

# **Avoiding Conflict of Interest in Government Procurement**

**(Chapter IA of the Stores and Procurement Regulations)**

# STORES AND PROCUREMENT REGULATIONS

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## CHAPTER IA

### AVOIDING CONFLICT OF INTEREST IN GOVERNMENT PROCUREMENT

#### GENERAL AND APPLICABILITY

180. It is the responsibility of all public officers to ensure the integrity and impartiality of the Government's procurement process. Conflict of interest situations may arise in cases where a public officer exercises his authority, influences decisions and actions or gains access to valuable information, perhaps but not necessarily restricted or confidential. Conflict of interest may also arise from participation by consulting firms or contractors in government procurement. All public officers involved in procurement must be alert to situations which may lead to actual, potential or perceived conflict of interest and ensure that sufficient safeguards are in place to avoid such situations from arising. The principles and guidelines set out in this Chapter apply to all types of government procurement, irrespective of value.

#### AVOIDING CONFLICTS WITH PRIVATE INTERESTS

185. All public officers involved in government procurement, including in particular the chairperson and members of all committees/working groups responsible for preparing tender documentation, including tender specifications, tender opening teams, tender assessment panels, tender boards and consultants selection boards, must —

- (a) **avoid** conflicts, whether actual, potential or perceived, arising between their official duties and their private interests. Private interests include the financial and other interests of the officer, the officer's relatives and close associates, or persons to whom the officer is indebted or owes a favour, as defined in relevant civil service guidelines (including CSB Circular No. 2/2004 on "Conflict of Interest" or any updated version);
- (b) **declare** all such conflicts or relevant private interests as soon as the officer is aware of them to enable his supervisors or the chairperson of the relevant tender assessment panel or board to decide whether the officer should continue to be involved in the specific procurement exercise;
- (c) **observe** prevailing civil service guidelines on how to prevent or deal with conflict of interest situations; and
- (d) **observe** prevailing security regulations and not make unauthorized disclosure or take advantage of any tender-related information whether or not for personal gain.

186. All officers involved in preparing tender documentation including tender specifications and assessing tenders must declare whether they have any actual, potential or perceived conflict of interest at the start of deliberation or as soon as they become aware of a potential conflict. Tender assessment panels must state in each tender evaluation report whether or not all members of the panel have declared their interest and, where conflicts of interest (actual, potential or perceived) have been identified, what remedial action has been taken.

187. The chairperson and members of all tender opening teams, tender boards and consultants selection boards who handle procurement matters on a regular basis are required to sign an undertaking upon taking up these responsibilities, and are also required to renew their undertaking at regular intervals. A specimen undertaking is at Appendix I.

188. Controlling Officers of the procuring department must —

- (a) **remind** all colleagues involved in government procurement, at regular intervals, to observe strict confidentiality rules with regard to tender-related information and to declare any private interests as may arise in relation to the stores or services being procured, or in relation to the parties offering the stores or services being procured;
- (b) **ensure** that all declarations are drawn to the attention of the head of the teams preparing the tenders, opening the tenders or sitting on the tender assessment panel, tender board or consultants selection board as the case may be. All such declarations and actions taken must be recorded and filed properly;
- (c) if an officer has declared an interest and the supervisor or the chairperson of the assessment panel or board rules that the officer should not continue to handle the specific procurement exercise, **redeploy**, if necessary, other staff to take the place of the officer who has declared an interest in the procurement exercise; and
- (d) **consider** and if appropriate draw up supplementary guidelines to fit the circumstances of the department on the detection and avoidance of conflicts in government procurement.

## **AVOIDING CONFLICTS THAT MAY ARISE FROM THE DIFFERENT ROLES OF CONSULTING FIRMS/CONTRACTORS**

190. Departments must be alert to the potential conflict of interest which may arise from the different roles or assignments a private consulting firm or contractor may take up, whether in relation to the same project for which that private firm was or remains engaged by the Government in the first place, or other related projects.

191. It is not possible to list all situations in which potential conflicts of interest may arise. One typical situation is where a firm, having acted as Government's consultant for a project, bids as a contractor or is involved as a controlling shareholder or subcontractor of the contractor in a subsequent exercise for the procurement of any goods and/or services arising out of the consultancy or which was the very subject of the consultancy.

