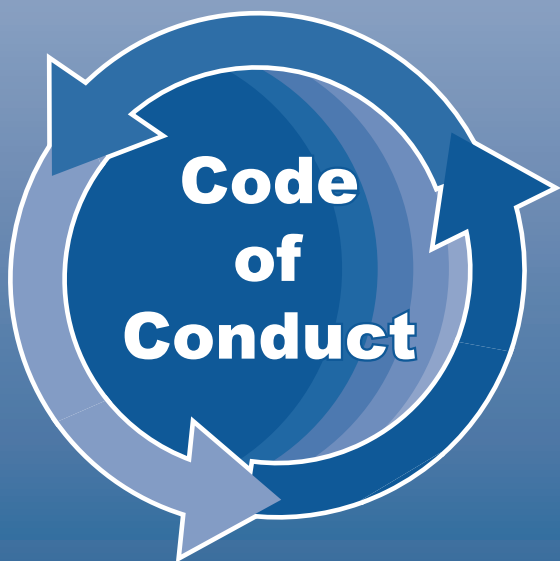




ICAC

INDEPENDENT COMMISSION AGAINST CORRUPTION



**on Procurement
for Public Officials**

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Message from the Director-General ICAC and Director of the PPO

Public Procurement which is one of the major activities in every public institution results, in aggregate, into substantial public expenditure representing a significant percentage of the Gross Domestic Product (GDP) in a number of countries. In Mauritius, for the year 2014 an amount of Rs 16.7 billion was approved for contracts above Rs 100,000 representing nearly 5% of GDP for that year. Wherever there are movements of goods and financial resources, curbing the high risk of malpractices/corruption remains a major challenge of governance institutions.

Recognising such risks, the public procurement system, as designed in the Public Procurement Act 2006, embeds Article 9 of the United Nations Convention Against Corruption that emphasises, amongst others, the three core principles for an effective procurement system namely, transparency, competition and objective criteria in decision making.

However, even the best structured system to regulate the procurement process is not enough if the person behind the system does not meet the standards of probity. As stated by Dr B. R. Ambedkar, father of the Indian Constitution:

“However good a system might be it is sure to turn out bad if those who are called upon to work in it are untrustworthy.....”

While laws and regulations will partially address the risk of malpractices, the primary emphasis of this Code of Conduct is on the trust of public officials as the custodian in use of public funds.

Guided by this requirement, the ICAC, in collaboration with the Procurement Policy Office, has revised the former “Code of Conduct for Public Officials Involved in Procurement” that was issued in 2009.

This revised Code of Conduct which emphasises on ethical issues complements the provisions of the law. We urge public officials to comply with the Code to uphold the standards of integrity in public procurement practices.



L. Aujayeb

Director-General

Independent Corruption Against Corruption



M. Dhoorundhur

Director

Procurement Policy Office

Introduction

Public Officials involved in procurement activities represent the state in their interface with the business sector and Civil Society while performing their public duties. This privileged position implies that public procurement officials may take actions and make decisions which may have significant impact on the lives of citizens.

As a result, officials involved in the procurement processes are expected to perform their duties lawfully, honestly and fairly. In particular, they are expected to make judicious use of the power, authority and resources at their disposal and to avoid situations of conflict between their personal interests and their official duties.

In this respect, a Code of Conduct is a useful asset that helps to solve ethical dilemmas. At the same time it makes the citizens aware of the basic standards of behaviour that are expected from officials involved in the procurement process.

The ICAC has revised the Code of Conduct for Public Officials Involved in Procurement developed in 2009 in collaboration with the Procurement Policy Office. The Code sets the minimum standards of behaviour which public officials involved in procurement activities are expected to uphold. It complements the provisions of the Public Procurement Act 2006, as amended. Its application should not in any way supersede relevant legislations and regulations.

The Code addresses the following key elements pertaining to behaviour, actions and practices of officials involved in public procurement:

- (a) transparency in their decision-making processes;
- (b) accountability regarding their roles and responsibilities;
- (c) equity and fairness in their actions;
- (d) management of situations of conflict of interests; and
- (e) use of confidential and proprietary information.

