

What is a conflict of interest in procurement?

A conflict of interest occurs where there is conflict between the public duty and private interests of a public official. In procurement:

- conflicts can also arise between different work-related duties or interests without involving any personal interests at all – for example, an evaluator who has previously worked with one of the tenderers on another project or is currently managing a contract with them.
- conflicts are usually about an evaluator or decision maker in the process who has some affiliation or interest that could compromise their impartiality or be seen as compromising their impartiality or ability to properly fulfil their role in the process or influencing them.

Is it only current situations that create conflicts of interest?

Conflicts of interest can be actual, potential or perceived - when we talk about interests we often mean circumstances or interests. Conflicts of interest can be:

- **Actual** – circumstances or interests that detract from a person's fulfilment of their obligation to government.
- **Potential** – circumstances where future known events could result in an actual conflict. – an example could be if an evaluator's spouse was applying for a job with one of the tenderers
- **Perceived** – circumstances that may detract from government's interests, or be seen to compromise its interests, by diminishing the fairness and competitiveness of the procurement process.

Do conflicts of interest always involve actual financial benefit?

No, some conflicts of interest do not involve any direct or indirect financial benefit although that would be a clear and actual conflict of interest. Conflicts can also involve perceptions about bias or favouritism such as preferring to work with a particular supplier.

A conflict of interest arises where a participant in a procurement team or an adviser to the team has an affiliation or interest which might be seen to prejudice his or her impartiality. (Such interests may be of financial nature, as well as of a non-financial nature involving

personal or other relationships.) Conflicts of interest occur occasionally, but provided they are identified early and dealt with effectively, need not be indicative of any wrongdoing.¹

How should conflicts be managed?

To properly identify and resolve conflicts of interest, every procurement process should:

- set up and apply procedures and processes to identify and address actual and perceived conflicts of interest
- record all action taken to address any actual or perceived conflict of interest.²

The first step is for each person to make a disclosure indicating whether there are any circumstances or interests that do or could be perceived to create a conflict of interest. Once those disclosures are made and registered by participants in the procurement process, someone else should decide what action is warranted. *Relying on individuals to make their own assessment of whether or not a conflict of interest exists, particularly where there is poor understanding of probity requirements, is inadequate. Best practice requires project staff to declare all related interests, with the project management responsible for assessing whether a conflict exists and documenting this assessment and, where necessary, any strategies to address it, in each instance.³*

Agencies often use one or more of the following strategies to manage a conflict:⁴

- introducing oversight controls, such as separate reviews of decisions made by the person with the identified conflict
- having more than one person involved in the decision-making process
- establishing other controls to prevent the conflict from resulting in bias.

These controls endeavour to influence the actions of the person with the conflict and/or reduce their influence over the decision-making process. However, perceptions of bias must also be managed effectively.

The following six considerations are often cited as an approach to managing conflicts of interest, not all of them relevant to every situation.

- Register the conflict

¹ VGPB Code of Conduct for Commercial Engagements with Government

² VGPB Guide to Probity

³ Victorian Auditor General's Office report Melbourne Markets Redevelopment March 2012

⁴ Victorian Auditor General's Office report Melbourne Markets Redevelopment March 2012

- Restrict activities/involvement of the person with the conflict, for example, so they can offer subject matter expertise but not be a scorer or decision maker
- Recruit a third party not affected by the conflict to introduce independence
- Remove the person with the conflict from the evaluation
- Relinquish the conflicting interest i.e. the person with the conflict may relinquish their conflicting interests such as resigning from a committee role that is inconsistent with being an evaluator
- Resign – on occasions an employee may choose to resign to pursue or maintain some competing private interests

The required responses to a conflict of interest or potential conflict vary greatly. At one extreme, a conflict may result in a public official being redeployed onto other full-time duties or an adviser's engagement terminated. At the other end of the scale, it may be resolved simply by documenting and declaring the apparent conflict. The key point is to ensure that all the participants in the project team, including advisers to it, declare their interests before the tendering process begins and at critical stages throughout it, and to ensure that any issues arising are resolved.⁵

Who is responsible for managing conflicts of interest?

The responsibility to address conflicts of interest in government procurement is a shared responsibility – it's up to the participants in the process to make disclosures and it's then up to the Evaluation Team chairperson and others responsible for oversight of the procurement process such as probity advisor or steering committee or an ethics board to consider the disclosures and to determine what response is required.

Public sector employees have a duty to put the public interest above their private interests when carrying out their official duties. Conflicts of interest may arise without any one being at fault. To maintain the highest levels of integrity and public trust, it is therefore critical that conflicts of interest are managed effectively.⁶

The chairperson of the evaluation team and the project sponsor have the primary direct responsibility to ensure that conflicts of interest are properly managed.

Why is timely disclosure important?

⁵ DTF Partnerships Victoria Practitioners Guide

⁶ Victorian Auditor General's Office website www.vago.gov.au

Timely disclosure is critical to prevent or minimise risk to the process. The integrity of a procurement process can be adversely affected by a conflict of interest and in some instances, it is necessary to re-tender because of conflicts of interest that could have been identified earlier and managed to avoid impact on the process.

If management determines that the appropriate strategy to manage a conflict of interest is to remove a person from the procurement process, this decision should be made as soon as possible to avoid any impact on the integrity of the process.

More than the actual situation itself, it is often the lack of adequate and timely disclosure and consequent lack of opportunity to manage a conflict of interest issue that leads to difficulties and potentially compromises the integrity of a project.⁷

Do evaluators need to disclose conflicts of interest?

Yes, whether they are public servants, contract staff or consultant advisors all evaluators should disclose conflicts of interest.

The VPS Code of Conduct requires VPS staff to disclose conflicts of interest and also says:

Public sector employees avoid conflicts of interest (actual, potential or perceived) wherever possible. They ensure their personal or financial interests (including the interests of family members, friends, or associates) do not influence and could not be perceived to influence the performance of their role.

VPS staff are required to demonstrate integrity by ... avoiding any real or apparent conflicts of interest.⁸

Why is it important to manage conflicts of interest?

Openness, transparency and the even-handed dealing with all tenderers by all involved in developing a tender or making a tender decision, is paramount. It is important, therefore, that both perceptions and reality are properly managed so tenderers remain confident about the process.

Management of conflicts of interest and other probity issues is important for:

- business and community confidence in the integrity of government procurement processes;
- encouraging and enabling purchasers and businesses to deal with each other on the basis of mutual trust and respect; and

⁷ VGPB Code of Conduct for Commercial Engagements in Government

⁸ Public Administration Act 2004 section 7



- improving the defensibility of market engagement processes and procurement outcomes.⁹

It is central to maintaining an ethical culture that procurement processes effectively manage conflicts of interest and avoid adverse perception about favouritism and bias.

*An ethical culture is the single most important factor in ensuring that the Victorian public sector retains the degree of public trust required in a modern democracy.*¹⁰

⁹ VGPB Guide to Probity

¹⁰ George Brower 2008