



## GENERAL FORM (NOT REFERRING TO A SPECIFIC PROJECT)

### 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 AN AWARD PROCEDURE<sup>1</sup>

I am aware that no one may participate in an award procedure on the contracting authority's behalf or in a panel of experts if they<sup>2</sup>

- 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>3</sup>; or
- e. lack the independence necessary to carry out public procurements for other reasons<sup>4</sup>.

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

Furthermore, I am aware that I am obliged to inform my superior or my contracting authority immediately in writing of any secondary occupations, contractual relationships and other vested interests that could lead to a conflict of interest in the award procedure<sup>5</sup>.

- I acknowledge that a conflicting vested interest exists in particular if a tender is received from a tenderer with whom I have special connections. These include, for example, current or past close (including personal) business relationships<sup>6</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 other type of dependent relationship (e.g. ongoing job application to the tenderer or current job offer from the tenderer, definite change of job to work for the tenderer, signed employment contract regarding future employment with the tenderer) 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 a procurement procedure. I acknowledge that I may be guilty of misconduct in public office if, in order to gain an unlawful

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

<sup>2</sup> See Art. 13 para. 1 of the PPA

<sup>3</sup> "Worked on the same matter" is generally 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>4</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>5</sup> See Art. 3 para. 1 lit. a of the PPO

<sup>6</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.

advantage for myself or another person, I damage the public interests to be protected in a procurement procedure.<sup>7</sup>

- I will comply with the following rules on accepting advantages. In particular, I am aware that I may not accept gifts or other advantages (risk of passive bribery or acceptance of an advantage).<sup>8</sup> In case of doubt, I will clarify the issue of permissibility with my superior or my contracting authority.
- I am aware that all employees of our administrative unit and all third parties commissioned by it are subject to official secrecy<sup>9</sup>. In a procurement procedure, all information, documents and results that are neither in the public domain nor generally accessible are confidential before, during and after the award procedure. In case of doubt, they must be treated as confidential. This means that this data and information may not be made accessible in any way whatsoever to unauthorised third parties and may not be removed from the premises designated for this purpose.
- Moreover, before and during the award procedure, contact that could jeopardise equal treatment of the tenderers is prohibited with potential tenderers concerning the procurement in question.
- Failure to comply with the aforementioned points may, among other things, constitute a violation of federal personnel law, criminal law or a breach of contract, which may lead to criminal sanctions or disciplinary measures, for instance.
- Claims for damages arising from duty violations of this nature, in particular to do with the internal administrative costs of repeating the procurement procedure in whole or in part, remain expressly reserved.

I confirm that I have taken note of and understood the above and the obligations therein, as well as the following extracts from the pertinent legal foundations. If I have any questions or doubts, I will immediately contact my superior or my contracting authority.

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

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

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

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

Issue date: 1 January 2021

Status: 1 January 2024

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<sup>7</sup> See Art. 314 of the SCC

<sup>8</sup> See Art. 322<sup>quater</sup> and 322<sup>sexies</sup> of the SCC

<sup>9</sup> See Art. 320 of the SCC

## APPLICABLE LAW (EXCERPTS, NOT EXHAUSTIVE)

Excerpts from the Federal Act of 21 June 2019 on Public Procurement (PPA; SR 172.056.1) and the Ordinance of 12 February 2020 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 to counter conflicts of interest, unlawful agreements affecting competition and 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 occupations, contractual relationships and vested interests that could lead to a conflict of interest in the award procedure;
- b. sign a declaration of impartiality.

Excerpts from the Swiss Criminal Code of 21 December 1937 (SCC; SR 311.0), the Federal Act of 24 March 2000 on the Personnel of the Swiss Confederation (FPA; SR 172.220.1) and 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.

### Bribery and acceptance of an advantage

#### **Art. 322<sup>quater</sup> of the SCC – Acceptance of bribes**

Any person who, as a member of a judicial or other authority, as a public official, as an officially appointed expert, translator or interpreter or as an arbitrator, demands, secures the promise of or accepts an undue advantage for themselves or for a third party for an act or omission in connection with their official activity which is contrary to their duty or at their discretion shall be liable to a custodial sentence not exceeding five years or to a monetary penalty.

#### **Art. 322<sup>sexies</sup> of the SCC – Acceptance of an advantage**

Any person who, as a member of a judicial or other authority, as a public official, as an officially appointed expert, translator or interpreter or as an arbitrator, demands, secures the promise of or accepts an undue advantage for themselves or for a third party with regard to the performance of their official duties shall be liable to a custodial sentence not exceeding three years or to a monetary penalty.

#### **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.

### **Recusal**

#### **Art. 94a of the FPersO – Recusal**

<sup>1</sup> Employees must recuse themselves if they could lack impartiality due to a personal interest in a matter or for other reasons. The appearance of partiality is sufficient grounds for recusal.

<sup>2</sup> The following in particular are considered grounds for partiality:

- a. particularly close relationship or personal friendship or ill will with an individual or legal entity involved in or affected by a transaction or decision-making process;
- b. the existence of a job offer from an individual or legal entity involved in or affected by a transaction or decision-making process.

<sup>3</sup> Employees must disclose unavoidable grounds for partiality to their superiors in a timely manner. In case of doubt, the superiors will take a decision on recusal.

<sup>4</sup> For employees who have to make a ruling or who have to make preparations for this, Article 10 of the Administrative Procedure Act of 20 December 1968 is applicable.

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

#### **Art. 320 of the SCC – Breach of official secrecy**

<sup>1</sup> Any person who discloses secret information that has been confided to them in their capacity as a member of an authority or as a public official or which has come to their knowledge in the performance of their official duties or as an auxiliary to a public official or an authority shall be liable to a custodial sentence not exceeding three years or to a monetary penalty.

A breach of official secrecy remains an offence following termination of employment as a member of

an authority or as a public official or of the auxiliary activity.

<sup>2</sup> Offenders are not liable to any penalty if they have disclosed the secret information with the written consent of their superior authority.

**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 of the FPA.

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

**Misconduct in public office**

**Art. 314 of the SCC – Misconduct in public office**

Members of an authority or public officials who, in the course of a legal transaction and with a view to obtaining an unlawful advantage for themselves or another person, damage the public interests they have a duty to safeguard shall be liable to a custodial sentence not exceeding five years or to a monetary penalty. A custodial sentence must be combined with a monetary penalty.

**Secondary occupation**

**Article 23 of the FPA – Secondary occupation**

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 – Secondary occupation**

<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 in particular:

- 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.