The Code of Conduct was reviewed in consultation with different government departments. It is expected to help to achieve a strategic approach to procurement. However, an effective Code of Conduct requires successful implementation which includes essentially proper endorsement, integration, effective communication of the Code and appropriate training. Management has a key role to play in order to ensure compliance and the right behaviour, actions and practices. It also has the responsibility to monitor its effective implementation.

Definitions

- We** Refers to Public Officials involved in procurement activities.
- Associate** As per the Prevention of Corruption Act 2002, as amended, an associate in relation to a person, means –
- (a) a person who is a nominee or an employee of that person;
 - (b) a person who manages the affairs of that person;
 - (c) a firm of which that person, or his nominee, is a partner or a person in charge or in control of its business or affairs;
 - (d) a company in which that person, or his nominee, is a director or is in charge or in control of its business or affairs, or in which that person, alone or together with his nominee, holds a controlling interest, or shares amounting to more than 30 per cent of the total issued share capital; or
 - (e) the trustee of a trust, where -
 - (i) the trust has been created by that person; or
 - (ii) the total value of the assets contributed by that person to the trust at any time, whether before or after the creation of the trust, amounts, at any time, to not less than 20 per cent of the total value of the assets of the trust.
- Public body** As per the Prevention of Corruption Act 2002, as amended, a public body -
- (a) means a Ministry or Government department, a Commission set up under the Constitution or under the authority of any other law, a local authority, or a statutory corporation; and
 - (b) includes a Government company.
- As per the Public Procurement Act 2006, as amended, a public body -
- (a) means any Ministry or other agency of the Government;
 - (b) includes -
 - (i) a local authority;
 - (ii) a parastatal body; and
 - (iii) such other bodies specified in the Schedule.

- Public official** As per the Prevention of Corruption Act 2002, as amended, a public official -
- (a) means a Minister, a member of the National Assembly, a public officer, a local government officer, an employee or member of a local authority, a member of a Commission set up under the Constitution, an employee or member of a statutory corporation, or an employee or director of any Government company;
 - (b) includes a Judge, an arbitrator, an assessor or a member of a jury;
 - (c) includes an official of the International Criminal Court referred to in the International Criminal Court Act 2011.
-
- Relative** As per the Prevention of Corruption Act 2002, as amended, a relative in relation to a person, means -
- (a) a spouse or conjugal partner of that person;
 - (b) a brother or sister of that person;
 - (c) a brother or sister of the spouse of that person; or
 - (d) any lineal ascendant or descendant of that person.

Statement of Values

Trust	We uphold public trust by acting in accordance with the law and in the interest of all stakeholders.
Selflessness	We take decisions solely in terms of public interest. We do not act in order to gain financial or other benefits for ourselves and our relatives.
Equity & Fairness	We provide equal opportunities and justice for all potential suppliers in the process.
Impartiality	We treat all potential suppliers the same way and without bias.
Objectivity	We ensure that any decision is free from subjectivity and bias.
Accountability	We are accountable to the public and the Government for our actions and decisions and ensure that resources are used judiciously.
Transparency	We ensure transparency in the decision-making process and in our actions.
Integrity	We act honestly and in good faith in the interest of the Government and its different stakeholders.
Non - Discrimination	We do not discriminate against potential bidders/suppliers on the ground of sex, marital status, colour, race, ethnic or place of origin, caste, creed, impairment, age, disability, political opinion, occupation, status, sexual orientation or religious beliefs.
Professionalism	We work to the highest standards of professionalism.
Respect	We respect our colleagues, potential suppliers and treat them with courtesy at all times.

Code of Conduct for Public Officials Involved in Procurement

1. Rule of Law

Comply with laws, regulations and contractual obligations.

2. Accountability

Be accountable for all works and actions and ensure that value for money is obtained at all times.

3. Transparency

Carry out all procurement activities in a transparent manner where decisions are properly documented and justified. Relevant information is available and communicated to stakeholders at the appropriate time.

4. Equity & Fairness

Provide fair and equitable treatment to all bidders and suppliers.

5. Conflict of Interests

Avoid and prevent situations that can give rise to conflict of interests, or the appearance thereof. Declare any personal interest in writing that may affect, or be seen by others to affect impartiality in any decision making. Abstain from participating in that decision in line with Section 13 of the Prevention of Corruption Act 2002, as amended.

