



# Getting it right

## *Managing conflicts of interest in procurement*

### Introduction

#### **Why is it particularly important to manage conflicts of interest in procurement?**

The Ministry of Business, Innovation, and Employment, as the functional lead for procurement, has established procurement rules and these principles:

- plan and manage for great results;
- be fair to all suppliers;
- get the right supplier;
- get the best deal for everyone; and
- play by the rules.

Essentially, all of these principles come back to one important over-riding point: procurement needs to be fair and ethical. Procurement decisions in the public sector are essentially decisions about spending public money. As such, they must be – and be seen to be – fair, impartial, and provide value for money.

Sometimes, and just as importantly, conflicts of interest can create a perception of a lack of fairness or impartiality. That, in turn, can call into question the integrity of a procurement decision, can negatively impact market confidence, and undermine trust and confidence in the integrity of the public sector.

If it looks like someone involved in a procurement process has been influenced by favouritism or improper personal motives, the organisation can also be exposed to legal, commercial, or reputational risk.

*“based on what we have seen from our work, conflicts of interest in a procurement process that are not identified or managed well can significantly undermine fairness and impartiality”*



## Common ways that conflicts of interest in procurement processes arise

Public sector procurement bridges the boundary between the public, private, and voluntary sectors. One of the reasons concerns about conflicts of interest in procurement often arise is that procurement decisions involve these different sectors interacting. Each sector might have different ideas about what is appropriate.

Conflicts of interest can arise in several different ways. These include:

- employment relationships – an individual may have previously worked for (or with) a tenderer;
- financial interests – an individual may have a financial interest in a company that has tendered for a contract;
- business relationships – an individual may have received a gift or hospitality from a potential provider; and
- family or personal relationships – an individual may also have a conflict of interest through a family member or friend.

Regardless of how the conflict arises, there is a risk that an individual with a conflict might (consciously or unconsciously) pass on information or make comments about a procurement to potential providers that create an unfair advantage or improperly influence a decision-making process.

Even if these things don't happen, managing perceptions is as important as managing actual conflicts of interest.

We have prepared six common scenarios where conflicts of interest can arise during procurement. We set out:

- why the scenario represents a conflict of interest;
- how it might affect trust and confidence; and
- why some proposed mitigations may not fully address the risk.

We also provide some ways to help avoid, mitigate, or manage the conflicts.

## Scenario 1: A relative works for a supplier

### What is the situation?

A government department needs a building firm for a major capital project. Rawiri, the manager in charge of delivering this project, is married to Kevin, who works for a building firm.

Kevin's firm is on a shortlist of suppliers bidding for the contract. He is in charge of putting together pricing.

Rawiri is in charge of putting together the government department's requirements. He will be part of the evaluation team choosing which firm to award the contract to.

### Why is this a conflict?

This was a potential conflict of interest at the planning stage. It became an actual conflict of interest as soon as Kevin's firm was shortlisted to bid for the project.

Rawiri is representing the interest of the government department he works for. That interest is getting the best value supplier for the job. However, Rawiri also has an interest in Kevin's successful employment.

### Management plans that do not mitigate the conflict

The government department identified some management plans to deal with this scenario. However, these plans do not remove the risk or reduce it to an acceptable level.

#### Proposed management plan

Rawiri will be an adviser to the evaluation panel but not a full member giving the suppliers a score.

One of his staff will replace him on the panel and do this.

#### Why it does not work

This does not remove the perception that Rawiri is still in a position of influence. If his advice is needed, it must be influential.

Replacing him with one of his own staff creates a power imbalance where he will remain influential. The situation would be different if his manager replaced him.

### Proposed management plan

Rawiri and Kevin do not discuss the project at home.

### Why it does not work

This would be impossible to verify.

Even if it were manageable in practice, it does not mitigate the perception of a conflict, particularly from other suppliers bidding for the contract.

### What might be a better plan?

A better plan would be to completely remove Rawiri from the procurement stage of the project. A conflict of interest involving close relatives in influential positions is very difficult to mitigate.

Mitigation might be possible if they were more distant relatives (such as cousins) or if they held less influential roles (such as administrative staff members).

