



**Victorian
Public Sector
Commission**



Conflicts of interest in procurement in the Victorian Public Service (VPS)

A guide to managing conflicts of interest in
procurement

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About the conflict of interest in procurement guide

Who this guide applies to and how to use it in your work

This guide uses 3 scenarios to explain how to manage conflicts of interest when people with in-demand skills and experience move between the private sector and VPS.

This guide applies to you if you're:

- a VPS employee, including a manager or executive
- a consultant, contractor or (except where we state otherwise) a labour-hire employee who must comply with the [code of conduct](#).

The guide's purpose is to assist you if you're involved in:

- procurement, such as being on a procurement panel or approving procurement costs
- declaring procurement-related conflicts of interest
- assessing declarations
- developing and overseeing conflict of interest management plans.

The guide doesn't alter any policy, process or code. You must comply with the relevant [Victorian Government Purchasing Board policies](#) and [public construction ministerial directions](#).

Managing conflicts of interest

As a VPS employee, you must be — and be seen to be — impartial in performing your public duties. This helps to maintain public trust and prevent corruption.

If you have a conflict of interest you must:



- declare the conflict in writing
- follow the management plan your manager develops in consultation with you to manage the conflict.

Always declare a conflict of interest, regardless of whether the [conflict is real, potential or perceived](#).

Your manager will develop a plan to address your conflict of interest based on the risk mitigation strategies in your organisation's conflict of interest policy. The approach taken in the plan will be proportionate to the risk.

These strategies are likely to be similar to those in our [conflict of interest model policy \(DOC, 50KB\)](#), which are:

Open allClose all

Record and monitor

Your conflict of interest is recorded. Relevant team members and managers are made aware of it. This supports impartial decision-making.

Ongoing monitoring occurs. If the risk level rises, additional strategies are implemented. For example, the strategy 'restrict or remove'.

Restrict

Restrictions are placed on your involvement in the conflicted procurement.

For example, the management plan may say that you can take part in certain discussions on the matter but must not take part in any decision or be present when it's made.

Remove

You're removed from the conflicted procurement process entirely. You don't take part in any discussion or decision on the matter and aren't present when these occur.

Recruit

An independent, impartial third party with no conflict of interest in the matter oversees part or all of the procurement process.

This person could be an employee or external to the organisation. However, a subordinate wouldn't be considered independent unless exceptional circumstances exist.

Relinquish or resolve

You relinquish your private interest in the procurement.

If you can't do so (for example, because of your relationship with a prospective bidder), the organisation will take action to resolve the situation. This is because it's not in the public interest for an unmanageable conflict to continue to exist.

The organisation will do so consistent with the [public sector employment principles and standards](#) and any applicable employment contract, agreement or law.

Example – resolve

An employee must be able to:

- perform the duties of their role as required, to the required standard
- comply with their employment obligations, including their employer's policies.



Sometimes, the situation can be resolved by the employee taking leave or performing modified duties or another role.

But this will not always be the case. For example, due to staffing needs or capacity or the duration of the conflict.

In such cases, the employment relationship may need to terminate.

More information

If you need more information after reading this guide, see:

- [conflict of interest information for organisations](#)
- [goods and services procurement policies](#)
- [public construction ministerial directions](#)
- [buyer's guide for procurement](#)
- [plan for probity](#)
- [supplier code of conduct](#)
- [VAGO report on managing conflicts of interest in procurement](#)
- [managing corruption risks associated with conflicts of interest in the Victorian public sector.](#)



Former private sector employees and procurement conflicts of interest

A VPS employee is involved in deciding who to award a contract to and their former employer is a prospective bidder.

It's common for employees to move between the VPS and private sector during their careers. This exchange of skills and experience is beneficial for all parties. But it can lead to conflicts of interest that must be declared and managed.

Identifying a conflict of interest

As a VPS employee, you have a conflict of interest if:

- you're involved in a procurement process, and
- a prospective bidder is one of your former employers from the private sector.

The public could reasonably form the view that your relationship with your former employer may influence your work.

The employees most likely to be affected by this type of conflict of interest are those working in:

- the immediate work area that the goods or services are being procured for
- the procurement unit
- any other part of the procurement process.



How to manage this conflict

If your former employer is a prospective bidder, you need to declare a conflict of interest. Your manager will develop a conflict of interest management plan in consultation with you.

The plan will set out the restrictions to be put in place to manage your conflict of interest.

This may include not being involved in:

- awarding the contract
- other parts of the procurement process.

