



## FORM FOR PROJECTS

### **DECLARATION OF IMPARTIALITY AND DUTY TO REPORT OF EMPLOYEES OF A CONTRACTING AUTHORITY AND OF THIRD PARTIES COMMISSIONED BY THE CONTRACTING AUTHORITY WHO ARE INVOLVED IN THIS PROCUREMENT PROJECT (AWARD PROCEDURE)<sup>1</sup>**

I am aware that persons may not participate in the award procedure on the contracting authority's behalf or in a panel of experts if they:

- a. have a personal interest in a contract;
- b. are connected to a tenderer or a member of one of its governing bodies by marriage or registered partnership, or cohabit de facto with this party;
- c. are related to a tenderer or a member of one of its governing bodies by blood or by marriage in a direct line or collaterally to the third degree;
- d. are representatives of a tenderer or worked for a tenderer on the same matter<sup>2</sup>; or
- e. lack the independence necessary to carry out public procurements for other reasons<sup>3</sup>.

**In these cases, I am obliged to recuse myself because the award decision will otherwise be tainted by a formal error and can be annulled by the court.**

I am therefore aware that I am obliged to inform my superior or my principal immediately in writing of any secondary occupations, contractual relationships and vested interests that could lead to a conflict of interest in the award procedure if I discover in the course of this procurement project that I have a vested interest with a tenderer or a member of one of its governing bodies that may lead to a conflict of interest<sup>4</sup>.

- I acknowledge that a conflicting vested interest exists if a tender is received from a tenderer with whom I have special connections. These include, for example, current or past close (personal) business relationships<sup>5</sup> (e.g. customer relationship, strategic partnership, form of participation, employment relationship), marriage, registered partnership or consensual union, kinship or affinity, an economically-dependent relationship or another type of dependent relationship or several years of close comradeship (e.g. due to military service).
- Furthermore, I will exclusively represent the interests of the Confederation and the contracting authority when assessing tenders received within the framework of this procurement procedure. All information, documents and results in a procurement procedure are confidential before, during and after the award procedure. This means that data should not be made available in any way

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<sup>1</sup> See Art. 3 para. 1 of the PPO

<sup>2</sup> "Worked on the same matter" is to be understood as meaning that an employee of a public contracting authority involved in the preparation and execution of the tender in question was, in the 18 months prior to the tender, still involved as an employee or representative of a tenderer in the completion of a previous contract concerning the same matter (forming what is to be procured).

<sup>3</sup> Partiality "for other reasons" must have a concrete effect on the procurement process. In this catch-all framework, the right is reserved to prove (counterevidence) that the circumstances calling independence into question (e.g. proximity between persons on the side of the contracting authority and on the side of the tenderer) were not relevant for the outcome of the procedure, i.e. that there is no partiality. Independence is not to be assessed in an abstract manner, but always against the backdrop of the tasks and functions of procurement law.

<sup>4</sup> See Art. 3 para. 1 lit. a of the PPO

<sup>5</sup> The fact that an employee works with an external contractor in the performance of his or her duties as a federal employee does not by itself establish partiality. However, as soon as financial interests, employment relationships or personal business relationships, for example, come into play, partiality can very quickly be assumed.

whatsoever to unauthorised third parties and should not be removed from the designated premises.

- Moreover, before and during the award procedure, contact with potential tenderers concerning the procurement in question that could jeopardise equal treatment of the tenderers is prohibited.
- Failure to comply with the aforementioned points may constitute a violation of federal personnel law for federal employees and a breach of contract for external employees, both of which may be sanctioned.
- Claims for damages based on the Government Liability Act (SR 170.32) which arise in the case of a duty violation of this nature, in particular to do with internal administrative costs where the procurement procedure is partially or fully repeated, remain expressly reserved.

I confirm that I have taken note of and understood the above and the obligations therein, as well as the following excerpts from the pertinent legal foundations.