## Scenario 2: Being friendly with suppliers

### What is the situation?

A DHB wants to find a supplier from an existing panel of approved providers of print and related services. The DHB uses a secondary procurement process that asks providers for a formal proposal.

Priya is a member of the evaluation panel. She declares that she has a “business as usual” relationship with Ari, a staff member from one of providers bidding for the contract.

Priya manages the existing contract with the provider for the DHB. Further investigation reveals that she worked with Ari in a previous role and that the two remain close.

### Why is this a conflict?

It is not unusual for public sector employees to have a relationship with staff at a supplier. It is also often likely that an incumbent supplier already working with a public organisation will compete for a new opportunity.

The DHB needs to manage two risks here.

First, it needs to ensure that Priya is managing the existing relationship in the DHB’s best interests.

Second, it needs to ensure that her relationship with Ari has not become a close personal friendship (or one that can be perceived as such) where Priya’s interest in Ari’s well-being could conflict with the DHB’s interest in choosing the best supplier.

Even in the absence of a friendship, staff often have regular relationship management meetings with suppliers – for example, over a regular coffee catch up. This can create the perception of a close relationship even if it is not a conflict.

### Management plans that do not mitigate the conflict

The DHB identified some management plans to deal with this scenario. However, these plans do not address the perception that a conflict exists.

### Proposed management plan

Priya will not see Ari during the tender process.

### Why it does not work

This would be impossible to verify. It is also unlikely to address competitors’ perception of a conflict.

It does not remove any conscious or unconscious bias that may exist.

### Proposed management plan

Priya will delegate management of the existing contract during the tender process so she is not involved.

### Why it does not work

The existing contract needs to continue being managed.

Managing the existing contract does not cause the conflict. Priya’s involvement in the procurement process does.

## What might be a better plan?

If Priya has a close personal friendship with Ari, she should not be involved in the procurement process. If they were not friends, Priya's ongoing relationship with Ari in managing the existing relationship is not a conflict.

However, it is also important to consider whether there is an actual or potential advantage for the incumbent supplier Ari works for. If there is, the DHB needs to decide how to mitigate that advantage to make the procurement a level playing field.

The DHB also needs to consider perceptions – in particular, how the situation might look to a competing supplier who has less information about the full circumstances.

During the procurement process, contact with the supplier, and particularly Ari, should be kept to essential business only. It should be carried out on DHB premises and should not include any hospitality from the supplier.

It would be prudent to include more than two people and to carefully document each meeting. This would help mitigate the perception of a close relationship or conflict.

## Scenario 3: Working both sides of the deal

### What is the situation?

A Crown Research Institute (CRI) needs a new IT system. It recognises that it does not have the expertise to write a detailed and technical specification for the system that it can use for the tender.

The CRI hires a specialist consultancy firm to develop the requirements and write the specification and tender documentation on its behalf.

Subsequently, a software supplier asks the consultancy firm to become part of a joint venture to bid for the contract to implement the new system.

## Why is this a conflict?

Initially, the interests of the CRI and the consultancy firm were not in conflict. The CRI wanted good quality tender documentation that it could go to the market with.

The consultancy firm's interest was in doing the work, getting paid, and building a track record that would help make it a successful and sustainable business.

However, an actual, potential, or perceived conflict arises when the consultancy firm joins a bidding consortium. Its interest is now in winning the contract, but the CRI's interest is in choosing the best supplier.

### Why is the consultancy firm's work for the CRI a problem?

The consultancy firm's work writing the requirements, specification, and tender documentation for the CRI is a problem for several reasons:

- The consultancy firm could have or could be perceived to have skewed the specification towards its or its preferred delivery partner's area of expertise.
- Having worked closely with the CRI, the consultancy firm could have inside information that is not available to others or that is not clear from the tender documentation. This could include the CRI's plans and what it thinks is important to the project's success.
- Having worked closely with the CRI, the consultancy firm may have established good relationships that could lead to conscious or unconscious bias among the CRI staff.
- The consultancy firm cannot bid for the contract and support the CRI at the same time. Because the CRI lacks in-house expertise, it needs to find another source of specialist support to manage the procurement, but it has fewer and less effective options for finding it.

### Management plans that do not mitigate the conflict

The CRI identified some management plans to deal with this scenario. However, the plans do not address the inherent conflict for the consultancy firm.

