Conflict of Interest Policy

Energy Procurement Supply Association

1. PURPOSE AND APPLICATION OF POLICY

1.1 This policy applies to all members of the Energy Procurement Supply Association (**EPSA**) to the extent that they are making decisions or undertaking activities on behalf of EPSA (including, but not limited to, members of the management committee).

1.2 The purpose of this policy is to ensure that conflicts of interest are promptly disclosed, managed and, where appropriate, avoided in order to minimise legal and reputational risk to EPSA and its members.

1.3 References in this policy to a member's company should be understood to refer to a company that employs the member (or for whom the member is otherwise engaged to provide services).

2. WHAT IS A CONFLICT OF INTEREST?

2.1 A **conflict of interest** exists if a member has an interest or duty outside of their EPSA membership which could improperly influence, or be perceived to improperly influence, the way in which they undertake activities for or on behalf of EPSA, or contribute to EPSA's objectives, or which could improperly undermine, or be perceived to improperly undermine, their loyalty to EPSA.

2.2 An **outside interest or duty** may give rise to a conflict whether or not the member:

(a) believes that the outside duty or interest has had, or will have, any actual influence on their ability or the way in which they act for or on behalf of EPSA, or other contribute to EPSA. A conflict will arise if the outside duty or interest has even the potential to influence, or might reasonably be perceived to influence, their actions or contributions as a member of EPSA;

(b) stands to gain financially by favouring the outside interest or duty. A conflict will arise if, for example, a member is in a position to show favour (or disfavour) to a personal contact or relative who is affiliated with a prospective member of or supplier to EPSA;

(c) receives any actual advantage or benefit from favouring the outside interest or duty. A conflict will usually arise if there is even a mere possibility that the member will obtain an advantage or benefit for themselves, their company or a personal contact (eg a family member) because of how they act for or contribute as a member of EPSA;

(d) is ultimately responsible for making the decision which relates to their outside interest or duties. A conflict will arise if, for example, the member is merely one of a number of people involved in evaluating an opportunity (including a tender process) or negotiation in which they have some outside interest; or

(e) has a professional or personal outside interest or duty, or a mix of both. A conflict would arise if, for example, a member was offered a discount from a personal contact of a supplier on the understanding that they would use their EPSA membership to refer EPSA members to the supplier and promote its goods and services.

2.3 A conflict of interest might also arise because a member **acquires confidential information** which is commercially or competitively sensitive, as between one individual EPSA member and some other entity in which the member has an interest. For example, a conflict may exist if a member has access to confidential information about another EPSA member which that member could then use to gain an improper advantage outside of EPSA (for instance, in the course of the member's employment).

2.4 **Competitively sensitive information (CSI)** is defined in EPSA's Competition Law Compliance Policy as including non-public information about:

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(a) pricing (or components of price such as discounts, rebates, freight or service charges etc) of goods or services supplied or acquired by a member;

(b) current profit margins, volumes or revenue;

(c) customers or suppliers, including their identity and material contract/trading terms;

(d) costs or significant components of costs, including cost information by customer, supplier, service or product;

(e) bids, tenders or negotiations with current or potential customers or suppliers, including any future bidding intentions; and

(f) confidential business strategies, including plans for expansion into, or exit from, particular activities.

2.5 To the extent that any member is in possession of CSI of another EPSA member , it is vital that the member does not share the CSI with any actual or potential competitor of that EPSA member.

2.6 **The existence of a conflict of interest does not necessarily breach this policy or the law.** Conflicts can arise unexpectedly in the course of EPSA's operations. It is essential that any such conflicts are identified and managed promptly, in accordance with this policy. In some cases, the failure to properly manage conflicts can result in exposure to liability including under:

(a) **anti-bribery and corruption laws**, including criminal liability, for both EPSA and the member involved;

(b) **competition laws**, including criminal liability (under 'cartel' laws), where the conflict situation involves the exchange of CSI between EPSA members who are competitors; and

(c) **corporations law**, where it involves a director or officer of an EPSA member.

3. DISCLOSING AND RECORDING CONFLICTS OF INTEREST

3.1 All EPSA members have an ongoing responsibility to identify conflicts of interest that might arise in the course of their membership (including potential or perceived conflicts, as explained in Section 2).

3.2 If a member considers that they have or may have a conflict of interest, they must report the conflict as soon as possible to the President of EPSA (President) (or, if the management committee person who considers they have or may have a conflict is the President, the Secretary of EPSA).

3.3 If the relevant conflict involves CSI, the member must consider whether they can disclose the existence of the actual or potential conflict without inappropriately disclosing CSI. If not, or they are uncertain, EPSA will assist the member to obtain legal advice as to the appropriate steps to follow in making the disclosure.

3.4 If the conflict of interest involves the exchange (including the mere receipt) of CSI with an actual or potential competitor of the member's company, the member must also:

(a) not act in any way on the CSI of the competitor;

(b) not share the member's company's CSI with the competitor;

(c) not use the member's company's CSI for any purpose connected to the competitor;

(d) not share CSI of the competitor with anyone, except for the purpose of complying with the disclosure obligation in section 3.2; and

(e) cease any communications about the CSI with the competitor, other than in accordance with instructions from the President as part of managing the conflict (eg an instruction that the competitor be told to delete the member's company's CSI).

