



Conflicts of Interest

Scenario 1

**Managing procurement processes,
tenders and contracts**

“The purchase and disposal of goods and services across the public sector, including managing tenders and contracts, is considered an area of high risk for conflict of interest situations.”

“It isn’t wrong or unethical to have a conflict of interest, what is important is that it is identified and appropriately managed”

The Integrity Coordinating Group

The Integrity Coordinating Group (ICG) was formed to promote and strengthen integrity in Western Australian public authorities. ICG members support integrity through their independent roles under their own legislation, and also work collaboratively across the public sector.

Integrity in decision making

Decision makers need to demonstrate integrity by:

- serving the public interest
- using powers responsibly
- acting with honesty and transparency
- addressing improper conduct.

The Integrity in Decision Making guidelines

ICG supports building the capacity of public authorities, and their employees, to demonstrate integrity when making decisions.

These guidelines provide public authorities with information and practical tools about integrity in decision making, which can be used to strengthen and sustain their decision making processes.

Introduction

Almost all functions performed in the public sector can potentially lead to conflict of interest situations. A conflict of interest in itself is not necessarily wrong or unethical, however, identifying and managing the situation is important. Managing conflicts of interest is all about risk management. Identifying at-risk functions in the organisation is the first step to managing the risks conflicts of interest present.

The purchase and disposal of goods and services across the public sector, including managing tenders and contracts, is considered an area of high risk for conflict of interest situations. In undertaking procurement functions, the State Supply Commission recommends¹ that consideration be given to:

- any likely conflicts prior to the commencement of any procurement process
- the obligations of individual employees to report possible or actual conflict, or incompatibility between their public duties and their personal and private lives In the event of conflict, or potential conflict, individual employees should disclose the conflict as soon as possible and public authorities need to respond appropriately.

The following scenario illustrates one example of how conflicts of interest may be identified and what strategies may be employed to manage them. The choice of strategies may vary across the sector, and will be dependent on the operating environment, legislative requirements and practical solutions.

Scenario

Jack is the contracts manager for a State Government department. He is required to develop a tender for a new telecommunications system. Until three years ago, Jack worked in the 'telco' business, having worked for a number of different companies locally, and interstate. He hasn't really kept in touch with former colleagues, although suspects many of them are still in the business. He appreciates that it is a rapidly changing and highly competitive industry and wonders if any of his former employers will tender.

How to identify conflicts of interest

Even though Jack hasn't kept in touch with the telecommunications industry, he may be perceived to have friends/associates still in the business who could influence his ability to be impartial in carrying out his public duty to award the best tender.

After three years absence, Jack may no longer have any connections with the industry, or have current 'inside' knowledge but does he (or the agency) stand to gain (or lose) now or in the future from his involvement in the tender process?

Would Jack be comfortable in defending his involvement in the tender process if an unsuccessful tenderer went to the media and started asking questions about Jack's previous connections? The perception of a conflict of interest could undermine the public's confidence in the organisation and cast doubt on its objectivity.

How to manage conflicts of interest

Regardless of whether Jack continues to be involved in the telecommunications tender, he should declare and register his conflict of interest.

It may be prudent to restrict his involvement by refraining from being part of the decision making once the tender specifications have been developed. Alternatively, the organisation may engage or recruit an independent person to oversee the process.

If feasible, it may be wise for Jack to remove himself from this particular tender process altogether.

Relevant legislation

- *Public Sector Management Act 1994*
- *Financial Administration and Audit Act 1985* and Treasurer's Instructions
- *State Supply Commission Act 1991*
- *Local Government Act 1995* and associated regulations
- *Members of Parliament (Financial Interests) Act 1992*

Codes of Ethics and Conduct

- The Public Sector Commission Western Australian Public Sector Code of Ethics (reprinted December 2010)
- Agency Codes of Conduct
- Policies and Guidelines
- Department of Local Government (1999) Financial interests handbook: for local governments in Western Australia
- Department of Local Government and Regional Development (2000) Disclosure of interests affecting impartiality (Local Government Operational Guidelines, No. 1)
- State Supply Commission (2004) Integrity, ethics and probity policy

The 6 Ps

Public duty versus private interests

Do I have personal or private interests that may conflict, or be perceived to conflict with my public duty?

Potentialities

Could there be benefits for me now, or in the future, that could cast doubt on my objectivity?

Perception

Remember, perception is important. How will my involvement in the decision/action be viewed by others?

Proportionality

Does my involvement in the decision appear fair and reasonable in all the circumstances?

Presence of mind

What are the consequences if I ignore a conflict of interest?
What if my involvement was questioned publicly?

Promises

Have I made any promises or commitments in relation to the matter? Do I stand to gain or lose from the proposed action/decision?

The 6 Rs

Record/Register

Recording the disclosure of a conflict of interest in a register is an important first step, however this does not necessarily resolve the conflict. It may be necessary to assess the situation and determine whether one or more of the following strategies is also required:

Restrict

It may be appropriate to restrict your involvement in the matter, for example, refrain from taking part in debate about a specific issue, abstain from voting on decisions, and/or restrict access to information relating to the conflict of interest. If this situation occurs frequently, and an ongoing conflict of interest is likely, other options may need to be considered.

Recruit

If it is not practical to restrict your involvement, an independent third party may need to be engaged to participate in, oversee, or review the integrity of the decision-making process.

Remove

Removal from involvement in the matter altogether is the best option when ad hoc or recruitment strategies are not feasible, or appropriate.

Relinquish

Relinquishing the personal or private interests may be a valid strategy for ensuring there is no conflict with your public duty. This may be the relinquishment of shares, or membership of a club or association.

Resign

Resignation may be an option if the conflict of interest cannot be resolved in any other way, particularly where conflicting private interests cannot be relinquished.

Where can I get more information?

More information is available from ICG website at www.publicsector.wa.gov.au/icg

Where can I seek further advice?

It is important to first discuss the situation with a supervisor or senior colleague. You may also contact:

State Supply Commission

4th Floor, Optima Centre

16 Parkland Road

OSBORNE PARK WA 6017

Telephone: (08) 6551 1500

Freecall: 1800 806 599 (Country only)

Email: enquiries@ssc.wa.gov.au

Web: www.ssc.wa.gov.au

Department of Local Government

PO Box R1250

PERTH WA 6844

Telephone: (08) 9217 1500

Facsimile: (08) 9217 1555

Freecall: 1800 620 511 (Country only)

Email: info@dlg.wa.gov.au

Web: www.dlg.wa.gov.au

Some other titles in this series

Available at www.publicsector.wa.gov.au/icg:

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- Wearing two hats—dual roles as a public officer
- Getting on Board—representative members on Boards and Committees
- Allocation of grants for community-based services
- Gifts, benefits and hospitality
- Recruitment, selection and appointment
- Secondary employment

References

¹State Supply Commission (2004) Integrity, ethics and probity policy

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Disclaimer

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