## Proposed management plan

The consultancy firm separates staff supporting the CRI from those supporting the software company with its bid.

## Why it does not work

It is difficult to get assurance that these kinds of separation are operating in practice.

Competing suppliers are likely to be sceptical, so the perception risk is not mitigated.

## Proposed management plan

The consultancy firm signs a non-disclosure agreement for any confidential information it has access to during its work with the CRI.

## Why it does not work

It would be practically difficult to ensure that no information is disclosed.

A non-disclosure agreement also cannot cover information already in the heads of the consultant's staff. It would be near impossible for them to ignore or not be influenced by this information, even if subconsciously.

## What might be a better plan?

**Key to managing the potential conflict is ensuring that everyone who tenders has a fair and equal chance of succeeding.** This could mean providing the market with as much information as possible to reduce any advantage that the consultancy firm has gained from early or inside access to information.

Another option could be to have informed the consultancy firm that it could not bid for the resulting implementation when appointing it to assist with writing up the requirements, specification, and tender document.

The viability of this option depends, in part, on whether you are embarking on a competitive or collaborative procurement approach. For example, it may be appropriate to engage with providers to co-design a new service delivery model.

However, it is unlikely to be appropriate for a consultant to write the specifications for a commercial project such as a new IT system or a capital build, then compete with other private sector firms to deliver the project.

Either way, it is important to be clear with the market at the start of the process.

## Scenario 4: Shares, directorships, and other financial interests

### What is the situation?

A government department is procuring reconfigured national transport services. Existing contracts are due to expire shortly.

The procurement covers urgent and routine transport services throughout the country. The services are structured into several regions, and public organisations can use the services contracted for their region.

A working group is set up. Jan, a director at one of the public organisations that would use the transport services, is a member of this group.

Jan declares that she has a close working relationship with one existing supplier. She also has "secondary employment" with a potential supplier and a subsidiary of another. She holds shares in a fourth potential supplier.

### Why is this a conflict?

Roles in, or relationships with, organisations that intend to participate in a procurement process always create the risk of divided loyalties. This is particularly true if the organisation's success or failure in the procurement affects the person's income or the value of any shares that they own.

In this situation, the interests of the public organisation that Jan is the director of are not aligned with the interests of the other organisations she also works for or has an interest in.

### Procurement can be undermined at the planning stage

The draft technical specification was shared with the working group that Jan was part of. Because she had specialist knowledge and experience, she could provide feedback and influence the specification.

She might have consciously or unconsciously skewed the specification to favour the suppliers she was involved with, even if only because she was more familiar with their operations.

Other suppliers could certainly perceive this to be the case.

### **Communication needs to be formal and well controlled**

Jan suggested that she could be a contact for suppliers that wanted to know more about the service requirements in her region. Again, this could have led to actual, potential, or perceived inequity in what information was provided, when, and to whom.

It could be perceived that those organisations that Jan had a relationship with or worked for could get preferential access to useful information.

### **Shares are part ownership of a business**

Jan holds shares in a company that is a potential supplier. As a result, she has a financial interest in the outcome of the procurement process. This is because the success of the company will influence the value of her shares.

### **Management plans that do not mitigate the conflict**

The government department identified some management plans to deal with this scenario. However, these plans do not address the risk arising from the shares and the secondary employment.

### **Proposed management plan**

Jan is conflicted with multiple parties in the tender, so the effect of this will average out.

### **Why it does not work**

Multiple conflicts do not “average out”. On the contrary, they combine to undermine confidence in the process.

This management plan also does not consider the relative size of the conflicts. For example, if most of Jan’s secondary income is from one supplier, she might be more positively inclined towards it than the other suppliers.

### **Proposed management plan**

Jan does not have a decision-making role in evaluating tenders or selecting supplier(s).

### **Why it does not work**

Although this limits the level of influence Jan has on the outcome to some extent, it does not control her influence on the requirements and specifications. These could still favour certain suppliers.

### **What might be a better plan?**

Conflicts from roles in, or relationships with, other organisations can be difficult to mitigate or manage, especially if the conflict is financial.

Even if Jan gives up her secondary employment, these organisations will become former employers. Former employers are a common source of conflict, which we cover in scenario 5.

