

OFFICIAL: SENSITIVE



Australian Government
Department of Foreign Affairs and Trade

RECEIVED

6:00pm 31/7

MINUTE

SECRETARY

Through:

Clare Walsh *CW 30.7.*
Chief Operating Officer

s 37(1)(a)

Recommendation:

1. s 37(1)(a), s 47E(d)

NOTED / PLEASE DISCUSS

Secretary:.....

31 / 07 / 2024

s 37(1)(a), s 47E(d)

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s 37(1)(a), s 47E(d)

Background:

9. The ANAO is undertaking a performance audit involving procurement by APO, and has issued DFAT with a range of requests for information. These requests indicate a range of historic procurement practices within APO that may involve administrative misconduct and possible criminal offending.
10. On 23 May 2024, Darren Sharp (DFAT'S Chief Auditor), referred the concerns to PPD.
11. ESS has seconded an experienced fraud and corruption investigation manager from Defence to lead the response to these concerns.
 - ESS has undertaken preliminary enquiries and will next conduct extensive investigation planning prior to making overt inquiries with witnesses and persons of interest.
 - EES will ensure organisational risks are identified and treated, including the appropriateness of DFAT Officials remaining in the workplace.

s 37(1)(a), s 47E(c), s 47E(d)

13. The ANAO continues to progress its performance audit of procurement by APO, with Report Preparation Papers anticipated to be received by DFAT shortly.
14. There is the possibility the ANAO may detect additional misconduct that DFAT is currently unaware of.

Financial Implications:

Not applicable.

OFFICIAL: SENSITIVE**Consultation:**

Ben Milton, General Counsel Branch, LGD

Anita Dwyer, Governance Risk and Performance Branch, EXD

Prepared by: Belinda Casson
Chief People Officer
Phone Number: s 22(1)(a)(ii)
Date: 30 July 2024

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Australian Government

Department of Foreign Affairs and Trade

MINUTE**SECRETARY****CC:**

Craig Maclachlan, Deputy Secretary ISG

Through:

Clare Walsh, Chief Operating Officer

Belinda Casson, Chief People Officer

Thanks James,
Jan

SUBJECT: Update - internal investigation into APO procurement practices**Critical Date:** N/A**Recommendation:**

1. s 37(1)(a), s 47E(d)

NOTED // PLEASE DISCUSS

Secretary:.....

2 / 10 / 2024

Issues:

1. As part of DFAT's response to the ANAO audit into Australian Passport Office procurement, DFAT's Chief Auditor referred concerns to the Ethics, Integrity and Professional Standards Section in PPD about historical procurement practices that may have failed to satisfy Commonwealth Procurement Rules and general duties of officials. An investigation has commenced (*Attachment A* summarises the investigation process).
2. s 37(1)(a), s 47E(d)

3. s 37(1)(a), s 47E(d)

It also meets DFAT's obligations under the *Public Governance, Performance and Accountability Act 2013* to investigate suspected fraud and corruption that impacts DFAT.

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4. Remaining ANAO recommendations are being addressed by other DFAT work areas, led by Internal Audit Branch.

s 37(1)(a), s 47E(d)

Financial Implications: Not applicable.

Consultation: Ongoing consultation with ED APO, Chief Auditor, General Counsel.

s 47E(d), s 47E(c), s 37(1)(c)

Prepared by: James O'Brien
Assistant Secretary People Culture Branch, PPD
Phone Number: s 22(1)(a)(ii)
Date: 27 September 2024

JUNE 2024

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s 47E(d), s 47E(c), s 37(1)(a)

Background

The Australian National Audit Office (ANAO) is undertaking a performance audit involving procurement by the Australian Passport Office (APO). This audit is in addition to performance audit 13/2023-24,¹ which raised (largely unrelated) Commonwealth Procurement Rules (CPRs) compliance concerns with APO procurements.

s 47E(d), s 47E(c), s 37(1)(a)

¹ Auditor-General Report 13/2023-24, Efficiency of the Australian Passport Office

s 47E(d), s 47E(c), s 37(1)(c)

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OPERATION MONSOON

INVESTIGATION REPORT

s 47E(d), s 47E(c), s 37(1)(a)

Background

5. On 7 February 2024, the Australian National Audit Office (ANAO) published performance audit 13/2023-24¹ into *Efficiency of the Australian Passport Office (APO)*.
6. As a result of that audit:

*The ANAO observed a number of practices in respect of the conduct of procurement by DFAT through its Australian Passport Office that merited further examination. The Auditor-General decided to commence a separate audit of whether the procurements DFAT conducts through its Australian Passport Office comply with the Commonwealth Procurement Rules and demonstrate the achievement of value for money.*²
7. On 31 October 2024, the ANAO published performance audit 11/2024-25³ into *Procurement by the Department of Foreign Affairs and Trade through its Australian Passport Office*.
8. The performance audit found:

