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**ADDENDUM 18**

**STANDARD OPERATING PROCEDURE  
FOR  
BUSINESS CONFLICT OF INTEREST**

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## 1. OBJECTIVE

- 1.1 The purpose of this Standard Operating Procedure (SOP) is to delineate the process to be followed when the Central Supplier Database (CSD) and the Western Cape Supplier Evidence Bank (WCSEB) flag an owner/partner/shareholder/member or Director of an entity as being a current employee of an organ of state.
- 1.2 In addition, it will also guide Departments to assess expenditure relating to potential Conflict of Interest (COI) as reported in the quarterly SCM Insight Reports.

## 2. LEGISLATIVE REQUIREMENTS

- 2.1 **Sections 38 (1)(a)(iii) and 51 (1) (a) (iii) of the of the Public Finance Management Act**, prescribes that accounting officers/authorities must ensure that the institution has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective.
- 2.2 **Prevention and combatting of corrupt activities Act 12 of 2004: Section 17 Offence relating to acquisition of private interest in contract, agreement or investment of public body** states that any public officer who, subject to subsection (2), acquires or holds a private interest in any contract, agreement or investment emanating from or connected with the public body in which he or she is employed or which is made on account of that public body, is guilty of an offence.
- 2.3 **Public Service Regulation: Regulation 13 (c)** prohibits an employee from conducting business with any organ of state or be a director of a public or private company conducting business with an organ of state, unless such employee is in an official capacity a director of a company listed in schedule 2 and 3 of the Public Finance Management Act;
- 2.4 **National Treasury Circular dated 24 March 2006, Code of Conduct for Bid Adjudication Committees** states that "a member (including the chairperson or vice-chairperson) shall beforehand declare his/her interest regarding any matter serving before the Committee and the member will then recuse her/himself during the discussion of that matter. No discussion by the member concerned will be allowed with other members prior to the serving of that submission/report and such a member may not retain that specific submission/report. Any personal interest that may infringe, or might reasonably be deemed to infringe on a member's impartiality in any matter relevant to their duties must be recorded"; and
- 2.5 **Provincial Treasury Instruction, 2019: Provision 3.8.2:** The supply chain management system of an institution must, irrespective of the procurement process followed, prohibit any award to an employee of the state, who either individually or as a director of a public or private company or a member of a close corporation, who seeks to conduct business with the Western Cape Government, unless such employee is in an official capacity a director of a company listed in Schedule 2 or 3 of the PFMA.

- 2.6 **Pro forma AOS, Chapter 3 Paragraph 3.4:** Every employee must declare his or her interest, and that of any family member, in an entity conducting business with the WCG.

### 3. COMPLIANCE WITH ETHICAL STANDARDS

- 3.1 Sound ethics allow for the possibility of effective service delivery. All employees involved in the procurement process must act with integrity. Every employee is a guardian of the procurement process and has duty to ensure that the system is not abused, neither for the sake of the department nor for any potential contractor or service provider.<sup>1</sup>
- 3.2 Any employee reasonably suspected of acting contrary to the ethical standards of the department, WCG or general standards of professional behaviour, will face disciplinary procedures. To avoid this, and maintain the required ethical standards, all employees will:<sup>2</sup>
- a) maintain open, honest, and co-operative business relations with colleagues and vendors;
  - b) adhere to the confidentiality of government, personal, and commercial information;
  - c) avoid any conflict of interest or a perception of bias, and disclose any potential conflict of interest to the Head of the SCM Unit, who must in turn report it to the AO or their delegate;
  - d) exercise impartial conduct in the evaluation of bids;
  - e) apply high standards of professionalism and competence as well as the encouragement of similar standards amongst colleagues;
  - f) promote mutual trust and respect;
  - g) ensure an environment where business can be conducted with integrity and in a fair and reasonable manner;
  - h) recognise and deal with conflicts or the potential thereof;
  - i) deal with suppliers even-handedly;
  - j) ensure that they do not compromise the good standing of the state through acts of impropriety, which may arise from the acceptance of gifts and hospitality;
  - k) see to the scrupulous use of public property, resources, and funds; and
  - l) assist in the elimination of fraud and corruption.