A better plan is for Jan to not be involved at all. If her expert input is needed, an independent peer review might give the government department confidence that the resulting specifications and requirements do not favour any particular party.

It is inappropriate for Jan to be a contact for suppliers during the tender process. All contact, questions, and requests for clarification from suppliers should be through a single point of contact at the public organisation. This ensures that information flow is controlled and that all interested parties get the same information at the same time.

## **Scenario 5: A former employer**

### **What is the situation?**

A council is running a tender process to choose operators for its public transport services.

Rakesh, a staff member at the council, is involved in planning for the tender. He is a public transport expert who previously worked for one of the bus companies bidding for the contract.

## Why is this a conflict?

Most people have had former employers.

Rakesh may still have close contacts working at the bus company. He might feel some loyalty or allegiance to his former employer, or, if he left on bad terms, he might feel antagonistic towards the company.

Rakesh will also likely have greater insight into, or views on, what his former employer can do well or less well.

Any of these reasons might mean that Rakesh has conscious or unconscious bias. He might treat the company differently to other suppliers during the procurement process.

Other suppliers might have negative perceptions about the council's independence as a result of this.

## Management plans that do not mitigate the conflict

The council identified some management plans to deal with this scenario. However, these plans do not fully mitigate the risk.

### Proposed management plan

The council will let all suppliers bidding for the contract know that Rakesh had previously worked for one of the bus companies.

If they do not object, the council will consider the issue closed.

### Why it does not work

Just because a supplier does not object does not mean you have maintained its confidence. It also does not mean that your approach is fair. There are reasons why competing suppliers may not object in circumstances such as:

- They are not fully informed so might not appreciate the seriousness of the situation.
- They do not want to be seen as troublemakers in case it affects the likelihood of them winning a contract.

### Proposed management plan

Rakesh will not score the tender from his previous employer during the tender evaluation.

### Why it does not work

Although this removes the risk that Rakesh might (consciously or unconsciously) score his previous employer higher, it does not remove the possibility that he could score the competitors lower, which would have the same effect.

## What might be a better plan?

Consider how long the person spent in their previous role, how senior they were, how long it has been since they left, and how influential they are in the procurement process.

If they are influential and have been in their new role for less than two years, it would be prudent to remove them from the procurement.

### Time matters

Loyalties, knowledge, and working relationships tend to fade over time. A rule of thumb we suggest is that most of the risk of actual or perceived bias from previous employment has likely gone after two years.

However, this is not a hard and fast rule. Someone who was in a senior role at their previous employer for a long time might remain conflicted for longer.

### Declare when you apply for another job

You don't only need to consider former employers. Applying for a new job can also create a risk of conflict.

A person's interest in their future might no longer align with their employer's interests. Instead, their interest may be more closely aligned with another organisation. If they fail to get the job, they might feel disgruntled. Either way, this might influence their judgement.

They might also find themselves dealing on behalf of their current employer with a supplier that they later need to impress to secure the new position.

For all these reasons, it is important to declare a job application where there is a perceived, a potential, or, in some cases, an actual conflict.

## Scenario 6: Many minor conflicts can add up to a major issue

### What is the situation?

A university wants to partner with other universities and private sector laboratories to carry out specialist tests. The proposed arrangement will include giving academics and researchers access to the partner laboratories' specialist facilities.

Lisa, the senior manager responsible for the procurement, declares that she:

- manages existing arrangements with many of the potential partners;
- held discussions with some providers interested in working with the university;
- convenes a regular meeting of laboratory service providers in the region; and
- manages two staff on secondment from private sector laboratories while they work on research at the university.

Brian, a technical adviser to the panel, declares a previous role as chief technician at one of the private sector laboratories. He left 18 months ago. He still has friends there and sees them regularly. He stated that he has no bias but recognises that there could be a perception that he does.

Mia, an evaluation panel member, declares that she had some earlier discussions with private sector providers on possible partnerships with the university. She also mentions that she socialised with several people from private laboratories at an international conference a few years ago.

Beth, an evaluation panel member, declares that she has her own views on what a partnership arrangement might be like. She wants to be transparent in case her views are perceived as predetermination.

Michael, an evaluation panel member, declares that, as a public sector employee, he fears he could be viewed as biased against private sector providers.

