period between 1 January of the corresponding financial year and 31 December of that same financial year.

Actions eligible for aid under this aid programme are exclusively as follows:

- a. Pilot testing at the demonstration and validation phase of full scale, or almost full scale, prototypes of wave energy converters.
- b. Pilot testing at the demonstration and validation phase of full scale, or almost full scale, prototypes of floating platforms for wind turbines.
- c. Pilot testing at the demonstration and validation phase of full scale, or almost full scale, prototypes of offshore wind turbines.
- d. Pilot testing at the demonstration and validation phase of prototypes of auxiliary equipment or components considered as complementary to any of the prototypes described under sub-sections **4.a, 4.b and 4.c** of these terms and conditions.
- e. Coordination of projects linked to one or more of the actions described herein under **sub-sections 4.a, 4.b, 4.c and 4.d** of these terms and conditions.

All actions shall necessarily be carried out in open-sea testing facilities within the ACBC. Projects may be submitted:

- ✓ as an **individual proposal**, submitted by one sole entity, or
- ✓ as a **collaborative proposal**, taken forward together on a shared basis by various entities of distinct legal personalities, relations between whom are established through a formal contract, arrangement or legal agreement in which the rights and obligations of each participating entity are laid out. In this respect, a collaborative proposal shall require collaboration between a minimum of two independent entities.

Each action potentially eligible for aid shall necessarily be submitted with a **commitment of acceptance from the open-sea testing facilities** where the prototype is going to be tested.

Projects must necessarily target commercialisation, present innovative solutions and be replicable and scalable. Furthermore, all projects submitted shall necessarily demonstrate that the prototypes for testing have successfully gone through a rigorous R&D stage, with tests conducted on different operational scales in acknowledged and certified facilities, and that the designs, performance and project costs have been verified.

Actions covered under **sub-sections 4.a, 4.b, 4.c and 4.d** of these terms and conditions shall receive aid corresponding to 25% of the eligible cost. The action covered under **sub-section 4.e** of these terms and conditions shall receive aid corresponding to 10% of the eligible cost (see paragraph on personnel expenses in **sub-section 5.1** of these terms and conditions).

## 5. Eligible costs

### 5.1. Eligible aspects

- For those actions eligible for aid under **Section 4 of these terms and conditions**, eligible costs of research and development projects shall be allocated to a specific category of research and development (see **sub-sections 4.a, 4.b, 4.c and 4.d of these terms and conditions**).
- For those actions eligible for aid under **Section 4 of these terms and conditions**, the following costs and expenses shall be considered as eligible costs:
  - Costs of instruments and equipment, to the extent and for the period they are used for the action potentially eligible for aid under this aid programme. Where such instruments and equipment are not used for the entirety of their useful life to perform the action, only the depreciation costs incurred in the course of performing the action shall be considered as eligible for aid. Such costs shall be calculated on the basis of generally accepted accounting principles and shall be considered as those required to conduct the pilot testing on the prototypes, such as the costs of moorings and the umbilical cable, amongst others. The costs of the prototypes themselves shall be specifically excluded.

- Costs of contractual research, technical knowledge and patents bought or licensed from outside sources at market prices, where the transaction has been carried out at arm's length and there is no element of collusion involved, as well as costs of consultancy and equivalent services used exclusively for the research activity and provided they have been incurred in the course of the pilot testing.
- Additional overheads incurred directly as a result of performing the action eligible for aid, such as the rental costs of the open sea testing facilities for emerging marine renewable energy technologies.
- Personnel expenses of the consortium, group or association of companies, resulting from the specific activity outlined in **sub-section 4.e** of the terms and conditions of this aid programme.

For this concept of coordination, typified in **sub-section 4.e** of these terms and conditions, a maximum limit of 10% of the aid awarded for the action eligible for aid is established. In any case, the maximum aid to be awarded for this concept shall not exceed EUR 100,000.

In any case, all financial costs related to material and labour and considered as eligible for aid must be directly attributable to the action eligible for aid.

- Eligible costs shall be expressed inclusive of tax deductions and/or other fiscal charges.