*The procurements that DFAT conducted through its Australian Passport Office did not comply with the Commonwealth Procurement Rules and DFAT's procurement policies, and did not demonstrate it had achieved value for money.*⁴

s 37(1)(a), s 47E(d), s 47E(c)

¹ [Auditor-General Report No. 13 of 2023-24, Efficiency of the Australian Passport Office](#)

² [Auditor-General Report No. 11 of 2024-25, Procurement by the Department of Foreign Affairs and Trade through its Australian Passport Office](#)

³ *Ibid*

⁴ *Ibid*

Annexure A – Legislation / Policy

Public Governance, Performance and Accountability Act 2013⁴⁸ (PGPA Act)

Division 3—Officials

Subdivision A—General duties of officials

25 Duty of care and diligence

(1) An official of a Commonwealth entity must exercise his or her powers, perform his or her functions and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if the person:

- (a) were an official of a Commonwealth entity in the Commonwealth entity's circumstances; and
- (b) occupied the position held by, and had the same responsibilities within the Commonwealth entity as, the official.

(2) The rules may prescribe circumstances in which the requirements of subsection (1) are taken to be met.

26 Duty to act honestly, in good faith and for a proper purpose

An official of a Commonwealth entity must exercise his or her powers, perform his or her functions and discharge his or her duties honestly, in good faith and for a proper purpose.

27 Duty in relation to use of position

An official of a Commonwealth entity must not improperly use his or her position:

- (a) to gain, or seek to gain, a benefit or an advantage for himself or herself or any other person; or
- (b) to cause, or seek to cause, detriment to the entity, the Commonwealth or any other person.

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A person who obtains information because they are an official of a Commonwealth entity must not improperly use the information:

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29 Duty to disclose interests

(1) An official of a Commonwealth entity who has a material personal interest that relates to the affairs of the entity must disclose details of the interest.

(2) The rules may do the following:

- (a) prescribe circumstances in which subsection (1) does not apply;
- (b) prescribe how and when an interest must be disclosed;
- (c) prescribe the consequences of disclosing an interest (for example, that the official must not participate at a meeting about a matter or vote on the matter).

⁴⁸ [Public Governance, Performance and Accountability Act 2013](#)

F2020L01519, titled Commonwealth Procurement Rules 14 December 2020 applied from 2 December 2020 until 30 June 2022 ⁴⁹

6. Efficient, effective, economical and ethical procurement

- 6.5 Ethical relates to honesty, integrity, probity, diligence, fairness and consistency. Ethical behaviour identifies and manages conflicts of interests, and does not make improper use of an individual's position.
- 6.6 In particular, officials undertaking procurement must act ethically throughout the procurement. Ethical behaviour includes:
- a. recognising and dealing with actual, potential and perceived conflicts of interest;

DFAT Procurement Policy version 0.9 applied from 1 March 2018 until 31 May 2022 ⁵⁰

49. Probity

- 49.2 Probity requires that staff involved in procurement act ethically; do not make improper use of their position; avoid placing themselves in a position where there is potential for claims of bias; treat all potential suppliers equitably; manage conflicts of interest appropriately; and ensure confidentiality of information in the procurement process.

50. Conflicts of Interest

- 50.1 A conflict of interest is a situation where an individual or a supplier has multiple interests, one of which is actually, or be perceived to, improperly influence the performance of that individual's or supplier's duties or responsibilities. A conflict of interest creates the appearance that an individual's or a supplier's objective judgement is likely to be compromised, biased or not impartial.
- 50.2 Conflicts of interest can be actual, perceived or potential
- Actual: where a direct conflict exists between current official duties and other interests;
 - Perceived: where it appears or could be perceived that other interests are improperly influencing the performance of official duties – whether or not that is actually the case; and
 - Potential: where other interests are not but could come into direct conflict with official duties.
- 50.3 Conflicts of interest are not necessarily 'wrong' and can happen without anyone being at fault. However, it is vital that conflicts of interest are disclosed and managed effectively so that DFAT employees and suppliers perform their duties in a fair, transparent and unbiased way and are seen to be doing so.

Secretary's Instructions applied from October 2018 until July 2021 ⁵¹

1 . Corporate Governance

1.5 Disclosure of Interests

Instruction – All Officials

You **must** disclose a material personal interest that relates to the affairs of the Department in accordance with the instructions.

Conduct and Ethics Policy Manual applied from 14 December 2020 until 26 February 2021 ⁵²

Conflicts of Interest (Chapter 5)

DFAT staff must take reasonable steps to avoid real or apparent conflicts of interest in connection with their duties, as well as situations where their private, financial or other interests (or those of immediate family members) could or could be perceived to conflict with their duties. They must not allow their interests to influence the decisions they make, the actions they take or the advice they provide in connection with their duties in DFAT. They must regularly assess whether their interests could or could be perceived to influence the decisions they make, the actions they take or the advice they provide in connection with their duties in DFAT. They must disclose any real or potential conflicts of interest to their supervisors as soon as they arise.

