

CONFLICT OF INTEREST



WHAT IS CONFLICT OF INTEREST?

“Any financial or other private interest or undertaking that could directly or indirectly compromise the performance of the public servant’s duties or the reputation of a public servant’s department in its relationship with its stakeholders”¹

“A situation in which a public official has a private interest which influences, or appears to influence a public decision.”²

EXAMPLES OF CONFLICTS OF INTEREST IN THE PUBLIC SECTOR

- Holding public office as well as private business interests and using your public position to benefit your private interests;
- Influencing government tender processes so that your family members and friends are awarded state contracts;
- Abusing your position within a government department to ensure your friends and family members are hired into the same department;
- Accepting bribes in order to disclose confidential information about the government department that you work for;
- Tendering for a municipal contract when you are an employee of the municipality.

¹ See definition of conflict of interest in the Public Service Commission Rules on managing conflicts of interest identified through the financial disclosures framework for senior managers

² Institute for Security Studies (ISS) 2011 Conflict of Interest Toolkit

CONFLICTS OF INTEREST IN THE PUBLIC SECTOR – WHAT YOU SHOULD KNOW

Important legislation / frameworks

| Legislation/framework | Who in the public sector it applies to |
|---|---|
| Code of Conduct for Public Servants | Anyone permanently or temporarily employed in a post established by a department |
| The Public Service Commission Act | Anyone permanently or temporarily employed in a post established by a government department |
| The Public Service Commission Rules | Anyone permanently or temporarily employed in a post established by a government department |
| The Public Service Regulations | All people and institutions governed by the Public Service Act |
| The Executive Members' Ethics Act | Cabinet members; deputy ministers and MECs |
| The Executive Members' Code | Cabinet members; deputy ministers and MECs |
| Code of Conduct for Councillors (Schedules 1 of the Municipal Systems Act) | Members of municipal councils |
| Code of Conduct for Municipal Staff Members (Schedule 2 of the Municipal Systems Act) | Municipal staff members |
| The Prevention and Combatting of Corrupt Activities Act | Any person who is a member, an officer, an employee or a servant of a public body |

WHAT SOUTH AFRICAN LAW SAYS ABOUT CONFLICT OF INTEREST

The Constitution

Our Constitution, in section 195, sets out the basic values and principles that govern public administration. Services must be provided impartially; fairly; equitably and without bias. Public administration must be accountable.

The Public Service Act

Section 30 of the Public Service Act (PSA) [1994 as amended] provides that employees in the public sector shall not perform remunerative work outside their employment except within the written permission of the executive authority of the department.

The executive authority must take into account whether the outside work could reasonably be expected to interfere with or impede the effective performance of the employee's functions in department.

The Code of Conduct for Public Servants

The Code of Conduct for Public Servants (Section 5.5) prohibits employees from undertaking outside remunerative work.

The Public Service Regulations

The Public Service Regulations require all members of senior management service level to disclose their financial interests to their executive authorities by 30 April each year. The executive authorities are required to send the disclosure forms to the Public Service Commission (PSC) each year. The PSC must assess the financial disclosures for potential conflicts of interest.

The Prevention and Combatting of Corrupt Activities Act (PRECCA)

The PRECCA prohibits members of public bodies from holding private interests in contracts with that body. That is, any public officer who acquires a private interest in a contract connected with the public body, is guilty of an offence.

Exceptions to this offence include:

- * Where the public officer's conditions of employment do not prohibit him/her from such holdings
- * Where the public official's interest is as a shareholder of a listed company
- * Where the contract is awarded through a tender and the official's contract of employment does not prohibit this and the tender process is independent

LAWS REGARDING CONFLICT OF INTEREST IN THE PROCUREMENT CONTEXT

At national level and provincial level

The Public Finance Management Act (PFMA) Regulations require supply chain management officials and other role players to ‘recognise and disclose any conflict of interest that may arise’.

In addition to disclosing the interest, supply chain management officials and other role players as well as family members, partners and associates must withdraw from participating in any manner whatsoever in the process relating to the contract³.

At local government level

The Supply Chain Management Regulations⁴ provide that supply chain management policies must compel bidders to declare any conflict of interest that they may have in any transaction for which they have submitted a bid.

