



## GENERAL FORM, NOT REFERRING TO A SPECIFIC PROJECT

### DECLARATION OF IMPARTIALITY OF A PROCUREMENT OFFICER IN

**In the event of an apparent conflict of interests on account of a particularly close relationship with a tenderer, I will be obliged to step down because the decision will otherwise be tainted by a formal error and would be annulled by a court, irrespective of whether the decision is correct or not.**

- I will thus notify my superior immediately in writing should a tender be submitted in a procurement process by a tenderer who is particularly close to me or with whom I am otherwise in contact. Examples of a particularly close relationship include close current or past (personal) business connections (e.g. a customer relationship, a strategic partnership, a form of participation or an employment relationship), a partnership (marriage or de facto union), a family relationship or affinity, an economically-dependent relationship or other type of dependent relationship or military comradeship over several years.
- When assessing submitted bids within the scope of a procurement process, I will exclusively represent the interests of the Confederation and  
All information, documents and results in a procurement process are confidential before, during and after the award procedure. In specific terms, this means that data should not be made available in any way whatsoever to unauthorised third parties and should not be removed from the designated premises.
- Moreover, contact is prohibited with potential tenderers before and during the award procedure which could jeopardise equal treatment of the tenderers concerning the procurement in question.
- Failure to comply with the aforementioned points can constitute for federal employees a violation of the duties of due diligence and loyalty under personnel law and the legislation governing the personnel of the Confederation; in the case of external staff members, this could constitute a grave breach of contract.
- Claims for damages based on the Government Liability Act (SR 170.32) which arise in the case of a duty violation of this nature, in particular to do with internal administrative costs where the procurement process is partially or fully repeated, remain reserved.

I confirm that I have taken note of the above and the obligations therein, as well as the following extracts from the pertinent legal bases.

Place and date:

Full name:

Organisational unit:

Signature: \_\_\_\_\_

**Extracts from the Federal Act of 24 March 2000 on the Personnel of the Swiss Confederation (FPA; SR 172.220.1), and from the Federal Ordinance of 3 July 2001 on the Personnel of the Swiss Confederation (FPersO; SR 172.220.111.3):**

### **Safeguarding of interests**

#### ***Art. 20 FPA – Safeguarding the interests of the employer***

<sup>1</sup> Employees must carry out the work assigned to them with due care and attention and safeguard the justified interests of the Confederation or their employer.

### **Taking unfair advantage**

#### ***Art. 21 FPA – Personnel obligations***

<sup>3</sup> Employees are prohibited from accepting gifts or claiming other benefits or obtaining promises for themselves or on behalf of others if this occurs within the context of the employment relationship.

#### ***Art. 93 FPersO – Acceptance of gifts and other benefits***

<sup>1</sup> Small and socially or traditionally motivated benefits are not considered as gifts in terms of the law. The term “small benefits” corresponds to gifts in kind with a market value of CHF 200 or less.

<sup>2</sup> Employees who are involved in a procurement or decision-making process are also prohibited from accepting small and socially or traditionally motivated benefits if:

- a. the benefit is offered by:
  1. an actual or potential tenderer,
  2. a person who is involved in a decision-making process or is affected by this; or
- b. a link between the benefit granted and the procurement or decision-making process cannot be excluded.

<sup>3</sup> If employees have to accept gifts as a matter of courtesy, the gifts must be handed over to the competent office in accordance with Article 2. The acceptance of gifts as a matter of courtesy must be in the overall interests of the Confederation. The acceptance and any utilisation of such gifts will be conducted by the competent office in accordance with Article 2 in favour of the Confederation.

<sup>4</sup> In case of doubt, staff members must clarify the admissibility of the acceptance of benefits with their superiors.

#### ***Art. 93a FPersO – Invitations***

<sup>1</sup> Employees are to decline invitations if accepting them could compromise their impartiality or their ability to do their job effectively. Invitations abroad must be turned down unless the staff member has the written authorisation of his or her immediate superior.

<sup>2</sup> Employees who are involved in a procurement or decision-making process are also prohibited from accepting invitations, if:

- a. the invitation is from:
  1. an actual or potential tenderer,
  2. a person who is involved in a decision-making process or is affected by this; or
- b. a link between the invitation and the procurement or decision-making process cannot be excluded.

<sup>3</sup> In case of doubt, employees must clarify with their superiors whether or not the invitation may be accepted.

### **Art. 94 FPersO – Professional, business and official secrecy**

<sup>1</sup> Employees are obliged to maintain confidentiality regarding professional and business matters which have to be treated as secret due to their nature or because of legislation or directives.

<sup>2</sup> The obligation to observe official and professional secrecy remains even after the termination of the working relationship.