All SES and contractors and some non-SES APS and LES employees (see section 5.2 of this Manual) must complete a 'Disclosure of Private, Financial and Other Interests Form' on initial engagement with DFAT, annually thereafter and if their circumstances change.

OPERATION MONSOON

INVESTIGATION REPORT

s 47E(d), s 47E(c), s 37(1)(a)

Background

5. On 7 February 2024, the Australian National Audit Office (ANAO) published performance audit 13/2023-24¹ into *Efficiency of the Australian Passport Office (APO)*.
6. As a result of that audit:

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s 37(1)(a), s 47E(d), s 47E(c)

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² [Auditor-General Report No. 11 of 2024-25, Procurement by the Department of Foreign Affairs and Trade through its Australian Passport Office](#)

³ *Ibid*

⁴ *Ibid*

Annexure A – Legislation / Policy

Public Governance, Performance and Accountability Act 2013⁴⁶ (PGPA Act)

Division 3—Officials

Subdivision A—General duties of officials

25 Duty of care and diligence

(1) An official of a Commonwealth entity must exercise his or her powers, perform his or her functions and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if the person:

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DFAT Procurement Policy version 0.9 applied from 1 March 2018 until 31 May 2022 ⁴⁸

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OPERATION MONSOON

INVESTIGATION REPORT

s 47E(d), s 47E(c), s 37(1)(a)

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¹ [Auditor-General Report No. 13 of 2023-24, Efficiency of the Australian Passport Office](#)

² [Auditor-General Report No. 11 of 2024-25, Procurement by the Department of Foreign Affairs and Trade through its Australian Passport Office](#)

³ *Ibid*

⁴ *Ibid*

s 47E(d), s 47E(c), s 37(1)(a) – this section, together with the following pages (56-60) are exempt and have been removed.

Annexure A – Legislation / Policy

Public Governance, Performance and Accountability Act (PGPA Act)²⁶

Division 3—Officials

Subdivision A—General duties of officials

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²⁶ [Federal Register of Legislation - Public Governance, Performance and Accountability Act 2013](#)

Commonwealth Procurement Rules 14 December 2020 and 1 July 2022 (No.2)^{27 28}

Achieving value for money

4.4 Achieving value for money is the core rule of the CPRs. Officials responsible for a procurement must be satisfied, after reasonable enquiries, that the procurement achieves a value for money outcome. Procurements should:

- (a) encourage competition and be non-discriminatory;
- (b) use public resources in an efficient, effective, economical and ethical manner that is not inconsistent with the policies of the Commonwealth;
- (c) facilitate accountable and transparent decision making;
- (d) encourage appropriate engagement with risk; and
- (e) be commensurate with the scale and scope of the business requirement.

Encouraging competition

5.1 Competition is a key element of the Australian Government's procurement framework. Effective competition requires non-discrimination and the use of competitive procurement processes.

Ethical behaviour

6.6 In particular, officials undertaking procurement must act ethically throughout the procurement. Ethical behaviour includes:

- (a) recognising and dealing with actual, potential and perceived conflicts of interest

Procurement from standing offers²⁹

9.14 To maximise competition, officials should, where possible, approach multiple potential suppliers on a standing offer.

DFAT Procurement Policy Version 0.9 June March 2018³⁰

Probity

49.1 Probity is a critical consideration in planning and managing the award and administration of a procurement. Probity is the evidence of ethical behaviour and can be defined as complete and confirmed integrity, uprightness and honesty in a particular process.

49.2 Probity requires that staff involved in procurement act ethically; do not make improper use of their position; avoid placing themselves in a position where there is potential for claims of bias; treat all potential suppliers equitably; manage conflicts of interest appropriately; and ensure confidentiality of information in the procurement process.

Conflicts of Interest

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²⁷ Evidence Log 417

²⁸ Evidence Log 419

²⁹ This section is only present in CPR 1 July 2022 (no.2)

s 22(1)(a)(ii)

50.3 Conflicts of interest are not necessarily 'wrong' and can happen without anyone being at fault. However, it is vital that conflicts of interest are disclosed and managed effectively so that DFAT employees and suppliers perform their duties in a fair, transparent and unbiased way and are seen to be doing so.

DFAT Procurement Policy Version 1.0 June 2022³¹

Commonwealth Procurement Rules

8.1 DFAT Officials must comply with the CPRs when performing duties related to procurement

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Conflicts of Interest

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53.2 Conflicts of interest are not necessarily 'wrong' and can happen without anyone being at fault. However, it is vital that conflicts of interest are disclosed and managed effectively so that DFAT Employees and suppliers perform their duties in a fair, transparent and unbiased way and are seen to be doing so.

53.3 All officials involved in a procurement process should complete a conflict of interest declaration.

53.4 Conflicts of interest should be revisited and considered throughout the life of the agreement. If you have questions regarding conflicts of interest issues at any stage, contact DVB/ BGB.

