



Australian Government
Department of Home Affairs



Department of Home Affairs submission to the Inquiry into the management and assurance of integrity by consulting services

Public Administration References Committee

21 April 2023

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Department of Home Affairs submission to the Inquiry into the management and assurance of integrity by consulting services

1. The Department of Home Affairs (the Department) welcomes the opportunity to provide a submission to the Inquiry into the management and assurance of integrity by consulting services.
2. The Department, including the Australian Border Force (ABF), is committed to conducting procurement activity that is consistent with the Commonwealth Procurement Rules 2022 (CPRs). The Department, through the Chief Operating Officer Group (COO Group) is responsible for establishing procurement processes that are compliant with the CPRs and other legislative requirements and is the first point of contact for all procurement advice. The COO Group provides procurement and contract management support across the Department and ABF to ensure that procurement processes are an efficient, effective, economical and ethical use of resources that encourage competition and are non-discriminatory to facilitate accountable and transparent decision making that achieves a value for money outcome.

Background

3. On 16 March 2023, the Department received an invitation to make a submission into the Senate Finance and Public Administration References Committee, Inquiry into the management and assurance of integrity by consulting services (Consulting services) provided for the Australian Government, with particular reference to:
 - a) the management of conflicts of interest by consultants;
 - b) measures to prevent conflicts of interest, breach of contract or any other unethical behaviour by consultants;
 - c) enforcement measures taken in response to integrity breaches, such as the inadequate management of conflicts of interest, breach of contract or any other unethical behaviour by consultants;
 - d) the management of risks to public sector integrity arising from the engagement of consultants;
 - e) the transparency of work undertaken by consultants, and the accountability of consultants for this work; and
 - f) any other related matters.

Response to the Terms of Reference

A) The management of conflicts of interest by consultants

Integrity and Professional Standards Frameworks

4. The Department has robust Integrity and Professional Standards Frameworks (the Frameworks) which are designed to protect the Department's people, property, systems and information from infiltration and corruption. The Frameworks set the standards of behaviour that underpin a high performance and professional organisational culture.
5. The *Professional Standards Framework* is an overarching framework encompassing guidelines from the Australian Public Service Commission, including obligations contained in the Public Service Act like the APS Code of Conduct, the APS Values and APS Employment Principles, as well as Secretary's Determinations and Directions.
6. The *Integrity Framework* is a component of the Professional Standards Framework. It includes measures designed to protect our staff, property, systems and information from infiltration and corruption by criminal entities, and includes a Conflict of Interest Procedural Instruction.

7. This Procedural Instruction recognises that either perceived or actual conflicts of interest can and do occur in the normal course of duties or performance of services, and provides guidance on identifying, declaring and managing them.
8. All Immigration and Border Protection (IBP) workers must abide by the Frameworks, including the Conflict of Interest Procedural Instruction. IBP workers are defined by section 4 of the *Australian Border Force Act 2015* (Cth) and include:
 - all APS employees in the Department;
 - secondees from other government agencies, foreign governments or international bodies;
 - other persons authorised to be an 'officer of Customs' under the Customs Act 1901 or an 'officer' under the *Migration Act 1958*;
 - contractors and consultants, and their employees and subcontractors, who are:
 - performing services 'in-house' (that is physically located in premises that are owned, managed, controlled, leased, contracted by or operated by the Department); and
 - who are otherwise performing services that require non-public access to Department assets or systems.

B) Measures to prevent conflicts of interest, breach of contract or any other unethical behaviour by consultants

9. Section 13 of the *Public Service Act 1999* (Cth) (Public Service Act) requires that an APS employee must take reasonable steps to avoid any conflict of interest (real or apparent) and disclose details of any material personal interest in connection with their APS employment. In addition, employees must not make improper use of inside information, or their duties, status, power or authority in order to gain, or seek to gain a benefit or advantage for themselves, or for any other person. Contractors and consultants must behave similarly in accordance with provisions in their contracts.
10. All IBP workers are required to declare conflicts of interest as soon as they arise, and further, to update the Department of any changes in their personal circumstances which allows the Department to assess any integrity risk to the Department's operating environment.
11. As consultants are not engaged under the Public Service Act, integrity concerns are not able to be effectively addressed through an administrative process under the APS Code of Conduct. As such, where integrity issues are identified by the Department, in relation to a consultant, this will be managed directly through contract management processes.
12. Where corruption is suspected, the matter may be referred to the Australian Commission for the Law Enforcement Integrity (ACLEI) for investigation under the *Law Enforcement Integrity Commissioner Act 2006* (Cth) (LEIC Act). While not all consultants currently fall within LEIC Act jurisdiction, the Department notes the expected establishment of the National Anti-Corruption Commission (NACC) in mid-2023. The NACC will operate under an expanded jurisdiction which will include all departmental contractors.
13. The Conflict of Interest Procedural Instruction provides guidance on identifying, declaring and managing conflicts of interest, including examples of circumstances which may give rise to a conflict of interest to enable workers to consider a broad range of issues when assessing their own personal circumstances. This is complemented by a Department-wide integrity awareness and education program, which encourages a pro-integrity culture through reminders of IBP workers' integrity obligations, and highlighting of the consequences of non-compliance. Under the Integrity Framework, IBP workers are also required to mandatorily report suspected misconduct, criminal conduct or corrupt conduct. Reporting suspected corruption or integrity concerns can be made through a range of mechanisms, and may be made anonymously.

