



## FUSION FOR ENERGY

The European Joint Undertaking for ITER and the Development of Fusion Energy

THE GOVERNING BOARD

### DECISION OF THE PROCUREMENT AND CONTRACTS COMMITTEE OF FUSION FOR ENERGY ADOPTING ITS RULES OF PROCEDURE

#### I. MANDATE

##### *Rule 1*

The Procurement and Contracts Committee (hereinafter “the PCC”) shall provide the Director with recommendations on the strategies in relation to procurement and grant activities and the award and follow-up of contracts and other related matters. The PCC shall:

- a) comment on draft ITER Procurement Arrangements between Fusion for Energy and the ITER International Organization;
- b) comment upon overall strategies proposed by the Joint Undertaking for delivering each ITER procurement package as described in the Project Plan;
- c) recommend individual procurement strategies of the Joint Undertaking for
  - i. individual calls for tender in advance of launching contracts when the value of the contract is estimated to be greater than EUR 20 million;
  - ii. individual calls and invitations for proposals in advance of launching grants when the maximum financial contribution of the Joint Undertaking is greater than EUR 4 million;
  - iii. when deemed appropriate by the Director of the Joint Undertaking on the basis of a risk assessment;
- d) recommend the award of contracts and grants
  - i. when the value of a contract is greater than EUR 20 million;
  - ii. when the maximum financial contribution of the Joint Undertaking for a grant is greater than EUR 4 million; or
  - iii. when deemed appropriate by the Director on the basis of a risk assessment;
- e) comment ex ante on a contract amendment which
  - a) has a value exceeding EUR 10 million; or
  - b) causes the cumulative contract value to exceed EUR 20 million; or
  - c) causes the cumulative value of amendments to exceed EUR 10 million; or
  - d) together with previous amendments signed after the last amendment commented on by the PCC causes the cumulative value of such previous amendment(s) and this amendment to exceed EUR 10 million.

The Chair shall appoint a PCC member to act as rapporteur. The rapporteur shall provide draft comments to the Committee in writing within three working days, unless a different deadline is determined by the Chair. On the basis of the rapporteur’s draft, the Committee shall adopt the PCC comments either by remote meeting or written procedure within three working days, unless a different deadline is determined by the Chair.
- f) upon request by the Governing Board or the Director, comment ex post on:
  - (i) awarded contracts with a value between EUR 1 million and EUR 20 million ;

- (ii) contract amendments with a value between EUR 1 million and EUR 10 million;
  - (iii) awarded grants with a maximum financial contribution by the Joint Undertaking of between EUR 1 and 4 million .
- g) provide an opinion on opening procurement procedures of the Joint Undertaking to economic operators, having their registered office, central administration or principle place of business outside the territories of the Members of the Joint Undertaking in accordance with Article 85a (2) of the Financial Regulation;
  - h) comment upon new model procurement contracts, grant agreements and framework partnership agreements.

## **II. COMPOSITION**

### *Rule 2*

#### **Members**

1. The PCC shall be composed of five members and a Chairperson.
2. The members of the PCC (hereinafter "the members") shall be appointed by the Board from among persons with relevant professional experience in contractual and procurement matters.
3. Members shall not serve as Representatives on the Board.
4. The members shall not be bound by any instructions. They shall be completely independent in the performance of their duties, in the general interest of the Fusion for Energy.
5. The term of office for members shall be two years. Members may be re-appointed for a second term by the Board taking into account the need to maintain a balance of expertise on the PCC.
6. On expiry of their term of office members shall remain in office until their appointment is renewed or they are replaced. If a member resigns, he<sup>1</sup> shall remain in office until he is replaced.
7. Alternate members are not admissible.

## **III. CHAIRMANSHIP**

### *Rule 3*

1. The Board shall elect by a two-thirds majority decision a Chairperson (hereinafter "the Chair") who shall serve for a term of two years renewable once.
2. The Chair shall not have the capacity of a PCC member.
3. The Board shall elect by a two-thirds majority decision from among the PCC members a Vice-Chairperson (hereinafter "the Vice-Chair") who shall serve for a term of two years renewable once.
4. If the Chair is unable to fulfil his functions, the Vice-Chair shall act as the Chair. If both the Chair and the Vice-Chair are unable to fulfil their functions, the meeting of the PCC shall be re-scheduled unless it is urgent, in which case the meeting shall be chaired by a member elected by the PCC for that meeting only.