<sup>3</sup> Employees may issue comments as a party, witness or court expert on observations which they made due to their tasks or in carrying out their functions and which refer to their official tasks only if the competent office according to Article 2 gave them written authorisation to do so.

<sup>4</sup> Article 47<sup>bis</sup> of the Parliamentary Procedure Act of 23 March 1962 remains reserved.

### **Art. 94a FPersO – Withdrawal**

<sup>1</sup> Employees must withdraw from a process if they face, or could face, a conflict of interests with regard to their own personal involvement or for any other reason. Even an apparent conflict of interests is enough to justify withdrawal.

<sup>2</sup> The following count as conflicts of interests:

- a. particularly close relationship or personal friendship or ill will with an individual or legal entity involved in a transaction or decision-making process or affected by it;
- b. the existence of a job offer from an individual or legal entity involved in a transaction or decision-making process or affected by it.

<sup>3</sup> Employees must disclose unavoidable conflicts of interests to their superiors in a timely manner. In cases of doubt, the superiors will take a decision on withdrawing.

<sup>4</sup> For employees who have to make a ruling or who have to make preparations for this, Article 10 of the Administrative Procedure Act of 20 December 1968 is applicable.

### **Art. 94b FPersO – Impartiality**

Administrative units which take or prepare decisions on supervisory roles, tax assessment, awarding of contracts or other comparable decision-making processes may agree a ban on activities undertaken for another employer or client with employees having the function of director, deputy director or vice-director. For a maximum period of two years after the termination of their employment relationship, these employees may be prohibited from working within the scope of an employment or contractual relationship for an addressee which was significantly affected by one of the decisions mentioned in the two years preceding termination of the employment relationship.

## **Secondary occupation**

### **Art. 23 FPA**

The implementing provisions may make pursuing certain activities and holding certain public offices subject to authorisation to the extent that they adversely affect the performance of tasks.

### **Art. 91 FPersO**

<sup>1</sup> Employees must inform their superiors of all public offices held or any remunerated work performed outside of their employment contract.

<sup>1bis</sup> Voluntary work must be reported if a conflict of interests cannot be excluded.

<sup>2</sup> The performance of duties and activities in accordance with paras. 1 and 1<sup>bis</sup> requires authorisation if:

- a. they make demands on the employees which might reduce their performance in their work for the Confederation;
- b. due to the type of work the danger of a conflict with the primary employment interests might arise.

<sup>3</sup> If conflicts of interests cannot be excluded in individual cases, authorisation will be withheld. Conflicts of interests may arise in the case of the following activities:

- a. advising or representing third parties in matters which belong to the tasks of the administrative unit in which the employed person works;
- b. activities associated with mandates executed for the Confederation or which will be awarded by the Confederation in the foreseeable future.

<sup>4</sup> Employees deployed in a Swiss representation abroad require authorisation from the Federal Department of Foreign Affairs (FDFA) in all cases for remunerated activities. The authorisation obligation is also applicable to FDFA career service employees during assignments in Switzerland. Employees must periodically submit a report to the FDFA on these activities. The FDFA lays down the conditions.

<sup>5</sup> The FDFA may make provision to have notification and authorisation requirements imposed on the remunerated activities of accompanying persons of employees deployed in a Swiss representation abroad.

### **Close relationships/withdrawal**

#### ***Explanation regarding Article 10 of the Federal Administrative Procedure Act:***

People who due to their office award contracts, process them or can influence the content thereof must be impartial and thereby have no close relationships with tenderers or suppliers.

They must submit a written declaration stating that they undertake to inform their superior in writing immediately if they are involved in a procurement process in which they have such a close relationship. Should a close relationship exist, the superior will take a decision on any withdrawal.

Examples of a particularly close relationship include close business connections (such as a customer relationship, a strategic partnership or a form of participation), a partnership (marriage, registered partnership or de facto unions), a family relationship or affinity, an economically-dependent relationship or other type of dependent relationship or military comradeship over several years.

#### ***Art. 10 of the Federal Administrative Procedure Act***

##### **B. Withdrawal**

<sup>1</sup> People who have to make a ruling or who must make preparations for this must withdraw if they:

- a. have a personal interest in the matter;
- b. are connected to a party by marriage or registered partnership or have a de facto union with this party;
- b<sup>bis</sup>. are directly related to a party or related up to the third degree in the collateral line or related by marriage;
- c. are representatives for a party or were employed by a party in the same matter;
- d. could face a conflict of interests for other reasons.

<sup>2</sup> If the withdrawal is disputable, the supervisory authority will decide, or if it is a matter of the withdrawal of a member of a collegial authority, then this authority will decide, but excluding the member concerned.

Approved on 1st February 2011, adapted to amendments in the FPerO on 1st October 2012.