53.5 DFAT policy on avoiding, disclosing and managing conflicts of interest is found in Chapter 5 of the Ethics, Integrity and Professional Standards Policy Manual.

OFFICIAL: Sensitive**OPERATION MONSOON
INVESTIGATION REPORT**

s 47E(d), s 47E(c), s 37(1)(a)

Background

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INVESTIGATION REPORT

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s 47E(d), s 47E(c), s 37(1)(a) – this section, together with the following pages (191-213) are exempt and have been removed.

Annexure A – Legislation / Policy

Public Governance, Performance and Accountability Act (PGPA Act)⁵⁹

Division 3—Officials

Subdivision A—General duties of officials

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⁵⁹ [Federal Register of Legislation - Public Governance, Performance and Accountability Act 2013](#)

Commonwealth Procurement Rules 1 July 2022 (No.2)⁶⁰

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4.4 Achieving value for money is the core rule of the CPRs. Officials responsible for a procurement must be satisfied, after reasonable enquiries, that the procurement achieves a value for money outcome. Procurements should:

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Procurement from standing offers

9.14 To maximise competition, officials should, where possible, approach multiple potential suppliers on a standing offer.

DFAT Procurement Policy Version 1.0 June 2022⁶¹

Commonwealth Procurement Rules

8.1 DFAT Officials must comply with the CPRs when performing duties related to procurement

Providing References

46.1 DFAT staff can be referees for tender bids so long as conflict of interest provisions have been considered. Refer to Section 53 for information on conflicts of interest.

46.2 Guidance on providing references can be found in Chapter 8: Upholding the Reputation of the Department and Australia in the Ethics, Integrity and Professional Standards Policy Manual.

Probity

52.1 Probity is a critical consideration in planning and managing the award and administration of a procurement. Probity is the evidence of ethical behaviour and can be defined as complete and confirmed integrity, uprightness and honesty in a particular process.

52.2 Probity requires that staff involved in procurement act ethically; do not make improper use of their position; avoid placing themselves in a position where there is potential for claims of bias; treat all potential suppliers

s 22(1)(a)(ii)

equitably; manage conflicts of interest appropriately; and ensure confidentiality of information in the procurement process.

Conflicts of Interest

53.1 A conflict of interest arises where a public official has private interests which may or do improperly influence the performance of their official duties and responsibilities. A conflict of interest creates the appearance that an individual's or a supplier's objective judgement is likely to be compromised, biased or not impartial.

53.2 Conflicts of interest are not necessarily 'wrong' and can happen without anyone being at fault. However, it is vital that conflicts of interest are disclosed and managed effectively so that DFAT Employees and suppliers perform their duties in a fair, transparent and unbiased way and are seen to be doing so.

53.3 All officials involved in a procurement process should complete a conflict of interest declaration.

53.4 Conflicts of interest should be revisited and considered throughout the life of the agreement. If you have questions regarding conflicts of interest issues at any stage, contact DVB/ BGB.

53.5 DFAT policy on avoiding, disclosing and managing conflicts of interest is found in Chapter 5 of the Ethics, Integrity and Professional Standards Policy Manual.

Ethics, Integrity and Professional Standards Policy Manual⁶²

Conflicts of Interest

5.1.1 A conflict of interest arises where a public official has private interests which may or do improperly influence the performance of their official duties and responsibilities. Conflicts of interest can arise in relation to financial interests such as shareholdings, employment opportunities, real estate and trusts, as well as private interests such as relationships and other interests that can conflict with public duties and responsibilities. Conflicts can include not only the interests of individual employees and contractors, but also the interests of their immediate family (such as spouses, children or other dependents) and the interests of their business partners or associates.

5.1.4 Contractors must act in a manner that is consistent with the APS Code of Conduct as set out in their contractual obligations.

5.1.7 All staff (APS employees, LES and contractors) must take reasonable steps to avoid situations where their private, financial or other interests (or those of immediate family members, such as spouses/partners, children or other dependents) and the interests of their business partners or associates could or could be perceived to conflict with their official duties. They must not allow these interests to influence the decisions they make, the actions they take or the advice they provide in connection with their official duties. If their interests and duties are in conflict, or could be perceived to be in conflict, they must disclose any such conflict to the department.