6. Undue influence

Never misuse authority or position for personal gain/interest.

7. Soliciting and accepting gifts and other benefits

Refrain from practices which may reasonably be deemed improper such as accepting/soliciting inducements or gifts.

8. Protect confidentiality and proprietary information

Protect confidential and proprietary information of the organisation as well as bidders/suppliers.

9. Professionalism

Strive for the highest standards of professionalism in all procurement activities.

10. Relationship with suppliers

Promote sound supplier relationship within the legal framework.

1 : RULE OF LAW

Compliance with laws and regulations ensures predictability and acts as a stabilising force to minimise opportunities for corruption and malpractices.

We shall:

- comply with applicable laws, regulations, directives and circulars governing procurement of goods, services and works.
- condemn and take appropriate actions against any act that violates policies and rules of the public body or those of the Procurement Policy Office.
- respect the terms and conditions of payment to suppliers as set out in the bidding documents.
- avoid, through appropriate actions and behaviour, any conduct that creates the perception that we are violating the law or ethical standards.

2 : ACCOUNTABILITY

Accountability implies that individuals and organisations are held responsible for properly executing the powers delegated to them and reporting how procurement has achieved its anticipated outcomes.

We shall:

- plan, execute and monitor our procurement activities in line with our corporate objectives.
- develop and adhere to appropriate procurement policy and procedures that incorporate and promote principles of probity.
- ensure appropriate segregation of duties and responsibilities.
- deal promptly with all written or verbal complaints related to procurement.
- keep accurate and updated records for internal and external scrutiny throughout the procurement process.
- not negotiate with bidders except in such circumstances as may be provided by law.
- monitor suppliers' performance against agreed standards and initiate remedial measures as appropriate.

3 : TRANSPARENCY

Transparency refers to the openness of a procurement activity to withstand scrutiny by interested parties. It concerns access to relevant information.

We shall:

- ensure that the bidding documents contain all relevant information including qualification/evaluation criteria to enable potential suppliers to bid properly.
- ensure that changes made in bidding documents during a procurement process are brought to the attention of all potential bidders.
- ensure that queries made by a bidder are attended to promptly and any clarification/additional information given is imparted to all other bidders concerned.
- notify bidders where applicable of the grounds for the rejection of their bids, the cancellation of the procurement proceedings or the outcome of the bidding process in a timely manner.

4 : EQUITY AND FAIRNESS

Sound public procurement is based on the principles of fairness and equity. These involve equal opportunities and procedural fairness to all bidders at all stages of the procurement process. When bidders believe the process to be prejudiced or the outcomes tainted by bias, they may lose faith and confidence in the system.

We shall:

- use, where applicable, an appropriate method of procurement for each bidding exercise.
- ensure that a reasonable time is given to bidders to prepare and submit their bids.
- ensure that specifications are drawn up in a manner which meet the procurement principle of maintaining open and fair competition.
- ensure that the process, qualification and evaluation criteria are determined in such a way as to enable relevant firms to compete fairly and equitably.
- ensure that bids are examined and evaluated in accordance with criteria as set in the bid documents.
- ensure that all bidders are given the same information within the same time frame with regard to the bidding exercise.
- abide by the challenge and review mechanism.

5 : CONFLICT OF INTERESTS

“Conflict of interests” may be defined as a real or seeming incompatibility between one’s private interests and one’s fiduciary duties.

As per Section 13 of the Prevention of Corruption Act 2002, as amended:

(1) *Where -*

- (a) *a public body in which a public official is a member, director or employee proposes to deal with a company, partnership or other undertaking in which that public official or a relative or associate of his has a direct or indirect interest; and*
- (b) *that public official and/or his relative or associate hold more than 10 per cent of the total issued share capital or of the total equity participation in such company, partnership or other undertaking,*

that public official shall forthwith disclose, in writing, to that public body the nature of such interest.

