



Australian Government

**Department of Agriculture,
Fisheries and Forestry**

Department of Agriculture, Fisheries and Forestry's Submission to the Inquiry into Management and Assurance of Integrity by Consulting Services

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1. Introduction

The Department of Agriculture, Fisheries and Forestry (DAFF) makes this submission to the Standing Committee in its inquiry into the management and assurance of integrity relating to consulting services.

- We are the Department of Agriculture, Fisheries and Forestry. We are part of the Australian Government.
- We work to enhance our agricultural, fisheries and forestry industries. We create new and maintain existing agricultural export opportunities, to provide gains for Australian agriculture. We manage biosecurity risks to Australia to protect our multi-billion-dollar agricultural industries and our way of life.
- Find out more about what we do at www.agriculture.gov.au/about/what-we-do.
- DAFF at times engages external consulting services where the department lacks specialist expertise or required independent research, review or assessment. DAFF typically engages consultants to investigate or diagnose a defined issue or problem; carry out defined reviews or evaluations; and provide independent advice, information or solutions to assist in our decision-making. Consultants are also engaged to assist with implementing key reform projects and initiatives.
- DAFF welcomes this opportunity to provide assurance to Government and the Australian Public that consulting service providers are held to a high level of integrity and ethical behaviour.

2. Summary

This submission discusses, at a high level, DAFF's approach, views and/or general controls as they relate to:

- The range of measures and tools to prevent, address and manage conflicts of interest (COI), contract breaches and unethical behaviours in dealings with all contracts more broadly, but specifically applying to the use of consultancy services; as well as the behaviour of consultants themselves when undertaking work for the Department.
- The proactive detections, assurance and due diligence checks DAFF regularly undertakes relating to integrity breaches and COI, as well as the potential enforcement measures the Department can impose where a breach of policy or risk is identified.
- Contract managers in DAFF have an obligation to ensure work undertaken by consultants they engage is transparent and meets performance requirements. This is supported by specific risk mitigations within the consultancy contract.

3. The management of conflict of interest by consultants

- In DAFF, when a consultancy contract is proposed, executed, and for the duration of the contract, the consultancy contract manager is responsible for managing probity issues and/or declaring COI.
- Procurement guidelines and processes outline requirements including the requirements for consultants to declare their own conflicts.
- DAFF employees are supported on integrity matters, including COI, through material on the Integrity page of the agency intranet, mandatory *Integrity Essentials* and *Integrity Essentials refresher* training and COI declarations forms.
- On request the integrity team and central procurement team are available to provide high level probity guidance to business areas to assist them with integrity guidance, including matters relating to consultancy where requested. Responsibility for DAFF employee COI declarations and decisions rests with the contract manager.

4. Measures to prevent conflicts of interest, breach of contract or any other unethical behaviour by consultants

- Addressing and managing COI, commences in the initial phases of the procurement process and is carried through its entire life cycle to contract management, contract delivery and contract completion.
- Accountable Authority Instructions (AAIs) are issued by the Secretary under Section 20A of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

- The AAls apply to all officials in the department including consultants. Section 1.5 of the AAI's provides instructions on the requirement that officials disclose material personal interests relating to the affairs of the entity (section 29 of the PGPA Act and sections 12 to 16D of the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule). To assist officials in understanding their duties and responsibilities, the AAls contain links to relevant legislative requirements, guidance material, delegations, and other instructions.
- Any officer involved in a procurement process, is required to declare their impartiality and disclose any private interests that may conflict with their role in the process.
- Should DAFF officers become aware of a COI or unethical behaviour by a consultant they are obliged to report this behaviour for assessment and action.
- Planning is integral to conducting a procurement process and begins with developing a Procurement Plan and the risk assessment commensurate with the scale and complexity of the procurement. Any requirements for consultancy services must identify amongst a range of matters the identification of any perceived and actual conflicts of interest or related risks that may be evident or likely arise during the course of the procurement and contract services. If so, these must be provided to the delegate/Senior Responsible Officer (SRO) before signing-off the Plan.
- The Whole of Government Commonwealth Contracting Suite is used for procurements up to \$200,000 and also between \$200,000 and \$1,000,000 as an option where a procurement is considered low risk. These are mandatory documents issued by the Department of Finance and developed in consultation with the Attorney-General's Department. COI are specifically addressed in standard terms and conditions.
- Business areas intending to undertake public/open tender procurements greater than \$80,000 must complete a risk assessment and have the procurement plan reviewed by the central procurement team.
- When using bespoke tender documents/contracts, standard COI provisions are included, and in the majority of cases there is a Deed of Confidentiality and COI Declaration required to be signed and returned as part of their tender for specified personnel. The decision as to the appropriate arrangements for managing confidentiality and conflict of interest in a particular procurement process is a matter for the relevant delegate, having regard to the nature of the proposed arrangement. For example, in some circumstances the delegate may consider appropriate for only the personnel of the successful tenderer to be required to complete these declarations during the contract negotiation process, after the contract is signed or where the delegate agrees that relevant declarations can be provided as part of the departments standard onboarding processes.
- Should any COI situations emerge throughout the entire process, these must be reported to the delegate/SRO for consideration and decision; and may include a range of measure to manage them. Refer Section 3 above.
- Contracts for consultancy services include:
 - **Delivery, milestones, performance measures** and the **relevant standards** to which they must be delivered are specified in the statement of requirements of the consultancy contract.
 - **Invoicing** as outlined in consultancy contracts.

