

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
AUSTRALIAN FEDERAL POLICE

Question No. 63

Senator Humphries asked the following question in writing after the hearing of 8 February 2010:

Regarding external contractors/service providers at the AFP:

- a) What probity checks does the AFP conduct?
- b) In what year did these checks commence?
- c) What form do these checks take? What aspects are covered in these checks?
- d) Have these checks ever shown a prospective contactor/service provider to be a serving officer of a state, federal or territory police force, or the spouse of a serving officer? If so, what action was taken?
- e) Does the AFP believe a contract with such an officer could constitute a conflict of interest?

The answer to the honourable senator's question is as follows:

- a) The Australian Federal Police (AFP) conducts a range of probity checks on external contractors/service providers. The extent of the probity check is dependent on the nature of the services being provided. Probity checks typically involve security, probity, financial and referee checks and procedures as the AFP, at its discretion, may determine are necessary to ensure the integrity of contractors/service providers.
- b) The AFP has always reserved the right to conduct security, probity and financial checks as it sees fit.
- c) When procuring goods or services, AFP appointees are required to identify, assess and treat security risks associated with the contract in accordance with the requirements of the Commonwealth Protective Security Manual.

The AFP may require a police check for low risk contracts (no access to AFP systems). For more complex contracts, security clearances, ranging from Protected to Top Secret, are conducted on specified personnel. In addition, some contractors are required to undergo drug testing prior to commencement of the services and on a random basis during the period of the contract.

Under section 35(2) of the *Australian Federal Police Act 1979* (AFP Act), the AFP may determine the successful tenderer, any specified personnel or subcontractors to be AFP Appointees for the purposes of the AFP Act. Whether the AFP makes an AFP Appointee determination will depend upon the nature of the services being delivered. If the successful tenderer, any specified personnel or subcontractors are determined to be an AFP Appointee, they will be subject to professional standards obligations under the AFP Act, the AFP Code of Conduct and AFP Professional Standards framework.

Financial checks involve a Financial Performance Assessment that includes details of any adverse checks on office holders, shareholder/ownership details, financial overview, capacity, assets, liabilities and equity.

In its tender documents, the AFP reserves the right to perform such security, probity, financial and referee checks and procedures as the AFP, at its absolute discretion, may determine are necessary in relation to the tenderer, its partners, associates or related entities including their officers or employees and sub-contractors.

Tenderers are required to the best of its knowledge, to disclose to the AFP any matter that may materially affect the tenderer's performance of the contract, including, but not limited to:

- (a) any security, probity or integrity issue, including current or pending investigations or enquiries by any government, law enforcement, or regulatory body, into the tenderer (including its directors, officers, employees, agents, contractors, partners, associates and related entities);
 - (b) any unsettled judicial decisions against the tenderer in respect of unpaid employee entitlements; or
 - (c) financial capacity and viability of the tenderer.
- d) There are occasions where a prospective contractor/and or service provider is a spouse of a serving police officer. In these circumstances normal conflict of interest protocols apply. Prospective contractors/service providers are advised that they shall not use the improper assistance of employees or former employees of the Commonwealth or information unlawfully obtained in compiling their tenders. They must provide details of any circumstances or relationships that constitute or may constitute a conflict or potential conflict of interest regarding a tender or their potential obligations under any formal Agreement with the AFP. AFP Appointees involved in the procurement process are required to make a declaration stating whether or not any conflict of interest exists with respect to the procurement.
- e) Where a conflict of interest exists or may exist, a written declaration of that conflict must be made to the Evaluation Committee chair or Delegate. On receipt of a declaration of an actual or potential conflict of interest, the Evaluation Committee chair or Delegate must decide, and where appropriate in consultation with the probity adviser, on the course of action to be taken to resolve the matter. If, in the opinion of the Evaluation Committee chair or Delegate, and where appropriate in consultation with the probity adviser, the conflict of interest is not able to be resolved, the person in relation to whom the conflict exists must be excluded from the tender process.