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Department:
Public Service and Administration
REPUBLIC OF SOUTH AFRICA

GUIDE ON THE PREVENTION AND MANAGEMENT OF CONFLICTS OF INTEREST IN THE PUBLIC SERVICE

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Table of Contents

EXECUTIVE SUMMARY	5
1. GUIDE STATEMENT	7
2. OBJECTIVES OF THE GUIDE	7
3. APPLICATION	7
4. DUTY AND OBLIGATION	7
5. ACCOUNTABILITY	8
6. BATHO-PELE	8
7. CONSTITUTIONAL VALUES	9
8. DEFINITIONS	11
9. WHAT IS A CONFLICT OF INTEREST?	13
9.1 Types of conflict of interest: how to identify them?	13
10. PREVENTION OF CONFLICTS OF INTEREST	14
11. MANAGEMENT OF CONFLICTS OF INTEREST	15
12. CATEGORIES OF RISK OF CONFLICT OF INTEREST	16
12.1 HUMAN RESOURCES	16
12.1.1 Recruitment and Selection	16
12.1.2 Career progression	26
12.2 PROCUREMENT	32
12.2.1 Call for quotation or tender	32
12.2.2 Tender	42
12.2.3 Service provider performance management	49
12.2.4 Post employment	
12.3 BENEFITS	53
12.3.1 Gifts	53
12.3.2 Hospitality	55
12.3.3 Other benefits (including sponsorships)	58
12.4 ASSETS OF GOVERNMENT	60
12.4.1 Lifecycle	60
12.4.2 Outsourcing asset management	62
12.5 RELATIONSHIP WITH THE GOVERNMENT	64
12.5.1 Lobbying	64
12.5.2 Conducting Business with the State	64
12.6 PRIVACY AND SECURITY	65
12.6.1 Information management	65
12.6.2 Intellectual property	67
12.6.3 Protected disclosure	67
12.7.1 Obligation of reserve	69
12.7.2 DUTY OF DISCRETION	69
12.7.3 POLITICAL NEUTRALITY	70

13. TOOLS	72
13.1 TOOL NO.1: DECISION SUPPORT TOOL.....	72
13.2 TOOL NO.2: VALUE STATEMENT.....	73
14. REFERENCE DOCUMENTS	75
14.1 DOC NO. 1: WHAT IS STATE CAPTURE?	75
14.2 DOC NO. 2: RULES-BASED ETHICS & VALUE-BASED ETHICS.....	76
15. RESOLUTION.....	77

LIST OF ABBREVIATIONS

COI:	Conflict of interest
DPSA:	Department of Public Service and Administration
EA:	Executive Authority
HOD:	Head of Department
OSD:	Occupation Specific Dispensation
PAEIDTAU:	Public Administration Ethics, Integrity, and Disciplinary Technical Assistance Unit
PFMA :	Public Finance Management Act, No.1 of 1999
PSA:	Public Service Act, 1994 (Proclamation 103 of 1994)
PSR:	Public Service Regulations, 2016
SMS:	Senior Management Services
TR:	Treasury Regulations

EXECUTIVE SUMMARY

The Constitution of the Republic of South Africa requires public administration to promote high standards of ethical conduct among employees. This requirement has been translated into a Code of Conduct for the public service (the Code). Reducing the risk of conflict of interest situations is an important issue in enhancing a culture of ethics and integrity within the public service. If not appropriately managed, conflict of interest situations can undermine the integrity of officials, decisions, and institutions involved. It can also lead to the misuse of public resources and abuse of positions as officials serve their interests. It is against this background that the Public Administration Ethics, Integrity, and Disciplinary Technical Assistance Unit developed a Guide on the Prevention and Management of Conflicts of Interest in the Public Service.

The Code addresses many issues regarding conflict of interest and outlines expected responses from employees in the public service. Employees are expected to not engage in any transaction or action that is in conflict with, or infringes on the execution of their official duties and recuse themselves from any official action or decision-making process which may result in improper personal gain, and immediately declare such a situation. Furthermore, employees are required to serve the public in an unbiased and impartial manner in order to create confidence in the public service, not receive, solicit, or accept any gratification, not conduct business with any organ of state or be a director of a public or private company conducting business with an organ of state, refrain from favouring relatives and friends in work-related activities and not abuse their authority or influence another employee, nor be influenced to abuse their authority; and not use or disclose any official information for personal gain or the gain of others. The Code, however, does not define a conflict of interest.

The Guide on the Prevention and Management of Conflict of Interest in the Public Service (Guide) was developed to close the gaps identified in the management of conflict of interest in the public service. It defines a conflict of interest and provides guidance on how to avoid, or where this cannot be done, how to manage conflicts of interest that take place in the workplace, considering the applicable legal and regulatory framework. Above all, it aims to provide concrete support and assistance for public service employees to manage situations of conflicts of interest in a preventive manner, with practical guidance.

Taking into account, the applicable legal and regulatory framework, the objective of this Guide is to offer a single reference document that supports public service employees in identifying and managing situations that involve the risk of conflict of interest. Hence, all the applicable norms and standards regarding the management of conflict of interest are reflected in full in the document. In many cases, such are quoted verbatim from the source regulation or Act.

In the Guide, conflict of interest is defined and explained. The kinds of conflict of interest situations are identified and explained: real, apparent, and potential conflict of interest situations. Norms and standards that employees in the public service should adhere to in their particular area of work are also described to ensure that employees stick to the regulatory framework within their functional areas while applying this Guide. These include the Constitution of the Republic of South Africa, 1996, Batho-Pele Principles, Public Service Regulations, 2016, Treasury Regulations and Practice Notes, etc. Examples have also been offered to demonstrate a certain conflict of interest situations. It is not possible to describe a remedy for every situation that could lead to a conflict of interest in this Guide. Employees are, therefore, encouraged to seek guidance from supervisors and Ethics Officers while in doubt.

Categories of conflict of interest covered in this Guide include human resources, procurement (supply chain management), and benefits. Although there are currently no public service norms and standards to manage post-employment and lobbying, these sub-categories are included in the Guide to raise awareness among employees of how these issues could pose a risk of conflict of interest. At the end of the Guide, the decision support tool is included to guide decision-making in situations of conflict of interest. The Guide applies to all the departments in the public service.

1. GUIDE STATEMENT

This guide is intended to provide a basis for public service employees to fulfill their official duties and responsibilities and support them in making decisions in the public interest. Reducing the risk of conflict of interest situations is an important issue in enhancing a culture of ethics and integrity within the public service.

2. OBJECTIVES OF THE GUIDE

The objective of this Guide is to offer a single reference document that supports public service employees in identifying and managing situations that involve the risk of conflict of interest. This document has a normative scope that provides guidance on how to avoid, or where this cannot be done, how to manage conflicts of interest that take place in the public service, taking into account the applicable legal and regulatory framework. Above all, it aims to provide concrete support and assistance for public service employees to manage situations of conflicts of interest in a preventive manner, with practical guidance.

3. APPLICATION

This document applies to public service employees of the government of South Africa to provide for peace, order, and good government. This includes (a) national departments; (b) national government components; (c) provincial departments, and provincial government components.

4. DUTY AND OBLIGATION

Public service employees have a duty and an obligation to serve the public interest by giving honest and impartial advice as well as making all information relevant to a decision available to executive authorities. Public service employees shall loyally implement all legislation and other lawful instructions applicable to their conduct and official duties. Further, public service employees shall support both individual and collective accountability by providing Parliament, constitutional institutions, and the public with reliable information. Public service employees must work within the laws of South Africa and maintain the tradition of political neutrality by remaining impartial, acting without bias, and abiding by the Constitution and all other relevant legislation. They shall endeavor to ensure the proper, effective, and efficient use of public money. In the public service, how ends are achieved shall be as important as the achievements themselves.

Constantly, public service employees shall review their commitment to serving the public by continuing to improve the quality of service, adapting to changing needs through innovation, and improving the efficiency and effectiveness of government programs and

services. Public service employees shall perform their duties and arrange their private affairs in such a way that the public confidence and trust in the integrity, objectivity, and impartiality of the service are conserved and enhanced.

Public service employees shall, at all times, act in a manner that will withstand the closest public scrutiny. They shall make decisions in the public interest in order to fulfill their official duties and responsibilities. If a conflict arises between the private interests and the official duties of the public service employee, the conflict shall be resolved in favor of the public interest.

For more information, the *Public Service Regulation 2016, Code of conduct (11-15)* provides the norms and standards for professional duties and obligations.

5. ACCOUNTABILITY

Accountability in the public service is a reflection of the organizational principles and values to which a public service employee chooses to adhere to when performing his/her professional functions. This is reflected in the Constitution of South Africa:

Constitution of the Republic of South Africa (Act 108 of 1996)
Section 195. Basic values and principles governing public administration
*(f) **Public administration must be accountable***

This accountability is foundational to the professional practice in that it is a call for the integrity and loyalty of the public service employees in the performance of their functions. Accountability is about taking responsibility for each of the public service employee's actions and decisions, which collectively strengthens confidence in their professional duties.

6. BATHO-PELE

Batho-Pele (Sotho-Tswana: "People First") is a South African Public Service delivery transformation policy (White Paper on Transforming Public Service Delivery, 1997). The initiative was introduced by the Mandela Administration on October 1, 1997, to stand for the best delivery of goods and services to the public. The Batho Pele initiative aims to enhance the quality and accessibility of government services by improving efficiency and accountability to the recipients of public goods and services.

Batho-Pele requires that eight service delivery principles be implemented:

- Regularly consult with customers
- Set service standards
- Increase access to services
- Ensure higher levels of courtesy
- Provide more and better information about services
- Increase openness and transparency about services
- Remedy failures and mistakes
- Give the best possible value for money

The Conflicts of Interest Guide is in direct alignment with the orientation and principles of Batho-Pele. Addressing conflict of interest situations can greatly contribute to integrating the founding principles of Batho-Pele. Understanding, preventing, and managing risks of conflict of interest strongly contribute to the quality of services offered at different spheres of government. By promoting the integrity and transparency of public service employees through the services they offer, this guide supports giving effect to this "People First" approach.

7. CONSTITUTIONAL VALUES

Values are enduring fundamental beliefs that influence our attitudes, decisions, choices, actions, and behavior. Among others, professional values include respect, integrity, honesty, patience, care, compassion, duty, and courage. All those values are important in fulfilling the duty of public service.

An organizational value is the representation of an ideal that helps to guide the choices and the conduct of the members of the same institution. Indeed, it helps to assess and identify the legitimate basis for their actions and their decisions. Within the Government of South Africa, four core values help to specify a way of being and acting that is valued to create a shared ideal that guides public service employees in the performance of their duties. Those values derive from the fundamental principles and values presented in the *Constitution of the Republic of South Africa, 1996, (section 195): Basic values and principles governing public administration.*

Transparency

When applied to an individual and his/her actions, transparency refers to being honest and true to oneself, his/her colleagues, and his/her institution. Transparency also means the absence of malicious intentions in all forms of action, behavior, and decision-making.

In a public institution, this is an important value that refers to the honesty of an individual in their professional functions. If the public service employee acts with transparency, he/she will pay attention to the repercussions of his/her decisions and to the trustworthiness of what he/she says, decides, or supports. He/she makes sure not to place himself/herself in a situation likely to involve any form of hidden actions or derogation from his/her professional duty.

Impartiality

An impartial individual adopts an objective, fair and equitable posture. It is a neutral stance that does not involve any bias and applies to an individual, a judgment, or an action. Impartiality also refers to the absence of prejudice and not providing others with undue advantage in the course of actions or decisions.

In the public administration, impartiality is a long-standing organizational value because of the close link that the public service employees have with the political world. Indeed, the public administration must be free from any partisanship or political influence in the course of their duties which may tend towards partial and biased decision-making. An impartial decision is one that is taken in the public interest and that is not influenced by any individuals, private interests, or other external pressures.

Loyalty

Loyalty is about honoring one's commitments and responsibilities toward higher authority. It is faithfulness and devotion towards an individual, an organization, a community, or an obligation.

In the public administration, loyalty is an important organizational value that ensures members of the public administration have a duty of reverence towards their institution and the members of the public it serves. Loyalty involves a set of responsibilities that relates, among other things, to a duty of honesty towards the public, respect for institutional values, and protection of confidential information.

Accountability

Professional accountability is a reflection of the organisational principles and values to which a public service employee chooses to adhere when performing his/her functions. This is a call for the integrity and loyalty of public service employees in the occupation of their functions in the public service.

Accountability is about taking responsibility for each of your actions and decisions, which collectively strengthens the confidence that the public has in employees of the public service. Therefore, the public service employee is not only accountable for responding to the constitution but also and above all out of respect and dedication to the institution of which he/she is a part.

8. DEFINITIONS

8.1 Ethics

Ethics is a thought process that aims to guide choices and decisions as well as assess the means to carry out an action. An ethical approach can rely on rules, norms, values, principles, and even contextual particularities in order to analyze an action. It helps to understand the motivations and the justifications for certain behaviors and actions in a specific situation.

8.2 Ethical Dilemma

A dilemma is a situation involving several possible decision-making proposals, all of which have partially unsatisfactory components. The dilemma has an ethical dimension that relates to the thought process allowing one to determine the choice to be made.

In this guide, the terms “ethical dilemmas” and “moral dilemmas” will be used interchangeably to simplify their use.

8.3 Ethics Committee

An ethics committee is a grouping that aims to develop and maintain ethical considerations within an organization. It may have disciplinary, educational, and decision support responsibilities.

8.4 Other Remunerative Work

Other Remunerative Work relates to any form of paid work outside the employee’s employment in the relevant department. It includes multiple activities such as consultancy work and retainership.

8.5 Values

Values describe personal, professional, or organizational standards of what is valuable, worthy, or important. Values can help to understand or motivate actions, as they provide general guidance on how a public service employee should conduct himself/herself and how he/she should behave toward his/her colleagues.