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<sup>1</sup> "He" shall include "he/she" throughout.

5. When acting as Chair, the Vice-Chair, or the PCC member elected in accordance with paragraph 4, shall have the same powers and duties as the Chair.

#### **IV. SECRETARY**

##### *Rule 4*

1. The Director of Fusion for Energy (hereinafter “the Director”) shall provide a secretariat for the PCC. The Director, in consultation with the Chair, shall designate a secretary (hereinafter “the Secretary”), who shall be a member of the staff of Fusion for Energy.
2. The Secretary shall perform his duties independently with a view solely to the interests of the PCC and shall neither seek nor take instructions from person, organisation or authority other than the PCC, except that he shall remain subject to all of the rules and regulations of Fusion for Energy and any other conditions of his employment contract.

#### **V. MEETINGS**

##### *Rule 5*

##### **Convening and Attendance**

1. The PCC shall meet when convened by the Chair. The PCC shall also be convened at the request of at least three members, the Chair of the Board or the Director.
2. PCC meetings shall normally take place at the seat of Fusion for Energy, unless the Chair decides otherwise.
3. Any member who is unable to physically participate in a meeting may participate remotely having obtained the approval of the Chair in advance.
4. Remote attendance at PCC meetings shall be subject to the strict confidentiality requirements of PCC meetings.
5. Any member who is unable to attend a meeting in person or remotely shall notify the Chair in advance.
6. The Director or a designated member of the staff Fusion for Energy shall attend the meetings of the PCC and may be assisted by other staff of Fusion for Energy.
7. When needed and considered appropriate the Chair may authorise up to two experts or other persons to attend a meeting of the PCC on an ad hoc basis to advise the Committee. Such experts or other persons shall not have the right to vote.
8. PCC meetings shall not be held in public unless otherwise decided by the PCC in agreement with the Chair of the Board.

##### *Rule 6*

##### **Quorum**

1. At least three participating members shall constitute the quorum necessary for a meeting of the PCC to be valid.
2. In the absence of a quorum, the Chair shall close the meeting and convene another as soon as possible.

*Rule 7*

**Agenda**

1. Having received approval of the draft agenda from the Chair, the Secretary shall send it by electronic means together with relevant material to the members and the Director at least 7 calendar days before the date of the meeting.
2. The agenda shall be adopted by the PCC at the beginning of each of its meetings.
3. If the PCC so decides, the agenda may be changed and relevant documentation circulated at any time prior to the end of the meeting.

**VI. CONDUCT OF BUSINESS**

*Rule 8*

**Adoption of Decisions**

1. Whenever possible, the PCC shall adopt decisions by consensus. If such a consensus cannot be reached, a decision shall be adopted if supported by a majority of PCC members attending a meeting.
2. For each decision adopted by the PCC, the result shall be recorded. Members who have voted against a decision shall clearly state the reasons for their divergent position. The divergent positions and the names of the members expressing the divergent positions shall be described in the minutes.
3. Between PCC meetings, the Chair, through the Secretary, may transmit proposals for a decision to the PCC members in writing. They shall be deemed adopted if the Chair does not receive any written objections within a period to be fixed by the Chair case by case. The Secretary shall inform the members about the adoption of the decision without delay.
4. In case of objections, the Chair in consultation with the Director decides whether the written procedure should be suspended and an urgent PCC meeting convened or whether the draft decision, together with the objections, should be amended and the written procedure re-started. If one or more PCC members should raise an objection to the restarted written procedure, the decision shall be automatically deferred to the next PCC meeting.
5. Decisions made by written procedure shall be recorded in the minutes of the subsequent meeting of the PCC.

**VII. SUMMARY OF DECISIONS AND MINUTES**

*Rule 9*

1. At the conclusion of each meeting, the PCC shall approve a Summary of Decisions on the basis of a draft prepared by the Secretary under the direction of the Chair. The Summary of Decisions shall be submitted to the Director with a copy to the Chair of the Board.
2. After each meeting of the PCC, the Secretary shall prepare the draft minutes of the meeting. After approval by the Chair, draft minutes shall be submitted by the Secretary to the members within 21 calendar days after the date of the meeting.
3. The minutes shall include *inter alia*:
  - (a) The list of those present;
  - (b) The substance of the discussions and the conclusions reached.