### Why are these conflicts?

Taken in isolation, each of these examples is a minor conflict of interest.

Because Lisa is a senior manager, she is influential and could have biases for or against the laboratories

that her two staff are seconded from. Regular contact with these staff and the meetings she convenes could make confidential information vulnerable.

Lisa's earlier discussions with providers could look like predetermination or favouritism if only a few providers were involved.

Brian has relevant former employment and some friends who could be close. Both of these could lead to conscious or unconscious bias.

Mia's early discussions and socialising at a conference do not necessarily lead to a conflict unless they were significant or could be perceived to be significant.

Having a personal view, as Beth does, is also not a problem in itself. However, a strong view that has been publicly expressed and that points to a closed mind could lead to actual or perceived predetermination.

Being a public sector employee, as Michael is, does not inherently mean you have a conflict of interest with the private sector.

However, even though each of these conflicts is minor, the fundamental point here is that many minor issues add up to a major one.

The manager in charge, the technical adviser, and all the evaluation panellists have some sort of actual, potential, or perceived conflict. Taken together, this might erode confidence in the process.

### Management plans that do not mitigate the conflict

The university identified some management plans to deal with this scenario. However, the plans do not address the significance of all the conflicts combined.

#### Proposed management plan

No individual will discuss any material related to this tender with any of the respondents.

#### Why it does not work

This is a basic expectation of anyone involved in a procurement process, not a specific mitigation for a declared conflict.



## Proposed management plan

No individual is the sole decision-maker. Each person is part of a panel that will moderate and reach a decision together.

## Why it does not work

This is a reasonable mitigation for an individual with a minor conflict.

However, it does not address the issue that this procurement might be fundamentally flawed by everyone involved being conflicted to some extent.

## Proposed management plan

People are encouraged to try their best not to take any previous experience with the respondents into consideration when evaluating responses.

They are encouraged to comply with probity principles.

## Why it does not work

Complying with the principles of probity or fairness is a basic expectation of anyone involved in a procurement process, not a specific mitigation.

People cannot reasonably be expected not to be influenced by previous experience.

Previous court cases on this issue have found that public bodies are bound by a duty of good faith and fair dealing to treat all tenderers equally.

However, this does not necessarily mean that evaluators in a procurement process have to come to the process without any prior knowledge or previously formed views about the companies bidding for the contract. It just means that they must judge them all by the same criteria.

Skills, knowledge, and experience are the very reasons why people are chosen to be part of evaluation panels.

Although it is reasonable and appropriate to factor in evidence of good or poor past performance to inform a selection decision, people should constrain their evaluation to the proposals that suppliers present and not use their experience to make assumptions and fill gaps in submissions.

## What might be a better plan?

In this case, a better plan may have been to consider the overall effect of the identified conflicts. Although none of the declared conflicts may be deemed to be serious enough to warrant excluding a member from the panel, four of the five members were potentially conflicted.

Therefore, there is a risk that, taken together, their conflicts would undermine confidence in the panel as a whole. To mitigate that, it might be prudent to consider including more unconflicted members on the panel.

Second, consider the specific issues raised by each potential conflict, how it gives rise to risk, how serious the risk is, and what would reduce that risk.

For example, in the case of Mia having early discussions with suppliers, the university should make any information about plans and preferences available to all interested parties. This would be a good mitigation for the early and preferential access that some had to this information.

The type of prior knowledge and seriousness of any related conflict is important to consider. General expertise about the market or the services that you are seeking is a benefit.

However, with a more serious or direct conflict (such as a person on the evaluation panel who was recently employed by one of the tenderers), it might be better to forgo their knowledge and experience on the panel in favour of someone who can be seen to be more objective.

Essentially, this comes down to a balance of risks. There is a risk that the evaluation is actually or perceived to be biased because of the conflicted person's involvement. However, excluding a person with critical specialist knowledge can create the risk that the evaluation is ill-informed.

A good management plan should recognise both risks and aim to minimise the combined risk.

### We have a range of resources to help you manage conflicts of interest:

- [\*Managing conflicts of interest: A guide for the public sector\*](#); and
- [\*Local Authorities \(Members' Interests\) Act 1968: A guide for members of local authorities on managing financial conflicts of interest\*](#).

You can also test yourself with [an interactive quiz](#).