8.6 Social Acceptability

Social acceptability refers to the collective judgment of a given community in regard to a public policy or project with social repercussions. It wants to integrate a consultation process into the implementation of a social project in order to assess its conditions of realization and the perception of citizens towards it. It is particularly important in a public institution since the work and the projects carried out are always done for the common good.

8.7 State Capture

The illegitimate control of the state for personal gain by corporations, the military, politicians, etc., through the corruption of public service employees.

8.8 Confidentiality

Confidentiality refers to the protection of information under certain conditions. It is entrusted that confidential information will be kept secret with defined restricted access. Employees in the public service have a professional duty to protect the confidentiality of certain information in given contexts.

8.9 Privacy

Privacy is a right that refers to the state of being free from intrusion in one's private life. Among other things, it refers more precisely to the right to intimacy, anonymity, and reserve. Public servants have a right to privacy in the workplace and therefore must commit to respecting the privacy practices that the government collectively imposes on itself.

8.10 Fraud

Fraud is a deliberate misrepresentation that allows an individual or a group of individuals to have an advantage over another party. Fraud may relate to actions such as asset misappropriation, accounting manipulations, intellectual property infringement, or bribery.

8.11 Nepotism

Nepotism is an abuse of power that favours an individual's relatives or personal relationships with different types of preferential treatment. It can involve offering a job, giving a contract, offering an unfair professional advantage, and many other benefits.

8.12 Norms and Standards

Norms are parameters that frame a practice to better guide and regulate it. A norm does not have a restrictive approach, it defines the framework in which certain actions and certain behaviors can or cannot take place. A standard is an approved requirement, a

behavior that needs to be upheld. It is a rule that defines and represents, by general consent, what is expected of public service employees.

8.13 Procedures

A procedure is a set of instructions that establishes a way of doing something, a mode of conducting a specific proceeding. Those organized actions represent an agreed way of accomplishing a task. “A Standard Operating Procedure (SOP) specifies in writing what should be done, when, where, by whom, and how”¹.

9. WHAT IS A CONFLICT OF INTEREST?

A conflict of interest goes beyond the common idea of acceptance of a gift to influence the judgment of an individual. They arise in a lot of different contexts and therefore require special attention. However, recognition of a conflict of interest is not immediately a problem, the important issue is how it is dealt with.

A conflict of interest is a situation in which the professional functions of a public service employee or a group of public service employees are incompatible with other responsibilities they have. Those commitments with competing interests may arise both within the government and in an external context. The interests involved can be professional, financial, political, or personal. They are irreconcilable with the professional duties of a public service employee if they may have an impact on the impartiality of the decisions and practices related to their functions.

In short, a conflict of interest is an action that compromises, appears, or has the potential to compromise the judgment of a public service employee in the course of their duties.

9.1 Types of conflict of interest: how to identify them?

A conflict of interest can be real, apparent, or potential. All these variations of conflict of interest deserve the same consideration since they can all have significant consequences if not adequately managed. Here are the particularities specific to these three forms of conflict of interest that help to identify them.

9.1.1 Real

A real conflict of interest is when a public service employee’s interest is sufficient to influence their judgment in the performance of their professional duties. It is an actual

¹ Operations Management Framework, 2016

situation that involves competing interests which can have an impact on the neutrality of their actions and decisions.

9.1.2 Apparent

An apparent conflict of interest is one that another individual perceives in you. Whether or not it is in fact the case that it exists, the apparent conflict of interest must be considered in the public service because of the issues of social acceptability. Preserving the appearance of integrity in the government is important because those perceived conflicts may have a significant impact on public judgment.

The following question may help in assessing an apparent conflict of interest:

Assuming the perception of a reasonable person of the public, would he/she be in favor and agree with your conduct in this conflictual situation?

9.1.3 Potential

A potential conflict of interest may place a public service employee in a situation of real or apparent conflict of interest in the future. Work arrangements, professional contexts, or flimsy regulatory frameworks which are conducive to the development of conflict of interest must be prevented. Public service employees must establish a working environment that prevents situations that may allow potential conflicts of interest.

The following question may help in assessing a potential conflict of interest:

Do these professional dispositions, arrangements, or actions make possible or encourage future conflict of interest situations?

10. PREVENTION OF CONFLICTS OF INTEREST

Avoiding and preventing situations that could give rise to a real, apparent, or potential conflict of interest is one of the primary means by which a public service employee maintains his/her independence in his/her role. To fulfill this duty, public service employees must be aware of the conflicts of interest guidelines within their departments. They must ensure that the interests of the public are promoted in all their professional actions and decisions. They must also be aware of the most significant risks of conflicts of interest that they must monitor in their sector of activity. Finally, they must seek help through the resources at their disposal in situations of doubt to obtain appropriate guidance.

It is not possible to describe a remedy for every situation that could lead to a conflict of interest. When in doubt, the public service employee should seek guidance from their manager or the Ethics Officer, and bear the following in mind:

- A) In carrying out their official duties, public service employees should arrange their private affairs in a manner that will prevent real, apparent, or potential conflicts of interest; and
- B) If a conflict does arise between their private interests and their official duties, the conflict must be resolved in favour of the public interest.

11. MANAGEMENT OF CONFLICTS OF INTEREST

Each department should guide employees on how to deal with conflicts of interest. All public service employees must, therefore, refer to their departmental ethics management strategy and comply with national and departmental conflicts of interest management procedures.

Trying to avoid conflicts of interest is sometimes not enough to manage such complex situations. Assuming that all conflicts of interest can be avoided limits our management capabilities. For example, an employee may not have any practical way to avoid having a close family relationship with an individual who provides goods and services for their department. Public service employees cannot and should not get rid of the multiple interests that they have in all circumstances.

In that sense, having a conflict of interest is also not always problematic, the importance is how it is dealt with. Facing a conflict of interest does not necessarily mean being at fault. It rather suggests that there is an ethical dilemma to be addressed. The moral implications depend on how a public service employee chooses to handle the situation.

What should be done about a conflict of interest depends on various factors, including the significance of the decision at hand, the public interest, the available options, applicable laws, and regulations, as well as the ethical guidelines specific to the department involved. Some conflicts of interest should be avoided, others should be disclosed and managed.

By managing conflict of interest situations, public service employees act in the best interests of the public and improve the quality of services provided.

12. CATEGORIES OF RISK OF CONFLICT OF INTEREST

In the various sectors of activity of the public service, different situations of conflict of interest may arise. As conflicts of interest are very contextual, it is difficult to identify all their forms and variations. However, defining some of the risks of conflict of interest that exist in the different sectors can help to identify and prevent them.

When facing a potential conflict of interest context, you can refer to the relevant section below to help you assess the situation. The examples provided in these sections are intended to guide public service employees. They are not turnkey solutions and must, in all circumstances, be adapted to the particularities of the situation of risk of conflict of interest that appears.

12.1 HUMAN RESOURCES

12.1.1 Recruitment and Selection

12.1.1.1 Job evaluation

Who is concerned?

A public service employee responsible for, involved in, or aware of the job evaluation process.

Context

The job evaluation is the work of determining what is required to determine/confirm the grade of the position, before filling the position. These initial choices on the requirements of the job have an impact on the entire selection and appointment process that follows. It is therefore important to ensure that the job evaluation is based on grading criteria and job requirements that relate to real organizational needs that are justifiable to avoid having any biased selection.

Risk of conflict of interest

A risk of conflict of interest includes but is not limited to, the manipulation of the job requirements to favor or disadvantage certain candidates, to limit or circumscribe the applications to be received, or to divert the prerequisites from the real needs of the position.

Example of potential conflict of interest

- Determine overly specific job requirements to make sure it fits the qualifications of a chosen individual.

- Overvalue the expected compensation for a position knowing which individual will be selected for it.
- Unjustifiably lower the criteria of a job position to ensure that an individual is eligible.

Applicable norms and standard

PSR 41. Job evaluation and job grading systems:

1. The Minister shall determine-
 - (a) a job evaluation and job grading system or systems that shall be utilized in the public service to ensure work of equal value is remunerated equally; and
 - (b) a range of job weights derived from the system or systems for each salary level in a salary scale.
2. The Minister may –
 - (a) issue directives of the application of a job evaluation or job grading system or systems;
 - (b) review the application of job evaluation in the public service;
 - (c) determine a job or category of jobs that an executive authority must evaluate; and
 - (d) issue directives that direct the evaluation and grading of any job or category of jobs.
3. An executive authority may evaluate or reevaluate any job in his or her department, except:
 - (a) jobs evaluated and graded by the Minister in terms of sub-regulation (2)(d); or
 - (b) jobs determined in terms of an OSD.

12.1.1.2 Advertising

Who is concerned?

A public service employee responsible for, affected by advertising, or who is aware of the advertising process.

Context

An advertising process for recruitment involves several key steps that should not be neglected to ensure an ethical approach. Whether it is a question of the media selection, designing the advert, or choosing the place and time of the posting, these processes can create situations conducive to conflicts of interest when poorly managed.

Risk of conflict of interest

The risk of conflict of interest includes but is not limited to, the accessibility of the posting. The transparency of the process and the impartiality of the individuals responsible for advertising are also important.

Examples of potential conflict of interest

- Posting a job offer during the holiday season for a short period and on a web platform that is difficult to access and not openly promoting it.
- Posting a job offer that does not reflect the job requirements aligned to the job grade.
- Favouring specific media outlets consistently.
- Re-advertising a post for unjustifiable reasons. For example, to allow a specific individual to apply after the deadline for receipt of applications has passed.

Applicable norms and standard

PSR 65. Advertising (1) to (5):

- (1) An executive authority shall ensure that vacant posts in the department are advertised, as efficiently and effectively as possible, to reach the entire pool of potential applicants, including designated groups.
- (2) An advertisement for a post shall as a minimum specify the job title, salary scale, core functions, place of work, and inherent requirements of the job, including any other requirements prescribed in these Regulations.
- (3) A vacant post in the SMS shall be advertised nationwide.
- (4) An executive authority shall advertise any other vacant post, as a minimum, within the department, but may also advertise such post (a) in the public service; (b) locally; or (c) nationwide.
- (5) When advertising outside the department, the department shall also advertise in the public service vacancy circular issued by the Department of Public Service and Administration.

12.1.1.3 Selection Committee

Who is concerned?

A public service employee who is part of a selection committee or involved in any way in the selection process.

Context

A selection committee may face a significant risk of conflict of interest due to the multiple relational circumstances it involves. Those potentially conflicting relationships may relate to family members, friends, employees, former colleagues, suppliers, or business partners. Power relationships and positions of authority can also be a source of risk as it relates to social status or hierarchical relationships.

Risk of conflict of interest

The risk of conflict of interest includes but is not limited to, that of having relational interests to defend or preserve at the expense of the impartiality of your professional

judgment. This may result in direct or indirect forms of nepotism, cronyism, and/or patronage, which are to be avoided at all costs.

Examples of potential conflicts of interest

- A selection committee member adjudicated over an application of a candidate with whom he/she has close relations but does not recuse him/herself from the selection process, despite being conflicted.
- The chairperson of the selection committee is or was the supervisor of one or more of the members of the selection committee which creates an existing or past employment hierarchical link between members of the selection committee which could exert pressure on the exercise of their judgment (possibly for fear of retaliation).

Applicable norms and standard

Constitution S195(1) (h) & (i). Basic values and principles governing public administration

(h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated.

(i) Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.

PSA S11. Appointments and filling of posts (1) and (2)

(1) In the making of appointments and the filling of posts in the public service due regard shall be had to equality and the other democratic values and principles enshrined in the Constitution.

(2) In the making of any appointment in terms of section 9 in the public service-

- (a) all persons who applied and qualify for the appointment concerned shall be considered; and
- (b) the evaluation of persons shall be based on training, skills, competence, knowledge, and the need to redress, in accordance with the Employment Equity Act, 1998 (Act 55 of 1998), the imbalances of the past to achieve a public service broadly representative of the South African people, including representation according to race, gender, and disability.

12.1.1.4 Candidate selection

Who is concerned?

A public service employee who is consulted on the selection of a candidate or involved in any way in the selection process organization or in determining the selection criteria.

Context

The arrangement and dispositions of the selection process can have a decisive impact on the professional choice made for a candidate selection. The risks of conflict of interest can take shape downstream or upstream of the selection process, in the evaluation arrangements, and in the decisions that concern whether the job requirements are met or not.

Risk of conflict of interest

The risk of conflict of interest includes, but is not limited to, the leeway for the support or rejection of certain candidates based on justifications that involve difficult verification procedures.

Example of potential conflict of interest

Additional selection points are awarded to a candidate for experiences and qualifications that are in no way related to the position to be filled, but which are considered interesting.

Applicable norms and standard

PSR 65. Advertising (6):

- (1) An executive authority shall ensure that vacant posts in the department are advertised, as efficiently and effectively as possible, to reach the entire pool of potential applicants, including designated groups.
- (2) An advertisement for a post shall as a minimum specify the job title, salary scale, core functions, place of work, and inherent requirements of the job, including any other requirements prescribed in these Regulations.
- (3) A vacant post in the SMS shall be advertised nationwide.
- (4) An executive authority shall advertise any other vacant post, as a minimum, within the department, but may also advertise such post
 - (a) in the public service;
 - (b) locally; or
 - (c) nationwide.
- (5) When advertising outside the department, the department shall also advertise in the public service vacancy circular issued by the Department of Public Service and Administration.
- (6) An advertisement for a post shall not unfairly discriminate against or prohibit any suitably qualified person or employee from applying.
- (7) A funded vacant post shall be advertised within six months after becoming vacant and be filled within twelve months after becoming vacant.
- (8) An advertisement contemplated in sub-regulation (4) may be utilised to create a pool of potential employees for not more than 6 months from the date of advertisement to fill any other vacancy in the relevant department if:

- (a) the job title, core functions, inherent requirements of the job, and the salary level of the other vacancy is the same as the post advertised; and
 - (b) the selection process contemplated in regulation 67 has been complied with.
- (9) With due regard to the criteria in regulation 67 (5) (b) to (f), an executive authority may fill a vacant post without complying with sub-regulations (3) and (4) if
- (a) the department can fill the post from the ranks of employees who have been declared in excess and are on a salary level linked to the grade of that post;
 - (b) the department can appoint into the post an employee who was appointed under an affirmative action measure as contemplated in section 15 of the Employment Equity Act;
 - (c) the post is to be filled through a transfer of an employee in terms of section 12 (3) or 14 of the Act; or
 - (d) the post falls within an occupation or category of employees as directed by the Minister.