C) Enforcement measures taken in response to integrity breaches, such as the inadequate management of conflicts of interest, breach of contract or any other unethical behaviour by consultants

14. As consultants are not engaged under the Public Service Act, integrity concerns are not able to be effectively addressed through an administrative process under the APS Code of Conduct. As such, where integrity issues are identified by the Department, in relation to a consultant, this will be managed directly through contract management processes which may include replacement of the specified personnel nominated in the contract or contract termination under appropriate circumstances.
15. The Department notes that the NACC will operate under an expanded jurisdiction from mid-2023 which will include all departmental contractors.

D) The management of risks to public sector integrity arising from the engagement of consultants

16. ACLEI provides independent assurance to the Australian Government that Commonwealth law enforcement agencies and their staff act with integrity. The Department's Integrity and Professional Standards Branch (I&PS) works closely with ACLEI on activities to prevent and manage corruption risks within the Department, including in relation to integrity risks arising from the engagement of consultants.

E) The transparency of work undertaken by consultants, and the accountability of consultants for this work

17. The transparency and accountability for a consultant's work is the immediate responsibility of the line area and contract manager supported as required by integrity areas of the Department.
18. Contract managers are responsible for managing contract performance and compliance, including identification and proactive management of risks and conflicts of interest throughout the term of the individual's contract. All personnel working on a procurement process, whether APS staff or contractors, are required to undertake probity briefings and complete confidentiality undertakings and conflict of interest declarations.
19. There is a bespoke template for each category of personnel, and these forms are recorded and any declared conflicts are managed.
20. To build contract management capability, in 2018 the Department engaged a training provider for the development and delivery of an in-house tailored Contract Management course. The course covers practical contract administration skills, and legislative, compliance, governance and audit requirements relevant to contract management.
21. In December 2021 the Department released 'Your responsibilities as a Contract Manager' eLearning course outlining the requirement of Contract Managers to meet high standards of governance, performance and accountability. The course covers the requirement for Contract Managers to be aware of their probity and conflict of interest obligations when managing contracts.
22. In December 2022, the Chief Procurement Officer also endorsed a new Contract Management Framework and Contract Management Manual which provides guidance to contract managers on how to identify and manage conflicts of interest.
23. The Department has a range of guidance material available throughout the procurement process on managing conflicts of interest.

F) Any other related matters

24. Under the *Law Enforcement Integrity Commissioner Act 2006* (LEIC Act), the Department is required to notify the Integrity Commissioner of any potentially corrupt conduct by departmental officers. The Integrity Commissioner will then determine the extent of ACLEI's involvement in investigating the allegations.

25. Should the Integrity Commissioner decide to refer matters to the Department to investigate, I&PS is responsible for investigating the allegations and reporting outcomes formally back to the Integrity Commissioner for consideration. I&PS can conduct investigations into matters that the Integrity Commissioner has returned to the Department for investigation either with ACLEI management or oversight, or otherwise without oversight or management.
26. Should the Integrity Commissioner decide to investigate the matter jointly with the Department and/or with other law enforcement agencies, I&PS is able to support ACLEI with their enquiries. The extent of that joint investigation is governed by ACLEI as the lead agency. It may include provision of information, or obtaining statements from Department employees, or assisting ACLEI with facilitating interviews with persons of interest. It may also involve assisting with the compiling of other material for a brief of evidence, or witness management for matters being prosecuted.
27. The Department notes that the National Anti-Corruption Commission (NACC) will be established in 2023 and the Department will operate under the NACC's expanded jurisdiction which will include all departmental contractors.