3.5 The President will maintain (or cause to be maintained under their direct supervision) a register of conflicts of interest, which will record the nature of the conflict and its resolution.

4. MANAGING A CONFLICT OF INTEREST

4.1 The President is responsible for deciding how to manage a conflict of interest which has been disclosed under section 3.

4.2 The appropriate steps to manage a conflict will depend on the circumstances of the conflict. The table below contains a non-exhaustive list of possible responses, and some examples of when each response might be appropriate. The examples are simplified for illustration purposes – it is possible that a different response might be appropriate in similar circumstances.

Possible response	When might response be appropriate?	Simplified example
Do nothing further	This might be appropriate if the President decides that the report does not disclose a conflict of interest.	A member discloses that their family member has applied for a job at a utility company which was recently admitted as an EPSA member.
Prevent involvement in a decision-making process	This might be appropriate if the conflict, and the particular decision-making process, is a one-off occurrence (ie, the interest which gave rise to the conflict is not inherently improper and is unlikely to give rise to future conflicts).	A member is employed by an energy generation company whose data analytics arm has developed a new Supply Chain Data Analysis Tool. The question of whether to promote this tool to EPSA's membership is listed for discussion on the agenda for an upcoming meeting of the management committee. The member does not participate in any part of the decision-making process, including the discussion or review of the product.
Reduce involvement in a decision-making process	This might be appropriate if (a) the member's involvement in the process can be managed to prevent any influence; and (b) for practical reasons, it is not feasible for the member to be removed from the decision-making process altogether.	Same as the previous example, except that the member has particular experience and knowledge which means it is highly beneficial to the management committee (and EPSA's membership) for them to comment on specific aspects of the tool. The relevant member comments on the operation of the tool and technical aspects that are within their area of knowledge and experience, but is not otherwise involved in the decision-making process.

Possible response	When might response be appropriate?	Simplified example
Give up the outside interest or duty that created the conflict	This might be appropriate if the conflict can be removed by disposing of an interest, particularly if the conflict cannot otherwise be easily managed.	A member is employed by an energy generation company and (as part of their employment) is heavily involved in the evaluation of tender responses. While attending a conference, the member overhears another EPSA member discussing its intention to bid on a tender that the member is responsible for, together with some information about the proposed bid. The member discloses the conflict to their employer and removes themselves from the evaluation of the relevant tender.
Alter the role being performed by the member	A change to a member's role might be appropriate where that can be accommodated without any significant disruption and the interest or duty which gives rise to the conflict cannot otherwise be easily managed – eg it arises because of a personal relationship.	The son of a member owns a business that wins a bid to supply EPSA with event management services. The member disclosed the interest before the bid, and had no involvement in the bid process (and restrictions were put in place to prevent their access to information about that process). They would ordinarily be one of the members that deals with the new supplier on a daily basis and assesses their performance. The member is moved from that role to work on other tasks.
Remove the conflict by declining or refusing to deal further with a third party	This might be appropriate if the potential conflict arose because of an improper offer or promise made by a third party (eg a suggestion that a member make or receive a bribe). In such cases, the offer must be refused and that may also resolve any potential conflict.	A member discloses that they have been contacted by an individual who used to work for a supplier. The individual said that they still have contacts at the supplier who they could 'lean on' to increase their supply to EPSA members, in exchange for a private 'referral fee'. The member discloses the offer under this policy, refuses the offer and does not seek any services from the individual.

5. SPECIFIC PROCEDURES FOR CONFIDENTIAL INFORMATION

5.1 Conflicts which arise because a member has, or might gain, access to confidential information of another entity, or could use the member's own company's confidential information in the interests of a third party, might be resolved by information restrictions.

5.2 Each member:

(a) must not use, disclose or copy any confidential information, including CSI, in any form or in any manner except for the purpose of and to the extent necessary to perform their duties to the management committee; and

(b) must use their best endeavours, including keeping such information in a safe place and implementing adequate security measures, to ensure that any confidential information, including CSI, that they receive in the course of their duties is secure from unauthorised access, use, disclosure or copying by third parties.

5.3 Depending on the circumstances, information restrictions that may apply to a member to manage a conflict of interest include:

(a) implementing controls to prevent the member from having physical or electronic access to the relevant information;

(b) implementing controls to prevent the member from being involved in situations or discussions where they might receive or overhear confidential communications about the restricted information;

(c) limiting contact between the member who is subject to the restrictions and any other member who is responsible for using the restricted information;

(d) limiting contact between the member and particular suppliers or other entities who may have access to the information; and

(e) in appropriate cases where the member has already accessed parts of the restricted information or where it is absolutely necessary for them to do so, a written undertaking from the member that they will not use the information (or not use the information except for very specific purposes).

5.4 If information restrictions are put in place, the President will nominate a person to oversee compliance with those restrictions. The nominated person must obtain acknowledgments from:

(a) the member; and

(b) any other members who are likely to access the restricted information,

to the effect that they are aware of the restrictions and will report any breach of the restrictions to the nominated person.

6. OTHER POLICIES

6.1 This policy should be read in conjunction with:

(a) EPSA's Rules of Engagement;

(b) EPSA's Model Rules – Constitution;

(c) EPSA's Competition Law Compliance Policy; and

(d) EPSA's Code of Conduct Policy

7. QUESTIONS ABOUT THIS POLICY

Any questions about this policy should be directed to the EPSA President presidentsdesk@epsaonline.net