PSR 67. Selection (5)(a):

- (1) An executive authority shall appoint a selection committee to make a recommendation on the appointment to a post. The selection committee shall consist of at least three members who are employees of a grade equal to or higher than the grade of the post to be filled or suitable persons from outside the public service. However,
- (a) the chairperson of the selection committee, who shall be an employee, shall be of a grade higher than the post to be filled; and
 - (b) if the head of the component within which the vacant post is located, is graded lower than the vacant post, such a head may be a member of the selection committee.
- (2) A selection committee constituted for the appointment of:
- (a) the head of a national department or national government component shall be chaired by the executive authority responsible for the portfolio in which the vacancy exists and include at least two other executive authorities of a national department and a national head of department;
 - (b) the head of the Presidency shall be chaired by a Minister in the Presidency and include at least two other executive authorities of a national department and a national head of department;
 - (c) the head of the Office of the Commission, shall be chaired by the chairperson of the Commission and include at least the Minister and one other executive authority of a national department and the head of a national department;
 - (d) the head of the Office of the Premier shall include at least three members of the Executive Council of the relevant province and the head of any national

- department and shall be chaired by a member of the Executive Council of the relevant province;
- (e) the head of a provincial department or provincial government component, shall be chaired by the relevant member of the Executive Council and include at least two other members of the Executive Council of the relevant province and the head of the Office of the Premier of the province;
 - (f) a Deputy Director-General of a national department shall be chaired by the executive authority responsible for the portfolio in which the vacancy exists and include at least two Deputy Ministers and the relevant head of department;
 - (g) a Deputy Director-General of the Office of the Commission, shall be chaired by the chairperson of the Commission and include at least two Deputy Ministers and the head of the Office of the Commission; and
 - (h) a Deputy Director-General of:
 - (i) the Office of the Premier, shall be chaired by a member of the Executive Council and include at least two other members of the Executive Council of the relevant province and the head of the Office of the Premier; and
 - (ii) a provincial department, shall be chaired by the relevant member of the Executive Council and include at least two other members of the Executive Council of the relevant province and the head of the relevant provincial department.
- (3) A selection committee shall, where possible, include adequate representation of designated groups.
- (4) Any suitably qualified employee may provide secretarial or advisory services during the selection process.
- (5) The selection committee shall make a recommendation on the suitability of a candidate after considering only
- (a) information based on valid methods, criteria, or instruments for selection that are free from any bias or discrimination;
 - (b) the inherent requirements of the post;
 - (c) the department's employment equity plan as contemplated in regulation 27; and
 - (d) in respect of candidates applying for posts from salary level 9 and above
 - (i) the level of understanding of the relevant departmental mandates;
 - (ii) the ability to identify problems and find innovative solutions; and
 - (iii) the ability to work in a team.
- (6) A selection committee shall record the reasons for its recommendation with reference to the criteria mentioned in sub-regulation (5).
- (7) If the selection committee is unable to recommend a suitable person for appointment from those who applied in terms of sub-regulation (5), the executive authority may, after that selection process has been completed, approve the headhunting of one or

more persons with the requisite competencies and subject such person or persons to the same selection process as those who applied.

- (8) If an executive authority does not approve a recommendation of a selection committee, he or she shall record the reasons for his or her decision in writing.
- (9) Before making a decision on an appointment or the filling of a post, an executive authority shall:
 - (a) satisfy herself or himself that the candidate qualifies in all respects for the post and that his or her claims in his or her application for the post have been verified as directed by the Minister; and
 - (b) record that verification in writing.

12.1.1.5 Pre-employment screening

Who is concerned?

A public service employee who is responsible for, is concerned by, or is aware of the staffing process.

Context

There is a need to ensure an individual under consideration for employment with the public service is not in a situation of conflicts of interest before being engaged. This includes security clearance, acceptable financial burden, ability to perform the functions for which the person is being appointed to do, and education requirements.

Risk of conflict of interest

A security clearance process would ensure the prospect of engaging as a public service employee needs to be vetted to ensure that there is no disqualifying criminal history. Confirming that the potential public service employee has an acceptable financial burden assists in ensuring that the candidate is not compromised and could not be coerced into aiding someone to make decisions that would favour the debtor.

Examples of a situation with this risk of conflict of interest

- If the potential public servant does not have the ability or the competencies to perform the work he/she is being appointed for but he/she is nevertheless appointed due to his/her connection with another public service employee or political office bearer.
- If the applicable recruitment and selection policies and procedures are not fully respected in the hiring process while claiming a lack of applications.

Applicable norms and standards

Constitution S195 (1) (h) & (i). Basic values and principles governing public administration:

- (h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated.
- (i) Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.

PSA S10. Qualifications for Appointment:

No person shall be appointed permanently, whether on probation or not, to any post on the establishment in a department unless he or she-

- (a) is a South African citizen or permanent resident; and
- (b) is a fit and proper person.

PSA S11. Appointments and filling of posts (1) and (2):

- (1) In the making of appointments and the filling of posts in the public service due regard shall be had to equality and the other democratic values and principles enshrined in the Constitution.
- (2) In the making of any appointment in terms of section 9 in the public service-
 - (a) all persons who applied and qualify for the appointment concerned shall be considered; and
 - (b) the evaluation of persons shall be based on training, skills, competence, knowledge, and the need to redress, in accordance with the Employment Equity Act, 1998 (Act 55 of 1998), the imbalances of the past to achieve a public service broadly representative of the South African people, including representation according to race, gender, and disability.

12.1.1.6 Appointment

Who is concerned?

A public service employee who is responsible for, affected by, or who is aware of the appointment process.

Context

The appointment of employees must be made in accordance with the regulatory framework which includes the Public Service Act, 1994, Public Service Regulations, 2016, Senior Management Service (SMS) Handbook, Public Finance Management Act, 1999, and other relevant legal frameworks. The relational context of the members of a team or a department requires additional vigilance regarding the appointment process of internal candidates.

Risk of conflict of interest

Certain positions filled by the departments are likely to involve irregular appointments resulting from conflict of interest situations. There may be an abuse of contract appointments to make an appointment of certain individuals possible.

Examples of potential conflicts of interest

- Reject the candidate recommended by the Selection Panel and choose the second potential candidate for unjustifiable reasons.
- Offer certain individuals contract appointments to bypass formal appointment rules.

Applicable norms and standards

Constitution S195 (1) (h) & (i). Basic values and principles governing public administration:

- (h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated.
- (i) Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.

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- (1) In the making of appointments and the filling of posts in the public service due regard shall be had to equality and the other democratic values and principles enshrined in the Constitution.
- (2) In the making of any appointment in terms of section 9 in the public service-
 - (a) all persons who applied and qualify for the appointment concerned shall be considered; and
 - (b) the evaluation of persons shall be based on training, skills, competence, knowledge, and the need to redress, in accordance with the Employment Equity Act, 1998 (Act 55 of 1998), the imbalances of the past to achieve a public service broadly representative of the South African people, including representation according to race, gender, and disability.

PSR 91. Ethics and Conduct.

Members of the SMS shall -

- (a) display the highest possible standards of ethical conduct;

- (b) set an example to those employees reporting to them and maintain high levels of professionalism and integrity in their interaction with political office bearers and the public;
- (c) ensure that they minimise conflicts of interest and that they put the public interest first in the performance of their functions; and
- (d) avoid any conflict of interest that may arise in representing the interests of his or her department and being a member of a trade union, as defined in section 213 of the Labour Relations Act.

12.1.2 Career progression

12.1.2.1 Remuneration

Who is concerned?

A public service employee who determines the remuneration of an employee or who is involved in any way in the review or implementation of the remuneration policy.

Context

Remuneration is a working condition that involves a considerable risk of conflict of interest. As the salary often corresponds to the institutional hierarchy, the salary criteria and choices of salary allocations have important repercussions which must be monitored.

Risk of conflict of interest

The risk of conflict of interest relates to the relationship with the candidates concerned by the choice of salary and to the relations of power and authority that may be linked to the salary allocation.

Examples of potential conflicts of interest

- A higher salary is offered to a candidate or a serving employee based on subjective criteria and not for the purpose of recruiting or retaining scarce skills and without following due process.
- The post and salary of an employee are upgraded without due consideration to the weight of the post based on job evaluation.

Applicable norms and standard

PSR 39. Job descriptions, job titles, systems of occupational classification and remuneration, and OSDs.

- (3) To assist an executive authority in designing a job and career path linked to a salary scale, the Minister shall determine:
 - (a) a system of remuneration for an occupational category, for which an OSD has not been determined; and
 - (b) an occupational classification system.
- (4) An executive authority shall link all posts in his or her department as contained in a remuneration system as contemplated in sub-regulation (3) (a) to an occupation listed in the occupational classification system referred to in sub-regulation 3 (b), except in the case of posts determined in terms of an OSD, in which case the classification indicated in the OSD shall be utilised.

PSR 43. Grading of posts (2)

- (2) An executive authority shall (a) determine the grade of a post to correspond with (i) the evaluation of the job by the Minister in terms of regulation 41 (2) (d) on a date determined by the Minister; (ii) jobs determined in terms of regulation 42; or (iii) if the job was not so evaluated or determined by the Minister, the evaluation of the job by the executive authority in terms of regulation 41 (3); and (b) set the commencing salary of an employee on the minimum notch of the salary level attached to the relevant grade unless a higher salary is awarded in terms of regulation 44.

PSR 44. Setting of higher salary (1) – (4)

- (1) Subject to sub-regulation (2) to (4) an executive authority may set the salary of an employee above the minimum notch of the salary level indicated by the job weight (a) if he or she has evaluated the job; (b) if he or she requires to retain or recruit an employee with the necessary competencies; and (c) he or she shall record the reason why the higher salary was awarded.
- (2) The setting of a higher salary notch, as contemplated in sub-regulation (1) to retain an employee (herein called the "counteroffer") shall only take place on the first day of the month following the date of approval, if;
 - a) the employee has received an employment offer (herein called the "external offer") from any other body or organ of state;
 - (b) the department has verified the validity and content of the external offer;
 - (c) the counteroffer made is limited to the salary notch closest to the external offer; and
 - (d) the counteroffer shall not exceed the salary level of the post.
- (3) The setting of a higher salary notch, as contemplated in sub-regulation (1) to recruit an employee shall only take place on the first day of the month following the date of approval if-
 - (a) the executive authority has complied with the process contemplated in regulation 64;

- (b) the employee occupied an equally graded post immediately before the date of appointment;
 - (c) the higher salary shall not exceed that of the employee immediately prior to appointment; and
 - (d) the higher salary shall not exceed the salary level of the post unless such employee has been awarded a higher salary attached to the grade of the post in terms of any other provision of the Act.
- (4) If an employee is awarded a higher salary notch or a higher salary level in terms of sub-regulation (1) to (3), he or she shall not be disqualified from progression to a higher notch or grade if he or she meets the requirements for such progression.

12.1.2.2 Performance management

Who is concerned?

A public service employee who is responsible for performance reviews, who receives a performance review, or who is aware of a performance review process.

Context

The performance review, being an assessment in which you evaluate an employee's work performance, strengths, and weaknesses and offer feedback, can lead to situations of favoritism, discrimination, and cronyism. The independence of the performance review process and the impartiality of the supervisor carrying it out is therefore essential. As performance management is often linked to pay progression, they represent an attractive change in the working conditions of an employee and must be managed with care.

Risk of conflict of interest

The risk of conflict of interest relates to the relationship between the individual responsible for the performance review (supervisor) and the individual being evaluated (supervisee). The risks concern possible bias from the supervisor towards the supervisee arising from their personal relationship as well as relations of authority within the institution.

Examples of a situation with this risk of conflict of interest

- The granting of rewards to a supervisee by the same supervisor based on their personal relationship rather than on an objective assessment of performance against his/her performance agreement and in accordance with the applicable regulation.
- A manager who under-evaluates the performance of a public service employee because of a strained working relationship.

Applicable norms and standard

PSR 72 (1) – (8). Performance agreements and assessments.

- (1) An employee shall enter into a performance agreement or an agreement of similar nature within three calendar months of his or her date of appointment and thereafter within two months of the beginning of each financial year. This agreement may be reviewed from time to time.
- (2) If, during the performance cycle, an employee is appointed, seconded, or transferred to another post or position at the same salary level, a new performance agreement or agreement of a similar nature shall be entered into for the new post or position and the performance assessment shall take both periods of work in the cycle into consideration.
- (3) A performance agreement or an agreement of a similar nature shall include at least the following:
 - (a) a personnel number, job title, and post grade as well as a clear description of the main objectives of the employee's job and the relevant outputs or key responsibility areas and competency requirements;
 - (b) a workplan containing the outputs, activities, and resource requirements; and
 - (c) a personal development plan that identifies the employee's competency and developmental needs in terms of the inherent requirements of the job as well as methods to improve these.
- (4) If both the employee and his or her supervisor do not sign the performance agreement or an agreement of similar nature due to a dispute relating to the content of the agreement, a person shall be appointed within one month after the expiry of the period stipulated in sub-regulation (1), to consider the dispute. Such person shall be appointed in the following manner:
 - (a) in the case of a dispute involving a head of a national department, the appointment shall be made by the President, provided that the person so appointed, shall be an executive authority, a Deputy Minister or an employee who is a member of the SMS;
 - (b) in the case of a dispute involving a head of the Office of the Premier or a provincial department, the appointment shall be made by the relevant Premier, provided that the person so appointed, shall be an executive authority, a Deputy Minister, or an employee who is a member of the SMS; and
 - (c) in the case of other employees, the appointment shall be made by the relevant executive authority, provided that the person so appointed, shall be an employee.
- (5) The person appointed to consider the dispute in terms of sub-regulation (4) shall within one month of his or her appointment consider the dispute and recommend a performance agreement or an agreement of similar nature to be signed, in the case of a head of department, to the President, Premier or executive authority, as the case may be, and in the case of other employees to the head of department.