⁶² D25/171163

OPERATION MONSOON

INVESTIGATION REPORT

s 47E(d), s 47E(c), s 37(1)(a)

Background

7. On 7 February 2024, the Australian National Audit Office (ANAO) published performance audit 13/2023-24¹ into *Efficiency of the Australian Passport Office*.
8. As a result of that audit:
*The ANAO observed a number of practices in respect of the conduct of procurement by DFAT through its Australian Passport Office that merited further examination. The Auditor-General decided to commence a separate audit of whether the procurements DFAT conducts through its Australian Passport Office comply with the Commonwealth Procurement Rules and demonstrate the achievement of value for money.*²
9. On 31 October 2024, the ANAO published performance audit 11/2024-25³ into *Procurement by the Department of Foreign Affairs and Trade through its Australian Passport Office*.
10. The performance audit found:
*The procurements that DFAT conducted through its Australian Passport Office did not comply with the Commonwealth Procurement Rules and DFAT's procurement policies, and did not demonstrate it had achieved value for money.*⁴

¹ Auditor-General Report No. 13 of 2023-24, *Efficiency of the Australian Passport Office*

² Auditor-General Report No. 11 of 2024-25, *Procurement by the Department of Foreign Affairs and Trade through its Australian Passport Office*

³ *Ibid*

⁴ *Ibid*

s 47E(d), s 47E(c), s 37(1)(a) – this section, together with the following pages (219-236) are exempt and have been removed.

Annexure A – Legislation / Policy

***Public Governance, Performance and Accountability Act* (PGPA Act)⁴⁵**

Division 3—Officials

Subdivision A—General duties of officials

25 Duty of care and diligence

(1) An official of a Commonwealth entity must exercise his or her powers, perform his or her functions and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if the person:

- (a) were an official of a Commonwealth entity in the Commonwealth entity's circumstances; and
- (b) occupied the position held by, and had the same responsibilities within the Commonwealth entity as, the official.

(2) The rules may prescribe circumstances in which the requirements of subsection (1) are taken to be met.

26 Duty to act honestly, in good faith and for a proper purpose

An official of a Commonwealth entity must exercise his or her powers, perform his or her functions and discharge his or her duties honestly, in good faith and for a proper purpose.

27 Duty in relation to use of position

An official of a Commonwealth entity must not improperly use his or her position:

- (a) to gain, or seek to gain, a benefit or an advantage for himself or herself or any other person; or
- (b) to cause, or seek to cause, detriment to the entity, the Commonwealth or any other person.

28 Duty in relation to use of information

A person who obtains information because they are an official of a Commonwealth entity must not improperly use the information:

- (a) to gain, or seek to gain, a benefit or an advantage for himself or herself or any other person; or
- (b) to cause, or seek to cause, detriment to the Commonwealth entity, the Commonwealth or any other person.

29 Duty to disclose interests

(1) An official of a Commonwealth entity who has a material personal interest that relates to the affairs of the entity must disclose details of the interest.

(2) The rules may do the following:

- (a) prescribe circumstances in which subsection (1) does not apply;
- (b) prescribe how and when an interest must be disclosed;
- (c) prescribe the consequences of disclosing an interest (for example, that the official must not participate at a meeting about a matter or vote on the matter).

⁴⁵ [Federal Register of Legislation - Public Governance, Performance and Accountability Act 2013](#)

Commonwealth Procurement Rules 1 July 2022 (No.2)⁴⁶**Achieving value for money**

4.4 Achieving value for money is the core rule of the CPRs. Officials responsible for a procurement must be satisfied, after reasonable enquiries, that the procurement achieves a value for money outcome. Procurements should:

- (a) encourage competition and be non-discriminatory;
- (b) use public resources in an efficient, effective, economical and ethical manner that is not inconsistent with the policies of the Commonwealth;
- (c) facilitate accountable and transparent decision making;
- (d) encourage appropriate engagement with risk; and
- (e) be commensurate with the scale and scope of the business requirement.

Encouraging competition

5.1 Competition is a key element of the Australian Government's procurement framework. Effective competition requires non-discrimination and the use of competitive procurement processes.

Ethical behaviour

6.6 In particular, officials undertaking procurement must act ethically throughout the procurement. Ethical behaviour includes:

- (a) recognising and dealing with actual, potential and perceived conflicts of interest

Procurement from standing offers

9.14 To maximise competition, officials should, where possible, approach multiple potential suppliers on a standing offer.

DFAT Procurement Policy Version 1.0 June 2022⁴⁷**Commonwealth Procurement Rules**

8.1 DFAT Officials must comply with the CPRs when performing duties related to procurement

Providing References

46.1 DFAT staff can be referees for tender bids so long as conflict of interest provisions have been considered. Refer to Section 53 for information on conflicts of interest.

46.2 Guidance on providing references can be found in Chapter 8: Upholding the Reputation of the Department and Australia in the Ethics, Integrity and Professional Standards Policy Manual.

Probity

52.1 Probity is a critical consideration in planning and managing the award and administration of a procurement. Probity is the evidence of ethical behaviour and can be defined as complete and confirmed integrity, uprightness and honesty in a particular process.

52.2 Probity requires that staff involved in procurement act ethically; do not make improper use of their position; avoid placing themselves in a position where there is potential for claims of bias; treat all potential suppliers equitably; manage conflicts of interest appropriately; and ensure confidentiality of information in the procurement process.