- **Confidentiality** undertakings are obtained from the consultancy service provider.
- **Information security** undertakings are specified in consultancy contracts.
- Consultancy service providers must comply with the Department's **Privacy** policy.
- **Security requirements** are set, including for example, requirements for holding national police checks and government security clearances.
- Requirements for sub-contractors are covered under the contract terms with the consultancy service provider. As a general rule, they should inherit the terms of the parent contract.
- The ongoing management of the consultant is overseen by contract managers/delegates that have entered into consultancy contracts as they are responsible for the management of consultants working in the department.
- The department also delivers training courses and material to procurement officials on a periodic rolling basis on matters relating to security, confidentiality, and COI.
 - The department provides extensive training in Procurement and Contract Management to officials undertaking procurement to ensure they are aware of the responsibilities when undertaking a procurement process.
 - DAFF's Contract Management Framework specifically provides a Probity, Security, Integrity and Fraud Control Checklist to ensure basic roles, responsibilities/authorities and conduct are adhered to for the life of the contract.

5. Enforcement measures taken in response to integrity breaches, such as the inadequate management of conflicts of interest, breach of contract or any other unethical behaviour by consultants

- Integrity Branch does proactive detections assurance and due diligence checks of DAFF officer COI declarations. Each month a sample of employee COI declarations are checked against business data to detect any partially declared, or undeclared COIs.
- Approaches to the identification and management of COI are considered on a case-by-case basis. These may include but are not limited to:
 - Establishing whether if, and/or the extent to which a conflict may exist or is likely to arise or whether it constitutes a perception of one.
 - Seeking Probity advice.
 - What risk mitigation strategies may be employed to manage the conflict?
 - Removal and replacement of specified personnel from the consultancy service arrangement.
 - Impose any restrictions on the contract services that the delegate deems appropriate.

- Not engage a consultant if determined there is an actual conflict risk that cannot be appropriately managed or mitigated.
- In certain cases, the contract may be reduced in scope or terminated.
- If the matter has been reported to the Integrity Branch for investigation, depending on the seriousness of the matter it may be referred to management for action or potentially escalated through other investigative mechanisms.
- There are a number of avenues of investigation depending on the nature of the allegation/information and the status of the person (*contractors / consultants or APS staff*) alleged to have involved in a type of conduct. The status of their employment will contribute to determining how investigations will be led.
- Where a matter reaches corrupt or fraudulent conduct threshold, and is in jurisdiction, the Department may also refer a matter to the Australian Commission for Law Enforcement Integrity (ACLEI) or if not in jurisdiction the Department may refer a matter to the Australian Federal Police (AFP).

6. The management of risks to public sector integrity arising from the engagement of consultants

In addition to the mechanisms already described the following functions provide an additional level of risk management:

- The department has a dedicated Risk Management team that foster a positive risk culture and ensure risk management is integrated, considered and part of the everyday decision-making process. The Enterprise Risk Management Framework and Policy (ERMFP) outlines the department's approach to effective risk management.
- The department's Internal Audit function also provides added assistance to business areas in the development and assessment of their control and assurance activities in support of the achievement of their objectives.
- The National Anti-Corruption Commission (NACC) will begin operations in mid-2023.
- The NACC will investigate corrupt conduct that involves a public official in some way. The *NACC Act* specifically says that the following people are public officials: staff members of Commonwealth agencies including employees of Australian Government departments, Commonwealth companies and statutory bodies and contracted service providers (**including consultants**, independent contractors, labour-hire contractors, and others providing contracted services to the government).
- The NACC will be able to investigate any person, even if they are not a public official, so long as they do something that might cause a public official to carry out their official role in a dishonest or biased way.

7. The transparency of work undertaken by consultants, and the accountability of consultants for this work

- The deliverables and probity for consultancy contracts are stipulated in the terms of the contract and are managed by the manager of that contract.
- The Commonwealth's standard contract provisions, the Department's contract management framework, and underlying Departmental policies and procedures are robust in providing the Department's contract managers the capability and tools to assist in providing assurance of consulting services.
- These include:
 - Articulating and identifying key milestones and deliverables by nominated dates and linking payments according to these milestones wherever possible.
 - Reference back to the consultancy service provider tender documents and the Statement of Requirements if there are any areas of uncertainty, ambiguity or potential situations of non-compliance.
 - Regular contract management and stakeholder's meetings to assess progress against milestones/deliverables and to take any corrective action that may be required.
 - Periodic progress reports to management and submission of a final Project Report.
 - Pre-contract execution checks of referees and analysis of past performance with similar requirements in other entities.
 - Independent audit scrutiny.
 - Publication of contract arrangements in AusTender.
 - Senior Executive, (FAS level) approval for all proposed consultancy arrangements prior to approaching the market is a mandatory requirement.