COMMERCIAL CONFLICT OF INTEREST DECLARATION TEMPLATE GUIDANCE NOTES

= Guidance = Content to be inserted. All highlighting is to be removed prior to submission.

A commercial conflict of interest is a circumstance (actual, potential or perceived) where:

* A supplier’s judgement/performance may be influenced by their commercial interests/relationships.
* A supplier receives benefit in addition to contractually agreed remuneration as a result of being engaged to deliver services.

Examples of commercial conflict of interest may include:

* A project manager awarding themselves (or their organisation) the contract for design services for a project that they are project managing.
* A project manager conducting a procurement (e.g. for design services) for which they (or their organisation) intend to bid.
* A consultant undertaking weathertightness condition assessments also being engaged to deliver subsequent remediation design services.

All commercial conflict of interests must be declared immediately by submitting a Commercial Conflict of Interest Declaration to the Procurement Leader (for school led (5YA) projects: the relevant Ministry Property Advisor of for Ministry led projects: EIS Commercial Procurement). Approval of the Procurement Leader is required prior to any engagement that will give rise to an actual, potential or perceived commercial conflict of interest.

A commercial conflict of interest may result in circumstances (actual, potential or perceived) where:

* The most suitable supplier is not engaged (e.g. a project manager who awards themselves the contract for design services may not have been the most suitable designer for the project).
* Value for money is not achieved (e.g. a project manager who awards themselves the contract for design services cannot be objective when determining whether their design fees are best value).
* Potential suppliers are not evaluated/treated fairly or given fair opportunity (e.g. a project manager procuring design services for which they also bid cannot be objective in their evaluation).
* Potential suppliers do not bid for contracts (e.g. when procuring design services, potential suppliers may not bid if it is perceived that the project manager will award themselves the contract or that their commercially sensitive information will be seen by the project manager, whom they consider to be a competitor).
* A supplier’s performance is influenced by their subsequent commercial benefit (e.g. a consultant undertaking weathertightness condition assessments and remediation design services may be perceived as inflating the requirement for remediation because this will increase their fee for the remediation design services).
* A supplier’s performance is not managed appropriately (e.g. a project manager also delivering design services cannot objectively/effectively manage the performance of the designer). compromised)

Note: Because Project Managers are perceived to have an influence on all decisions made during a project, there will at the very least be a perception that the Project Manager has an influence on the selection of contractors/consultants. Therefore, the Project Manager must always make a Commercial Conflict of Interest declaration before they (or their organisation) are considered for the delivery of other services for the project.

Restrictions specific to Project Managers (and their organisations) engaged by Board of Trustees wishing to provide design services for projects are:

* If the design services have a procurement value of $50,000 or more, the Project Manager/their organisation is excluded from bidding for/delivering the design services.
* If the design services have a procurement value of less than $50,000, prior approval of the relevant Ministry property Advisor is required (via Commercial Conflict of interest Declaration)
* If the cumulative value of design services engagements at a school is to exceed $50,000 within any 12 month period (multiple projects), the Project Manager/their organisation is excluded from bidding for or delivering design services where that engagement will breech the cumulative $50k threshold (e.g. March: $20,000 + July: $25,000 + October: $10k = $55k: The Project Manager/their organisation is excluded from bidding for/delivering the October engagement).

Note: In addition to any Commercial Conflict of Interest Declaration submitted, every person involved in a procurement with a value of $50,000 or more must submit a (personal) Conflict of Interest and Confidentiality Agreement immediately at the start of their involvement in the procurement.

**DELETE THIS PAGE BEFORE SUBMITTING THIS DECLARTION FORM**

****Commercial Conflict of Interest Declaration****

|  |  |
| --- | --- |
| Name | [Name of person making this declaration] |
| Role/Position | [Role/position of the person making this declaration e.g. Project Manager, Procurement Officer and Evaluator] |
| Services provided | [The primary services being provided by the person making this declaration (or their organisation) e.g. Project Management services] |
| Organisation | [Organisation of the person making/signing this declaration] |
| Procurement Title | [Procurement title] |
| Circumstances | [Describe the circumstances of the Commercial Conflict of Interest including:   * the other services (e.g. design services) proposed to be awarded/allowed to be bid for by the person making the declaration (or by their organisation) * procurement value of the other services (e.g. the design fee) * proposed procurement process for sourcing the other services (e.g. direct source, close tender, open tender)   [Note: the proposed procurement process must comply with the thresholds in the school property procurement framework e.g. $50,000 or more: closed tender (seek three quotes)] |
| Rationale for proposed approach | [Describe the reasons that support awarding the contract to/allowing a bid from the person making the declaration (or their organisation)]  [E.g. relative low value of the other services, remote location of school means no other suppliers available, remote location of the school makes it uneconomic to have a separate supplier, specialist knowledge of circumstances precludes having a separate supplier] |
| Conflict management plan | [Describe the measures to be taken to manage the commercial conflict. Measures may include:   * what separation of duties will be put in place to maintain objectivity/impartiality * what independent oversight will be put in place to provide assurance of objectivity/impartiality * who will evaluate the bid/offer of service to determine fit for purpose * how will price be evaluated to ensure that it represents value for money * (if appropriate) how will fair treatment/evaluation/opportunity be provided to other potential suppliers? * how will performance delivering the other services be managed?] |
| **Signatures** | |
| Person making the declaration | [Name] Date: |
| Endorsed by  Procurement Sponsor | [Name] Date: |
| Approved/declined by  [School Property Advisor] | Approved / Declined  [Name] Date: |
| Comments/instructions | [Comments by the Approver: reasons for the decision to approve/decline the proposed approach and/or any additional instructions for the managing the commercial conflict of Interest] |