Conflicts of Interest

53.1 A conflict of interest arises where a public official has private interests which may or do improperly influence the performance of their official duties and responsibilities. A conflict of interest creates the appearance that an individual's or a supplier's objective judgement is likely to be compromised, biased or not impartial.

53.2 Conflicts of interest are not necessarily 'wrong' and can happen without anyone being at fault. However, it is vital that conflicts of interest are disclosed and managed effectively so that DFAT Employees and suppliers perform their duties in a fair, transparent and unbiased way and are seen to be doing so.

53.3 All officials involved in a procurement process should complete a conflict of interest declaration.

53.4 Conflicts of interest should be revisited and considered throughout the life of the agreement. If you have questions regarding conflicts of interest issues at any stage, contact DVB/ BGB.

53.5 DFAT policy on avoiding, disclosing and managing conflicts of interest is found in Chapter 5 of the Ethics, Integrity and Professional Standards Policy Manual.

Ethics, Integrity and Professional Standards Policy Manual⁴⁸**Conflicts of Interest**

5.1.1 A conflict of interest arises where a public official has private interests which may or do improperly influence the performance of their official duties and responsibilities. Conflicts of interest can arise in relation to financial interests such as shareholdings, employment opportunities, real estate and trusts, as well as private interests such as relationships and other interests that can conflict with public duties and responsibilities. Conflicts can include not only the interests of individual employees and contractors, but also the interests of their immediate family (such as spouses, children or other dependents) and the interests of their business partners or associates.

5.1.4 Contractors must act in a manner that is consistent with the APS Code of Conduct as set out in their contractual obligations.

5.1.7 All staff (APS employees, LES and contractors) must take reasonable steps to avoid situations where their private, financial or other interests (or those of immediate family members, such as spouses/partners, children or other dependents) and the interests of their business partners or associates could or could be perceived to conflict with their official duties. They must not allow these interests to influence the decisions they make, the actions they take or the advice they provide in connection with their official duties. If their interests and duties are in conflict, or could be perceived to be in conflict, they must disclose any such conflict to the department.

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INVESTIGATION REPORT**

s 47E(d), s 47E(c), s 37(1)(a)

Background

5. On 7 Feb 24, the Australian National Audit Office (ANAO) published performance audit 13/2023-24² into *Efficiency of the Australian Passport Office (APO)*.

¹ Federal Register of Legislation - Public Service Act 1999

² [Auditor-General Report No. 13 of 2023-24, Efficiency of the Australian Passport Office](#)

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6. As a result of that audit:

The ANAO observed a number of practices in respect of the conduct of procurement by DFAT through its Australian Passport Office that merited further examination. The Auditor-General decided to commence a separate audit of whether the procurements DFAT conducts through its Australian Passport Office comply with the Commonwealth Procurement Rules and demonstrate the achievement of value for money.³

7. On 31 Oct 24, the ANAO published performance audit 11/2024-25⁴ into *Procurement by the Department of Foreign Affairs and Trade through its Australian Passport Office*.

8. The performance audit found:

The procurements that DFAT conducted through its Australian Passport Office did not comply with the Commonwealth Procurement Rules and DFAT's procurement policies, and did not demonstrate it had achieved value for money.⁵

s 47E(d), s 47E(c), s 37(1)(a)

³ Auditor-General Report No. 11 of 2024-25, Procurement by the Department of Foreign Affairs and Trade through its Australian Passport Office

⁴ *Ibid*

⁵ *Ibid*

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OFFICIAL: Sensitive**Annexure A****Deed of Standing Offer – The Commonwealth of Australia and s 47G(1)(a)**

- AFP** means the Commonwealth of Australia as represented by the Australian Federal Police, or any other Commonwealth agency responsible for administering this Agreement from time to time
- Conflict** means any matter, circumstance, interest or activity, affecting either the Service Provider, or its Personnel, which either may, or may appear, to impair the Service Provider's ability to perform the Services for the AFP diligently, and independently.
- Contract** means the contract that is formed when the AFP places an Official Order with the Service Provider pursuant to clause 2.2
- Contract Manager** means the AFP representative specified by position in Item 9 or the person for the time being performing the duties of that position;
- Personnel** means:
- (a) in relation to the Service Provider, any natural person who is an officer, employee, Subcontractor, agent, or professional adviser, of either the Service Provider, or its Subcontractor(s);
- 2.5 Services to Additional Agencies**
- 2.5.2** Where an Additional Agency under clause 2.5.1:
- (a) issues an Official Order, or a request for quotation, it does so in its own capacity, and not on behalf of the AFP; and
 - (b) issues an Official Order, that Official Order will create a separate Contract between the Service Provider and the Additional Agency in accordance with clause 2.2.4, except:
 - i. all references to the AFP will be read as references to that Additional Agency;
 - ii. all references to particular positions within the AFP will be read as references to the most equivalent position in the Additional Agency;
 - iii. all references to legislation particular to the AFP (including the AFP Act) will be read as references to the most equivalent legislation relevant to the Additional Agency; and
 - iv. Recital C, and clause 3.7, will be read as 'not used'.

