



**Victorian
Public Sector
Commission**



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.