



PUBLIC PROCUREMENT & CONTRATS

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Code of Conduct for Infrabel Staff
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Code of Conduct for Public Procurement and Contracts

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GOOD GOVERNANCE OF PUBLIC PROCUREMENT AND CONTRACTS

To function at its best, our company thrives on trust: internally, between its members, but also with its partners, its shareholders and the public who demand responsible management of public resources. This trust depends on the ethical conduct of all Infrabel staff, at every level of the business. In the context of procurement, this commitment is reflected in our wish to work in a fully transparent manner and to aim for optimal management of public procurement and contracts in terms of safety, quality, planning, budgets and sustainability.

We therefore invite all staff involved in activities related to public procurement and contracts to read this document carefully, with an open mind and the humility necessary to put good practices into effect, with the honest, ethical and sustainable vision that we support. Every individual that is directly or indirectly involved in a public contract or any other contract is expected to scrupulously follow the principles set out in the following pages. **Team, Passion, Service**: those values of Infrabel are the references.

In conclusion, we would like to thank all our employees who, through their daily efforts, ensure the management of all our activities with integrity. This strengthens the company every day.

The Management Board,



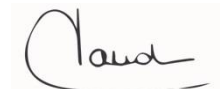
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1. Foreword

The 'Code of Conduct for Public Procurement and Contracts' complements the chapter on '*Relationships with our Suppliers*' from the Infrabel 'Code of Conduct' (Blue Booklet). The publication of a specific Code relating to public procurement and contracts has proved necessary. The legal framework in general, and the one that deals with public procurement in particular, as well as the social context in which Infrabel exercises its activities, have changed significantly.

Unlike the 'Code of Conduct' aimed at all Infrabel staff, whatever their role, this document is aimed more specifically at staff who perform a role directly or indirectly involved in public procurement, contracts, and relationships with suppliers.

This Code must therefore be read as an additional and specialized reference document intended for staff who come into contact with our suppliers or who are involved in procurement and performance procedures for public procurement and contracts. If you are faced with a situation about which you have doubts, you will find this document a real decision-making support.

1.1 Definitions

In the context of the Code, the following terms and expressions, when used with an initial capital letter, have the following meanings:

- **Infrabel:** Infrabel S.A.(public limited company) and its subsidiary Tuc Rail S.A.(public limited company);
- **Public Contract:** contractual agreement subject at the very least to the rules on Public Contracts;
- **Contract:** contractual agreement or other commitment that is not subject to the rules on Public Contracts;
- **Supplier:** economic operator meaning a supplier of goods, a provider of services and/or a works contractor – potential or otherwise – within the context of a Public Contract or a Contract;
- **Prospecting:** practice that allows contracting authorities to keep informed of changes in products and technologies on the industrial and commercial market;
- **Preliminary Consultation of the Market:** practice that allows contracting authorities to find out about products and technologies with a view to preparing a probable Public Contract or a Contract. We go from the practice of Prospecting to Preliminary Consultation of the Market when it specifically concerns the subject of a probable procurement procedure or contractual agreement;
- **Chief Officer:** officer, or any other individual responsible for the direction and control of the performance of the Public Contract;
- **Procurement Department:** central and local entities designated by Infrabel, responsible for meeting the needs of the Internal Client through the management of the procurement procedure for Public Contracts for

works, supplies and services or through the management of the conclusion of a Contract in compliance with the legal framework, such as public procurement law, and that of internal procedures, etc. These entities exist at both central administration level and within the Areas;

- **Internal Client:** Infrabel entity having expressed a need which results in the launch by the Procurement Department a Public Contract for works, supplies or services or of a Contract. This requesting entity thus becomes the Procurement Department's Internal Client;
- **Code:** this document.

Please note: where the masculine form is used (he, him, employee, manager, etc.), this should also be taken to refer to its female equivalent.



1.2 Scope

To successfully fulfil its remits, Infrabel calls on suppliers, service providers, contractors and sub-contractors, among others.

In all its relationships with these Suppliers, Infrabel is obliged to comply with civil, criminal and economic regulations, railway regulations and internal rules, for example the delegation and sub-delegation of powers and, on a case-by-case basis, the rules on Public Contracts.

Infrabel staff in charge of a Public Contract or a Contract should refer to the contents of this Code. In case of doubt, they should seek help from the Procurement Department (I-FBA.5).

Infrabel's Code of Conduct for Public Procurement and Contracts applies without prejudice to the legislative and regulatory terms governing Public Contracts/Contracts, the terms of the Belgian Criminal Code and those embodied in the Staff Statutes drawn up by HR-Rail and its rules of application, notably the disciplinary rules.

1.2.1 Public Contracts for works, supplies and services

As the contracting authority, Infrabel is subject to the rules on Public Contracts. Staff in charge of a Public Contract for works, supplies and services must therefore respect certain strict and binding criteria and procedures laid down in the laws and Royal Decrees concerned.

1.2.2 Contracts excluding Public Contracts

However, the rules on Public Contracts do not always apply. This is the case, for example, for the sale or acquisition of rights in rem in immovable property, or for Contracts for the connection of electricity, water, gas, etc.

1.2.3 Across all phases of a Public Contract or a Contract

This 'Code of Conduct for Public Procurement and Contracts' applies to all phases in the life of a Public Contract or a Contract.