Place and date: \_\_\_\_\_

Full name: \_\_\_\_\_

Organisational unit: \_\_\_\_\_

Project designation: \_\_\_\_\_

Signature: \_\_\_\_\_

Issue date: 1 January 2021

Status: 1 January 2021

## APPLICABLE LAW (EXCERPTS)

### Excerpts from the Federal Act on Public Procurement (PPA; SR 172.056.1) and the Ordinance on Public Procurement (PPO; SR 172.056.11)

#### Conflicts of interest and partiality

##### **Art. 11 of the PPA – Procedural principles**

When awarding public contracts, the contracting authority shall observe the following procedural principles:

- b. It shall take measures against conflicts of interest, unlawful agreements affecting competition and against corruption.

##### **Art. 13 of the PPA – Recusal**

Persons may not participate in the award procedure on the contracting authority's behalf or in a panel of experts if they:

- a. have a personal interest in a contract;
- b. are connected to a tenderer or a member of one of its governing bodies by marriage or registered partnership, or cohabit de facto with this party;
- c. are related to a tenderer or a member of one of its governing bodies by blood or by marriage in a direct line or collaterally to the third degree;
- d. are representatives of a tenderer or worked for a tenderer on the same matter;
- e. or lack the independence necessary to carry out public procurements for other reasons.

##### **Art. 3 of the PPO – Measures to counter conflicts of interest and corruption**

<sup>1</sup> The employees of a contracting authority, as well as third parties commissioned by the contracting authority who are involved in an award procedure, shall be obliged to:

- a. disclose any secondary employment and contractual relationships as well as and vested interests that could lead to a conflict of interest in the award procedure;
- b. sign a declaration of impartiality.

### Excerpts from the Federal Act of 24 March 2000 on the Personnel of the Swiss Confederation (FPA; SR 172.220.1), and from the Federal Ordinance of 3 July 2001 on the Personnel of the Swiss Confederation (FPersO; SR 172.220.111.3):

#### Safeguarding of interests

##### **Art. 20 of the FPA – Safeguarding the interests of the employer**

<sup>1</sup> Employees must carry out the work assigned to them with due care and attention and safeguard the justified interests of the Confederation or their employer.

<sup>2</sup> For the duration of the employment relationship, employees must not perform any paid work for third parties in breach of their duty of loyalty.

#### Taking unfair advantage

##### **Art. 21 of the FPA – Personnel obligations**

<sup>3</sup> Employees are prohibited from accepting gifts or claiming other benefits or obtaining promises for themselves or on behalf of others if this occurs within the context of the employment relationship.

##### **Art. 93 of the FPersO – Acceptance of gifts and other benefits**

<sup>1</sup> Small and socially or traditionally motivated benefits are not considered as gifts in terms of the law. The term "small benefits" corresponds to gifts in kind with a market value of CHF 200 or less.

<sup>2</sup> Employees who are involved in a procurement or decision-making process are also prohibited from accepting small and socially or traditionally motivated benefits if:

- a. the benefit is offered by:
  1. an actual or potential tenderer,
  2. a person who is involved in a decision-making process or is affected by this; or
- b. a link between the benefit granted and the procurement or decision-making process cannot be excluded.

<sup>3</sup> If employees have to accept gifts as a matter of courtesy, the gifts must be handed over to

the competent office in accordance with Article 2. The acceptance of gifts as a matter of courtesy must be in the overall interests of the Confederation. The acceptance and any utilisation of such gifts will be conducted by the competent office in accordance with Article 2 in favour of the Confederation.

<sup>4</sup> In case of doubt, staff members must clarify the admissibility of the acceptance of benefits with their superiors.

#### **Art. 93a of the FPersO – Invitations**

<sup>1</sup> Employees are to decline invitations if accepting them could compromise their impartiality or their ability to do their job effectively. Invitations abroad must be turned down unless the staff member has the written authorisation of his or her superior.

<sup>2</sup> Employees who are involved in a procurement or decision-making process are also prohibited from accepting invitations, if:

- a. the invitation is from:
  1. an actual or potential tenderer,
  2. a person who is involved in a decision-making process or is affected by this; or
- b. a link between the invitation and the procurement or decision-making process cannot be excluded.