- (2) *Where a public official or a relative or associate of his has a personal interest in a decision which a public body is to take, that public official shall not vote or take part in any proceedings of that public body relating to such decision.*
- (3) *Any public official who contravenes subsection (1) or (2) shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.*

We shall:

- disclose promptly, fully and appropriately in writing to management or other relevant official as appropriate, any situation of conflict of interests and the nature of such interests. *A sample declaration form is provided in Tool 2.*
- not vote or take part in the proceedings relating to such decisions.
- ensure that the disclosure of interests is properly recorded.
- avoid situations in which our private interests conflict or might reasonably be thought to conflict with our public duty.
- assist management during the risk assessment exercise to identify areas prone to situations of conflict of interests in the procurement cycle.

6 : AVOIDANCE OF UNDUE INFLUENCE

Undue influence in the procurement of goods, services and works occurs when a person directly or indirectly, in any manner whatsoever influences or attempts to influence public officials in the performance of their duties relating to procurement.

Section 12 of the Prevention of Corruption Act 2002, as amended, provides that -

- (1) *Any person who gives or agrees to give or offers a gratification to a public official in consideration of that public official giving assistance or using influence in -*
 - (a) *promoting, executing, or procuring a contract with a public body for the performance of a work, the supply of a service, or the procurement of supplies;*
 - (b) *the payment of the price provided for in a contract with a public body;*
 - (c) *obtaining for that person or for any other person, an advantage under a contract for work or procurement,*

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.
- (2) *Any public official who solicits, accepts or obtains from any other person, for himself or for any other person, a gratification for giving assistance or using influence in -*
 - (a) *promoting, executing, or procuring a contract with a public body for the performance of a work, the supply of a service, or the procurement of supplies;*
 - (b) *the payment of the price provided for in a contract with a public body;*
 - (c) *obtaining for that person or for any other person, an advantage under a contract for work or procurement,*

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

We shall:

- not accept or solicit any private benefit (such as gifts, discounts, free air tickets, etc, except token and emblematic gifts) which may cause undue influence on our decisions or actions affecting the conduct of a procurement activity.
- avoid undue influence from other parties who offer or promise private benefits to us, our relatives or associates.
- not attempt to influence the decisions or actions of other public officials to obtain private benefits/gains.
- report immediately to our employer whenever experiencing undue influence.

7 : SOLICITING AND ACCEPTING GIFTS & OTHER PERSONAL BENEFITS

Soliciting and accepting gifts and benefits may quickly become a habit and then an expectation. If this happens the officer involved in procurement may find himself or herself favouring suppliers who are likely to express their gratitude materially.

According to Section 15 of the Prevention of Corruption Act 2002, as amended

Any public official who solicits, accepts or obtains a gratification for himself or for any other person -

- a) from a person, whom he knows to have been, to be, or to be likely to be, concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with his functions or those of any public official to whom he is subordinate or of whom he is the superior; or*
- b) from a person whom he knows to be interested in or related to the person so concerned,*

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

We shall:

- adopt a “zero tolerance” approach and shall not accept or solicit any type of gift, favour, advantage or any offer of hospitality.
- be particularly alert to attempts to influence us in circumstances when we are dealing with commercially sensitive information.
- impress on our relatives and associates that they are not to accept any type of gift or any offer of hospitality so that we are not compromised in our duties.
- report to the ICAC whenever suspecting an act of corruption has been committed in relation to a public body in line with Sections 44 and 45 of the Prevention of Corruption Act 2002, as amended.

8 : USE OF CONFIDENTIAL AND PROPRIETARY INFORMATION

In exercising their duties, public officers involved in procurement obtain confidential and proprietary information belonging to employers or suppliers which should be handled with due care and diligence. Confidential information may be misused through leakage for one's financial advantage, thus harming the organisation.

We shall:

- never disclose confidential information or documents acquired in the course of public employment, except when required to do so by law or when proper authority has been obtained.
- give access to bid information strictly on a need-to-know basis.
- restrict access to confidential information to authorised personnel only.
- implement documented procedures for electronic security including information storage and communication processes.
- ensure that confidential and proprietary information such as bid information, supply sources, drawings and blueprints are not disclosed.

9 : PROFESSIONALISM

Public officials require a broad range of skills and competence within the field of procurement, an area which is continuously evolving. A professional approach impacts positively on the organisation. It helps to gain respect and credibility from all stakeholders.