- (6) The relevant employee and his or her supervisor shall sign the performance agreement or an agreement of similar nature, as recommended in sub-regulation (5), within two weeks of receipt thereof, failing which the agreement shall be deemed to have been signed from the date of the recommendation.
- (7) No employee shall qualify for performance rewards as contemplated in regulation 73 (1), including pay progression if he or she has not signed a performance agreement or an agreement of similar nature within the period contemplated in sub-regulation (1).
- (8) The supervisor and the employee shall ensure that annual performance assessments are finalised by 31 July of the financial year following the year of the assessment.

12.1.2.4 Other Remunerative Work

Who is concerned?

All public service employees who, while employed within the public service, engage in other remunerative work outside their employment in the relevant department, which may affect their impartiality and judgment within the public service. All managers within the public service who supervise employees who engage in remunerative work outside their employment.

Context

Public service employees may not engage in employment outside the public service or perform remunerative work outside their employment unless they have written approval. If they perform such activities without approval, this is likely to give rise to a conflict of interest or interfere with their obligations towards their department, and in this way, undermine service delivery and the objectivity of the public service.

Risk of conflict of interest

A public service employee could face a situation of conflict of interest if his/her outside employment or remunerative work interferes with his professional responsibilities and the neutrality of his judgment in offering quality services.

Examples of potential conflicts of interest

- A company that operates in the same sector as your department approaches you to sit on its board member committee. This company has already applied to a call for tender from your department. However, no monetary compensation is offered by the company for your participation on the board member committee
- A lawyer working for the state is approached by a patient of the public health system who wants to hire him/her to sue the state for medical negligence.

Applicable norms and standards

PSA. S30. Other remunerative work by employees:

- (1) No employee shall perform or engage himself or herself to perform remunerative work outside his or her employment in the relevant department, except with the written permission of the executive authority of the department.
- (2) For the purposes of subsection (1) the executive authority shall at least take into account whether or not the outside work could reasonably be expected to interfere with or impede the effective or efficient performance of the employee's functions in the department or constitute a contravention of the code of conduct contemplated in section 41 (1) (b) (v).
- (3) (a) The executive authority shall decide whether or not to grant permission, contemplated in subsection (1), within 30 days after the receipt of the request from the employee in question.
(b) If the executive authority fails to decide within 30 days, it would be deemed that such permission was given.

PSR 19. Details of interest to be disclosed – Regulation 19(e):

- (d) Directorships and partnerships
 - (i) The name, type, and nature of the business activity of the corporate entity or partnership;
 - (ii) if applicable, the amount of any remuneration received for such directorship or partnership.
- (e) Remunerated work outside the employee's employment in her or his department:
 - (i) The type of work;
 - (ii) the name, type, and nature of the business activity of the employer;
 - (iii) the amount of the remuneration received for such work; and
 - (iv) proof of compliance with section 30 of the Act must be attached.
- (f) Consultancies and retainership
 - (i) The nature of the consultancy or retainership of any kind;
 - (ii) the name, type, and nature of the business activity of the client concerned; and
 - (iii) the value of any benefits received for such consultancy or retainership.
- (g) Sponsorships
 - (i) The source and description of direct financial sponsorship or assistance;
 - (ii) the relationship between the sponsor and the employee;
 - (iii) the relationship between the sponsor and the department; and (iv) the value of the sponsorship or assistance.

PSR 24. Other remunerative work by employees.

An application by an employee to perform remunerative work outside his or her department shall be in accordance with the process determined by the Minister and in the form issued by the Minister.

PSR 13(i). Ethical conduct.

If he or she has permission in terms of section 30 of the Act to perform outside remunerative work, not

- (i) perform such work during official work hours; and
- (ii) use official equipment or state resources for such work.

Directive on other remunerative work outside the employee's employment in the relevant departments, as contemplated in section 30 of the public service act, 1994 outlines the process and form to apply for permission to perform other remunerative work.

12.2 PROCUREMENT

12.2.1 Call for quotation or tender

12.2.1.1 Bid specification

Who is concerned?

A public service employee who is involved or concerned in any way in the development of a request for quotations or tender specifications.

Context

A needs assessment is the initial foundation for ensuring transparency in the tendering process and identifies what a project requires. Since this is the first action that will have major repercussions on the selection of service providers, ensuring the impartiality of this process is essential.

Risk of conflict of interest

The risk of conflict of interest is to develop needs assessments that are pre-oriented to favour or disadvantage certain service providers.

Example of potential conflict of interest

- A needs assessment that reflects the very specific goods or services offered by a particular service provider.

- A bid specification that immediately disqualifies certain service providers that can deliver the relevant goods or services by the inclusion of unjustified or discriminatory criteria.
- Outsourcing work or projects that should easily be conducted with internal staff and resources as part of their normal responsibilities

Applicable norms and standard

Constitution. S217(1). Procurement:

(1) When an organ of the state in the national, provincial, or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.

PFMA. S38(1)(a)(iii), (b) and (c). General responsibilities of accounting officers:

(1) The accounting officer for a department, trading entity, or constitutional institution—
(a) must ensure that that department, trading entity, or constitutional institution has and maintains—

(iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive, and cost-effective.

(b) is responsible for the effective, efficient, economical, and transparent use of the resources of the department, trading entity, or constitutional institution;

(c) must take effective and appropriate steps to—

(i) collect all money due to the department, trading entity, or constitutional institution;

(ii) prevent unauthorised, irregular and fruitless, and wasteful expenditure and losses resulting from criminal conduct; and

(iii) manage available working capital efficiently and economically.

PFMA. S45. Responsibilities of other officials:

An official in a department, trading entity, or constitutional institution—

(a) must ensure that the system of financial management and internal control established for that department, trading entity, or constitutional institution is carried out within the area of responsibility of that official;

(b) is responsible for the effective, efficient, economical, and transparent use of financial and other resources within that official's area of responsibility;

(c) must take effective and appropriate steps to prevent, within that official's area of responsibility, any unauthorised expenditure, irregular expenditure, fruitless and wasteful expenditure, and any under collection of revenue due;

(d) must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 44; and

(e) is responsible for the management, including the safeguarding, of the assets and the management of the liabilities within that official's area of responsibility.

PFMA. S81. Financial misconduct by officials in departments and constitutional institutions:

(1) An accounting officer for a department or a constitutional institution commits an act of financial misconduct if that accounting officer willfully or negligently—

(a) fails to comply with a requirement of sections 38, 39, 40, 41, or 42; or

(b) makes or permits an unauthorised expenditure, an irregular expenditure, or a fruitless and wasteful expenditure.

(2) An official of a department, a trading entity, or a constitutional institution to whom a power or duty is assigned in terms of section 44 commits an act of financial misconduct if that official willfully or negligently fails to exercise that power or perform that duty.

TR 16A6. Procurement of goods and services:

16A6.1 Procurement of goods and services, either by way of quotations or through bidding:

the process must be within the threshold values as determined by the National Treasury.

16A6.2 A supply chain management system must, in the case of procurement through a bidding process, provide for –

(a) the adjudication of bids through a bid adjudication committee;

(b) the establishment, composition, and functioning of bid specification, evaluation, and adjudication committees;

(c) the selection of bid adjudication committee members;

(d) bidding procedures; and

(e) the approval of bid evaluation and/or adjudication committee recommendations.

16A6.3 The accounting officer or accounting authority must ensure that –

(a) bid documentation and the general conditions of a contract are in accordance with –

(i) the instructions of the National Treasury; or

(ii) the prescripts of the Construction Industry Development Board, in the case of a bid relating to the construction industry;

(b) bid documentation including evaluation and adjudication criteria, including the criteria prescribed in terms of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

(c) bids are advertised in at least the Government Tender Bulletin for a minimum period of 21 days before closure, except in urgent cases when bids may be advertised for a such shorter period as the accounting officer or accounting authority may determine;

- (d) awards are published in the Government Tender Bulletin and other media by means of which the bids were advertised;
- (e) contracts relating to information technology are prepared in accordance with the State Information Technology Act, 1998 (Act No. 88 of 1998), and any regulations made in terms of that Act;
- (f) Treasury Regulation 16 is complied with when goods or services are procured through public private partnerships or as part of a public private partnership; and
- (g) instructions issued by the National Treasury in respect of the appointment of consultants are complied with.

16A6.4 If in a specific case, it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority.

TR 16A.8 – Compliance with ethical standards

16A8.1 All officials and other role players in a supply chain management system must comply with the highest ethical standards in order to promote –

- (a) mutual trust and respect; and*
- (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.*

16A8.2 The National Treasury's Code of Conduct for Supply Chain Management Practitioners must be adhered to by all officials and other role players involved in supply chain management. 16A8.3 A supply chain management official or other role players –

- (a) must recognise and disclose any conflict of interest that may arise;*
- (b) must treat all suppliers and potential suppliers equitably;*
- (c) may not use their position for private gain or to improperly benefit another person;*
- (d) must ensure that they do not compromise the credibility or integrity of the supply chain management system through the acceptance of gifts or hospitality or any other act;*
- (e) must be scrupulous in their use of public property; and*
- (f) must assist accounting officers or accounting authorities in combating corruption and fraud in the supply chain management system.*

16A8.4 If a supply chain management official or other role player, or any close family member, partner, or associate of such official or other role player, has any private or business interest in any contract to be awarded, that official or other role player must –

- (a) disclose that interest; and*
- (b) withdraw from participating in any manner whatsoever in the process relating to that contract.*

16A8.5 An official in the supply chain management unit who becomes aware of a breach of or failure to comply with any aspect of the supply chain management system must immediately report the breach or failure to the accounting officer or accounting authority, in writing.

PSR 14(f) and (j). Performance of official duties:

An employee shall:

- (f) be honest and accountable in dealing with public funds and use the State's property and other resources effectively, efficiently, and only for authorised official purposes; and
- (j) promote sound, efficient, effective, transparent, and accountable administration.

12.2.1.2 Solicitation method/posting

Who is concerned?

A professional who is responsible or involved in any way in the solicitation process and posting method that is used to publicly invite service providers to provide a quotation or to tender for goods or services.

Context

Procurement opportunities must be accessible to all service providers. The procurement method is an important aspect that ensures the opportunity is within reach of any possible service provider. Calls for quotations or tenders are therefore usually posted in the Government Tender Bulletin or online in dedicated portals such as National Treasury's eTender Publication (<https://etenders.treasury.gov.za/>)

Risk of conflict of interest

The risk of conflict of interest is to have a non-transparent procurement method that aims to favour a particular service provider.

Example of potential conflict of interest

A call for quotations/tenders which is sent to a limited number of service providers with the objective to unjustifiably exclude others who may also qualify to provide the required goods or services.

Applicable norms and standard

Constitution. S217(1). Procurement:

- (1) When an organ of the state in the national, provincial, or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.

PFMA. S38(1)(a)(iii), (b) and (c). General responsibilities of accounting officers:

- (1) The accounting officer for a department, trading entity, or constitutional institution—
 - (a) must ensure that that department, trading entity, or constitutional institution has and maintains—
 - (iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive, and cost-effective.
 - (b) is responsible for the effective, efficient, economical, and transparent use of the resources of the department, trading entity, or constitutional institution;
 - (c) must take effective and appropriate steps to—
 - (i) collect all money due to the department, trading entity, or constitutional institution;
 - (ii) prevent unauthorised, irregular and fruitless, and wasteful expenditure and losses resulting from criminal conduct; and
 - (iii) manage available working capital efficiently and economically.

PFMA. S45. Responsibilities of other officials:

An official in a department, trading entity, or constitutional institution—

- (a) must ensure that the system of financial management and internal control established for that department, trading entity, or constitutional institution is carried out within the area of responsibility of that official;
- (b) is responsible for the effective, efficient, economical, and transparent use of financial and other resources within that official's area of responsibility;
- (c) must take effective and appropriate steps to prevent, within that official's area of responsibility, any unauthorised expenditure, irregular expenditure, fruitless and wasteful expenditure, and any under collection of revenue due;
- (d) must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 44; and
- (e) is responsible for the management, including the safeguarding, of the assets and the management of the liabilities within that official's area of responsibility.

PFMA. S81. Financial misconduct by officials in departments and constitutional institutions:

- (1) An accounting officer for a department or a constitutional institution commits an act of financial misconduct if that accounting officer willfully or negligently—

- (a) fails to comply with a requirement of sections 38, 39, 40, 41, or 42; or
 - (b) makes or permits an unauthorised expenditure, an irregular expenditure, or a fruitless and wasteful expenditure.
- (2) An official of a department, a trading entity, or a constitutional institution to whom a power or duty is assigned in terms of section 44 commits an act of financial misconduct if that official willfully or negligently fails to exercise that power or perform that duty.

TR 16A.3 – Supply chain management:

16A3.2 A supply chain management system referred to in paragraph 16A.3.1 must –

- (a) be fair, equitable, transparent, competitive, and cost effective;
- (b) be consistent with the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
- (c) be consistent with the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and
- (d) provide for at least the following: – (i) demand management; (ii) acquisition management; (iii) logistics management; (iv) disposal management; (v) risk management; and (vi) regular assessment of supply chain performance.

TR 16A6. Procurement of goods and services:

16A6.1 Procurement of goods and services, either by way of quotations or through a bidding process must be within the threshold values as determined by the National Treasury.

16A6.2 A supply chain management system must, in the case of procurement through a bidding process, provide for –

- (a) the adjudication of bids through a bid adjudication committee;
- (b) the establishment, composition, and functioning of bid specification, evaluation, and adjudication committees;
- (c) the selection of bid adjudication committee members;
- (d) bidding procedures; and
- (e) the approval of bid evaluation and/or adjudication committee recommendations.