Awarding the contract

The management plan will usually remove you from taking part in deciding or approving who is awarded the contract.

This means you can't discuss the bids, provide advice or comment on the bids — even unofficially — or take part in any process to award the contract.

Other aspects of the procurement process

The risk level will determine whether or not you can take part in other parts of the procurement process.

The management plan will consider risk factors such as:

- the nature of the relationship between you and your former employer
- how recent or enduring the relationship is
- your current level of seniority
- your current level of decision-making power
- your access to sensitive or confidential information.



Your organisation should have a framework to assess these risks.

Example: Anna, a former private sector employee

A government department has appointed Anna as the new deputy secretary heading up a division.

Her previous role was as an executive in the public service of another state. Prior to her current role, Anna was a partner in a nationwide consulting firm.

Anna wants to commission a strategic review of her division. A procurement process will need to occur.

It's likely Anna's previous consultancy firm will submit a bid.

Anna's conflict of interest

Regardless of whether Anna would prefer the strategic review to be conducted by her previous firm, she has a conflict of interest.

The public could reasonably form the view that Anna's relationship with her former employer may affect the integrity and probity of the procurement process.

Anna must declare a conflict of interest in writing.

How to manage this conflict of interest

Anna's manager (the Secretary) will develop a management plan in consultation with Anna.

Or Anna's manager could appoint another deputy secretary or another impartial third party (such as an independent [probity adviser](#)) to develop and oversee the plan. This person shouldn't be a subordinate of Anna's.

When developing the plan, Anna's manager will consider the relevant factors. For example:

Writing and approving the tender specifications

When the tender documentation is being developed, Anna:

- must not have input into the tender specifications except if it's in the public interest and under the active supervision the Secretary or an impartial third party (such as another deputy secretary or an independent [probity adviser](#))
- must not approve the tender specifications or any 'go-to-market' strategy, nor can her subordinates.

Selecting and approving the procurement

Former employer doesn't submit a bid

If Anna's former employer does not submit a bid, Anna can then become involved in the procurement process.

Former employer submits a bid

If Anna's former employer submits a bid, she must also:

- be removed immediately from managing the procurement process
- take no part in any aspect of deciding or approving the procurement
- have no interaction regarding the procurement process with any employees involved in it, until the process has been completed.

Appointing an independent probity adviser

If an independent, impartial third party is appointed as a probity adviser, their role could be to provide probity advice on the procurement process. This could include overseeing:

- the design and approval of the tender specifications, to mitigate the conflict of interest arising from Anna's former employer being a prospective bidder
- the selection and approval of the procurement if Anna's former employer submits a

bid (Anna must be removed from doing so).

A suitable person to appoint as probity adviser would be:

- an internal employee (but not a subordinate) of appropriate seniority and expertise, such as the secretary or a deputy secretary
- an external [independent probity adviser](#).

Impartiality requirements

Whatever plan is in place, Anna must act impartially in the performance of her duties. As required by the code of conduct, Anna must not:

- favour her former employer in any way, such as tailoring the tender specifications to suit them
- provide her former employer with any confidential information
- promote her former employer's interests
- reach out to her former employer or accept any approach from them about the tender.



External secondees and procurement conflicts of interest

A prospective bidder has an external secondee embedded in the procurement process.

An external secondee is a person seconded from outside the public sector who is embedded in your organisation to work for a period of time.

This includes all secondees from the private sector, such as a consultant or advisor seconded from a private firm or an independent contractor. But excludes:

- people hired through a dedicated labour hire organisation (often referred to as 'temps') as per the [Staffing Services State Purchasing Contract](#)
- secondees from the broader public sector, such as a public entity or state-owned enterprise.

Sometimes, a VPS organisation seconds people from the private sector to work in the VPS as an external secondee.

For example, an organisation may source an external secondee from a professional services firm to assist in the delivery of a policy, project, or program.

External secondees from professional services firms shouldn't be engaged to undertake [work identified as a universal and enduring public service function](#).

Identifying a conflict of interest

An external secondee has an ongoing loyalty to their home firm.

A home firm is the organisation an external secondee works at when they're not on

secondment. For example, if an external secondee is on secondment at a department but is employed by 'XYZ Firm', then XYZ Firm is their home firm.

A conflict of interest arises if a home firm is a prospective bidder to supply goods or services and has an external secondee embedded in:

- the immediate work area the goods or services are being procured for
- the procurement unit
- another work area that is part of the procurement process.