## 5.2. Non-eligible costs

- VAT paid with respect to the acquisition of goods and services invoiced and, in general, any tax.
- Expenses resulting from the investment and those related to own personnel costs over and above the ceiling established in **sub-section 5.1** of these terms and conditions, as well as those related to land acquisition.
- Investment in the acquisition of used equipment.
- Investment in self-propelled machinery, vehicles, bicycles and other means of transport for goods and passengers in general.
- Investment in the repair, adaptation and maintenance of equipment and facilities.
- Servers, printers and, in general, any type of office equipment.
- Market studies, feasibility studies or analysis.
- Any financial cost identified as expenditure on civil works.
- In general, all and any costs which are not clearly defined or cannot be directly identified with the delivery of the energy-related objectives planned in relation to the investment in the actions provided for in **Section 4** of these terms and conditions.

## 6. General limitations on subsidies

### 6.1. Limitations on the amount of aid

The actions carried out within the scope of this call for applications for the aid programme shall be limited to a total and maximum amount of **EUR one million, two hundred and fifty thousand (€1,250,000)** per action; likewise, the total and maximum amount of aid per beneficiary shall also be **EUR one million, two hundred and fifty thousand (€1,250,000)**. Under no circumstances shall the percentages established for each type of action defined in **Section 4** of this aid programme, or the budgetary limitations established under **Section 3** of this aid programme, be exceeded for each yearly period.

The amount of aid established in **Section 4** of these terms and conditions (**25%** of eligible costs) shall be increased through additional bonuses, based on compliance with the following conditions:

- a) when aid is awarded to SMEs, maximum aid intensity may be increased 10 percentage points for medium-size enterprises and 20 percentage points for small enterprises; and
- b) an additional bonus of 15 percentage points shall be added if:
- (i) the action involves effective collaboration:
- between undertakings, at least one of which must be an SME, or is carried out in at least two Member States, or in a Member State and in a Contracting Party of the EEA Agreement, and no single undertaking bears more than 70% of the eligible costs, or
  - between an undertaking and one or more research and knowledge-dissemination organisations, where the latter bear at least 10% of the eligible costs and have the right to publish their own research results.

Actions conducted within the scope of this call for applications for aid for eligible actions as laid out in sub-sections **4.a, 4.b, and 4.c of these terms and conditions** shall be limited to a maximum amount of aid of **EUR five million (€5,000,000)**. Any quantity over and above this limit shall not be eligible for aid.

Actions conducted within the scope of this call for applications for aid for eligible actions as laid out in sub-section **4.d of these terms and conditions** shall be limited to a maximum amount of aid of **EUR six hundred thousand (€600,000)**. Any quantity over and above this limit shall not be eligible for aid.

#### **6.2. Cumulation with other aid**

- Aid granted under the terms and conditions of this aid programme shall be considered as compatible with that which may be awarded for the same purpose by other public or private bodies, providing the amount of aid taken as a whole is, in percentage terms, equal to or less than the following:
  - In the case of actions eligible for aid under **sub-sections 4.a, 4.b, 4.c and 4.d of these terms and conditions**, 40% of eligible costs, except in the case of small and medium size enterprises, for which the percentage figures shall be 60% and 50% respectively.
  - In any case, once the total amount of aid to be received by each beneficiary is known, the amount of aid that same organisation is eligible to receive under this aid programme shall be determined taking into account all applicable regulations in force in the European Union and, in particular, the provisions of Article 8 of Regulation 651/2014.

In the case of aid from other entities materialising after the decision to award aid has been taken by EVE, and in compliance with the conditions pursuant under **sub-section 12.e** of these terms and conditions, the beneficiary shall be required to inform EVE of this situation. In this case, and if subsequent analysis of the aid package leads to a reduction in the amount of the aid, this will be communicated by means of the corresponding decision of partial or total revocation and prior to the payment of the aid.

#### **6.3. Outsourcing or contracting of third parties for activities for which the aid has been awarded**

- a) In accordance with the provisions of Article 29 of the GSA and Article 68 of the General Regulation on Subsidies, a beneficiary is understood to have outsourced when that same beneficiary reaches an agreement with third parties concerning the total or partial execution of the activity for which the subsidy has been awarded. Costs incurred by the beneficiary in the normal course of conducting the activity for which the subsidy has been awarded shall be exempt from this concept of outsourcing.

In this regard, outsourcing or the contracting of third parties shall not exceed 50% of the aid awarded for the activity. All other provisions of the aforementioned Article 29 in relation to outsourcing or the contracting of third parties for activities for which aid has been awarded

shall be applicable. The outsourcing of works by the beneficiary which require material or human resources other than those needed for the direct corporate purpose of the beneficiary is excluded from the subcontracting limit.