16A6.3 The accounting officer or accounting authority must ensure that –

- (a) bid documentation and the general conditions of a contract are in accordance with –
 - (i) the instructions of the National Treasury; or
 - (ii) the prescripts of the Construction Industry Development Board, in the case of a bid relating to the construction industry;
- (b) bid documentation including evaluation and adjudication criteria, including the criteria prescribed in terms of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

- (c) bids are advertised in at least the Government Tender Bulletin for a minimum period of 21 days before closure, except in urgent cases when bids may be advertised for a such shorter period as the accounting officer or accounting authority may determine;
- (d) awards are published in the Government Tender Bulletin and other media by means of which the bids were advertised;
- (e) contracts relating to information technology are prepared in accordance with the State Information Technology Act, 1998 (Act No. 88 of 1998), and any regulations made in terms of that Act;
- (f) Treasury Regulation 16 is complied with when goods or services are procured through public-private partnerships or as part of a public-private partnership; and
- (g) instructions issued by the National Treasury in respect of the appointment of consultants are complied with.

16A6.4 If in a specific case, it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority.

PSR 14(f) and (j). Performance of official duties:

An employee shall:

- (f) be honest and accountable in dealing with public funds and use the State's property and other resources effectively, efficiently, and only for authorised official purposes; and
- (j) promote sound, efficient, effective, transparent, and accountable administration.

12.2.1.3 Accessibility to procurement contracts

Who is concerned?

A public service employee who is involved or concerned in any way in determining the parameters of access to a call for quotations or tenders.

Context

A call for quotations or tenders must be presented openly on a well-established public platform with a reasonable period. Accessibility is an important component of the tendering process since it ensures that all applicants have the opportunity to submit a bid.

Risk of conflict of interest

The risk of conflict of interest is to narrow the selection process by setting up accessibility parameters for the call for quotations/tenders which are particularly limited.

Example of potential conflict of interest

- A call for quotations/tenders which is accessible for a really short period or over a holiday period when most businesses are closed.
- A call for tenders posted on a difficult-to-access platform.

Applicable norms and standard

Constitution. S217(1). Procurement:

- (1) When an organ of the state in the national, provincial, or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system that is fair, equitable, transparent, competitive, and cost-effective.

PFMA. S38(1)(a)(iii), (b) and (c). General responsibilities of accounting officers:

- (1) The accounting officer for a department, trading entity, or constitutional institution—
 - (a) must ensure that that department, trading entity, or constitutional institution has and maintains—
 - (iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive, and cost-effective.
 - (b) is responsible for the effective, efficient, economical, and transparent use of the resources of the department, trading entity, or constitutional institution;
 - (c) must take effective and appropriate steps to—
 - (i) collect all money due to the department, trading entity, or constitutional institution;
 - (ii) prevent unauthorised, irregular and fruitless, and wasteful expenditure and losses resulting from criminal conduct; and
 - (iii) manage available working capital efficiently and economically.

PFMA. S45. Responsibilities of other officials:

An official in a department, trading entity, or constitutional institution—

- (a) must ensure that the system of financial management and internal control established for that department, trading entity, or constitutional institution is carried out within the area of responsibility of that official;
- (b) is responsible for the effective, efficient, economical, and transparent use of financial and other resources within that official's area of responsibility;
- (c) must take effective and appropriate steps to prevent, within that official's area of responsibility, any unauthorised expenditure, irregular expenditure, fruitless and wasteful expenditure, and any under collection of revenue due;
- (d) must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 44; and
- (e) is responsible for the management, including the safeguarding, of the assets and the management of the liabilities within that official's area of responsibility.

PFMA. S81. Financial misconduct by officials in departments and constitutional institutions:

- (1) An accounting officer for a department or a constitutional institution commits an act of financial misconduct if that accounting officer willfully or negligently—
 - (a) fails to comply with a requirement of sections 38, 39, 40, 41, or 42; or
 - (b) makes or permits an unauthorised expenditure, an irregular expenditure, or a fruitless and wasteful expenditure.
- (2) An official of a department, a trading entity, or a constitutional institution to whom a power or duty is assigned in terms of section 44 commits an act of financial misconduct if that official willfully or negligently fails to exercise that power or perform that duty.

TR 16A6. Procurement of goods and services:

16A6.1 Procurement of goods and services, either by way of quotations or through a bidding process must be within the threshold values as determined by the National Treasury.

16A6.2 A supply chain management system must, in the case of procurement through a bidding process, provide for –

- (a) the adjudication of bids through a bid adjudication committee;
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- (c) the selection of bid adjudication committee members;
- (d) bidding procedures; and
- (e) the approval of bid evaluation and/or adjudication committee recommendations.

16A6.3 The accounting officer or accounting authority must ensure that –

- (a) bid documentation and the general conditions of a contract are in accordance with –
 - (i) the instructions of the National Treasury; or
 - (ii) the prescripts of the Construction Industry Development Board, in the case of a bid relating to the construction industry;
- (b) bid documentation includes evaluation and adjudication criteria, including the criteria prescribed in terms of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (c) bids are advertised in at least the Government Tender Bulletin for a minimum period of 21 days before closure, except in urgent cases when bids may be advertised for a shorter period as the accounting officer or accounting authority may determine;
- (d) awards are published in the Government Tender Bulletin and other media by means of which the bids were advertised;

- (e) contracts relating to information technology are prepared in accordance with the State Information Technology Act, 1998 (Act No. 88 of 1998), and any regulations made in terms of that Act;
- (f) Treasury Regulation 16 is complied with when goods or services are procured through public-private partnerships or as part of a public-private partnership; and
- (g) instructions issued by the National Treasury in respect of the appointment of consultants are complied with.

16A6.4 If in a specific case, it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority.

PSR 14(f) and (j). Performance of official duties:

An employee shall:

- (f) be honest and accountable in dealing with public funds and use the State's property and other resources effectively, efficiently, and only for authorised official purposes; and
- (j) promote sound, efficient, effective, transparent, and accountable administration.

12.2.2 Tender

12.2.2.1 Evaluation and Adjudication

Who is concerned?

Any public service employee who is involved in any way in the quotation/tender evaluation and adjudication processes.

Context

The process following a call for quotations or tenders includes several stages which must be carried out with transparency. Whether it is a question of the evaluation of the qualifications and/or experience of the service providers, of the price estimates that they have provided, or their compliance with preferential procurement requirements, the process must be carried out independently, free of bias, and professionally.

Risk of conflict of interest

The risk of conflict of interest concerns the skewing of the process of evaluating or awarding the quotations/tenders with the aim of awarding contracts that serve private interests rather than the public interest.

Examples of potential conflicts of interest

- An unrealistic price estimate or bid proposal that is not questioned by the evaluation or adjudication committee.
- Not evaluating or adjudicating the bids of the service providers according to the advertised evaluation criteria.
- Awarding a contract before the bid evaluation or adjudication has been completed.
- Contract Splitting: Splitting a requirement into many different (smaller) contracts to avoid having to award the contract through an open tender process.

Applicable norms and standard

Constitution. S217(1). Procurement:

- (1) When an organ of the state in the national, provincial, or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.

PFMA. S38(1)(a)(iii), (b) and (c). General responsibilities of accounting officers.

- (1) The accounting officer for a department, trading entity, or constitutional institution—
 - (a) must ensure that that department, trading entity, or constitutional institution has and maintains—
 - (iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive, and cost-effective.
 - (b) is responsible for the effective, efficient, economical, and transparent use of the resources of the department, trading entity, or constitutional institution;
 - (c) must take effective and appropriate steps to—
 - (i) collect all money due to the department, trading entity, or constitutional institution;
 - (ii) prevent unauthorised, irregular and fruitless, and wasteful expenditure and losses resulting from criminal conduct; and
 - (iii) manage available working capital efficiently and economically.

PFMA. S45. Responsibilities of other officials:

An official in a department, trading entity, or constitutional institution—

- (a) must ensure that the system of financial management and internal control established for that department, trading entity, or constitutional institution is carried out within the area of responsibility of that official;
- (b) is responsible for the effective, efficient, economical, and transparent use of financial and other resources within that official's area of responsibility;
- (c) must take effective and appropriate steps to prevent, within that official's area of responsibility, any unauthorised expenditure, irregular expenditure, and fruitless and wasteful expenditure, and any under collection of revenue due;
- (d) must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 44; and
- (e) is responsible for the management, including the safeguarding, of the assets and the management of the liabilities within that official's area of responsibility.

PFMA. S81. Financial misconduct by officials in departments and constitutional institutions:

- (1) An accounting officer for a department or a constitutional institution commits an act of financial misconduct if that accounting officer wilfully or negligently—
 - (a) fails to comply with a requirement of sections 38, 39, 40, 41, or 42; or
 - (b) makes or permits an unauthorised expenditure, an irregular expenditure, or a fruitless and wasteful expenditure.
- (2) An official of a department, a trading entity, or a constitutional institution to whom a power or duty is assigned in terms of section 44 commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty.

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- (a) the adjudication of bids through a bid adjudication committee;
- (b) the establishment, composition, and functioning of bid specification, evaluation, and adjudication committees;
- (c) the selection of bid adjudication committee members;
- (d) bidding procedures; and
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16A6.3 The accounting officer or accounting authority must ensure that –

- (a) bid documentation and the general conditions of a contract are in accordance with –

- (i) the instructions of the National Treasury; or
- (ii) the prescripts of the Construction Industry Development Board, in the case of a bid relating to the construction industry;
- (b) bid documentation includes evaluation and adjudication criteria, including the criteria prescribed in terms of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (c) bids are advertised in at least the Government Tender Bulletin for a minimum period of 21 days before closure, except in urgent cases when bids may be advertised for a shorter period as the accounting officer or accounting authority may determine;
- (d) awards are published in the Government Tender Bulletin and other media by means of which the bids were advertised;
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- (f) Treasury Regulation 16 is complied with when goods or services are procured through public-private partnerships or as part of a public-private partnership; and
- (g) instructions issued by the National Treasury in respect of the appointment of consultants are complied with.

16A6.4 If in a specific case, it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority.

PSR 14(f) and (j). Performance of official duties:

An employee shall:

- (f) be honest and accountable in dealing with public funds and use the State's property and other resources effectively, efficiently, and only for authorised official purposes; and
- (j) promote sound, efficient, effective, transparent, and accountable administration.

12.2.2.2 Bid evaluation committees

Who is concerned?

Any permanent or coopted member of a bid evaluation or bid adjudication committee or any individual with knowledge of the practices of such committees.

Context

The Bid evaluation committees play very important roles in the awarding of bids, hence

they need to be subjected to ethical supervision. The composition of these committees and the relations of the members of these committees with the bidders are two central elements that require close scrutiny to help to maintain the fairness, equitability, transparency, competitiveness, and cost effectiveness of the bid process.

Risk of conflict of interest

There is a risk of conflicts of interest concerning personal relationships or private interests that could influence the judgment of a member of these committees. The composition of these committees also presents a risk of conflict of interest which relates to the number of members, the rotation of the members, the diversity of expertise, or conflicting interests.

Examples of potential conflicts of interest

- Participate in the activities of these committees despite one of the bidders being a former business partner.
- A lack of diverse expertise in these committees could encourage the promotion of common interests shared by the members while losing sight of the objectives of the tender.

Applicable norms and standard

Constitution. S217(1). Procurement:

- (1) When an organ of the state in the national, provincial, or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system that is fair, equitable, transparent, competitive, and cost-effective.

PFMA. S38(1)(a)(iii), (b) and (c). General responsibilities of accounting officers:

- (1) The accounting officer for a department, trading entity, or constitutional institution—
 - (a) must ensure that that department, trading entity, or constitutional institution has and maintains—
 - (iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive, and cost-effective.
 - (b) is responsible for the effective, efficient, economical, and transparent use of the resources of the department, trading entity, or constitutional institution;
 - (c) must take effective and appropriate steps to—
 - (i) collect all money due to the department, trading entity, or constitutional institution;
 - (ii) prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct; and
 - (iii) manage available working capital efficiently and economically.

PFMA. S45. Responsibilities of other officials:

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- (a) must ensure that the system of financial management and internal control established for that department, trading entity, or constitutional institution is carried out within the area of responsibility of that official;
- (b) is responsible for the effective, efficient, economical, and transparent use of financial and other resources within that official's area of responsibility;
- (c) must take effective and appropriate steps to prevent, within that official's area of responsibility, any unauthorised expenditure, irregular expenditure, and fruitless and wasteful expenditure, and any under collection of revenue due;
- (d) must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 44; and
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- (1) An accounting officer for a department or a constitutional institution commits an act of financial misconduct if that accounting officer willfully or negligently—
 - (a) fails to comply with a requirement of sections 38, 39, 40, 41, or 42; or
 - (b) makes or permits an unauthorised expenditure, an irregular expenditure, or a fruitless and wasteful expenditure.
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- (c) the selection of bid adjudication committee members;
- (d) bidding procedures; and
- (e) the approval of bid evaluation and/or adjudication committee recommendations.

16A6.3 The accounting officer or accounting authority must ensure that –

- (a) bid documentation and the general conditions of a contract are in accordance with –
 - (i) the instructions of the National Treasury; or
 - (ii) the prescripts of the Construction Industry Development Board, in the case of a bid relating to the construction industry;
- (b) bid documentation includes evaluation and adjudication criteria, including the criteria prescribed in terms of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
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- (f) Treasury Regulation 16 is complied with when goods or services are procured through public-private partnerships or as part of a public-private partnership; and
- (g) instructions issued by the National Treasury in respect of the appointment of consultants are complied with.

16A6.4 If in a specific case, it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority.

PSR 14(f) and (j): Performance of official duties:

An employee shall:

- (f) be honest and accountable in dealing with public funds and use the State's property and other resources effectively, efficiently, and only for authorised official purposes; and
- (j) promote sound, efficient, effective, transparent, and accountable administration.

12.2.3 Service provider performance management

12.2.3.1 Post-contract evaluation

Who is concerned?

Any public service employee responsible for, involved in, or concerned by the post-contract evaluation process.

