

PRUDENCE, NON-DISCLOSURE AND CONFLICT OF INTEREST

Purpose

The Ministry of Defence (MoD) and the defence sector¹ shall act in accordance with good business practice and pursue the highest ethical standards throughout all stages of the acquisition process.

Likewise, the MoD and the defence sector expect all suppliers to adhere to good business practices and pursue the highest ethical standards. All suppliers are expected to be transparent about their connection to any project, which directly or indirectly may affect their cooperation with the defence sector. The name of any lobbyist acting on behalf of the supplier must be reported to the defence sector. If a supplier fails to act with openness and adhere to good business practices and the highest ethical standards, this may undermine trust in the relationship between the supplier and the defence sector, and potentially also the rating of the supplier's bid in the final decision process.

Prudence (Post Employment Restrictions)

Throughout the acquisition process, the supplier shall ensure that former MoD or defence sector employees do not encounter situations that place the former MoD or defence sector employee at risk of violating non-disclosure agreements (with their former employer) or situations where conflicts of interest can arise.

Personnel who were employed in the MoD or the defence sector in the last two years shall, as a basic principle, not be used for direct contact with the defence sector in a procurement process. The MoD may grant a waiver from this rule in cases where this is deemed unreasonable.

The supplier is requested to inform the defence sector if such conflicts may arise. The MoD and the defence sector have the prerogative to request changes to which personnel the supplier use in interaction with the defence sector.

Non-Disclosure Agreements (Professional Secrecy)

Any person performing services to, or working for, an administrative agency is obligated to prevent others from gaining access to, or obtaining knowledge of, any matter disclosed to him in the course of his duties concerning: technical devices, installations or procedures, as well as operational or business matters which for competitive reasons it is important keep secret in the interest of the party whom the information concerns, ref. the Public Administration Act² paragraph 13 section one, and public procurement regulations.

¹ The defence sector encompasses the Ministry of Defence and its administratively subordinate agencies.

² Unofficial translation of the Public Administration act: <https://lovdata.no/dokument/NLE/lov/1967-02-10>

Any person who gains access to classified information in the course of his or her work, assignments or office for an enterprise has a duty to prevent unauthorised persons from gaining knowledge of such information, ref. the National Security Act³ paragraph 5-4.

The duty of secrecy also applies after the person concerned has terminated his service, work, assignment or task, nor may he exploit such information in his own business activities or in service or work for others, ref. the Public Administration Act paragraph 13 section three and the National Security Act paragraph 5-4.

Conflict of Interest

A government official⁴ is disqualified from preparing the basis for decisions or from making any decisions in an administrative case whenever he is a party to the case, is related to a party, has a management position in, or is a member of the executive board of a company that is a party (to a case), ref. the Public Administration Act paragraph 6 section one.

Furthermore, a government official is disqualified if there are any other special circumstances, which may undermine trust in his impartiality. Due regard shall inter alia be paid to whether the decision in the case may result in special advantage, loss or inconvenience for him personally or for anyone closely associated with him, ref. the Public Administration Act paragraph 6 section two.

When dealing with cases governed by the public procurement regulations and the Defence Acquisition Regulations the provisions regarding conflict of interest in the Public Administration Act paragraph 6-10 shall be applied. However, where the Public Administration Act is not directly applicable, the provisions in the Public Administration Act paragraph 6 to 10 apply accordingly, ref. public procurement regulations and the Defence Acquisition Regulations.

³ The National Security Act in Norwegian: <https://lovdata.no/dokument/NL/lov/2018-06-01-24?q=sikkerhetsloven>

⁴ Including both civilian and military personnel.