- b) In accordance with Article 31.3 of the GSA, and without prejudice to the regime of application of the Public Sector Procurement Act (PSPA) resulting from the legal nature of the applicant, when the amount of eligible costs exceeds the amounts established under public procurement law for minor contracts (EUR 15,000 [excluding VAT] for services and supplies and EUR 40,000 [excluding VAT] for works), the beneficiary shall necessarily ask for at least three offers from different service providers prior to entering into any contractual obligation for the works, service provision or delivery of the good, except in those cases where, on account of the special nature of the works or goods, there is an insufficient number of entities in the market capable of carrying out or providing those services or goods or unless the costs had been incurred prior to the subsidy (except, in this last case, for cases of undertakings subject to Regulation 651/2014).

The selection process from among the different offers shall be conducted with due regard to principles of efficiency and economy. Likewise, the applicant shall specifically submit a report justifying the decision taken when the offer with the best price-quality ratio has not been selected.

## **7. Procedure for processing and managing applications**

Applications shall be submitted in the EVE offices or by certified mail within the time period stipulated in **section 3** of this aid programme. The postal address of EVE is as follows:

### **EVE – Ente Vasco de la Energía**

Apartado de correos 5020

Edificio Plaza Bizkaia  
Alameda de Urquijo, 36 – 1ª planta  
48011 Bilbao

Reference: **Emerging marine energy technologies 2020.**

If the application does not comply with all the requirements laid out in the terms and conditions of this aid programme, or is found to be incomplete or defective, the interested party shall be required to correct the situation and/or provide any and all required documentation within a maximum period of ten (10) working days from the date on which the aid applicant receives the notification to correct the situation, expressly stating that if these conditions are not met, the applicant shall be deemed to have withdrawn the application by means of a ruling to be issued under the terms set out in Article 21 of Law 39/2015.

If the required documentation is submitted within this period, the application shall continue to be processed. To this effect, the date of submission of the application shall be considered to be that on which the corrections were made.

## **8. Aid application**

The aid application form and all accompanying technical and administrative documentation must be submitted to the address indicated in **section 7** of these terms and conditions within the time period as stipulated in **section 3** of these terms and conditions. All such documentation may also be submitted in digital form (USB, etc.).

To apply for aid, the following documents must be submitted for each type of action:

**a. Aid application and administrative documentation**

*(i) Individual proposal:*

- ✓ **Appendix I.1. 2020 Aid Application Form.** Details of applicant, duly completed.
- ✓ **Appendix I.2. Administrative and Technical documents, including:**
  - Copy of identification document of signatory (legal representative).
  - Copy of CIF (VAT number)
  - Copy of the deed of proxy or document attesting to powers of representation of the applicant.
  - Copy of the deed, statutes or article of incorporation.
  - Accreditation certificate of the IBAN code of the beneficiary's bank account, where aid funds, providing all the requirements of the process to be followed under these terms and conditions have been met and the applicant has been approved as a beneficiary, are to be paid in.
  - Certified proof of being up-to-date with all payments to Regional Treasuries.
  - Certified proof of being up-to-date with all Social Security contribution payments.
  - In the case of enterprises having the status of small or medium-sized companies, as set out under Article 2 of Annex I to Regulation 651/2014, such enterprises shall provide documentation enabling this status to be verified by means of:
    - A certificate issued by the Social Security containing information on the number of employees of the company.
    - Document accrediting the annual turnover or annual balance sheet.
- ✓ **Appendix II.** A statement of regulatory compliance of the applicant at date of application.
- ✓ **Appendix III.** A statement, duly completed and at date of application, in relation to any other aid received. This statement must be submitted even if no other type of additional aid has been applied for or awarded.

If any such aid has been applied for and/or awarded by any other body or bodies, copies of this/these award(s) at date of application shall be provided.
- ✓ **Appendix IV.** In the case of enterprises, and for the purposes of Regulation 651/2014, a statement that the undertaking is considered an enterprise.

*(ii) Collaborative proposal*

In the event that the action eligible for aid is to be carried out by several entities according to a collaborative proposal, the set of entities shall submit, jointly as a whole, an aid application for the action, attaching the document - contract, arrangement or agreement - under which the relationship of consortium, group or association of companies has been formalised and in which the rights and obligations of the members of the same are established. At the same time, the implementation commitments (activities and detailed budgets) undertaken by each entity whose participation is contemplated in the joint action proposal must be indicated, together with any agreements on confidentiality, ownership of the results, legal protection of industrial and intellectual property (patents), future commercial exploitation of the results, public dissemination of the results, and others. At the same time, and individually for each of the entities, the documentation indicated in section (i) above shall be provided.