Context

The adequacy of the results with the contract deliverables, and the evaluation of the quality of the work done in respect of the established deadlines are all post-contract considerations that should be evaluated. In this process, different conflicts of interest related to relationships can take place to protect or discredit a contractor. In this regard, it is not because the contract is finished, and the result is delivered that the risks of conflict of interest are non-existent. There remains a risk of conflict of interest even though the contract period may have expired, or the goods or services may have been delivered.

Risk of conflict of interest

The risks of conflict of interest concern a reinterpretation of the requirements or objectives of a contract or the introduction of hidden objectives or requirements of a project based on personal or private interests.

Examples of potential conflicts of interest

- Hide the fact that expectations for the project have been reoriented or partially met, or that the cost is significantly higher than estimated to protect a contractor.
- Skew the performance evaluation of a problematic service provider such that it would not be blacklisted and can be reselected in the future.
- Blacklist competent service providers based on subjective reviews so that others can be appointed (elimination of competition).

Applicable norms and standard

Constitution, S217(1): Procurement:

- (1) When an organ of state in the national, provincial, or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system that is fair, equitable, transparent, competitive, and cost-effective.

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- (c) must take effective and appropriate steps to prevent, within that official's area of responsibility, any unauthorised expenditure, irregular expenditure, and fruitless and wasteful expenditure, and any under collection of revenue due;
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16A6.4 If in a specific case, it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other

means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority.

PSR 14(f) and (j). Performance of official duties:

An employee shall:

- (f) be honest and accountable in dealing with public funds and use the State's property and other resources effectively, efficiently, and only for authorised official purposes; and
- (j) promote sound, efficient, effective, transparent, and accountable administration.

12.2.4 Post employment

Who is concerned?

A public service employee who is responsible for, concerned by, or is aware of an abuse of a position in the public service to benefit certain individuals, themselves, or companies in exchange for favours, such as employment opportunities, after they have left the public service.

Context

The public service does not have specific measures in place to regulate the post-employment activities of former public servants. Nevertheless, the values that guided their actions and decisions as a public servants deserve to be respected even after one leaves office. In order to preserve the independence of the institution, to offer quality services to the public, and to ensure equity with the different stakeholders that compose it, a public service employee should pay attention to its power of influence in post-employment contexts.

Risk of conflict of interest

By taking improper advantage of his/her previous public office, the employee:

- (a) allows prospects of outside employment to create a real, potential, or apparent conflict of interest;
- (b) allows the company to obtain preferential treatment or privileged access to the Government after leaving public office; and
- (c) takes personal advantage of information obtained in the course of official duties before it becomes generally available to the public.

Example of a situation with this risk of conflict of interest

In integrity frameworks, there is often a reference to a “revolving door tendencies” by public officials. A “revolving door tendency” is a situation where an employee abuses

his/her public office to advantage certain companies with the hope or arrangement/promise of being recruited to the company once he/she leaves public office.

Applicable norms and standard

PSR; 13. Ethical conduct:

- (a) not receive, solicit, or accept any gratification, as defined in section 1 of the Prevention and Combating of Corrupt Activities Act, 2004, from any employee or any person in return for performing or not performing his or her official duties;*
- (d) recuse herself or himself from any official action or decision-making process which may result in improper personal gain, and this shall immediately be properly declared by the employee; and*
- (g) not use or disclose any official information for personal gain or the gain of others.*

12.3 BENEFITS

12.3.1 Gifts

Who is concerned?

Any professional receiving, giving or having knowledge of a gift given or received between two individuals who have a professional relationship.

Context

Gifts can be a hidden method of influencing an individual's judgment. The gifts offered or received do not have to be of great value to represent a risk of conflict of interest. Professionals must therefore be vigilant with all forms of presents received from both internal and external professionals.

Risk of conflict of interest

The risk of conflict of interest is related to the influence that gifts can have, which can compromise professional judgment.

Examples of potential conflicts of interest

- Tickets for a sports game or any entertainment event.
- Gift cards and other gratuities.
- A company that claims to sponsor an employee and offers him a car.

Applicable norms and standard

PSR; 19. Details of interests to be disclosed:

- (h) Gifts and hospitality from a source, other than a family member*

- (i) A description, value, and source of a gift; [SEP]
- (ii) the relationship between the giver and the employee;
- (iii) the relationship between the giver and the department; and [SEP]
- (iv) a description and the value of any hospitality intended as a gift in kind.

PSR Regulation 13 -13(h): Ethical conduct:

An employee shall:

- (a) not receive, solicit, or accept any gratification, as defined in section 1 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), from any employee or any person in return for performing or not performing his or her official duties;
- (b) not engage in any transaction or action that is in conflict with or infringes on the execution of his or her official duties;
- (c) not conduct business with any organ of state or be a director of a public or private company conducting business with an organ of state, unless such employee is in an official capacity a director of a company listed in schedules 2 and 3 of the Public Finance Management Act;
- (d) recuse herself or himself from any official action or decision-making process which may result in improper personal gain, and this shall immediately be properly declared by the employee;
- (e) immediately report to the relevant authorities, fraud, corruption, nepotism, maladministration, and any other act which constitutes a contravention of any law (including, but not limited to, a criminal offence) or which is prejudicial to the interest of the public, which comes to his or her attention during the course of his or her employment in the public service;
- (f) refrain from favouring relatives and friends in work-related activities and not abuse his or her authority or influence another employee, nor be influenced to abuse his or her authority;
- (g) not use or disclose any official information for personal gain or the gain of others;
- (h) not receive or accept any gift from any person in the course and scope of his or her employment, other than from a family member, to the cumulative value of R350 per year, unless prior approval is obtained from the relevant executive authority;
- (i) if he or she has permission in terms of section 30 of the Act to perform outside remunerative work, not
 - (i) perform such work during official work hours; and
 - (ii) use official equipment or state resources for such work.
- (j) deal fairly, professionally, and equitably with all other employees or members of the public, irrespective of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture, or language; and
- (k) refrain from party political activities in the workplace.

TR 21: Gifts, donations, and sponsorships

21.1 Granting of gifts, donations, and sponsorships by the state:

21.1.1 The accounting officer may approve gifts, donations, and sponsorships of state money and other movable property in the interest of the state. When such cash amounts exceed R100 000 per case, the approval of the relevant legislature must be sought by including the item separately in the appropriation bill.

21.2 Acceptance of gifts, donations, and sponsorships to the state:

21.2.1 The accounting officer may approve the acceptance of any gift, donation, or sponsorship to the state, whether such gifts, donations, or sponsorships are in cash or kind.

21.2.2 All cash gifts, donations, or sponsorships must be paid into the relevant revenue fund, except those donations received in terms of paragraph 21.2.5.

21.2.3 Where it is not apparent for what purpose a gift, donation, or sponsorship should be applied, the relevant executive authority may decide how it must be utilised.

21.2.4 All gifts, donations, or sponsorships received during the course of the financial year must be disclosed as a note to the annual financial statements of the institution. 21.2.5 Donor funding received in terms of the Reconstruction and Development Fund Act (Act 7 of 1994, as amended by Act 79 of 1998), must be dealt with as determined by the National Treasury from time to time.

21.3 Gifts or donations of immovable property by or to the state:

[Sections 76(1)(k) and (l) of the PFMA]

21.3.1 The relevant treasury's approval must be obtained before institutions offer or accept any gifts or donations of immovable property.

21.3.2 Institutions must submit to the relevant treasury the reasons for and the conditions under which the gift or donation of immovable property is offered or accepted.

21.4 Identity of donors and sponsors:

21.4.1 When a donor or sponsor requests to remain anonymous, the accounting officer must submit to the relevant treasury a certificate from both the Public Protector and the Auditor-General, which states that the identity of the donor or sponsor has been revealed to them, that they have noted it and have no objection.⁵⁵

Treasury Regulations: PFMA 70 21.4.2 The above provision in no way limits the Auditor-General or the Public Protector from supplying this information to their staff, and where they deem it in the public interest, to report on this.

12.3.2 Hospitality

Who is concerned?

Any professional receiving, giving, or having knowledge of a hospitality favor given or received between two individuals who have a professional relationship.

Context

A benefit that can influence professional judgment is not limited to material offerings. Creating meeting contexts or offering unjustified services is also a form of donation that can create relations of power and affect the impartiality of decisions to be made. Therefore, it is the duty of a public service employee to monitor the hospitality benefits that come their way in order to maintain their independence in all circumstances.

Risk of conflict of interest

The risk of conflict of interest arises from the influence that hospitality benefits can have, which can compromise professional judgment.

Examples of potential conflicts of interest

- Over expensive meal for a professional meeting.
- Proposals for accommodation and payment of travel or lodging expenses as part of a professional meeting or event.
- Payment for luxury transport by a third party.

Applicable norms and standard

PSR, 19. Details of interests to be disclosed

(h) Gifts and hospitality from a source, other than a family member

- (i) A description, value, and source of a gift;
- (ii) the relationship between the giver and the employee;
- (iii) the relationship between the giver and the department; and
- (iv) a description and the value of any hospitality intended as a gift in kind.

PSR Regulation 13 -13(h): Ethical Conduct

An employee shall

- (a) not receive, solicit, or accept any gratification, as defined in section 1 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), from any employee or any person in return for performing or not performing his or her official duties;
- (b) not engage in any transaction or action that is in conflict with or infringes on the execution of his or her official duties;
- (c) not conduct business with any organ of state or be a director of a public or private company conducting business with an organ of state, unless such employee is in an official capacity a director of a company listed in schedules 2 and 3 of the Public Finance Management Act;
- (d) recuse herself or himself from any official action or decision-making process which may result in improper personal gain, and this shall immediately be properly declared by the employee;
- (e) immediately report to the relevant authorities, fraud, corruption, nepotism, maladministration, and any other act which constitutes a contravention of any law (including, but not limited to, a criminal offence) or which is prejudicial to the interest of

the public, which comes to his or her attention during the course of his or her employment in the public service;

(f) refrain from favouring relatives and friends in work-related activities and not abuse his or her authority or influence another employee, nor be influenced to abuse his or her authority;

(g) not use or disclose any official information for personal gain or the gain of others;

(h) not receive or accept any gift from any person in the course and scope of his or her employment, other than from a family member, to the cumulative value of R350 per year, unless prior approval is obtained from the relevant executive authority;

(i) if he or she has permission in terms of section 30 of the Act to perform outside remunerative work, not

(i) perform such work during official work hours; and

(ii) use official equipment or state resources for such work.

(j) deal fairly, professionally, and equitably with all other employees or members of the public, irrespective of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture, or language; and

(k) refrain from party political activities in the workplace.

TR 21: Gifts, donations, and sponsorships

21.1 Granting of gifts, donations, and sponsorships by the state:

21.1.1 The accounting officer may approve gifts, donations, and sponsorships of state money and other movable property in the interest of the state. When such cash amounts exceed R100 000 per case, the approval of the relevant legislature must be sought by including the item separately in the appropriation bill.

21.2 Acceptance of gifts, donations, and sponsorships to the state

21.2.1 The accounting officer may approve the acceptance of any gift, donation, or sponsorship to the state, whether such gifts, donations, or sponsorships are in cash or kind.

21.2.2 All cash gifts, donations, or sponsorships must be paid into the relevant revenue fund, except those donations received in terms of paragraph 21.2.5.

21.2.3 Where it is not apparent for what purpose a gift, donation, or sponsorship should be applied, the relevant executive authority may decide how it must be utilised.

21.2.4 All gifts, donations, or sponsorships received during the course of the financial year must be disclosed as a note to the annual financial statements of the institution. 21.2.5 Donor funding received in terms of the Reconstruction and Development Fund Act (Act 7 of 1994, as amended by Act 79 of 1998), must be dealt with as determined by the National Treasury from time to time.

21.3 Gifts or donations of immovable property by or to the state:

[Sections 76(1)(k) and (l) of the PFMA]

21.3.1 The relevant treasury's approval must be obtained before institutions offer or accept any gifts or donations of immovable property.

21.3.2 Institutions must submit to the relevant treasury the reasons for and the conditions under which the gift or donation of immovable property is offered or accepted.

21.4 Identity of donors and sponsors

21.4.1 When a donor or sponsor requests to remain anonymous, the accounting officer must submit to the relevant treasury a certificate from both the Public Protector and the Auditor-General, which states that the identity of the donor or sponsor has been revealed to them, that they have noted it and have no objection.⁵⁸ Treasury Regulations: PFMA 70 21.4.2 The above provision in no way limits the Auditor-General or the Public Protector from supplying this information to their staff, and where they deem it in the public interest, to report on this.

12.3.3 Other benefits (including sponsorships)

Who is concerned?

Any professional receiving, giving, or having knowledge of a benefit given or received between two individuals who have a professional relationship.

Context

There are different forms of favours that are not gifts or hospitality benefits which are also to be considered to ensure the independence of a professional in their work relationship. It can include preferential treatments, advances, or professional securities. These unjustified beneficial situations should always be prevented by public service employees in the performance of their duty.

Risk of conflict of interest

The risk of conflict of interest is high given the multiple situational variations that may offer a benefit that can influence the judgment of a public service employee.

Examples of potential conflicts of interest

- An unjustified contribution from a call for a tender bidder to a fundraising project of the same department concerned by the tender process.
- A private company sponsoring a public service employee by paying for his/her child's education costs.

Applicable norms and standard

PSR 19. Details of interests to be disclosed:

(g) Sponsorships

- (i) The source and description of direct financial sponsorship or assistance; (ii) the relationship between the sponsor and the employee;
- (iii) the relationship between the sponsor and the department; and (iv) the value of the sponsorship or assistance.

- (h) Gifts and hospitality from a source, other than a family member
 - (i) A description, value, and source of a gift;
 - (ii) the relationship between the giver and the employee;
 - (iii) the relationship between the giver and the department; and
 - (iv) a description and the value of any hospitality intended as a gift in kind.

