



FUSION FOR ENERGY

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

DECISION OF THE GOVERNING BOARD OF FUSION FOR ENERGY APPROVING THE RULES OF PROCEDURE OF THE PROCUREMENT AND CONTRACTS COMMITTEE

THE GOVERNING BOARD OF FUSION FOR ENERGY,

HAVING REGARD to Council Decision 198/2007/Euratom¹ establishing the European Joint Undertaking for ITER and the Development of Fusion Energy (hereinafter "Fusion for Energy") and conferring advantages upon it, as last amended on 22 February 2021 by Council Decision (Euratom) No 2021/281²;

HAVING REGARD to the Statutes annexed to the aforementioned Council Decision in particular to Articles 6 (10) and 8b thereof³;

HAVING REGARD to the Financial Regulation of Fusion for Energy⁴ adopted by the Governing Board on 10 December 2019 (hereinafter "the Financial Regulation").

HAVING REGARD to the rules of procedure for the Procurement and Contracts Committee, last amended by the Governing Board on 6 July 2018⁵ and the need to amend them to take into account the experience gained since 2018 and the latest developments in the ITER project;

WHEREAS the Procurement and Contracts Committee of Fusion for Energy should adopt its rules of procedure subject to the prior approval of the Governing Board;

HAS ADOPTED THIS DECISION:

Article 1

The rules of procedure for the Procurement and Contracts Committee annexed to this decision are hereby approved.

Article 2

The Procurement and Contracts Committee is invited to adopt the rules referred to in Article 1.

Article 3

This Decision shall enter into force with immediate effect.

Done at Barcelona, 2 December 2022

For the Governing Board

Carlos Alejandre

(Signed Electronically in IDM)

Chair of the Governing Board

¹ O.J. L 90, 30.03.2007, p. 58.

² OJ L 62, 23.2.2021, p. 41

³ O.J. L 37, 13.02.2015, p.8.

⁴ F4E (19) GB45 21.1 adopted on 10.12.2019

⁵ F4E(15)-GB41 13.1, approved on 6 July 2018

For the Secretariat

Raymond Monk

(Signed electronically in IDM)

Acting Secretary to 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 and BA Procurement Arrangements and their amendments if they are significantly modifying the original scope, roles and responsibilities of the parties or causing significant price increase for F4E.
- b) comment upon overall strategies proposed by the Joint Undertaking for delivering each ITER and BA 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:
 - i. has a value exceeding EUR 10 million; or
 - ii. causes the cumulative contract value to exceed EUR 20 million; or
 - iii. causes the cumulative value of amendments to exceed EUR 10 million; or
 - iv. 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.
- 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 89a (2) of the Financial Regulation of Fusion for Energy.;
- h) comment upon new model procurement contracts, grant agreements and framework partnership agreements
- i) Provide an opinion on the due application of the exemption from public procurement in accordance with Article 89b of the Financial Regulation of Fusion for Energy for the conclusion of certain contracts with or via the ITER Organization, Domestic Agencies or Members of the Joint Undertaking, including their public authorities, hosting the ITER Organization and/or the Joint Undertaking or its offices.

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 Governing Board from among persons with relevant professional experience in contractual and procurement matters.
3. Members shall not serve as Representatives on the Governing 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 three 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, members shall remain in office until their appointment is renewed or they are replaced. If a member resigns, they shall remain in office until 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 Governing 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 their 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.

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 their duties independently with a view solely to the interests of the PCC and shall neither seek nor take instructions from persons, organisations or authorities other than the PCC, except that they shall remain subject to all of the rules and regulations of Fusion for Energy and any other conditions of their employment contract.
3. The Director and Management shall timely inform the Secretariat on all matters of relevance to the PCC.

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, or by video conference means, 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 Governing 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.

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 Summary of Decisions of the subsequent meeting of the PCC.

VII. SUMMARY OF DECISIONS

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 Final Agenda shall be Annexed to it.
2. The Summary of Decisions shall include *inter alia*:
 - (a) The list of those present;
 - (b) The main topics and questions discussed
 - (c) The summary of the conclusions reached.

3. Once approved, the Summary of Decisions and supporting documents shall be signed by the Chair and the Secretary and be kept by the secretariat.
4. A copy of the approved Summary of Decisions shall be sent to the Director with a copy to the Chair of the Governing 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 their 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 rules⁶ 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.

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 they have a conflict of interest, they shall immediately inform the Chair.

⁶ 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.

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.

6. The Secretary shall ensure the proper application of the relevant rules concerning meeting documentation confidentiality. This includes verifying that documents are appropriately marked according to their confidentiality level before dissemination to Committee member.

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 Governing Board, these rules may be amended by the PCC with the prior approval of the Governing 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 Governing Board, the Statutes then the Governing Board Rules 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.

Revision History

This document replaces the following previous versions:

- F4E(18)-PCC16-02