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OFFICIAL: Sensitive**3 PROVISIONS OF SERVICE****3.1 Service Provider's Primary Obligations****3.1.1 The Service Provider must:**

- (g) *comply with all legal, and regulatory, requirements applicable to the Services including any licensing, accreditation, and work health and safety, obligations, and all applicable Commonwealth, and AFP, policies;*

3.8 Responsibility of Service Provider**3.8.1 The Service Provider must ensure:**

- (a) *the Services are performed in accordance with the requirements of this Agreement, and any Contract; and*
- (b) *all other requirements of this Agreement, and any Contract, are met, and the Service Provider will not be relieved of those responsibilities because of the following:*
- (c) *involvement of the AFP in the performance of the Services;*
- (d) *subcontracting of the Services; or*
- (e) *payment made to the Service Provider on account of the Services*

14 GENERAL**14.7 Conflict of Interest****14.7.2 If, during either the term of this Agreement, or any Contract, a Conflict either arises, or appears likely to arise the Service Provider must:**

- (f) *notify the Contract Manager immediately, making full disclosure of all relevant information relating to the Conflict; and*
- (g) *take any steps the AFP reasonably requires to either resolve, or otherwise deal with, the Conflict.*

14.13 Compliance with Legislation and Policy**14.13.1 The Service Provider must ensure that it, and all of its Personnel, comply with:**

- (a) *all relevant laws in connection with this Agreement, and any Contract, including those identified in Item 7 to the extent they are applicable;*
- (b) *...*
- (c) *..*
- (d) *All Commonwealth and AFP policies relevant to the performance of the Services.*

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OFFICIAL: Sensitive**Annexure B****Relevant Legislation and Policy****Procurements 22(1)(a)(ii)****Commonwealth Procurement Rules¹¹⁹****6 . Efficient, effective, economical and ethical procurement**

6.5 Ethical relates to honesty, integrity, probity, diligence, fairness and consistency. Ethical behaviour identifies and manages conflicts of interests, and does not make improper use of an individual's position.

Ethical Behaviour

6.6 In particular, officials undertaking procurement must act ethically throughout the procurement.

Ethical behaviour includes:

- a. recognising and dealing with actual, potential and perceived conflicts of interest;

DFAT Procurement Policy¹²⁰**49. Probity**

49.2 Probity requires that staff involved in procurement act ethically; do not make improper use of their position; avoid placing themselves in a position where there is potential for claims of bias; treat all potential suppliers equitably; manage conflicts of interest appropriately; and ensure confidentiality of information in the procurement process.

50. Conflicts of Interest

50.1 A conflict of interest is a situation where an individual or a supplier has multiple interests, one of which is actually, or be perceived to, improperly influence the performance of that individual's or supplier's duties or responsibilities. A conflict of interest creates the appearance that an individual's or a supplier's objective judgement is likely to be compromised, biased or not impartial.

50.2 Conflicts of interest can be actual, perceived or potential

- Actual: where a direct conflict exists between current official duties and other interests;
- Perceived: where it appears or could be perceived that other interests are improperly influencing the performance of official duties – whether or not that is actually the case; and
- Potential: where other interests are not but could come into direct conflict with official duties.

50.3 Conflicts of interest are not necessarily 'wrong' and can happen without anyone being at fault.

However, it is vital that conflicts of interest are disclosed and managed effectively so that DFAT employees and suppliers perform their duties in a fair, transparent and unbiased way and are seen to be doing so.

s 22(1)(a)(ii)

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OFFICIAL: Sensitive**Conduct and Ethics Manual version 18¹²¹****Chapter 5: Conflicts of Interest****1.2 Does this Manual Apply to Me?**

1.2.1 This Manual applies to all categories of staff in the department – APS (i.e. A-based) employees, LES employees and contractors. Where the Manual expressly directs staff to carry out an action or to refrain from specified forms of behaviour, they must comply.

Contractors

1.2.6 For the purposes of this Manual, a contractor is defined as an individual engaged in Australia to perform specific services for the department in Australia or overseas under a contract, including

(a) *specified personnel* nominated under a head agreement/contract (or Deed of Standing Offer) with an intermediary company to which payment is made; or

(b) *individual contractors* who are directly engaged as the service provider (including sole traders).

1.2.7 Contractors are not APS employees. However, the standard terms and conditions of DFAT contracts include a specific obligation that contractors or labour hire companies who provide staff to the department ensure they/their personnel comply with its practices, policies, procedures and reasonable directions./ This includes the APS Values and Employment Principles, the APS Code of Conduct and the DFAT Code of Conduct for Overseas Service. The directions contained in the Manual and any departmental policy documents linked to the Manual constitute lawful and reasonable directions in this regard. Failure to comply with these directions may constitute a failure to meet contract obligations, for which sanctions may apply.