PSR Regulation 13 -13(h): Ethical Conduct

An employee shall:

- (a) not receive, solicit, or accept any gratification, as defined in section 1 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), from any employee or any person in return for performing or not performing his or her official duties;
- (b) not engage in any transaction or action that is in conflict with or infringes on the execution of his or her official duties;
- (c) not conduct business with any organ of state or be a director of a public or private company conducting business with an organ of state, unless such employee is in an official capacity a director of a company listed in schedules 2 and 3 of the Public Finance Management Act;
- (d) recuse herself or himself from any official action or decision-making process which may result in improper personal gain, and this shall immediately be properly declared by the employee;
- (e) immediately report to the relevant authorities, fraud, corruption, nepotism, maladministration, and any other act which constitutes a contravention of any law (including, but not limited to, a criminal offence) or which is prejudicial to the interest of the public, which comes to his or her attention during the course of his or her employment in the public service;
- (f) refrain from favouring relatives and friends in work-related activities and not abuse his or her authority or influence another employee, nor be influenced to abuse his or her authority;
- (g) not use or disclose any official information for personal gain or the gain of others;
- (h) not receive or accept any gift from any person in the course and scope of his or her employment, other than from a family member, to the cumulative value of R350 per year, unless prior approval is obtained from the relevant executive authority;
- (i) if he or she has permission in terms of section 30 of the Act to perform outside remunerative work, not
 - (i) perform such work during official work hours; and
 - (ii) use official equipment or state resources for such work.
- (j) deal fairly, professionally, and equitably with all other employees or members of the public, irrespective of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture, or language; and
- (k) refrain from party political activities in the workplace.

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amounts exceed R100 000 per case, the approval of the relevant legislature must be sought by including the item separately in the appropriation bill.

21.2 Acceptance of gifts, donations, and sponsorships to the state

21.2.1 The accounting officer may approve the acceptance of any gift, donation, or sponsorship to the state, whether such gifts, donations, or sponsorships are in cash or in kind.

21.2.2 All cash gifts, donations, or sponsorships must be paid into the relevant revenue fund, except those donations received in terms of paragraph 21.2.5.

21.2.3 Where it is not apparent for what purpose a gift, donation, or sponsorship should be applied, the relevant executive authority may decide how it must be utilised.

21.2.4 All gifts, donations, or sponsorships received during the course of the financial year must be disclosed as a note to the annual financial statements of the institution. 21.2.5 Donor funding received in terms of the Reconstruction and Development Fund Act (Act 7 of 1994, as amended by Act 79 of 1998), must be dealt with as determined by the National Treasury from time to time.

21.3 Gifts or donations of immovable property by or to the state

[Sections 76(1)(k) and (l) of the PFMA]

21.3.1 The relevant treasury's approval must be obtained before institutions offer or accept any gifts or donations of immovable property.

21.3.2 Institutions must submit to the relevant treasury the reasons for and the conditions under which the gift or donation of immovable property is offered or accepted.

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21.4.1 When a donor or sponsor requests to remain anonymous, the accounting officer must submit to the relevant treasury a certificate from both the Public Protector and the Auditor-General, which states that the identity of the donor or sponsor has been revealed to them, that they have noted it and have no objection.⁶⁰ Treasury Regulations: PFMA 70 21.4.2 The above provision in no way limits the Auditor-General or the Public Protector from supplying this information to their staff, and where they deem it in the public interest, to report on this.

12.4 ASSETS OF GOVERNMENT

12.4.1 Lifecycle

Who is concerned?

Any public service employee who has access to or who makes use of a government asset.

Context

The types of government assets can vary widely and involve different situations of extended use or lending to public service employees. Under certain conditions, government assets can be used in non-professional contexts to facilitate use. Some assets can also be disposed of for different reasons, and the replacement and sale decision process must be monitored. All these situational particularities deserve to be supervised, so as to define the parameters of use and avoid any form of utilization for private ends.

Risk of conflict of interest

The risk of conflict of interest concerns the misuse of government assets for personal, financial, or private interest.

Examples of potential conflicts of interest

- Lack of monitoring of the lifecycle and depreciation of certain assets which allows employees to improperly requisition assets for private interests.
- A car bought or leased by the government that is excessively used for deliveries of a family member's company.
- Early release of an asset to be sold to a friend of the employee.
- Members of the asset committee know what assets will be disposed of and inform their family or friends about these assets. They position themselves to buy those assets or be in front of the queue to buy the better ones.
- Members of the asset committee dispose of assets that could still be used, knowing that they will be available for purchase.

Applicable norms and standards

TR 10: Asset management

10.1 Responsibility for asset management [Section 38(1)(d) of the PFMA]

10.1.1 The accounting officer of an institution must take full responsibility and ensure that proper control systems exist for assets and that—

(a) preventative mechanisms are in place to eliminate theft, losses, wastage, and misuse; and

(b) stock levels are at an optimum and economical level.

10.1.2 The accounting officer must ensure that processes (whether manual or electronic) and procedures are in place for the effective, efficient, economical, and transparent use of the institution's assets.

10.2 Disposal and letting of assets [Section 76(1)(k) of the PFMA]

10.2.1 Disposal of movable assets must be at book value or by tender or auction, whichever is most advantageous to the state unless determined otherwise by the relevant treasury.

10.2.2 Any sale of immovable state property must be at market value unless the relevant treasury approves otherwise.

10.2.3 The letting of immovable state property must be at market-related tariffs unless the relevant treasury approves otherwise. No state property may be let free of charge without the prior approval of the relevant treasury.

10.2.4 The accounting officer must review, at least annually when finalising the budget, all fees, charges, rates, tariffs, or scales of fees or other charges relating to the letting of state property to ensure sound financial planning and management.

10.3 Assets accruing to the state by operation of any law [Section 76(2)(i) of the PFMA]

10.3.1 Where any money, property, or right accrues to the state by operation of law (*bona vacantia*), the responsible executive authority may exercise all powers, authority, and prerogatives, and fulfill any obligation on behalf of the state

TR 21: Gifts, donations, and sponsorships

21.3 Gifts or donations of immovable property by or to the state

[Sections 76(1)(k) and (l) of the PFMA]

21.3.1 The relevant treasury's approval must be obtained before institutions offer or accept any gifts or donations of immovable property.

21.3.2 Institutions must submit to the relevant treasury the reasons for and the conditions under which the gift or donation of immovable property is offered or accepted.

12.4.2 Outsourcing asset management

Who is concerned?

Any public service employee who is involved or concerned by an outsourcing asset management process.

Context

Certain asset management activities can be delegated to external companies to ensure that operations are properly taken care of. Those external service providers make it possible to seek specialized expertise. However, delegating those responsibilities creates an intermediary that can have repercussions on the monitoring and effective supervision of certain situations or policy applications of an institution.

Risk of conflict of interest

The risk of conflict of interest concerns dependence on outsourcing asset management services which can lead to a loss of monitoring quality and therefore, to the prioritization of private interests.

Example of potential conflict of interest

This external asset management company does not support effective day-to-day policy enforcement for the government. This creates loopholes that make certain asset loan conditions possible despite government regulations in place. Therefore, public service

employees can replace assets that are loaned to them without having to validate the need as required by the government policy on asset management.

Applicable norms and standards

TR 10: Asset management

10.1 Responsibility for asset management [Section 38(1)(d) of the PFMA]:

10.1.1 The accounting officer of an institution must take full responsibility and ensure that proper control systems exist for assets and that–

(a) preventative mechanisms are in place to eliminate theft, losses, wastage, and misuse; and

(b) stock levels are at an optimum and economical level.

10.1.2 The accounting officer must ensure that processes (whether manual or electronic) and procedures are in place for the effective, efficient, economical, and transparent use of the institution's assets.

10.2 Disposal and letting of assets [Section 76(1)(k) of the PFMA]:

10.2.1 Disposal of movable assets must be at book value or by tender or auction, whichever is most advantageous to the state unless determined otherwise by the relevant treasury.

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10.3.1 Where any money, property, or right accrues to the state by operation of law (*bona vacantia*), the responsible executive authority may exercise all powers, authority, and prerogatives, and fulfill any obligation on behalf of the state

TR 21: Gifts, donations, and sponsorships

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21.3.1 The relevant treasury's approval must be obtained before institutions offer or accept any gifts or donations of immovable property.

21.3.2 Institutions must submit to the relevant treasury the reasons for and the conditions under which the gift or donation of immovable property is offered or accepted.

12.5 RELATIONSHIP WITH THE GOVERNMENT

12.5.1 Lobbying

Who is concerned?

A public service employee who is involved in any form of advocacy with the intention of influencing decisions made by legislators, officials, or the government.

Context

Lobbyists, by definition, are positioned to influence government legislation, policies, and programs to benefit industries, associations, or companies. Although lobbying itself is not legislated in South Africa, corporations, organisations, and individuals are subject to the laws framing bribery and corruption. Despite their role which involves the promotion of private interests, lobbyists must therefore avoid any form of abuse of entrusted power in a way that hinders the duties of a public service employee or violates the norms and standards in place.

Lobbying can be distinguished from State Capture with the help of this [reference document](#).

Risk of conflict of interest

In the process of seeking internal government confidential information related to legislative changes, policies, and programs, lobbyists will contact public service employees for meetings to discuss the direction the government departments are headed. The information they glean may give them a clear advantage over others in positioning their companies for future contracts.

Example of conflict of interest

A lobbyist provides gifts or hospitality to a public service employee over what is sanctioned in order to influence the departments in their decision-making processes for contracting.

12.5.2 Conducting Business with the State

Who is concerned?

A public service employee or a special adviser involved in any form of business activity with the state.

Context

A public service employee has access to information and to a network that is likely to give him privileges at different levels. The legislation on conducting business with the state

aims to prevent any form of conflict that might arise with the private interests of a public service employee.

Risk of Conflict of interest

Risk of conflict of interest includes, but is not limited to:

- (a) accessibility of confidential information that is not available to other competitors;
- (b) Employees conniving with each other to do each other favours; and
- (c) Employees conducting business with their own departments (employers).

Example of risk of conflict of interest

An employee awarding business to a company belonging to one of his/her family members.

An employee performing remunerative work for another organ of the state.

Applicable norms and standards

Section 8(2) of the Public Administration Management Act, 2014 (PAMA);

(2) An employee may not—

- (a) conduct business with the State; or
- (b) be a director of a public or private company conducting business with the State.

(3) A contravention of subsection (2)—

- (a) is an offence, and any person found guilty of the offence is liable to a fine or imprisonment for a period not exceeding 5 years or both such fine and imprisonment; and
- (b) constitute serious misconduct that may result in the termination of employment by the employer.

12.6 PRIVACY AND SECURITY

12.6.1 Information management

Who is concerned?

Any public service employee responsible for collecting, classifying, storing, and protecting government information.

Context

Classified government information must be stored according to a strict procedure. This ensures the confidentiality of the data collected by the government, the preservation of the integrity of the information of the state, and the protection of the individuals concerned by the information gathered.

Risk of conflict of interest

The risk of conflict of interest relates to the protection of government information from being shared with unauthorized agents who could use the data to their advantage or the detriment of others in procurement, grant, and other contexts.

Example of risk of conflict of interest

Through the lax storage or illegal sharing of government information, an employee could allow a company to access certain protected information held by a department. This prior knowledge would allow the company to outbid another rival for a contract thus giving them a competitive advantage.

Applicable norms and standards

Protection of Personal Information Act 4 of 2013

45. Conflict of interest

(1) If any member of the Regulator or any person appointed by the Regulator in terms of this Act has a material interest in any matter which could conflict with the proper performance of his or her duties in terms of this Act or the Promotion of Access to Information Act, he or she must disclose that interest, as prescribed, as soon as practicable after the relevant facts come to his or her knowledge.

(2) (a) If a member of the Regulator or person referred to in subsection (1)— (i) is present at a meeting of the Regulator or committee referred to in section 49 or 50 at which a matter contemplated in that subsection is to be considered, the member or person concerned must disclose the nature of his or her interest to the meeting before the matter is considered; or (ii) fails to make a disclosure as required by this subsection and is present at a meeting of the Regulator or committee, as the case may be, or in any other manner participates in the proceedings, such proceedings in relation to the relevant matter must, as soon as the non-disclosure is discovered, be reviewed and be varied or set aside by the Regulator or the committee, as the case may be, without the participation of the member or person concerned.

(b) A member of the Regulator or person referred to in subsection (1) who is obliged to make a disclosure in terms of this subsection may not be present during any deliberation, or take part in any decision, in relation to the matter in question.

(c) Any disclosure made in terms of this subsection must be noted in the minutes of the relevant meeting of the Regulator or committee.

(3) A member of the Regulator or person referred to in subsection (1) who has disclosed a conflict of interest in terms of subsection (1)— (a) may perform all duties relating to the matter in question if a decision has been taken that the interest is trivial or irrelevant; or (b) must be relieved of all duties relating to the matter in question and such duties must be performed by another member of the Regulator or by another person referred to in subsection (1), as the case may be, who has no such conflict of interest.

12.6.2 Intellectual property

Who is concerned?

A public service employee who works in a department where inventions, designs, or creative work is completed and public service employees who have access to these products or control the use of these products.

Context

Classified and protected intellectual property information needs to be secured by managers and other public service employees to ensure its proper use by the government and the private sector.

Risk of Conflict of interest

The risk of conflict of interest relates to the protection of government information from being shared outside the government by unauthorized agents who could use the information protected by intellectual property rights for their interest.

Examples of conflict of interest

- Through the lax secure storage of intellectual property, a private sector entity could access information protected by intellectual property rights and use it to its benefit.
- A private sector individual could approach a public service employee who has access to the information and coerce him/her into sharing the information due to a relationship such as family, friendship, previous business partnership, or employee connection.

12.6.3 Protected disclosure

Who is concerned?

All public service employees who have access to the information contained in a protected disclosure database.

Context

When a public service employee makes a protected disclosure, it is important to keep the information confidential and prevent those public service employees, external individuals, or corporations from accessing the data. This action will protect all persons identified in the reports for privacy and confidential purposes.

Risk of conflict of interest

The risk of conflict of interest relates to the poor management of protected information which could compromise the interests of the persons reporting. By inappropriate sharing of names, allegations, and other private data, a public service employee breaches the confidentiality of the information.

