



What could be a Conflict of Interest – a concise summary

1. **Conflicts of Interest** relate to the circumstances where person is, or is perceived to be, unable to act objectively, fairly, and impartially in respect of the interests and/or activities of the entity they have a legal obligation represent, e.g. their employer or under a contractual relationship. It includes individual (or group) interests that are not in the best fiduciary interests of that entity.
 2. All Conflicts of Interest require **disclosure**.
 3. The **determination** of whether a conflict of interest exists **does not rest with the individual** ; but the objective test of a conflict of interest is the opinion of a reasonable independent third party reasonably informed of the available facts.
 4. Either **pecuniary or non-pecuniary interests** can manifest a conflict. The conflicted person could be the individual, a relative, close associate, or an active social relationship.
 5. Conflicts have three possibilities:
 - A **real Conflict of Interest** exists where the person, irrespective of personal benefit from the particular interest, has personal interests which are inconsistent with their role and responsibilities. It extends also to a relative or close associate of the person, where the person should be reasonably aware of the conflict.
 - A **perceived Conflict of Interest** can exist where another party or parties reasonably perceive, or would have the potential to perceive the objectivity of a person, or their relationships, or an association conflicts with the persons roles or responsibilities. Perceived conflicts of interest can be pervasive.
 - A **potential Conflict of Interest** exists where, from the conduct of a person's role or responsibilities, they may consequentially or subsequently be exposed to a real or perceived conflicted interest.
 6. Some examples are:
 - Bias, i.e. applying subjective opinion based on preference or prejudice to unduly influence an outcome more favorable to the individual or influenced by the person's associations. The reasonable 'apprehension of bias' is an apprehension of a conflict of interest.
 - Offering or accepting gifts or benefits or an influential relationship from a supplier or prospective supplier.
 - Undue Influence, i.e. acting to advance the interests of a supplier (or other party), e.g. skewing an evaluation.
 - Self-dealing, i.e. using an official position to secure a preferential arrangement in which the person (or relative or associate) has a pecuniary or other material interest.
 - Nepotism, i.e. contracts which are designed to benefit a relative or close friend, or an associate.
 - Secret commissions, i.e. accepting or offering any undisclosed payment in any form with intent to influence a particular outcome, e.g. development approvals, permits, or contracts. This could be by direct association, or through associated parties.
 - Misusing an organisation's assets or information - using confidential 'inside' information for advancement of personal interests or motivations.
 - Moonlighting or other conflicting secondary employment, e.g. setting up a business, providing commercial services, or taking another job that has conflicting commitments, or which may have related business dealings.
 - Post-separation employment, e.g. misusing the person's role to seek employment with a supplier; or to misuse acquired information in a competing business.
 - Commercial relationships – such as sitting on a panel for product selection while also providing technical or commercial services to a participating supplier.
 - Equity interests – holding a significant interest (equity, e.g. investments) in any company bidding for a contract in which the individual has a role in the evaluation or selection process.
 7. A Conflict of Interest may or may not be manageable, depending on:
 - the individual's ability to act impartially and objectively,
 - the ability to mitigate, remove or ameliorate the conflict of interest, or
 - the organisation's ability to maintain integrity or credibility of the outcome.
 8. Even an interest which is manageable may not meet the Objective Test in the public interest:
“What would an independent fair-minded person reasonably conclude?”
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