192. To ensure that Government receives from consulting firms objective professional advice which is not tailored or fashioned with regard to promoting that consulting firm's or its associate's products and/or services, and to maintain a level-playing field in the procedures for government procurement, departments must —

- (a) **ascertain** as far as practicable, before the award of a consultancy, whether there is any reason to disqualify a firm which has expressed an interest from undertaking a government consultancy on grounds of actual, potential or perceived conflicts of interest;
- (b) **oblige** the selected consulting firm to report on situations which may give rise to those conflicts. Departments must consult the Department of Justice on the wording for inclusion in the consultancy brief and consultancy agreement; and
- (c) **debar** the selected consulting firm from participating in any subsequent exercise for the procurement of any goods and/or services arising out of or which was the very subject of the consultancy. Departments must consult the Department of Justice on the wording for inclusion in the consultancy brief and consultancy agreement.

193. There may be circumstances where a strict ban on future participation in procurement exercises is not practicable. Departments which are not able to comply with the principles and guidelines set out in SPR 192 above must approach the relevant consultants selection board (or tender board if the professional advice is procured through a tender exercise versus a consultants selection exercise) for a ruling.

194. If, for reasons acceptable to the relevant consultants selection board, a department would not want to debar a firm which has acted as Government's consulting firm from participating in exercises for the procurement of any goods and/or services arising out of or which was the very subject of the consultancy, the department must at least —

- (a) **specify** in the tender notices for the implementation tenders that the firm appointed for the consultancy studies is a potential bidder but that all the information which was made available to that consulting firm and all the advice which the consulting firm has provided and which is relevant to the tender will equally be made available to all potential tenderers upon request; and
- (b) **set up** an independent committee to review the recommendations of the consulting firm, including the proposed tender specifications for the implementation tender, to satisfy itself that the tender document is and appears to be objective and unbiased having regard to the role and recommendations of that consulting firm. The committee should comprise public officers who have not been involved in the consultancy in question.

Under no circumstances may a consulting firm that has advised on the preparation of the tender, including tender specifications and tender assessment, be allowed to bid, participate or be financially involved in that or related tender exercise.

195. (a) Departments must bear in mind the requirement that all short-listed consulting firms/organisations must not only have, but be seen to have, an equal opportunity in the system and procedure for procurement by Government. Where members of a consulting firm/organisation participate with government departments in committees, working groups, boards, etc. in the course of which the need to engage consulting firms to perform assignments arises, departments must without any delay —
- (i) **require** the person concerned to disengage himself immediately from the committee, working group, board etc., as the case may be; or
  - (ii) **request** the person concerned to undertake in writing that his firm/organisation will not compete for, participate or be financially involved in the assignment whether as the main consultant or sub-consultant or otherwise.
- (b) Departments must not put pressure on prospective consulting firms to employ particular sub-consultants or be over-enthusiastic in matching sub-consultants with consulting firms. Information on the availability of specialist sub-consultants should be provided to all firms/organisations in the invitation to submit an expression of interest and/or a tender, if it is considered essential for the main consultants to have such information.

## **Appendices**

Appendix I

Specimen Undertakings by Members of Tender Opening  
Teams/Tender Boards/Consultants Selection Boards

**Undertakings by Members of Tender Opening Teams/Tender Boards/  
Consultants Selection Boards  
(SPR 187)**

1. I undertake to hold in strict confidence all tender information that I have access to through my position as a member of the above Tender Opening Team/Tender Board/Consultants Selection Board. Tender information includes details of tenders received and any other sensitive, restricted or confidential information relating to a tender.
2. I undertake not to make any unauthorized disclosure or take advantage of any tender information referred to in paragraph 1 above whether or not for personal gain.
3. I undertake to declare any actual or perceived conflict of interest with my official duty as a member of the Tender Opening Team/Tender Board/Consultants Selection Board immediately when I become aware of any such conflict.
4. I undertake to take steps to avoid any conflict of interest with any prospective tenderer or tenderer by not putting myself in a position of obligation towards any of them; for example, by not accepting any favour or lavish or excessive entertainment, and not over-socializing with any of them.
5. I understand that I may be subject to disciplinary action should I fail to observe any of my above undertakings.

**Signed** : \_\_\_\_\_

**Name (block letter)** : \_\_\_\_\_

**Rank** : \_\_\_\_\_

**Date** : \_\_\_\_\_