A representative or sole agent shall be appointed with sufficient authority to ensure that those obligations which, as an applicant, are applicable to the consortium, group or association of companies, are fulfilled.

For the purposes of development and management of the joint action proposal, one of the participants in the action shall take responsibility for all relations and liaison required with EVE for the success of the action eligible for aid, managing the project on behalf of all participating entities and thereby taking on the role of leader.

## **b. Technical documentation**

- ✓ **Appendix V. Technical Data:** Project Description. The following documents must be submitted:
  - **Technical and economic descriptive report.** This report will describe the experimental development from its initial stages through to that of the prototype to be subject to testing, including a description of the prototype itself. The report will also detail the end objective of the testing, the method to be used, the resources required and how to access them, the maintenance plan during testing, operations required for installation and removal, etc.
  - **Test programme.** Scheduling (by annual phases) of the test programme, covering the decision on where the tests are to take place and preparation of the test site and through, if so required, to the removal of the elements used in the trials.
  - **Risk analysis.** Availability of a contingency plan aligned to the risk analysis study conducted for the test programme.
  - **An itemised breakdown of the total budget** by concepts, and by entities in the case of a collaborative proposal, and of annual budgets (calendar year). Planning of the payments to be met by the applicant within each calendar year (see **Appendix X**, Budget Model).
  - **A letter of acceptance or of endorsement** signed by an authorised representative of the testing infrastructure where the demonstration programme is going to take place.

EVE shall have the right to request from all applicants any complementary documentation and/or information it considers necessary for the proper analysis of the aid application.

## **9. Decision, communication and publicity**

The decision to award aid (or otherwise) shall be conducted through a procedure of non-competitive tendering, whereby applications shall be examined and processed in the order in which they have been received and a decision taken on them based on their being correctly filled in and completed. If the application is found to be defective and needs correcting, the date of submission of the application shall be considered to be that on which the corrections were made, as provided for under **section 7** of these terms and conditions.

The General Manager of EVE shall take the final decision and duly inform the applicant using the means required to ensure compliance with the provisions of Law 39/2015, within a maximum of six (6) months from the date on which the application for aid was submitted (Article 21.2 of Law 39/2015). Once this period has expired, and under the terms established in Article 24.1 of Law 39/2015, if no notification has been received, all applicants may consider their applications accepted.

The final decision shall indicate: (i) the action eligible for aid, (ii) the amount of aid awarded (as a gross amount, without prejudice to the tax obligations arising by virtue of the nature of the

beneficiary), (iii) any other aspects deemed to be of interest, and (iv), where appropriate, the grounds on which the application has been rejected.

In the case of collaborative projects, the final decision shall also state the identity of the beneficiary undertakings that are members of the consortium, group or association of companies, the entity appointed to develop and manage the action eligible for aid and the total amount of aid assigned to each member.

Having exhausted administrative channels, the applicant shall have the right to appeal against the final decision of the General Manager of EVE within a period of one month from the day immediately after notification of the final decision, or directly undertake appeal proceedings in the Administrative Appeal Courts of Bilbao within a period of two (2) months from the day immediately after notification of the final decision, in accordance with the provisions of Articles 123 and 124 of Law 39/2015 and Article 46.1 of Law 29/1998, of 13 July, governing contentious-administrative jurisdiction (hereinafter "**Law 29/1998**").

Any change to the conditions on which the award of aid was based, provided the minimum requirements established by the regulations to be a beneficiary of aid have been safeguarded, may result in a change to the award decision, as provided for under the terms established in the regulatory guidelines for the subsidy (Articles 19.4 of the GSA and 49.2 of the LD 1/1997).

The actions to be undertaken shall necessarily be those described in the technical and economic report submitted with the application, though changes to those activities may be authorised by EVE provided a request for those changes has previously been made to EVE and have been fully justified by the beneficiary prior to the completion of those actions, without undermining the nature of those actions or the objectives pursued or adversely affecting third parties.

In those cases in which an action is deemed to have failed on technical grounds; that is to say, if, in the course of the action or at its completion, irrevocable technical faults have been identified which rule out delivery of the objectives set out in the technical and economic report submitted with the application, the beneficiary, or the entity responsible, shall have the right to request that EVE modifies the administrative decision to grant the aid to adjust it to the part of the action completed which has delivered the expected results. EVE may accept this request provided it is fully justified by the beneficiary or entity responsible.

