

Department of Treasury and Finance

RECORDING AND MANAGING CONFLICTS OF INTEREST - GUIDELINES FOR AGENCIES

Guidelines to assist Agencies appropriately deal with conflicts of interest in procurement activity

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1. Introduction

Government procurement is an area of activity that could be considered as high risk for possible conflict of interest that may give rise to perceptions and allegations of preferential treatment. Any actual or perceived conflict of interest in relation to the procurement activity could undermine confidence in the integrity of Government procurement.

Accordingly, to reassure the community and those wishing to do business with the Government that procurement processes and outcomes can be trusted, agencies should have in place appropriate and effective processes for the recording of conflict of interests.

2. Purpose

The aim of this document is to provide information to assist agencies to establish a process for recording conflicts of interest. This document is a guide only. An agency may tailor its process to suit its own requirements and circumstances.

3. General

For a procedure to be effective, everyone needs to be clear on what a conflict of interest is and what everyone's responsibilities are.

3.1 WHAT IS A CONFLICT OF INTEREST?

A conflict of interest arises when the private interests of an individual conflict with an activity that the individual is involved in. Private interests are interests that can bring benefits or disadvantages to the individual or to others that they may wish to see benefit or disadvantaged.

Conflicts of interest can be actual or perceived. An actual conflict of interest occurs where there is a direct conflict between an individual's private interests and the activity that he or she is involved in. For example, a member of an Evaluation Committee has shares in a company that tenders for a contract with an agency; or an Administrative Assistant is regularly required to organise catering for meetings and uses a catering business that is owned by their family.

A perceived conflict of interest occurs where a conflict of interest between an individual's private interests and the activity that he or she is involved in might reasonably be thought to exist by others; whether this is actually the case or not. For example, a member of a Procurement Review Committee reviews the evaluation of a procurement that recommends the awarding of a contract to a company that employs their spouse.

The requirements relating to conflicts apply to:

- agencies undertaking procurement processes;
- agency delegates responsible for managing conflicts of interest either generally within the agency or specifically in relation to a procurement process; and
- individuals involved in the procurement process, whether these individual are state service employees or members of the public who have been engaged to assist in the procurement process. For example, consultants.

3.2 WHAT ARE EVERYONE'S RESPONSIBILITIES?

3.2.1 Agencies

To manage conflicts effectively, it is important that agencies develop appropriate procedures that clearly outline what is required of employees, supervisors and managers or any other persons in relation to identifying, declaring, managing and documenting conflicts.

Agency procedures should detail who is delegated with responsibility for managing conflicts of interest. This may be supervisors or managers, Chairs of Evaluation Committees, Procurement Review Committees or another employee within the agency.

Conflicts of interest should be managed fairly and consistently and treated sensitively. Given that conflicts of interest records may contain personal, sensitive and confidential information, associated documentation will need to be carefully managed. Agencies should give consideration to information privacy issues.

Agency delegates responsible for managing conflicts of interest Agency delegates need to ensure employees are familiar with the procedures, know how to identify a conflict of interest and are aware of the steps they need to take if a conflict of interest arises. It is their responsibility to communicate to any employees involved in procurement what is expected. They are also responsible for ensuring that where non-state service employees are involved in procurement, these people are also aware of Government expectations and their responsibility to declare conflicts as they arise.

3.2.2 Individuals

While agencies are responsible for establishing and maintaining a procedure for the recording of conflicts of interest, the actual identification of a conflict of interest is each individual's responsibility. As the person who knows most about their own private interests, it is important that they take responsibility for identifying and declaring any actual or perceived conflict of interest as soon as possible. In most instances, the early disclosure of a conflict will allow for resolution before the integrity of the activity is compromised. If an individual is not sure about a possible conflict of interest, he or she should discuss the situation with the appropriate person or body delegated to with responsibility for managing conflicts of interest.

4. Establishing an Effective Recording Process

To comply with the requirements of Treasurer's Instruction *PF-5 Procurement Framework - Procurement Principles*, agencies are to develop and maintain a process for the recording of conflicts of interest. Records kept must include details of the action taken to manage the conflict of interest and be auditable.

Records of declarations may be kept on either employee files or on files relating to the procurement itself.

Standard declaration forms for completion should be prepared and readily available. [Template declaration forms](#) which may be used are available on the Purchasing website.

5. Managing Conflicts of Interest

If an individual raises the issue of a possible conflict of interest with a delegate, the details should be documented as soon as possible to allow it to be formally recorded. The individual needs to provide sufficient detail to allow an informed decision to be made on the most appropriate way to manage the situation.

Depending on the circumstances of the disclosed conflict of interest, there may be instances where the delegate responsible for managing conflicts of interest considers that the conflict is low-risk, that no action beyond the disclosure is required and that the individual should continue with his or her role in the activity. In most cases, in circumstances where an actual conflict of interest does exist, or it could be reasonably thought by others that a conflict exists, the individual should have no involvement in the procurement.

In instances where a conflict of interest becomes apparent part way through a procurement process, the agency may wish to consider the engagement of a probity adviser to review the process.

In all cases, records need to be kept on disclosures including how the matter was considered and what action was taken to manage the conflict. These records will need to be kept in such a manner that they are auditable.

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