



**Australian Government**  
**Department of Foreign Affairs and Trade**



# **POLICY WHEN SUPPLIERS ARE INVESTIGATED OR SANCTIONED BY MULTILATERAL DEVELOPMENT BANKS OR OTHER AID DONORS**

February 2018

THIS DOCUMENT SETS OUT DFAT'S POLICY IN RELATION TO CURRENT AND FUTURE PROCUREMENT PROCESSES AND EXISTING CONTRACTS OR AGREEMENTS (AGREEMENTS) WHEN DFAT IS NOTIFIED, OR ASCERTAINS, THAT A POTENTIAL SUPPLIER (ORGANISATION) HAS BECOME SUBJECT TO INVESTIGATION, SUSPENSION, PROCEEDINGS OR SANCTION BY A MULTILATERAL DEVELOPMENT BANK (MDB) OR BY ANOTHER AID DONOR.

THIS POLICY APPLIES WHETHER OR NOT DFAT FUNDS WERE INVOLVED IN THE MATTER THAT LED TO THE INVESTIGATION, SUSPENSION, PROCEEDINGS OR SANCTION.

## BACKGROUND

MDBs and other aid donors conduct investigations into Organisations that are alleged to have engaged in fraudulent or corrupt practices, or other integrity violations. When substantiated, such Organisations are subject to donor sanctions including debarment, in which Organisations are ineligible to be involved in donor-financed activities for a specified period.

MDBs publish lists of sanctioned Organisations, for example, the World Bank Listing of Ineligible Firms and Individuals or the Asian Development Bank's Anticorruption Sanctions List.

## POLICY STATEMENT

DFAT's response to any MDB or aid donor investigation, suspension, proceedings or sanction will be in accordance with the requirements in the relevant Request for Tender (RFT) or Agreement. If an RFT or Agreement provides DFAT a right that it may exercise, the relevant officer will decide whether DFAT will exercise that right in accordance with the provisions in the RFT or Agreement and this Policy.

DFAT, at its absolute discretion, may impose the same or a different sanction than that imposed by an MDB or another aid donor.

DFAT's "Guideline: Complaints Handling in Procurement" does not apply to a decision made under this Policy.



## REQUESTS FOR TENDER (RFTS)

### *Before the closing time for submission of tenders*

In accordance with the mandatory condition for participation in its RFTs, DFAT must exclude from evaluation any tender received from an Organisation that, as at the closing time for the submission of tenders, is listed on the World Bank List or a Relevant List (as defined in DFAT's RFT template) or is the subject of a temporary suspension that could lead to the Organisation becoming so listed.

If, as at the closing time for the submission of tenders, a Tenderer is subject to investigation by an MDB or another aid donor that could lead to the Tenderer becoming listed, DFAT may in its absolute discretion exclude a tender from that Tenderer from further consideration.

### *After the closing time for submission of tenders*

If a Tenderer is listed on the World Bank List or a Relevant List or becomes the subject of an investigation or temporary suspension after the closing time for the submission of tenders but before completion of the tender process, DFAT has an absolute discretion in its RFTs to exclude the tender from that Tenderer from further consideration.

DFAT's policy is to exclude any such tender from further consideration unless the relevant officer decides that continued evaluation of the tender is in DFAT's best interests. A decision to allow a tender to continue to be evaluated may be made subject to conditions as determined by the relevant officer in their absolute discretion.

## AGREEMENTS

Under DFAT's standard agreements, DFAT has the right to terminate an agreement by notice where the Organisation, its personnel or subcontractors are or become listed on a World Bank or Relevant List or are subject to any proceedings or an informal process that may lead to them becoming so listed.

The relevant officer may decide that continuation of an Agreement is in DFAT's best interests. A decision to allow an Agreement to continue may be made subject to such conditions as determined by the relevant officer in their absolute discretion.

Any decision not to exercise DFAT's termination right will not affect other rights or obligations under the Agreement.

## EXTENSIONS/OPTIONS TO EXTEND AND AMENDMENTS

DFAT will not agree to a subsequent extension of the term of an Agreement (including the exercise of an option to extend) or to a subsequent amendment of an Agreement, unless the relevant officer in their absolute discretion, decides that an extension or amendment is in DFAT's best interests. A decision to extend or amend an Agreement may be made subject to conditions as determined by the relevant officer in their absolute discretion.

## **RESERVATION OF DFAT'S RIGHTS**

Nothing in this Policy precludes DFAT from exercising its rights in respect of an Organisation that has engaged in fraudulent or corrupt practices, or other integrity violations arising from an Agreement with the Commonwealth of Australia, whether or not an MDB or another aid donor has imposed sanctions on the Organisation.

## **RELEVANT OFFICER**

The Assistant Secretary, Contracting Services Branch is the relevant officer for making any decision in accordance with this Policy. The relevant officer will consult with relevant investment managers and Corporate Legal Branch in making any decision under this policy.

## **DATE OF EFFECT**

This Policy takes effect on 01 March 2018.

This Policy replaces the previous DFAT policy – “Instruction – DFAT’s course of action when suppliers are investigated or sanctioned by other aid donors” May 2015.