Finally, on completion of the aid programme and in accordance with the provisions of Law 19/2013, of 9 December, on Transparency, Access to Public Information and Good Governance (hereinafter, "**Law 19/2013**") and the General Regulation on Subsidies, all aid awarded under the terms and conditions of this aid programme shall be published by EVE in the OGBC and on the EVE transparency portal, detailing all legally required data.

## **10. Payment of aid**

Entities with outstanding repayment obligations on sums corresponding to aid or subsidies of the same nature and awarded by the General and Institutional Administration of the ACBC, shall not be eligible for payment of aid.

In these circumstances, provision shall be made to ascertain whether the obligation accrued is being recovered voluntarily or through enforced recovery. Beneficiaries shall be considered to be up to date in the payment of obligations for the repayment of subsidies when they no longer have debts with the Administration granting them the aid due to the repayment of subsidies during the executive period or, in the case of beneficiaries or collaborating entities against which the use of enforced recovery is not appropriate, debts not paid during the voluntary period. Likewise, beneficiaries shall be considered to be up to date in the payment of subsidy repayment obligations when debts are deferred, divided or suspended when the corresponding repayment resolution is challenged (Article 21 of the General Regulation on Subsidies).

Payment of aid shall be made by EVE to the bank account as notified by the beneficiary, in accordance with the schedule outlined below in **sub-section 10.1**, subject to prior submission to EVE of supporting documentation substantiating that the corresponding activities eligible for aid have been undertaken and costs effectively incurred.

10.1 Aid shall be paid on the basis of planned test programme development and in accordance with the following payment schedule:

- a) 15% of the total subsidy shall be paid within a period of sixty (60) days from notification of the decision to award the subsidy and subject to the prior and express acceptance of the aid, request for the aid to be paid and presentation by the beneficiary or entity responsible of a bank guarantee for the same amount (see Appendix IX, **Model of Guarantee**).
- b) Once the prototype has been moored in the testing area and certification of the commissioning and setting up of the prototype has been signed by the competent authority, or an accreditation certificate has been provided by the testing infrastructure, EVE shall proceed to pay the part of the aid corresponding to the costs incurred and proven to date.
- c) At the end of each calendar year, and providing conditions laid out in point b) above have been met, the part of the subsidy corresponding to costs incurred since the last payment shall proceed to be paid.
- d) At the end of the test programme, the part of the subsidy corresponding to costs incurred up to the end of the test programme and not paid to date shall proceed to be paid.
- e) Finally, project coordination costs charged to each annual phase of the project shall be paid at the end of each calendar year.

All payments provided for under section 10.1 shall be subject to prior submission of documentation substantiating that the activities or phases have been undertaken in line with the time limits set out in the corresponding aid application, as indicated below in sub-section 10.2, and the degree to which the defined objectives have been delivered and costs effectively incurred.

10.2 With the exception of sub-section 10.1 above, and prior to the payment of any other amount of aid referred to in sub-section 10.1, the beneficiary or entity responsible shall submit the following documentation to EVE:

**a. Administrative documentation**

- ✓ **Appendix VI.** Notification of completion of phase or project.
- ✓ **Appendix VII.** A statement of regulatory compliance by the **beneficiary at date of submission of supporting documentation**.
- ✓ **Appendix VIII,** A statement, duly **dated from the date of submission of supporting documentation**, in relation to any other subsidy or aid received. This statement must be submitted even if no other type of additional aid has been applied for or awarded.

Where necessary, if any such aid has been awarded by any other body or bodies up to and including the date of application, copies of this/these award(s) shall be provided.

- ✓ The following documents shall also be submitted:
  - Proof of being up-to-date with all payments to Regional Treasuries.
  - Certified proof of being up-to-date with all Social Security contribution payments.

**b. Technical documentation**

- ✓ Itemised invoices (certified true copies) justifying the investment made, broken down and economically valued by items and dated within the period between the day immediately after the date of application for aid under this programme and 31 December 2020. For the financial years 2021 and 2022, invoices shall be dated within the period between 1 January of the corresponding financial year and 31 December of that same financial year. All invoices shall be issued to the entity qualifying as the beneficiary, as understood in sub-section 2.1 of these terms and conditions.

If the total investment stated in the aid application cannot be justified, a short explanation justifying the difference shall be required.

For projects which have involved the issuance of over five (5) invoices, a summary table detailing the invoices shall be submitted together with the invoices themselves, specifying, as a minimum, the supplier, the date, the invoice number and the tax base.

