

What is a conflict of interest?

A conflict of interest is where someone is compromised when their personal interests or obligations conflict with the responsibilities of their job or position. It means that their independence, objectivity or impartiality can be called into question.

A conflict of interest can be:

- Actual: where the conflict already exists
- Potential: where the conflict is about to happen, or could happen
- Perceived: where other people might reasonably think that a person has been compromised

A poorly managed 'perceived' conflict of interest can be just as damaging as a poorly managed 'actual' conflict of interest.

A conflict of interest can also be positive or negative. You could be seen to favour or benefit someone, or be against them and disadvantage them.

While conflicts of interest should be avoided wherever possible, they often happen innocently. It's how they're managed that counts. In the context of a procurement activity, a conflict of interest that's not properly managed could seriously undermine its integrity and lead to complaints, challenges and, in some cases, an agency's decision being overturned.

When can a conflict of interest happen?

A conflict of interest can arise in a number of ways: through a relationship, an activity or strong personal views. For example, a person could be compromised if, in carrying out their work duties, they're required to deal with:

- A relative or close personal friend
- An organisation, club, society or association of which they are a member
- A person who's their community or church leader
- A person or organisation:
 - To which they have a professional or legal obligation
 - With which they have a business interest or own a property
 - To whom they owe money
 - For whom they've previously worked, or currently work (secondary employment)

An employee could also be compromised if they're given something from a person who stands to benefit from their decision. They could, for example accept:

- A gift
- An invitation to lunch, dinner or a sporting event
- Free or subsidised travel or accommodation
- Any other sort of benefit, including money

In addition, a conflict can arise if a person holds strong personal views on an issue their agency is considering, for example political view or religious or cultural beliefs.

Public duty to service the public interest

The 'public interest' is the collective interest of the entire community. All staff have a public duty to put the public interest above their personal or private interests when carrying out their official duties. This principle applies to anyone engaged to delivery government programmes and services, whether they are full-time, part-time or temporary employees, casual or contract staff, secondees, consultants, board members or volunteers.

When interests conflict

Conflicts of interest are not wrong in themselves, but they should be properly identified and effectively and transparently managed. When a conflict of interest has been ignored, improperly acted on or influenced actions or decision-making, the conduct (not the conflict itself) can be seen as misconduct, abuse of office or even corruption.

Managing conflicts of interest – a declaration

It's essential that conflict of interest is considered by all officers involved in a procurement activity.

The Chair of the Evaluation Committee may require the completion and signing a Conflict-of-Interest Declaration and Confidentiality Agreement, this may include:

- All members of the Tender Evaluation Committee
- Any advisers, including consultants and/or contractors
- Anyone involved in making a recommendation
- Anyone involved in approving a recommendation or making an important decision
- Anyone making a financial approval for the procurement.

The declaration requires the person to identify any actual, perceived or potential conflicts of interest. The declaration also needs to be revisited regularly and checked once the supplier has been chosen.

Managing an identified conflict of interest

Conflicts that are identified must be reported to the Chair and/or Delegate in charge of the activity. They and they process for managing them must then be recorded in writing.

The options for managing a conflict of interest include:

- Restricting: imposing restrictions on the person's further involvement in the matter
- Recruiting: engaging an independent third party to oversee all or part of the process and verify its integrity
- Removing: where the person chooses, or is asked, to be removed completely from the matter
- Relinquishing: where the person relinquishes the private interest that created the conflict
- Resigning: where the person resigns from their position within the agency.

What is an Unsolicited Offer?
An unsolicited offer is an approach by a person or business with an offer, outside of any formal approach to the market by the ABS, for the supply of goods or services. An approach could be made via different channels such as senior management, an ABS official known to the person or organisation, via procurement or at a meeting or conference.
Where do proposals come from?
A supplier might approach the ABS wherever they identify a potential need for their product or services. Offers or approaches are often made on a targeted or ad-hoc basis where there may be no planned procurement. Offers may also be received when the ABS published procurement plans or makes an approach via a panel where the request is visible to other organisations. Sometimes it follows a product or service demonstration where officials are invited to facilitate interest and familiarity with a subsequent proposal.
Should the unsolicited offer be considered?
An unsolicited offer is not a substitute for routine competitive procurement processes. The focus should be on offers that are genuinely unique, innovative and of value to the ABS, even though it may not be something that has been identified as a current need or priority. Serious consideration should generally be only given to exceptional proposals or offers. There should demonstrate unique concepts or benefits that cannot otherwise be obtained in the marketplace or that are only able to be provided by a single organisation. Value for money must, always, be front of mind and be able to be achieved via direct negotiations.
What do I do if I receive an unsolicited offer
When an unsolicited offer is received, it must be dealt with in a way that ensures transparency and fairness. All unsolicited offers should be referred to the ABS Procurement Team, who will assist you to determine the steps to be taken in responding to the offer. This includes consideration of the following: <ul style="list-style-type: none">• Is the offer genuinely unsolicited?• Does it meet a current or future need?• Is it unique e.g. it is not an advanced proposal for a need that is already known or for goods or services readily available in the marketplace? Undertaking market research will assist to determine if similar goods/services are available.• Do you want to proceed with the offer?• Is there any funding will it provide a return on investment?

Should the ABS want to proceed to fully consider the offer, standard ABS procurement procedures/processes are to be followed for direct engagements (limited tender) that comply with the requirements set out in the Commonwealth Procurement Rules.