In addition, Supply Chain Management Regulations⁵ provide that supply chain management policies must **prohibit certain people** from tendering for government contracts – these are:

- **Persons in the service of the state;**
- **Directors, managers, principal shareholders or stakeholders as persons in the service of the state; or**
- **Any person who is an advisor or consultant contracted with the municipality or municipal entity.**

Councillors may not be members of bid committees and may not attend bid committee meetings.⁶

Officials who are involved in the implementation of a supply chain management policy of a municipality or municipal entity - are required to declare any private business interests which

³ See PMFA Regulation 16A8.4

⁴ Regulation 21 (c) of the MFMA Regulations

⁵ Regulation 44 of the MFMA Regulations

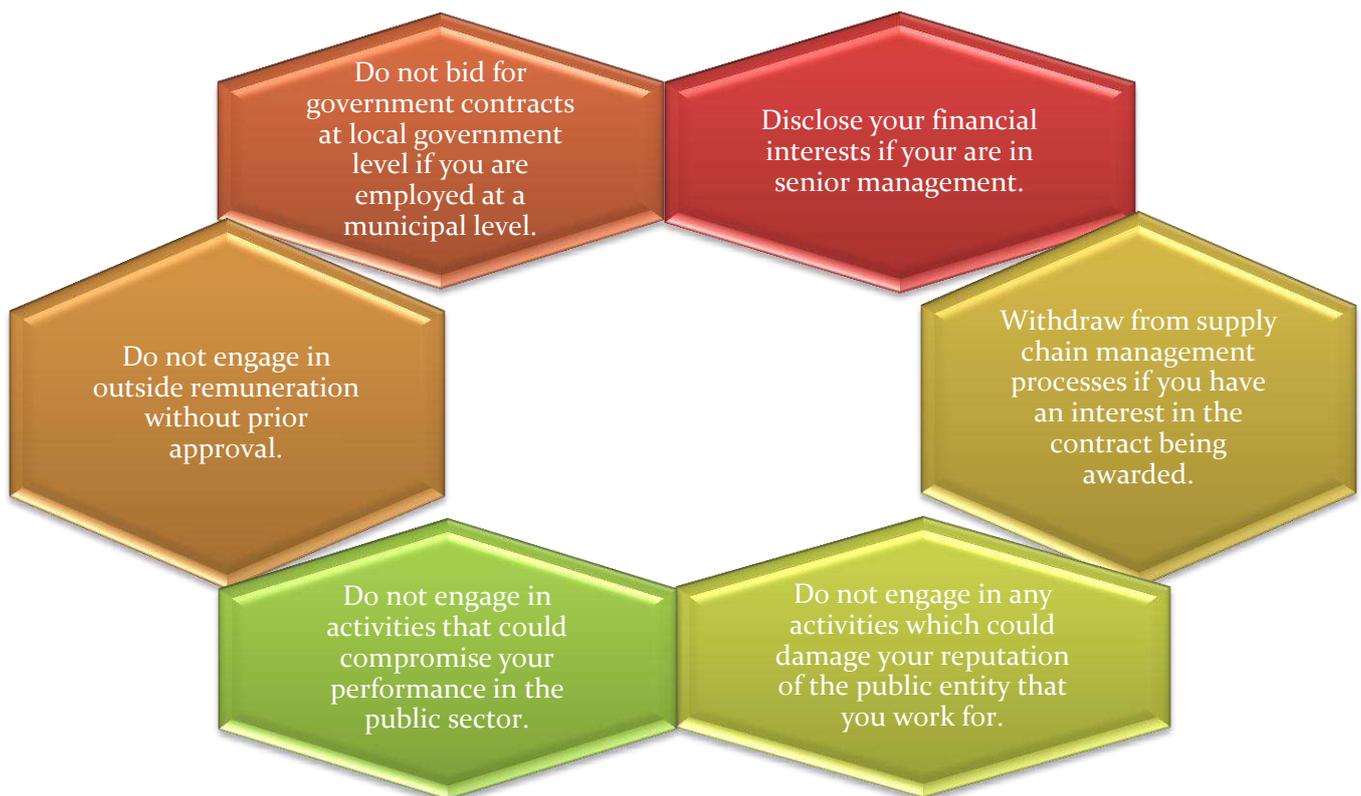
⁶ Section 17 of the MFMA

they have in the awarding of any contract; as well as interest that family members and associates have in the awarding of a contract.⁷

Schedules 1 and 2 of the Municipal Systems Act also provide for Codes of Conduct for municipal staff and councillors.

Councillors are required to disclose to the municipal council or any committee to which the councillor is a member, any business interest that the councillor may have in any matter before the council or the committee. The councillor must also disclose interests of his/her spouse; partner and business associates.⁸

WHAT THIS MEANS FOR PUBLIC SERVANTS



⁷ Regulation 46 (2) (e)

⁸ Schedule 5 of the Municipal Systems Act