4. Unless a meeting of the PCC is taking place within 30 days following the issue of the draft minutes, the minutes shall be approved by written procedure. Members shall send written objections or comments on the draft minutes to the Secretary during a period of 21 calendar days.
5. Minor and editorial corrections shall be resolved at the discretion of the Chair in consultation with the concerned member(s) and Director. Major issues shall be forwarded to all members, together with a proposal from the Chair on how to resolve the matter. This could either be to not accept the corrections, propose amendments to the minutes, or that adoption of the minutes is postponed to the next meeting of the PCC. Members shall have a further period of 7 calendar days to agree or reject the revised minutes. Any further objections shall result in the approval of the minutes being postponed to the next meeting of the PCC.
6. Once approved, the minutes and supporting documents shall be signed by the Chair and the Secretary and be kept by the secretariat.
7. A copy of the approved minutes of the PCC shall be sent to the Director with a copy to the Chair of the Board.

### **VIII. ADMINISTRATIVE PROVISIONS**

#### *Rule 10*

#### **Reimbursement of Expenses**

1. Travel and subsistence expenses incurred:
  - a) by the Chair to attend meetings of the PCC and other meetings in his official capacity as Chair;
  - b) by members attending meetings of the PCC and experts or other persons invited by the PCC in connection with its meetings,

shall be reimbursed by Fusion for Energy in accordance with the rules<sup>2</sup> applied by Fusion for Energy for the reimbursement of expenses to experts.
2. In addition to travel and subsistence expenses, the Chair and members shall be entitled to claim indemnities according to the decision of the Board concerning the payment of indemnities.

#### *Rule 11*

#### **Correspondence**

All correspondence intended for the PCC shall be addressed to the Secretary who shall inform the Chair accordingly.

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<sup>2</sup> These rules shall provide conditions that are equivalent to those laid down in Annex VII of the Staff Regulations of Officials and the conditions of employment of other servants of the European Communities.

## *Rule 12*

### **Management of Conflicts of Interest and Confidentiality**

1. The Chair, members, experts and other attendees (hereinafter “the Participants”) shall comply with the rules of Fusion for Energy concerning confidentiality, independence, preventing and managing conflicts of interest.
2. The Participants shall act in the general interest of Fusion for Energy and sign a declaration to that effect. Before taking up their duties they shall provide the Secretary with a completed and signed General Declaration of Interests form. In addition, the Participants shall provide the Secretary with information on their professional profile in the form of a simplified Curriculum Vitae.
3. The Participants undertake to inform the Secretary whenever there is a change in their circumstances that impacts on their declared interests and to submit an amended General Declaration of Interests form and Curriculum Vitae as appropriate.
4. Ahead of each PCC meeting the Participants shall declare any conflict of interest in relation to the specific agenda items to the Chair and Secretary. At the beginning of each meeting, the Participants shall declare to the Chair and Secretary whether they have a conflict of interest or for any items on the agenda. If during a meeting, a Participant becomes aware that he has a conflict of interest he shall immediately inform the Chair.
5. In case a Participant has not provided a General Declaration of Interests form or Curriculum Vitae within one month of the request being made by the Secretariat, meeting documents and correspondence will not be sent to the Participant concerned until the aforementioned documents have been provided.

## *Rule 13*

### **Transparency**

The names and affiliations of the PCC Chair and members shall be published on the Fusion for Energy website along with their General Declarations of Interest and professional profile in the form of a short curriculum vitae.

## *Rule 14*

### **Language Regime**

The PCC shall conduct its business in English.

## *Rule 15*

### **Amendment**

Upon proposal of the PCC or Board, these rules may be amended by the PCC with the prior approval of the Board.

## *Rule 16*

### **Interpretation**

In the event of any conflict between any provision of these rules and the Statutes of Fusion for Energy or the Rules of Procedure of the Board, the latter two shall prevail.

*Rule 17*

**Entry into Force**

These Rules shall enter into force on the date of their adoption by the PCC and shall be published on the official website of Fusion for Energy.