

10.2.4.6 Strategic considerations in some cases also led to Programme Managers having to accept technical values that were lower than the parameters set in the user specifications and which carried higher risks. For example, the Turbomeca engine posed more risks and was more expensive than the engine proposed by another bidder. Armscor and DoD, however, considered it strategically more important for Denel Aviation that Turbomeca should get the contract.

10.3 CONFLICT OF INTEREST

10.3.1 Definition

10.3.1.1 Conflict of interest can be defined as *"a situation in which a person, such as a public official, an employee, or a professional, has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties. "*

10.3.1.2 There are three key elements in this definition:

(a) A private or personal interest

It is often a financial interest, but it can also be another interest, such as providing a special advantage to a relative.

(b) An official duty

This refers literally to the duty that an official or employee has by virtue of holding a particular public office or acting in his official capacity. The official assumes certain official responsibilities and he acquires obligations to his employer and/or the general public. These obligations are supposed to override private or personal interests.

(c) Interference with objective professional judgement

Conflicts of interest interfere with official or professional responsibilities in a specific way, namely an interference with the official's objective judgement. Government officials and employees serve the general public and they are expected to be objective and independent. Factors, such as private and personal interests, *that either interfere or appear likely to interfere with objectivity* are then a matter of legitimate concern to those who rely on these employees or officials. It is also important to avoid apparent or potential as well as actual conflicts of interests. An apparent conflict of interest is one that causes a reasonable person to think that the employee's or official's judgement is likely to be compromised. A potential conflict of interest involves a situation that may develop into an actual conflict of interest. Private and personal interests can cloud a person's objectivity.

10.3.1.3 An employee shall be considered to have a possible conflict of interest if he has an existing or potential financial or other interest, which impairs or appears to impair his ability to exercise independent and unbiased judgement in the discharge of his/her responsibilities.

10.3.1.4 The mere appearance of a conflict may be as serious and potentially damaging as an actual conflict of interest. Reports of conflicts based on appearances can undermine public trust in ways that may not be restored adequately even when the mitigating facts of a situation are brought to light. Apparent conflicts should therefore be evaluated and managed with the same vigour as known conflicts.

10.3.1.5 Once a conflict of interest situation, actual or potential, is recognised, the ethical responses are straightforward: the person must avoid the conflict by

(disclosure and (complete) complete recusal.) This is, for instance, in line with the State Tender Board Code of Conduct, which stipulates that a member shall, beforehand, declare his interest *vis-à-vis* a matter serving before the Board and the member shall recuse himself during the discussion of the memorandum. No discussion by the member concerned will be allowed prior to or after the serving of the memorandum and such a member may not retain that specific memorandum.

10.3.2 Typical examples of conflict of interest

10.3.2.1 *Self-dealing*

For example, an employee works for government and uses his official position to secure a contract for a private consultancy company he or a member of his family owns. Another instance is using his Government position to get part-time employment for family members.

10.3.2.2 *Accepting benefits*

Corruption is one example and accepting substantial non-token gifts is another. For example, when an employee is the purchasing agent for his department and he accepts substantial gifts from a major supplier.

10.3.2.3 *Influence peddling*

Here the professional solicits benefits in exchange for using his influence to advance unfairly the interests of a particular party.

10.3.2.4 Using an employer's property for private advantage

This could be as blatant as stealing office supplies for home use. Or it might be more subtle, for instance, using software which is licensed to an employer for private consultancy work. In the first case the employer's permission eliminates the conflict, while in the second, it does not.

10.3.2.5 Using confidential information

While working for a private client, an employee learns that the client is planning to buy land in his region. He hurriedly buys the land in his wife's name.

10.3.2.6 Outside employment or moonlighting

An example would be establishing a separate business that is in direct competition with his employer. Another example would be accepting so many private clients that he does not have time and energy to devote to his regular employer. In combination with *influence peddling*, it might be that a professional, employed in the public service, sells private consultancy services to an individual with the assurance that they will secure benefits from government: "*If you use my company, I am sure that you will pass the environmental review.*"

10.3.2.7 Post-employment

Here the difficult situation might be one in which a person who resigns from public or private employment, goes into business in the same field. For example, a former public servant sets up a practice lobbying the department in which he was formerly employed.

10.3.2.8 The existence of a conflict of interest, whether actual, apparent, or potential revolves around the key question of whether the employee or official was in a situation which was likely to interfere or appear to interfere with the independent judgement that he is supposed to exercise in performing his official duties. The “trust test” could be used to test this. This test implies the following: would others (employer or the general public) trust the official’s judgement if they knew that he was in this particular situation? Trust is the ethical heart or core of this issue. Conflicts of interest involve the abuse, actual or potential, of the trust people have in certain employees or officials. It reduces the trust people generally have in the employer, i.e. the government.

10.4 ALLEGED CONFLICT OF INTEREST OF MR SHAIK

10.4.1 Mr Shaik’s official duties

10.4.1.1 Mr Shaik is a Chief Director in DoD. He was appointed as Chief of Acquisitions in May 1998, although he was designated to take over this post sooner. As such he was the Fund Manager of the Special Defence Account from which the SDP were to be funded. He was also in control of policy matters and planning relating to all acquisition matters.

10.4.1.2 In his capacity as Chief of Acquisitions, he played a pivotal role in the process for the acquisition of the SDP. He occupied the following influential positions:

- Chairperson of the PCB.
- Member of the Defence Staff Council.
- Co-chairperson of the Strategic Offers Committee (SOFCOM).
- Member of the NIP and DIP Consolidation Committee.
- Member of IONT.
- Secretary of the Ministers’ Committee.