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<sup>1</sup> Pro forma AOS Chapter 3, par. 3.1.1

<sup>2</sup> Pro forma AOS Chapter 3, par. 3.1.2 and WC PTI 2019, s. 3.8.1

#### 4. WHAT IS A CONFLICT OF INTEREST?

- 4.1 This guide mainly deals with conflicts of interest arising in the procurement decision-making processes, specifically in relation to the three-Bid/Quotation Committees. The roles of the three-Bid Committees and Quotation Committee is to objectively invite, evaluate and adjudicate quotations and bids. A conflict of interest arises when a member of any of the committees has any other interest that could negatively affect their duty to be objective and their ability to act impartially.
- 4.2 It is therefore important for members to disclose their interests prior to the commencement of the bid/quotation committee. Should there be an actual or perceived conflict of interest, that member must recuse himself/herself from the discussion of that matter.
- 4.3 A conflict of interest can affect a member's independence, objectivity and impartiality when a member has conflicting interests i.e. the member may derive a personal gain or advantage which may be of direct or indirect benefit to the member.
- 4.4 A conflicts of interest occurs when, in performing his/her formal duties, a member or SCM practitioner can be / appears to be influenced by a private or personal interest to make a decision that benefits him/her personally. This can occur through a relationship (i.e. family members, friends and acquaintances) and an activity (i.e. receiving of gifts, hospitality and favours). The benefit also can be negative, such as a contract withheld from the most suitable vendor because that vendor refuses to compensate the procurement employee. The three types of conflict of interest is discussed below:
- a) **Actual** – occurs when the member/practitioner making the financial decision holds a position where he realistically could be influenced. It does not mean that he/she has acted on the conflict; it only means that the conflict exists, such as when a potential vendor is owned by a relative of the employee making the procurement decision i.e. where a real conflict already exists;
  - b) **Potential** – when our personal or private interests puts us in a position where we could be influenced i.e. where a conflict is about to happen, or there is a risk of it happening; and
  - c) **Perceived** – occurs where the member/practitioner holds a position where he/she can appear to influence or be influenced. For instance, the head of the procurement department could have a financial interest in a potential vendor. While he does not make the actual procurement decision, it can be perceived that he may influence the buyer who does. Others may reasonably assume that the member may not be independent, impartial or objective.

## 5. MANAGING CONFLICT OF INTEREST

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| <p><b>5.1 IDENTIFY</b></p> <p><i>Where do I identify potential conflicts of interests?</i></p>                              | <ul style="list-style-type: none"> <li>a) Flag on CSD/WCSEB;</li> <li>b) Declaration by Bid/Quotation Committee Member;</li> <li>c) Declaration by role players within the SCM process (review procurement template);</li> <li>d) Listed in Table B of the WCBD 4;</li> <li>e) Listed in the System Insight Report; or</li> <li>f) Identified by the Committee or member/s.</li> </ul>  |
| <p><b>5.2 ASSESS</b></p> <p><i>How do I determine whether a conflict of interest exist?</i></p>                             | <ul style="list-style-type: none"> <li>a) Utilise the process flow (attached as Annexure A) to determine whether non-compliance to the Public Service Regulations or a conflict of interest in the procurement process, that may be categorised under paragraph 4 above exists.</li> <li>b) Determine the type of conflict of interest that exists.</li> <li>c) Furthermore, an employee employed by an organ of state conducting remunerative work outside the employee's employment should first obtain the necessary approval (RWOEE), failure to submit proof of such authority, where applicable, may result in disciplinary action.</li> </ul>  |
| <p><b>5.3 MANAGE THE CONFLICT OF INTEREST</b></p> <p><i>What do I do after the Conflict of interest was identified?</i></p> | <ul style="list-style-type: none"> <li>a) COI should be managed in an appropriate manner that is fair and transparent by the bid/quotation committee chairperson or the delegated official or any member or individual involved in the process.</li> <li>b) The process of managing the conflict of interest must be recorded in writing including the deliberations on managing and the decision to action/resolve the conflict.</li> <li>c) The minutes of the bid/quotation committee must record how a COI was resolved.</li> </ul>   |
| <p><b>5.4 MITIGATE THE CONFLICT OF INTEREST</b></p>   | <ul style="list-style-type: none"> <li>a) Removing the bid/quotation member from the committee; and/or</li> <li>b) Restrict the member from further engagement with the bidder during the evaluation process; and/or</li> <li>c) Utilise an independent officer to assess a perceived conflict of interest and to recommend the appropriate management thereof; and/or</li> <li>d) The bid/quotation member resigns as an employee of the organ of state or as an owner/partner/member/shareholder or director of the entity.</li> <li>e) Although a COI is considered managed (as above) the chairperson/delegated official may still decide to remove the bid/quotation member from the committee to eliminate any perception of COI that may exist.</li> <li>f) In addition, the Department may also assess any other pending transactions involving that provider which has not been paid to curb any potential irregular expenditure.</li> </ul> |
| <p><b>5.5 MANAGING COI FOR FOREIGN NATIONALS</b></p>  | <ul style="list-style-type: none"> <li>a) It is the responsibility of the Department to conduct a due diligence assessment to determine whether foreign owners/shareholders/directors/members/partners or</li> </ul>  |