Examples of conflict of interest

- Sharing of information with unconcerned individuals internal to the department based on an employee's relationship with that individual e.g. an employee sharing protected disclosure information with the Head of Department (on an unofficial basis)
- A public service employee may provide information from the protected disclosure reports based on a request from the private sector. Compliance with this request is made because of a past professional relationship that the public service employee wishes to honor.
- Leaks or selling of information.

Applicable norms and standards

Protection of Personal Information Act 4 of 2013

45. Conflict of interest

(1) If any member of the Regulator or any person appointed by the Regulator in terms of this Act has a material interest in any matter which could conflict with the proper performance of his or her duties in terms of this Act or the Promotion of Access to Information Act, he or she must disclose that interest, as prescribed, as soon as practicable after the relevant facts come to his or her knowledge.

(2) (a) If a member of the Regulator or person referred to in subsection (1)— (i) is present at a meeting of the Regulator or committee referred to in section 49 or 50 at which a matter contemplated in that subsection is to be considered, the member or person concerned must disclose the nature of his or her interest to the meeting before the matter is considered; or (ii) fails to make a disclosure as required by this subsection and is present at a meeting of the Regulator or committee, as the case may be, or in any other manner participates in the proceedings, such proceedings in relation to the relevant matter must, as soon as the non-disclosure is discovered, be reviewed and be varied or set aside by the Regulator or the committee, as the case may be, without the participation of the member or person concerned.

(b) A member of the Regulator or person referred to in subsection (1) who is obliged to make a disclosure in terms of this subsection may not be present during any deliberation, or take part in any decision, in relation to the matter in question.

(c) Any disclosure made in terms of this subsection must be noted in the minutes of the relevant meeting of the Regulator or committee.

(3) A member of the Regulator or person referred to in subsection (1) who has disclosed a conflict of interest in terms of subsection (1)— (a) may perform all duties relating to the matter in question if a decision has been taken that the interest is trivial or irrelevant; or (b) must be relieved of all duties relating to the matter in question and such duties must

be performed by another member of the Regulator or by another person referred to in subsection (1), as the case may be, who has no such conflict of interest.

12.7 EXPRESSION RESPONSIBILITIES

12.7.1 Obligation of reserve

Who is concerned?

All public service employees who communicate with the general public.

Context

The obligation of the reserve is not a prohibition to exercise freedom of opinion and freedom of expression. The obligation of reserve does not concern the content of an official's opinions, but the way they are expressed. In accordance with their professional functions and responsibilities, public service employees have the duty to adjust themselves in their oral and written expressions which may undermine the consideration of public service.

Risk of conflict of interest

The risk of conflict of interest relates to the impact of the expression of personal opinions on the objectivity of a decision or judgment rendered for public services.

Example of Conflict of Interest

A public service employee may be asked to express his/her opinion on whether the government supports a proposal to build a rail line through a specific public park. The public service employee, may not support the rail line because it would travel adjacent to his/her home location. This expression could be in direct conflict with the government's position and may lend support to private sector organizations who also oppose the rail line. The private sector organizations could then use the public service employee's statement as support for their position.

12.7.2 DUTY OF DISCRETION

Who is concerned?

All public service employees at all levels of the public service.

Context

Only authorized spokespersons can issue statements or make comments about a department's position on a given subject. If a public service employee is asked for a departmental position on a certain subject within their jurisdiction, the official must refer the inquiry through his or her manager, to the authorized department. As well, a duty of loyalty is owed by public service employees to the government to refrain from public criticism of the government.

Risk of Conflict of Interest

A public service employee must consider that there are many issues discussed relative to government policies and procedures that a public service employee may not be aware of. As a result, they may not have the full picture of the policies and procedures developed in consultation with other departments, other levels of government, and private sector interest groups. This lack of full knowledge opens the concern for providing misleading or inaccurate information to the public and promoting private or personal interests.

Example of Potential Conflict of Interest

A public service employee is approached by a private sector newspaper to have comments on the department's process related to the roll-out of a new life-saving drug. The sharing of the public service employee's understanding of the policy could cause confusion and affect the proper reception of the government's deployment plan.

12.7.3 POLITICAL NEUTRALITY

Who is concerned?

All public service employees at all levels of government.

Context:

All public service employees represent the public institution and must set aside any form of partisanship during the performance of their duties. This makes it possible to distinguish their interests from the public interest that they must serve.

Risk of conflict of interest:

Elected officials work with the government to represent the people of South Africa. They direct the government in shaping policies, procedures, and legislation to benefit the constituents they represent. If a public service employee represents or is perceived to represent an elected official or is seen to assist in electing one elected official over another, they will not be considered neutral in carrying out their official duties.

Example of potential conflict of interest

a) An official in the race for the next election approaches a public service employee with the promise that they would appoint him/her to a higher position if elected. By accepting to promote the candidacy of the official, the public servant is seeking unauthorized gain for himself/herself thus obtaining assistance where others would not be able to.

b) A public service employee finishes his day's work and decides to use the office printer to print out pamphlets before leaving. These pamphlets promote the political ideals of a candidate running in the upcoming provincial election. He wants to distribute them at a political rally he is attending this week. By using government equipment to print this promotional material, this public service employee is conducting political activity in the workplace. This situation involves a risk of conflict of interest, which is likely to affect the exercise of his professional duty.

Applicable norms and standards

PSR 2016 - 15. Employees as candidates for elections.

- (1) An employee who is issued with a certificate in terms of section 31(3) of the Electoral Act, 1998 (Act No. 73 of 1998), stating that he or she is a candidate in an election, shall, not later than the next working day, inform his/her head of department in writing thereof and submit a copy of the certificate.
- (2) The employee shall be deemed to be on annual leave from the date following the date the certificate is so issued until, if he/she is (a) elected and accepts the election, the date immediately before the date he/she assumes office, (b) elected, but declines election, the date that he/she declines election, or (c) not elected, the date of the designation of representatives in terms of item 16 to Schedule 1A to the Electoral Act, 1998.
- (3) If the employee has insufficient annual leave, he/she shall be deemed to be on unpaid leave for the period in question.

PSA, 1994

36 Employees as candidates for, and becoming members of, legislatures

- (1) An employee may be a candidate for election as a member of the National Assembly, a provincial legislature, or a Municipal Council, subject to the code of conduct contemplated in section 41 (1) (b) (v) and any other prescribed limits and conditions.
- (2) An employee elected as a member of the National Assembly or a provincial legislature a full-time member of a Municipal Council shall be deemed to have resigned from the public service with effect from the date immediately before the date he or she assumes office as such member.
- (3) An employee appointed as a permanent delegate of the National Council of Provinces shall be deemed to have resigned from the public service with effect from the date immediately before the date he or she assumes office as a delegate.
- (4) An employee elected as a member of a Municipal Council- (a) may only remain an employee in the public service if he or she serves as a part-time member of the Council, and (b) shall comply with section 30 (1).

PSR 2016 - 12. Relationship with the public

An employee shall –

- (a) promote the unity and well-being of the South African nation in performing his/her official duties;
- (b) serve the public in an unbiased and impartial manner in order to create confidence in the public service; and
- (f) not abuse his or her position in the public service to promote or prejudice the interest of any political party or interest group.

PSR 2016 - 13. Ethical conduct

An employee shall-

- (j) deal fairly, professionally, and equitably with all other employees or members of the public, irrespective of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture, or language, and
- (k) refrain from party political activities in the workplace.

13. TOOLS

13.1 TOOL NO.1: DECISION SUPPORT TOOL

Is it a conflict of interest and how can I manage it?

This tool presents the key steps to a complete thought process which allows one to develop an informed judgment when facing a situation that involves risks of conflict of interest.

Step 1: Description of the situation

Define the components of a situation in order to understand the issue.

- **The actors:** Which moral agents (individuals, groups, organizations) are concerned by the issue and what are their interests?
- **Values:** What organizational values help to assess the moral basis of the issue?
- **Norms and standards:** What rules, standards, and principles apply in the context of the issue?

Step 2: Situation analysis

Assess the tensions, conflicts, and dilemmas that arise in a situation.

- **Enumeration:** Considering the description, what are the most important constituents of the problem?
- **Gradation:** What are the competing interests that come into conflict and create a dilemma?
- **Repercussions:** What are the consequences of the actions of the moral agents involved in these dilemmas?

Step 3: Identification of options and decision-making

The thought process supports an informed judgment and guides decision-making.

- **Consideration:** Do individuals need to be met to clarify certain considerations? Do norms and standards need to be verified? Can stakeholders help me with this situation?
- **Decision:** Does this situation influence the professional judgment of an individual, create a context that could influence him in the future, or might appear to influence him?
- **Validation:** Are you able to defend this decision and what are the justifications? Is this decision consistent with the vision of the organization and is it taken in accordance with its values, principles, and members?

13.2 TOOL NO.2: VALUE STATEMENT

The value statement identifies the values that guide the choices and behaviors of members of the public function. These shared values make it possible to specify a way of being and acting that is valued within a work team, which helps to build a collective orientation. This shared ideal wants to support public service employees in their professional practice and in the ethical challenges that it involves.

This tool should be understood in consideration of the organization's mission, so as to link the priority values to the public function's vision and objectives. The values that support the professional practice of the public function apply to all individuals, employees, and partners of the institution.

Public service employees have 4 fundamental values that guide their professional practice:

Professional values



INTEGRITY

Integrity refers to the adequacy between one's conduct and values such as honesty, fairness and transparency.

A public official with integrity pays attention to the repercussions of his decisions so he/she does not place himself in a situation that involves any form of fees or exemptions from his professional functions.



IMPARTIALITY

Impartiality is a neutral stance that does not involve any bias or influence.

An impartial public official is acting in a fair, equitable, unbiased and objective way in the course of their professional duties. An impartial decision is one that is taken in the public interest and that is not influenced by any individuals, private interests or other external pressures.



LOYALTY

Loyalty translates as fidelity to keeping one's commitments and responsibilities.

A loyal public official has a duty of reverence and honesty towards the principles that govern his professional institution and towards all the moral agents who are involved in his work relations.



Accountability is the willingness to adhere to your responsibilities and to account to your actions.

An accountable public official takes responsibility for each of his actions and decisions, which collectively strengthens the confidence of members of the public service in their professional duties.

14. REFERENCE DOCUMENTS

14.1 DOC NO. 1: WHAT IS STATE CAPTURE?

State Capture takes place when decision-making power is concentrated in the hands of an elite who has control over several sectors of government activities, which allows them to manipulate policy and law formation to their interest.

14.1.1 How does State Capture take place?

State Capture is defined as the efforts of external agents to shape the laws, policies, and regulations of the state to their advantage by providing illicit private gains to public service employees. Because such firms use their influence to block any policy reforms that might eliminate these advantages, state capture has become not merely a symptom but also a fundamental cause of poor governance. The captured state is trapped in a vicious circle in which the policy and institutional reforms necessary to improve governance are undermined by the collision between powerful firms and state officials who reap substantial private gains from the continuation of weak governance.

The influence of external agents might be through a range of state institutions including the legislature, executive, ministries, and judiciary, or a corrupt electoral process. The private influences cannot be discovered by lawful processes, since the state procedures have been subverted.

14.1.2 Is lobbying a form of State Capture?

State capture should not be confused with lobbying work that uses various forms of advocacy. Private lobbying is a supervised practice that allows influential groups to defend certain interests legally on behalf of political decision-makers.

14.1.3 Are corruption and State Capture the same thing?

While in cases of corruption, the outcome (of policy or regulatory decision) is not certain, in cases of state capture, the outcome is planned and beneficial to the captors of the state. In cases of corruption, there are plurality and competition of corruptors to influence the outcome of the policy or distribution of resources. In state capture, decision-makers are usually more in a position of agents to the principals. Therefore, corruption is not the same as state capture but it can lead to the development of relations with public service employees likely to tend toward state capture.

How a government responds to the challenges posed by state capture is crucial to restoring integrity in public institutions. The power of public service employees to act on

this issue relates to the importance of respecting and promoting the values of integrity, impartiality, loyalty, and accountability in their professional work.

14.2 DOC NO. 2: RULES-BASED ETHICS & VALUE-BASED ETHICS

14.2.1 Rules-based ethics

The compliance or rules-based ethics approach mainly uses law, norms, standards, and regulations to frame the practice of public officials. By setting those boundaries, public officials have a clear point of reference regarding the restraints and the consequences of their professional actions. This approach is more restrictive in that it establishes the referents which should make it possible to frame the majority of the public service work.

14.2.2 Benefits of rules-based ethics

- Clear and precise standards that apply to all;
- Defined and immutable limits and restraints;
- Professionals should always relate to the rules to solve dilemmas; and
- The desire of professionals not to contravene regulations.

Not all ethical issues, including conflict of interest situations, can be framed by norms and standards. How can public officials have the resources to solve such situations?

14.2.3 Value-based ethics

Value-based ethics is an approach that places the development of professional judgment at the center of the practice of public officials. The recognition of shared values guides public service employees in their actions and strengthens their collective orientation with that shared ideal. This approach is more flexible and encourages professionals to care about what they achieve and how they accomplish it in regard to a common value framework.

14.2.4 Benefits of values-based ethics

- Increased awareness of ethical issues;
- Commitment to the organization with shared values;
- Development of ethical skills of the professionals; and
- Empowerment of professionals that affects many spheres of their work.

An organization can integrate elements of these two approaches to define its orientation. Such a unified approach can make it possible to establish clear regulatory limits that apply in certain cases while promoting the development of the autonomy of public service employees and the importance of shared values of a work team.

15. RESOLUTION

The purpose of this guide is to highlight the process of resolving situations of risk of conflict of interest that a public service employee may encounter. These resources can be used to understand, assess and respond appropriately to the conflict of interest situations one faces. In the context of a dilemma that remains difficult to resolve, ethics officers are qualified professionals who can provide advice. Consulting peers remains one of the most effective resources for understanding and preventing the risks of conflict of interest in public service.