<sup>3</sup> In case of doubt, employees must clarify with their superiors whether or not the invitation may be accepted.

#### **Professional, business and official secrecy**

##### **Art. 22 of the FPA – Professional, business and official secrecy**

<sup>1</sup> Employees are bound by the rules of professional, business and official secrecy.

<sup>2</sup> The implementing provisions regulate the duty of confidentiality, supplementing the special legislation.

##### **Art. 94 of the FPersO – Professional, business and official secrecy**

<sup>1</sup> Employees are obliged to maintain confidentiality regarding professional and business matters which have to be treated as secret due to their nature or because of legislation or directives.

<sup>2</sup> The obligation to observe official and professional secrecy remains even after the termination of the working relationship.

<sup>3</sup> Employees may issue comments as a party, witness or court expert on observations which they made due to their tasks or in carrying out their functions and which refer to their official tasks only if the competent office according to Article 2 gave them written authorisation to do so. No authorisation is required if the comments concern facts which create a duty to report or notify in accordance with Article 302 of the Swiss Criminal Procedure Code or Article 22a paragraphs 1 and 2 FPA.

<sup>4</sup> Article 156 of the Parliament Act of 13 December 2002 remains reserved.

##### **Art. 94b of the FPersO – Grace period**

<sup>1</sup> If it is expected that their future paid or unpaid activities will lead to a conflict of interest for certain employers and/or clients, the competent body under Article 2 can agree a period of grace for the period after the termination of the working relationship with employees under Article 2 paragraph 1 letters a, b, d and paragraph 1<sup>bis</sup>, as well as with other employees with significant influence on individual decisions of considerable consequence or with access to extensive information.

<sup>2</sup> A conflict of interest exists in particular if:

- a. the new activity can affect the credibility and reputation of the administrative unit concerned or the Confederation;
- b. the individual decisions or access to information of a person under paragraph 1 mean that, by changing to an employer or client affected by this, he or she will no longer appear independent.

<sup>3</sup> The length of the grace period is a minimum of six and a maximum of twelve months, including any exemption periods.

<sup>4</sup> Compensation may be stipulated for the grace period. In accordance with the expected negative economic impact in the individual case, maximum compensation is the previous salary amount according to appendix 2, whereby all income, allowances, and retirement benefits are to be included.

<sup>5</sup> Any person who receives grace period compensation is obliged to inform the competent bodies under Article 2 of any income, allowances, and retirement benefits received during the grace period.

<sup>6</sup> Any wrongfully obtained grace period compensation must be repaid.

## **Secondary occupation**

### **Article 23 of the FPA**

The implementing provisions may make pursuing certain activities and holding certain public offices subject to authorisation to the extent that they adversely affect the performance of tasks.

### **Art. 91 of the FPersO**

<sup>1</sup> Employees must inform their superiors of all public offices held or any remunerated work performed outside of their employment contract.

<sup>1bis</sup> Voluntary work must be reported if a conflict of interest cannot be excluded.

<sup>2</sup> The performance of duties and activities in accordance with paragraphs 1 and 1<sup>bis</sup> requires authorisation if:

- a. they make demands on the employees which might reduce their performance in their work for the Confederation;
- b. there is the risk of a conflict with the primary employment interests due to the type of work.

<sup>3</sup> If conflicts of interest cannot be excluded in individual cases, authorisation will be withheld. Conflicts of interest may arise in the case of the following activities:

- a. advising or representing third parties in matters which belong to the tasks of the administrative unit in which the employed person works;
- b. activities associated with mandates executed for the Confederation or which will be awarded by the Confederation in the foreseeable future.

<sup>4</sup> Employees deployed in a Swiss representation abroad require authorisation from the Federal Department of Foreign Affairs (FDFA) in all cases for remunerated activities. The authorisation obligation is also applicable to FDFA career service employees during assignments in Switzerland. Employees must periodically submit a report to the FDFA on these activities. The FDFA lays down the conditions.

<sup>5</sup> The FDFA may make provision to have notification and authorisation requirements imposed on the remunerated activities of accompanying persons of employees deployed in a Swiss representation abroad.