1.2.8 To help ensure contractors understand their obligations, a summary of directions contained in this Manual as they apply to contractors in the department is at Schedule B. This summary should be attached as a schedule to all head agreements, contracts or deeds of standing offer.

5.1.4 The APS Code of Conduct requires APS employees to:

- behave honestly and with integrity in connection with APS employment
- take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the employee's APS employment
- disclose details of any material personal interest of the employee in connection with the employee's APS employment and
- not improperly use inside information or the employee's duties, status, power or authority;
 - to gain, or seek to gain, a benefit or an advantage for the employee or any other person or
 - to cause, or seek to cause, detriment to the employee's Agency, the Commonwealth or any other person.

Contractors must act in a manner that is consistent with the APS Code of Conduct as set out in their contractual obligations.

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OFFICIAL: Sensitive**SCHEDULE B – SUMMARY OF CONDUCT AND ETHICS DIRECTIONS FOR CONTRACTORS IN DFAT***Policies, Values and Codes of Conduct*

Contractors in DFAT must comply with all departmental policies and directions which apply to them. These include directions in DFAT's Conduct and Ethics Policy Manual, as amended from time to time. The Policy Manual is available on the Department's external website allowing anyone with an internet connection to have access.

Contractors in DFAT must maintain conduct consistent with the APS Values and Employment Principles and Code of Conduct.

When performing duties overseas for DFAT, contractors in DFAT must maintain conduct consistent with the DFAT Code of Conduct for Overseas Service.

Conflicts of Interest

Contractors in DFAT must take reasonable steps to avoid real or apparent conflict of interests in connection with of their duties in DFAT, as well as situations where their private, financial or other interests (or those of immediate family members, such as spouses, partners or dependants) could or could be perceived to conflict with their duties in DFAT. They must not allow their interests to influence the decisions they make, the actions they take or the advice they provide in connection with their duties in DFAT. They must regularly assess whether their interests could or could be perceived to influence the decisions they make, the actions they take or the advice they provide in connection with their duties in DFAT. They must disclose any real or potential conflicts of interest to their supervisors as soon as they arise.

Procurement s 22(1)(a)(ii)**Commonwealth Procurement Rules¹²²****6 . Efficient, effective, economical and ethical procurement**

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s 22(1)(a)(ii)**OFFICIAL: Sensitive**

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Conduct and Ethics Manual version 18¹²⁴**Chapter 5: Conflicts of Interest****1.2 Does this Manual Apply to Me?**

1.2.1 This Manual applies to all categories of staff in the department – APS (i.e. A-based) employees, LES employees and contractors. Where the Manual expressly directs staff to carry out an action or to refrain from specified forms of behaviour, they must comply.

Contractors

1.2.6 For the purposes of this Manual, a contractor is defined as an individual engaged in Australia to perform specific services for the department in Australia or overseas under a contract, including

(a) *specified personnel* nominated under a head agreement/contract (or Deed of Standing Offer) with an intermediary company to which payment is made; or

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1.2.7 Contractors are not APS employees. However, the standard terms and conditions of DFAT contracts include a specific obligation that contractors or labour hire companies who provide staff to the department ensure they/their personnel comply with its practices, policies, procedures and reasonable directions./ This includes the APS Values and Employment Principles, the APS Code of Conduct and the DFAT Code of Conduct for Overseas Service. The directions contained in the Manual and any departmental policy documents linked to the Manual constitute lawful and reasonable directions in this regard. Failure to comply with these directions may constitute a failure to meet contract obligations, for which sanctions may apply.

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- take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the employee's APS employment
- disclose details of any material personal interest of the employee in connection with the employee's APS employment and
- not improperly use inside information or the employee's duties, status, power or authority;
 - to gain, or seek to gain, a benefit or an advantage for the employee or any other person or
 - to cause, or seek to cause, detriment to the employee's Agency, the Commonwealth or any other person.

Contractors must act in a manner that is consistent with the APS Code of Conduct as set out in their contractual obligations.

SCHEDULE B – SUMMARY OF CONDUCT AND ETHICS DIRECTIONS FOR CONTRACTORS IN DFAT

Policies, Values and Codes of Conduct

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Conflicts of Interest

Contractors in DFAT must take reasonable steps to avoid real or apparent conflict of interests in connection with or of their duties in DFAT, as well as situations where their private, financial or other interests (or those of immediate family members, such as spouses, partners or dependants) could or could be perceived to conflict with their duties in DFAT. They must not allow their interests to influence the decisions they make, the actions they take or the advice they provide in connection with their duties in DFAT. They must regularly assess whether their interests could or could be perceived to influence the decisions they make, the actions they take or the advice they provide in connection with their duties in DFAT. They must disclose any real or potential conflicts of interest to their supervisors as soon as they arise.

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Subject: s 47F(1) - s 22(1)(a)(ii) s 47F(1)
Date: s 47F(1)

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