We shall:

- align our systems and procedures to best practices in the fulfilment of our duties.
- commit ourselves to continuous professional improvements in order to perform to the best of our capabilities.
- ensure that the organisational system is of the highest standards.
- strive to reduce lead time, costs and improve quality outcomes to ensure a more efficient and effective procurement.
- contribute to human resource policies with the highest level of professionalism.
- ensure that our private interests do not conflict with our official duties.
- comply with laws, regulations, circulars, directives and observe guidelines.
- enhance professionalism as a key element to prevent risks to integrity in procurement.

10 : RELATIONSHIP WITH SUPPLIERS

Relationship with suppliers must be based on the principles of trust, confidence, fairness, impartiality and professionalism.

We shall:

- ensure that right supplier relationship is created and leads to the fulfilment of obligations by both parties.
- be open to suggestions and comments from suppliers in relation to procurement process and contract execution.
- communicate the weaknesses noted in the execution of the contracts promptly to the suppliers concerned with a view to giving them the opportunity to improve their performance.
- avoid socialising/familiarising with any bidder/supplier during the procurement exercise.
- not be involved in unethical practices by misuse of professional relationships.

Implementation Tools

Tool No. 1

ACKNOWLEDGEMENT FORM

Ministry / Department /
Organisation

I, _____, have received and read the Code of Conduct for Public Officials Involved in Procurement. I have taken cognizance of and understood the provisions contained in it and I agree to fully comply with the Code of Conduct.

Name : _____

Designation : _____

Place : _____

Date : _____

Signature : _____

Implementation Tools

Tool No. 2

CONFLICT OF INTERESTS DECLARATION FORM

1. PERSONAL DETAILS

Name: _____

Designation: _____

Organisation: _____

2. THE SITUATION

Matter under consideration:

Your expected roles/duties to be performed in dealing with this matter:

Are you required to vote or take part in any proceedings of the public body relating to such decision?

Yes No

3. PRIVATE INTERESTS

- (i). Do you or your relative* or your associate*** have a direct or indirect interest in the company, partnership, or other undertaking which your public body is proposing to deal with?

Yes No

and

- (ii). Do you or your relative or your associate hold(s) more than 10 per cent of total issued share capital or of the total equity participation in the company, partnership or other undertaking which your public body is proposing to deal with?

Yes No

If “YES,” please provide full information below.

- (iii). Do you or your relative or your associate has a personal interest in the decision which your public body is to take?

Yes No

If “YES,” please provide full information below.

4. CERTIFICATION

The above is an accurate and current statement of all my reportable interests to the best of my knowledge. I make this declaration in good faith and further state that I am aware of the consequences of any false or incorrect information given by me.

_____ Date:

_____ Signature:

Please return this form to the Senior Chief Executive/Permanent Secretary or Chief Executive Officer.

I have declared my interests and hereby abstain from participation in the above process.

_____ Date:

_____ Signature:

HEAD'S STATEMENT / ACTION TAKEN

DECISION

_____ Date:

_____ Signature:

Please Note

* “**relative**”, in relation to a person, means -

- (a) a spouse or conjugal partner of that person;
- (b) a brother or sister of that person;
- (c) a brother or sister of the spouse of that person; or
- (d) any lineal ascendant or descendant of that person**

** Lineal ascendant or descendant of that person- example father, mother, son or daughter of that person

*** “**associate**”, in relation to a person, means -

- (a) a person who is a nominee or an employee of that person;
- (b) a person who manages the affairs of that person;
- (c) a firm of which that person, or his nominee, is a partner or a person in charge or in control of its business or affairs;
- (d) a company in which that person, or his nominee, is a director or is in charge or in control of its business or affairs , or in which that person, alone or together with his nominee, holds a controlling interest, or shares amounting to more than 30 percent of the total issued share capital: or
- (e) the trustee of a trust, where -
 - (i) the trust has been created by that person; or
 - (ii) the total value of the assets contributed by that person to the trust at any time, whether before or after the creation of the trust, amounts, at any time, to not less than 20 per cent of the total value of the assets of the trust.

*Reject corruption
Always choose the right way*



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