This is because the public could reasonably form the view that the external secondee may influence the tender process.

The external secondee must declare a conflict of interest in writing.

This is a situation that the home firm should consider when it's providing an employee as an external secondee to the VPS. Consider informing external agencies of this risk before the secondment is agreed to.

Any management plan needs to deal with the specific circumstances of a conflict of interest. You can't make a management plan in advance, but you can try and prevent conflicts of interest from arising in the first place.

How to manage this conflict

If you're an external secondee with a conflict of interest you need to:

- declare the conflict in writing
- follow the management plan your manager develops in consultation with you to manage the conflict.

When developing the plan, your manager will consider the relevant factors. For example:

Impartiality requirements (all employees)

All employees, including external secondees, are bound by your organisation's conflict

of interest policy and the code of conduct.

An external secondee must be impartial in the performance of their public duties. For example, they:

- must not provide their home firm with any confidential information
- must not engage in anti-competitive practices such as attempting to influence the tender documents to suit their home firm
- must not promote their home firm's interests in any way.

Home firm is a prospective bidder

All external secondees whose home firm is a prospective bidder must be removed from any involvement in the design or approval of the tender documents.

This applies to all external secondees in:

- the immediate work area (particular project, team or function the goods or services are being procured for),
- procurement unit or other part of that particular procurement process.

Otherwise, it would be reasonable for members of the public to believe that the external secondee could influence the outcome of the design of the tender specifications

Home firm doesn't submit a bid

If the home firm does not submit a bid, their external secondees can become involved in the procurement process from then on.

Home firm submits a bid

When to exclude a home firm bid

If a home firm submits a bid:

- their external secondees must remain removed from the procurement process
- if this is not possible then the home firm's bid must be excluded, unless it's not in the public interest to do so.

This is because it would be reasonable for members of the public to believe the external secondees involved in the procurement process will consciously or unconsciously influence the outcome of the bidding.

When not to exclude a home firm bid

Examples of when it may not be in the public interest to exclude a home firm's bid include:

- there is a shortfall of suppliers who can perform the work to the required standard
- it would result in a narrow and significantly less competitive field
- the cost of another supplier would be prohibitively higher.

Pre-existing contractual obligations

Sometimes your organisation will have a pre-existing contract that requires you to engage the home firm, regardless of the presence of external secondees. It would still be highly advisable to appoint an independent probity adviser to manage the delivery of the contract.

Appointing an independent probity adviser

In some circumstances, it will be highly advisable to appoint an independent internal or external [probity adviser](#) to oversee the procurement process, including:

- provide probity advice
- assist with risk mitigation
- oversee decision-making.

Examples of when it will be highly advisable to appoint a probity adviser include:

Tender specifications

- If it's not feasible to remove all of a prospective bidders' external secondees from involvement in the design of the tender specifications – for example, because of the numbers involved or because one or more of them has expertise that is critical to the tender design
- if none of a prospective bidder's external secondees are involved in the procurement process but most of the workers on the project are external secondees.

Tender selection

- If it's not in the public interest to exclude a home firm bidder, it would be highly advisable to appoint an internal or external independent [probity adviser](#) to oversee the procurement process.
- If pre-existing contractual obligations require that the home firm be appointed when it might otherwise have been excluded.

Tender documentation

If a home firm intends to submit a bid, it must declare a conflict of interest in its tender documentation.

When any bidder provides their tender documentation, it's good practice for your organisation to check for conflicts of interest — even if none have been declared.

The check should include whether there are any external secondees embedded in the procurement process. If there are, check if their home firm is a bidder.

The requirement for a bidder to declare a conflict of interest is consistent with the [invitation to supply template](#) and the [supplier code of conduct](#).

Goods and services procurement

Clause 2.9(a) in the [invitation to supply template](#) sets out the rules for the procurement

and states that:

Invitees must not, and must ensure that their Representatives do not, place themselves in a position that may give rise to an actual, potential or perceived conflict of interest between the interests of the State and the Invitee's interests during the Invitation Process.

The Invitation to Supply template is in the process of being updated and changes will be reflected in this guide once the update is complete.