Due diligence should also be undertaken that is proportionate to the size, complexity, value and significance of the offer:

- Capability and capacity to deliver
- Financial viability/stability
- Reputation – track record of product/service delivery
- Ownership and licensing of the concept
- Risks associated with the product/service to the ABS

Alternatively, the offer should be declined, the Procurement Team can assist with this process.

Released under FOI Act

FROM SECTION 7 OF THE SURVEY: REPORTING ON s51 RECOMMENDATIONS (OR FINDINGS) FROM COMPLETED INVESTIGATIONS UNDER THE PUBLIC INTEREST DISCLOSURE ACT 2013 (CTH)(THE PD ACT) DURING THE 2024-25 FINANCIAL YEAR

***This may include disclosures that were received by an agency in previous financial years but investigations were completed in the 2024-25 financial year.**

COMMONWEALTH **OMBUDSMAN**

Agencies are required to complete the columns labelled 'mandatory' (relevant title headings are in red). These are mandatory reporting requirements under ss 76(2)(iii) and (iv) of the PID Act. Agencies may complete the remaining columns labelled 'optional' if they wish as it will assist in providing information for the remainder of the survey as well as assist the Ombudsman to better understand the operation of the PID Act. You may add additional columns if required (e.g. in relation to the number of recommendations or the actions taken in response to investigation recommendations).

Attachment A: PID recommendation actions

Recommendations

Recommendation 1:		
<p>In consultation with the ABS Integrity and Assurance Section, S22 and S47F, S47E undertake training to enhance their understanding of:</p> <ul style="list-style-type: none">Conflicts of interest, including real and apparentABS Conflict of Interest Policy including the requirements to:<ul style="list-style-type: none">ensure that staff with potential conflicts of interest make a declaration and implement a documented management plandisclose and record conflicts of interest whenever they arise during the course of their employment.		
Agreed Actions		
Action	Responsible Officer	Due date
S22 undergo tailored COI training	S47E	20/12/2024
S47F undergo tailored COI training	S47E	20/12/2024

Recommendation 2:		
<p>Contract Managers of S47E contracts uplift documentation practices in relation to contract engagements (requests for resources from contracted suppliers) including keeping accurate records of:</p> <ul style="list-style-type: none">the contracted suppliers to whom a request is sent to and record reasons for their selectionthe responses receivedthe staff involved in the assessment of candidates put forwardany conflicts of interest declared relating to any of the candidates put forward and actions taken to manage these potential conflicts during the processthe assessment of each candidate's suitability and reasons for the selection of preferred candidatesany resultant contract variations resulting from the process.		
Agreed Actions		
Action	Responsible Officer	Due date

Map out processes for contract engagement (request for resources) within S47E [REDACTED] Policies	Contract Manager S47E [REDACTED] contracts) in consultation with S22 [REDACTED], Director Procurement and Business Services	14 February 2025
Determine required documentation from each step of the process and centralised storage by contract manager	Contract Manager S47E [REDACTED] contracts) in consultation with S22 [REDACTED], Director Procurement and Business Services	14 March 2025
Implement enhanced record keeping and centralised storage	Contract Manager (S47E [REDACTED] contracts)	31 March 2025
Consider broader application to contract management guidance materials	S22 [REDACTED], Director Procurement and Business Services	31 March 2025

Recommendation 3:

Contract Managers of **S47E** [REDACTED] contracts engage with ABS Procurement and Business Services and Integrity and Assurance Sections to ensure that declarations of, and management of, conflicts of interest are embedded into the processes associated with contract engagements (requesting, assessing and engaging additional resources from contracted service providers) as part of contract management.

Agreed Actions

Action	Responsible Officer	Due date
Map out processes for contract engagement (request for resources) within S47E [REDACTED] Policies (note same as step 1 of rec 2)	Contract Manager (S47E [REDACTED] contracts)	14 February 2025
Identify where conflicts of interest may arise and determine appropriate approaches to record COI declarations (including records of no conflicts to declare)	Contract Manager in conjunction with S22 [REDACTED] (Director, Procurement) and S22 [REDACTED] (EL1, Integrity and Assurance)	14 March 2025
Implement agreed conflict of interest declaration practices into contract engagement processes	Contract Manager (S47E [REDACTED] contracts)	31 March 2025

Consider broader application to ABS contract management and associated guidance materials	S22 [REDACTED], Director Procurement	31 March 2025
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Recommendation 4:

ABS to enhance contract governance of ABS' S47E [REDACTED] contracts including:

- establishing the stakeholder engagement mechanisms, oversight arrangements, systems, processes, decision making and reporting including:
 - defining roles, responsibilities, and processes for managing multiple suppliers within a multi-supply arrangement (MSA), across MSAs and across other contracts.
 - maintaining open and regular communication channels with all suppliers
- establishing processes and procedures for how S47E [REDACTED] Section respond to approaches from organisations and/or people seeking engagements with the S47E [REDACTED] Section.

Agreed Actions

Action	Responsible Officer	Due date
Establish guidance for managing multiple suppliers within a multi-supply arrangement (MSA), across MSAs and across other contracts to ensure ethical practices and open and transparent communication with suppliers.	S22 [REDACTED], Director Procurement and Business Services	31 March 2025
Establish guidance for how S47E [REDACTED] contract managers and team members should handle unsolicited offers from individuals and businesses.	S22 [REDACTED], Director Procurement and Business Services	31 March 2025
Consider broader application of guidance to ABS contract management activities	S22 [REDACTED], Director Procurement and Business Services	31 March 2025