



Part 1 – Annex 4:

## **Caution, duty of non-disclosure and conflict of interest**

Contract number: 24/00573

# Caution, duty of non-disclosure and conflict of interest

## 1. Purpose

The Ministry of Defence (MOD) and the Defence sector<sup>1</sup> shall act in accordance with good business practice and ensure a high business ethical standard in their case handling in all phases of the procurement process.

Likewise, it is expected that each contractor adheres to good business practices and likewise ensures a high business ethical standard. All suppliers are expected to be transparent with regards to their connection to any project which, directly or indirectly, may affect their cooperation with the Defence sector. Any lobbyist acting on behalf of the supplier must be reported to the Defence sector. If a contractor fails to adhere to good business practices and transparency, this may undermine the trust in the relationship between the contractor and the Defence sector, and potentially also the rating of the contractor's tender in the final decision process.

## 2. Caution

Throughout the procurement process the contractor shall ensure that former Ministry of Defence or Defence sector personnel do not encounter situations that place such former Ministry of Defence or Defence sector personnel at risk of violating non-disclosure agreements or situations where conflicts of interest can arise.

Personnel who have been employed by the Ministry of Defence or in the Defence sector in the last two years shall be restricted from participating in the contractor's contact with the Defence sector. Exceptions may be made by Ministry of Defence in cases where these restrictions are deemed unreasonable.

The contractor is requested to inform the Contracting Authority of whether such conflict may arise. The Ministry of Defence and the Defence sector reserves the right to request changes to the contractor's personnel regarding who may interact with the Contracting Authority.

## 3. Duty of non-disclosure

Anyone who performs services or work for an administrative agency is obligated to prevent third parties from gaining access to or knowledge of technical installations and procedures, as well as operational and business relations, which for competitive reasons are important not to disclose in the interest of the party which such information concerns cf. section 13 first paragraph of the Public Administration Act (10 February 1967) and section 7-4 of the

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<sup>1</sup> The defense sector denotes the Ministry of Defense with subordinate agencies (the Armed Forces, the Norwegian National Security Authority, the Norwegian Defense Materiel Agency, the Norwegian Defence Research Establishment, the Norwegian Intelligence Service and the Norwegian Defense Estates Agency).

Regulation of 12 August 2016 No. 974 on public procurement (the Public Procurement regulation (FOA)).

Anyone that gains access to classified information in connection with work, assignments, or task on behalf of a business, is obligated to prevent unauthorized personnel from gaining knowledge of such information, cf. section 5-4 of the Act 1 June 2018 No. 24 on national security (the Security Act).

The duty of non-disclosure also applies after authorized personnel have discontinued their services, work, assignment or tasks, cf. Section 13, third paragraph of the Public Administration Act and section 5-4 of the Security Act.

#### **4. Conflict of interest**

A public official is disqualified from preparing the basis for decisions or making decisions regarding an administrative case whenever he is a party, is related to a party, or holds a senior position in, or is a member of the board of directors, in a company that is a party, cf. section 6 of the Public Administration Act. Furthermore, a public official is disqualified if there are any other *special circumstances* which are apt to impair confidence in his impartiality. Due regard shall inter alia be paid to whether the decision in the case may entail any special advantage, loss, or inconvenience for him personally or for anyone with whom he has a close personal association, cf. section 6 second paragraph of the Public Administration Act.

At the handling of cases governed by the Public Procurement regulation (FOA) and regulation of 25. October 2013 no. 1411 Procurement regulation for the Armed Forces (ARF) the provisions regarding conflict of interest mentioned in sections 6 to 10 of the Public Administration Act apply. Where the Public Administration Act is not directly applicable, the regulations of sections 6-10 of the Public Administration Act apply accordingly, cf. section 7-5 first paragraph of FOA.