- ✓ Documents providing proof of payment of invoices, identifying the final recipient of the aid, the third party receiving the payment, the date of payment (value date) and the data necessary to identify the project eligible for aid.
- ✓ The following additional documentation, depending on the activity or phase to be justified as laid out in **sub-section 10.1** of these terms and conditions, shall also be submitted by the beneficiary or entity responsible:
  - With regard to the activity or phase described in **point b) of sub-section 10.1**: evidence of part settlement of activities carried out in line with the technical and economic descriptive report submitted with the aid application. This shall provide evidence of the following:
    - Activities carried out.
    - The quantified results obtained and an evaluation of the same.
    - Modifications and, where appropriate, justifications.
    - The itemised budget of the activities carried out.
    - A report on compliance with contracts, agreements, etc. entered into with subcontracted organisations.
    - Certification of the commissioning and setting-up of the prototype by the competent authority or, failing that, a certificate of endorsement provided by the testing infrastructure.
  - With regard to the activity or phase described in point c) of sub-section 10.1: evidence of part settlement of activities carried out in line with the technical and economic descriptive report submitted with the aid application. This shall provide evidence of the following:
    - Activities carried out.
    - The quantified results obtained and an evaluation of the same.
    - Modifications and, where appropriate, justifications.
    - The itemised budget of the activities carried out.
    - A report on compliance with contracts, agreements, etc. entered into with subcontracted organisations.
  - With regard to the activity or phase described in point d) of sub-section 10.1: evidence of full settlement of activities carried out in line with the technical and economic descriptive report submitted with the aid application. This shall provide evidence of the following:

- Activities carried out.
- The quantified results obtained and an evaluation of the same.
- Modifications and, where appropriate, justifications.
- The itemised budget of the activities carried out.
- A report on compliance with contracts, agreements, etc. entered into with subcontracted organisations.

The deadline for the submission of supporting documentation for each calendar year of this aid programme shall be 15 January of the following year, terminating on 15 January 2023.

Under no circumstances shall the period of time allowed for submitting all supporting documentation be extended or prolonged by EVE. Failure to submit the supporting documentation within the period established in this section shall result in a demand for reimbursement and any other responsibilities as established in the GSA.

Once all the required documentation has been received, said documentation shall be duly analysed. If the documentation is considered to comply with all applicable conditions, EVE shall then proceed to pay the aid. If, having checked the supporting documentation submitted, the decision is taken to reduce the amount of aid initially awarded, proceedings will be opened for the total or partial revocation of the aid. Conversely, if:

- all the required documentation is not submitted within the established time limit;
- evidence is not provided of the complete execution of the activity for which aid was applied for, and of the corresponding invoices dated within the period between the day immediately after the date of application for aid under this programme and 31 December 2020, or, for the financial years 2021 and 2022, within the period between 1 January of the corresponding financial year and 31 December of that same financial year; or
- any other of the conditions set out in the terms and conditions of this aid programme and/or the prevailing rules and regulations on subsidies are not complied with, then

EVE shall open proceedings for the total revocation of the aid.

Payment shall be requested and all required documentation submitted by the beneficiary, or entity responsible, in a single act and in a comprehensive manner. If request for payment is considered incomplete or defective, and has been submitted by postal mail or in person, the applicant shall be notified accordingly in writing to put the request in order and given a maximum period of ten (10) working days from the date on which the aid applicant receives the notification (Article 68 of Law 39/2015) to remedy the situation.

All supporting documentation shall be submitted in the EVE offices or sent by certified mail to:

**EVE – Ente Vasco de la Energía**

Apartado de correos 5020

Edificio Plaza Bizkaia

Alameda de Urquijo, 36 – 1ª planta

48011 Bilbao

Reference: **file number and Emerging marine energy technologies 2020.**

## **11. Inspections**

After the issuance of a decision to award aid, and to verify that the action eligible for aid has effectively been performed and that all other obligations provided for in these terms and conditions have been met, EVE shall have the right to conduct an on-site inspection of investment,

during which representative photos may be taken of the installations affected, and to request any additional documentation which may have been unavailable at the time of submitting the file and required by EVE in the course of their monitoring and control of the end use of the aid.

All applicants to be subject to inspection shall be informed thereof in writing and shall mandatorily be required to enable such inspection.

