

ACT PUBLIC SECTOR – Commercial engagements with former ACTPS executives

Purpose

1. To manage all actual and perceived conflicts of interest arising where former ACT Public Service (ACTPS) executives become independent consultants, or are employed by a consulting company, and propose to engage in commercial activity with the Territory within two years of separating as an employee of the Territory.

Application

2. This policy applies to all ACTPS executives who separate from the ACTPS for a period of two years from the date of separation.

Principles

3. The *Government Procurement Act 2001* sets out at section 22A that the primary procurement principle is obtaining value for money.
4. In the pursuit of value for money, a delegate must have regard to a range of considerations including;
 - Probity and ethical behaviour;
 - Management of risk; and
 - Open and effective competition.
5. Engaging former ACTPS executives through a non-competitive process may lead to a perception of patronage and impropriety.
6. There may also be a risk of former executives using sensitive commercial information gained in the course of their employment with the Territory for personal gain or the benefit of a third party.
7. To address these risks, former ACTPS executives should generally not be engaged through a non-competitive process (single select) either directly or indirectly, for a period of two years from the date on which they separate from the ACTPS.
8. There may be legitimate reasons which necessitate the engagement of a former ACTPS executive within the two year period following the date of separation through a single

select process. These reasons must be clearly articulated with sufficient justification provided for not progressing such a procurement through an open, competitive process.

9. In order to avoid deliberate or inadvertent use of information gained in the course of ACTPS employment, the Territory, at its absolute discretion, may decline to enter into commercial arrangements with an entity that employs a person who has been an ACTPS executive within the previous two years.
10. For clarity, there is nothing to prevent a former ACTPS executive, or an entity which employs a former ACTPS executive, from providing commercial services to the Territory, at any time, where they secure such an engagement through an open, fully documented, competitive process. However, conflict of interest considerations continue to apply including:
 - The degree of connection between the former executive's role with the ACTPS and the role they are proposing to perform for the Territory as an independent contractor or through a third party employer;
 - The potential for use of sensitive information gained in the course of the executive's ACTPS employment to the detriment of the Territory; and
 - Public perception of the changed nature of the employment relationship and a former executive gaining an additional advantage by virtue of their former position with the ACTPS.

Responsibilities – Transitional Arrangements

11. Former ACTPS executives who are currently providing services to the Territory on the basis of non-competitive procurement processes may continue to provide those services until the end of the current contract. This policy must be applied to any optional extension or new contract to be entered into.

Further Advice

12. Further enquiries may be directed to the Manager, Legislation, Policy and Executive Contracts, Workforce Capability and Governance, CMTEDD, on 6205 2391.

Legislative Reference

Government Procurement Act 2001 <http://www.legislation.act.gov.au/a/2001-28/current/pdf/2001-28.pdf>

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