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|  | <p>individuals are deemed to have a conflict of interest. The CSD added a disclaimer indicating that foreign registration/identification/passport/bank account or work permit numbers will not be verified.</p> <p>b) There is no defined process to assess foreigner credentials as such information is not captured uniformly across provincial and national government institutions. The below guidance is provided but it is not limited, as it is expected of each department to do all in its power (within the context of information available to the department) to assess any potential of conflict of interest.</p> <ul style="list-style-type: none"> <li>i. Verify whether the foreign owner/shareholders/directors/members/partners or individuals are a current or past employee of a government institution by verifying the full first name and surname in Persal. This can be done by using the #4.1.7 function which allow for a search across all government institutions;</li> <li>ii. Should the result provide multiple lines, each line must be assessed to confirm whether that Persal profile may contain a system generated ID number. This will be indicated as "System Generated" next to the ID number. Persal assigns a system generated ID number when foreigner information is captured;</li> <li>iii. This finding must be verified with the shareholders/directors/members/partners or individuals and/or the identified employer to assess the status of their employment;</li> <li>iv. To maintain a proper audit trail, screen prints must be attached as supporting evidence to the payment batch; and</li> <li>v. Table B of the WCBD 4 should also be assessed for potential conflict of interest declared by the entity.</li> <li>vi. The above Persal verification process is only limited to government institutions which utilises Persal as their personnel information system and excludes municipalities and other government entities.</li> </ul> |
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## 6. DEFINITIONS

- 6.1 **"employee"**<sup>3</sup>, means a person contemplated in section 8 of the Public Service Act, 1994 but excludes a person appointed in terms of section 12A of that Act; and
- 6.2 **"public entity"**<sup>4</sup>, means a national or provincial public entity;
- 6.3 **"family member"**<sup>5</sup>, in relation to any person, means his or her parent, sister, brother, child or spouse—

<sup>3</sup> Public Service Act, 1994, s. 1

<sup>4</sup> Public Finance Management Act, 1999, s. 1

<sup>5</sup> Public service regulation, 2016, s. 2

- (a) including a person living with that person as if they were married to each other, namely a life partner;
- (b) whether such relationship results from birth, marriage or adoption;
- (c) including any other relative who resides permanently with that person; and
- (d) including any other relative who is of necessity dependent on such person.

6.4 **“RWOEE”<sup>6</sup>, Remunerated Work Outside the Employee's Employment**

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<sup>6</sup> Public service regulation, 2016, s. 19 (e)

## Conflict of Interest(COI) Process Flow