If, having informed of its intention to conduct an on-site inspection to effectively verify that the investment eligible for aid has been executed, EVE, through no fault of its own, cannot conduct that inspection within a period of two weeks following notification of the inspection, the beneficiary or entity responsible shall be given fifteen (15) working days notice in writing to set another date and to enable the inspection to be conducted. Failure to comply with this condition shall lead to EVE opening proceedings for the total revocation of the aid granted.

Once the evidence gathered through inspection has been checked against the documentation submitted in the application, if conclusive evidence is found that the amount of aid initially awarded should be less, or that no aid should be awarded, EVE shall respectively open proceedings for the total or partial revocation of the aid and, where appropriate, request the partial or total reimbursement of the aid, without prejudice to the legal actions or sanctions that may correspond.

## **12. Obligations of beneficiaries**

The beneficiaries of the aid regulated under this call for applications must in all cases comply with the following obligations:

- a. Those pursuant under Articles 14 and 16 of the GSA and Article 50.2 of the LD 1/1997.
- b. Accept the aid awarded. In this sense, if the beneficiary has not expressly and in writing rejected the aid awarded within a period of fifteen (15) days from the date of reception of the notification of the award, that aid shall be understood to have been accepted both in the economic sense and with respect to all other conditions provided for in the decision and in this call for applications.
- c. Use the aid for the specific purposes for which it has been awarded, without prejudice to EVE accepting variations which may occur in the course of those activities being executed, provided those variations have been fully justified and express authorisation for them has been obtained from EVE.
- d. Readily provide to the Office of Economic Control and to the Court of Auditors of the Basque Country all information requested in the course of their monitoring the aid received through this call for applications.
- e. Inform EVE of any application made for, or of the award of, any subsidy or aid, revenues or funds for the same purpose, from any other public or private institution or body.
- f. Carry out all actions in compliance with all rules and regulations applicable, and ensure that all components are approved and certified, wherever possible, by the competent authority. The beneficiary therefore assumes and accepts that the project for which aid has been awarded must in all respects comply with applicable law, be it of a technical, urban or any other nature.
- g. Provide EVE, or the accredited person assigned by EVE, with free access to all works related to the development of the project and to all related documentation.
- h. Inform EVE of any changes to any circumstances, both objective and subjective, which had been taken into account in the process of awarding the aid.

- i. Readily provide all information EVE may require in the course of their monitoring and control of the end use of the aid.
- j. Instructions for due compliance with the information and communication requirements of EVE are given below. These instructions are intended for the beneficiaries of aid for effective compliance with the obligations inherent in the receipt of public aid.

All information and communication measures and actions taken require the acknowledgement of the beneficiary of the aid provided by EVE. To this end:

- All and any actions of information or communication taken on paper, through a website, an app or of an audiovisual nature shall contain an express reference to the fact that this project has been subsidised as part of the aid programme of EVE. Likewise, the EVE logo shall be included and feature in any such actions. The EVE logo shall be available on the EVE website in vector format and in its latest and most updated version.
  - All and any information or communication actions taken in the media for the purpose of promoting the project for which aid has been awarded shall be taken in coordination and collaboration with EVE.
  - The EVE logo shall be clearly and visibly displayed on the installations or prototypes for which aid has been awarded, occupying a prominent place and of a size and scale suitable for the material and surface where it is located. If other logos are exhibited together with this one, the EVE logo shall be of at least the same size, in terms of height and width, as the largest of the other logos.
- k. Readily provide for EVE all information on the action undertaken and subsidised, with a view to jointly disseminating the findings by previous mutual consent.

### **13. Non-compliance and reimbursement**

As provided for under Article 37 of the GSA, all aid awarded and all corresponding interest on arrears (legal interest on the money increased by 25%, unless the State General Budget Act provides otherwise) from the moment the aid was paid up to the agreed reimbursement date shall be fully or partially reimbursed. Partial reimbursement shall be governed by the criteria set out in the provisions of Article 37.2 of the GSA.

Non-compliance with the requirements set out under this call for applications and other applicable regulations, as well as with any conditions that may be established under the decision to award the aid, shall give rise, after infringement proceedings have been duly opened, to the revocation of the decision and the obligation to reimburse the aid, and all corresponding statutory interest, to EVE, as provided for under the LD 1/1997, as well as Title II of Decree 698/1991, of 17 December, governing the general scheme of security rights and reimbursement of subsidies financed by the General Budget of the ACBC and setting out the requirements and obligations of collaborating entities engaged in managing the budget, without prejudice to any legal actions and sanctions as may be applicable.