Construction procurement

The [request for tender conditions template](#) sets out the rules for procurement. Section 12 (a) covers probity and competitiveness, stating that:

By submitting a Tender, the Tenderer warrants that:

the Tenderer and each of its Associates are not a member of, or otherwise involved with, a competing Tenderer in respect of the Project;

as at the Closing Time, no actual, potential or perceived probity issues (including any actual, potential or perceived conflicts of interest) exist or are likely to arise in respect of the Tenderer or each of its Associates or its involvement in the Project, including any relationships between the Tenderer and a competing Tenderer (including the existence of related parties, common directors, advisers or employees), other than those probity issues disclosed and described in its Tender; and

it will not place itself, and will procure that its Associates do not place themselves, in a position that may or does give rise to an actual, potential or perceived probity issue at any time during the Tender Process.

In section 18.1, the template defines associate as:

Associate means any officer, employee, secondee, agent, consultant, contractor, nominee, licensee, or advisor and

in the case of a Tenderer, includes [#] [Drafting Note: Insert project-specific associates.] but excludes the Principal and its Associates;...

Example: Jo is an external secondee in the immediate work area

The projects unit of your organisation is issuing a tender for the design and delivery of a large program. Most of the employees in the unit are external secondees from the same consulting firm.

Jo is an external secondee and would usually be involved in the procurement process through their role in the drafting of the tender documents. Jo's home firm is a prospective bidder.

Jo's conflict of interest

Each secondee in the project's unit has a conflict of interest, including Jo.

The public could reasonably form the view that the external secondees' presence in the unit may influence the procurement process to some degree. For example:

- Jo's involvement in drafting the tender documents may result in the tender specifications being tailored to suit the home firm
- the presence of other external secondees may result in the conscious or unconscious promotion of their home firm or other types of conflict of interest.

How to manage this conflict of interest

The external secondees should be reminded of their obligations under the code of conduct, including the impartiality requirements.

Jo must submit a conflict of interest declaration. Jo's manager will develop a conflict of interest management plan for Jo, in consultation with them.

To minimise risk, each of the other external secondees could be asked to also declare a conflict of interest in writing.

When developing a plan, the manager will consider the relevant factors. For example:

Before bids are submitted

Jo and the other secondees should be removed from any involvement in drafting or approving the tender specifications.

If this isn't feasible (for example, due to Jo's expertise in the project), Jo's involvement should be restricted as far as practical.

Due to the presence of the external secondees in the immediate work area, it would be highly advisable to appoint an internal or external independent [probity adviser](#) to oversee the drafting and approval of the tender specifications.

Home firm bidder

Unless it's not in the public interest to do so, the home firm must be removed from consideration if:

- the home firm submits a bid

- Jo and the other secondees can't be removed from involvement in the procurement process and immediate work area.

This applies even if the external secondees in the immediate work area aren't involved in the procurement process. This is because their presence as members of the work team may bias the selection and approval of the procurement.

After bidding closes

If the home firm bid is excluded

If the home firm's bid is excluded, Jo and the other external secondees in the team can be involved in the procurement process from that point onwards.

If the home firm bid isn't excluded

If it isn't in the public interest to exclude the home firm's bid, Jo and the other secondees in the team must not be involved in deciding or approving the procurement.

If this isn't feasible (for example, due to the number of external secondees involved), it's highly advisable to appoint an internal or external independent probity adviser to oversee the procurement process.



Financial delegates and procurement conflicts of interest

A financial delegate is responsible for signing off a procurement, but they have a conflict of interest.

Approval of the cost of procurement is a step in the procurement process.

Sometimes, the financial delegate will have a conflict of interest. For example, if they're:

- an ex-employee of the recommended bidder
- an external secondee embedded in your organisation whose home firm is the recommended bidder.

External secondees can only be financial delegates if they're given the status of 'employee by exemption'. This scenario is uncommon.

How to manage this conflict of interest

If a financial delegate is in either of these situations they must declare a conflict of interest. This is because it is reasonable for people to believe that:

- a former employee may be biased towards or against their former employer
- an external secondee may be biased towards their home firm.

The financial delegate's manager should develop a conflict of interest management plan in consultation with them.

When developing the plan, the manager should consider the relevant factors. For example:

Removing the person

The usual strategy would be to:

- remove the financial delegate from the particular procurement process
- appoint an alternative approver.

Appointing an independent probity adviser

Consider appointing an internal or external independent [probity adviser](#) (internal or external) to oversee the approval process.

Considering other good practice ideas

Your organisation can consider implementing these good practices as a precaution for all procurements:

- require the financial delegate to keep their duties separate and not be involved in the procurement process — this reduces but doesn't remove the chance of a conflict of interest occurring.
- require the financial delegate responsible for signing off on the procurement to complete a conflict of interest form.