Decisions regarding the institution and resolution of proceedings of revocation and, where appropriate, total or partial reimbursement of aid, will be the responsibility of the General Manager of EVE.

#### 14. Information clause for applicants

INFORMATION ON DATA PROTECTION (in compliance with Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data)	
<b>Information on data processing</b>	ENTE VASCO DE ENERGIA (EVE) Tax Identification Number: Q5150001E Address: Alameda de Urquijo, 36, 1ª Planta, 48011, Bilbao (Bizkaia) Telephone: 94.403.56.00 Data Protection Officer: <a href="mailto:dpd@eve.eus">dpd@eve.eus</a>
<b>Aim</b>	- Analysis and management of your aid application and, where appropriate, execution and control of the relationship established as a result of its award. - As regards the language selected for communication purposes with EVE, which is mandatorily required to be filled in, such data will be used within the framework of the language policies and strategies of the Basque Government and only for monitoring and statistical purposes.
<b>Lawfulness of processing and storage</b>	Consent of the interested party expressed with the submission of the application. Storage of information: for the period during which the application is to be studied and the legal periods applicable to it. If the aid is awarded, the data shall become part of the award file and shall be stored for as long as the aid remains active and, subsequently, for the legal periods applicable to it.
<b>Recipients of disclosure</b>	Regional or local supervisory bodies and authorities with competence in the matter.
<b>Data subjects' rights</b>	Data subjects may exercise their rights of access, rectification, erasure, portability and limitation or opposition by writing to the EVE Data Protection Officer, indicating "exercise of data protection rights", insofar as these can be exercised in accordance with the provisions of the regulations on subsidies. Data subjects have the right to withdraw their consent. Data subjects have the right to submit a legal claim to the Supervisory Authorities (Basque Data Protection Agency <a href="http://www.avpd.eus">www.avpd.eus</a> and the Spanish Data Protection Agency <a href="http://www.agpd.es">www.agpd.es</a> ).
All beneficiaries undertake that, prior to providing EVE with any personal data on any natural/legal person involved in the management and, where appropriate, subsequent execution of the project indicated in their application for aid, they will have informed such natural/legal person of the above and fulfilled any other requirements that may be applicable for the correct transfer of personal data to EVE.	

#### 15. Final provisions

1. Decisions taken by EVE are of an administrative nature. Any legal proceedings undertaken with respect to subsidies managed by EVE shall be subject to contentious-administrative jurisdiction.
2. EVE reserves the right to use images obtained in the facilities benefiting from aid granted under this aid programme for investment in the demonstration and validation of emerging marine energy technologies 2020.
3. Any and all errors and/or mistakes in the documents and information submitted by the beneficiary, and which may directly affect the acceptance or rejection of the application for aid and/or the decision regarding the amount of aid to be awarded by EVE, shall be the sole responsibility of the beneficiary. Under no circumstances shall an increase in the actual costs

incurred, in relation to those taken into consideration at the time of awarding the aid, trigger an upward revision of the amount of aid granted.

4. The subsidies covered under the terms and conditions of this aid programme shall be subject to:
- The General Subsidies Act 38/2003, of 17 November.
  - Royal Decree 887/2006, of 21 July, approving the the General Subsidies Act 38/2003, of 17 November.
  - LD 1/1997, of 11 November, approving the Revised Text of the Law of Governing Principles of the General Treasury of the Basque Country.
  - Commission Regulation (EU) 651/2014 of 26 June 2014, declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (DOUE 2014 L 187).
  - Law 39/2015, of 1 October, governing Common Administrative Procedures of Public Administration.
  - Law 29/1998, of 13 July, governing Contentious-Administrative Jurisdiction.
  - Any other local, regional, state and/or European regulations that may be applicable.

## Aid Programme for investment in the demonstration and validation of emerging marine renewable energy technologies

- 2020 -

### Appendices

Appendix	I.1	Aid Application Form 2020. Applicant Details
Appendix	I.2	Administrative and technical project documentation
Appendix	II	Statement of regulatory compliance at date of application
Appendix	III	Statement on other aid at date of application
Appendix	IV	Statement of consideration as an enterprise (R. 651/2014)
Appendix	V	Technical data: project description
Appendix	VI	Notification of completion of phase or project
Appendix	VII	Statement of regulatory compliance at date of submission of supporting documentation
Appendix	VIII	Statement on other aid at date of submission of supporting documentation.
Appendix	IX	Model of Guarantee
Appendix	X	Budget Model