As far as **Public Contracts** are concerned, this Code applies:

- **during Prospecting;**
- **during the procurement procedure**
This begins either with the Preliminary Consultation of the Market or with the launch of a procurement procedure and ends with the notification of the Public Contract, that is, the official announcement to the successful tenderer of the approval of its bid and the conclusion of this Public Contract;
- **during the performance:** from its notification until the end of the execution of the parties' reciprocal obligations.

If the Supplier defaults in its obligations, Infrabel will ensure that measures ex officio provided for by law are put in place, such as unilateral cancellation, while scrupulously respecting the prescribed requirements of formalisation.

For **Contracts**, this Code applies from the first contact between parties until the end of the execution of the reciprocal obligations.

1.2.4 For all those involved in Public Procurement or Contracts

This 'Code of Conduct for Public Procurement and Contracts' must be applied by all Infrabel staff directly or indirectly involved in a Public Contract or a Contract, which means all those who have to be in contact with Suppliers or have to be involved in the procurement and performance procedures for Public Contracts.

1.3 Rules that cannot be enforced by third parties

This Code exclusively affects relationships between members of Infrabel and their line management. Therefore, it cannot, under any circumstances, be deemed to generate rights or obligations to the benefit or detriment of third parties and therefore cannot be enforced against Infrabel.



2. Generic principles applicable to Public Procurement and Contracts

2.1 Act with integrity

Infrabel expects every employee to act with integrity, that is, in an honest, proper and reliable manner, respecting the procedures laid down by Infrabel and/or by the regulations.

This requires staff, in particular:

- to avoid interfering with the actions of the Procurement Department, whether it be for a Contract or a Public Contract in its Prospecting and procurement phases, or interfering with the actions of the Chief Officer during the performance of the Public Contract.
- to engender trust by looking after Infrabel's interest and not their own personal interest (theirs or that of a third party).
- to inform their line manager and the Procurement Department in writing (electronically or on paper, etc.) without delay if they find themselves in a situation where they cannot act with integrity.

2.2 Commitment and professionalism

Managers and staff at Infrabel must behave in an exemplary fashion: they should engage in constructive discussions and act in strict compliance with legislation, the delegation of powers, the reporting line and the rules and procedures necessary for the good management of Public Procurement and Contracts.

This professional attitude precludes convenience. It is driven by sound expertise and a good knowledge of the legal framework for Public Procurement and Contracts, and of internal procedures, the constraints linked to Infrabel professions, technological changes, and costs and prices. Every decision must be justifiable.

The company, via its management and its executives, must mobilise the means, the time and the resources necessary to guarantee good management of Public Procurement and Contracts, in an organised manner and according to clear agreements. This engagement forms the basis of a good organisation and a fruitful collaboration.

Executives commitment

Every executive at Infrabel has a role in supporting his staff from both a material and moral point of view. He promotes good communication with and between them:

- by regularly organising consultations with his staff to discuss problems, provide solutions and foster exchange of experiences;
- by establishing clear agreements on the objectives expected in the procurement procedure and the performance of Public Contracts and Contracts;
- by transmitting information to individuals who absolutely must have it for the correct performance of the assigned tasks.

For the executive, this means good knowledge:

- of the needs of the Internal Client as well as the technical file;
- of the legislation and the internal regulations in force.

This commitment must enable him to make a good decision, in particular when a choice has to be made between the different approaches of the Internal Client and the Procurement Department.

Staff commitment

Being committed to also means adopting a professional attitude towards customers, Suppliers and any other external party involved in the different phases of a Public Contract or Contract.

For Infrabel staff this means they must ensure that they develop and regularly update the following competencies:

- Integrity
- Customer focus
- Convincing
- Sharing knowledge
- Focusing on results
- Managing risks
- Innovating

These competencies are defined in the Infrabel Competency Model available on //WORKPLACE

2.3 Competition and equal treatment of the tenderers

By their very nature, the rules of Public Contracts aim to open the market as widely as possible. The call for competition between Suppliers must allow the best solution to be obtained at the best price. Infrabel, concerned with spending public funds sparingly, also applies these principles in Contract matters.

That is why Infrabel treats Suppliers **without discrimination and with transparency**.

In accordance with these principles, Infrabel calls on its staff to:

- avoid unnecessary restrictions when it comes to conditions of access to Public Contracts, conditions of selection and/or award criteria that could reduce the number of Suppliers;
 - set conditions of access to the Public Contract that are proportionate to its volume and nature;
 - avoid negotiations that could have the effect of substantially amending the initial conditions included in the Public Contract documents;
 - avoid technical specifications of a discriminatory nature that would distort competition.
-
- **Technical specifications** cannot have the effect of favouring or eliminating certain companies or products. This would be the case, for example, if these specifications made mention of a specific manufacture or provenance or of a particular technique, or reference to a brand, patent or specific type, origin or production.
 - As an exception, this mention or reference is authorised only:
 - if there is no other way of giving a description that is sufficiently precise and intelligible for all the interested Suppliers. Any such mention or reference must be accompanied by the terms “or equivalent”,
 - or if it is justified by the subject of the Public Contract.
 - When **specificity** is invoked as basis for the use of the negotiated procedure without prior call for competition and without consultation of the market, the documents on file must provide formal and material proof to the effect that:
 - at the time of award, the targeted Supplier really was the only one capable of performing the Public Contract;

- or that its products or services are the only ones to meet requirements and that there is no alternative solution on the market.

Infrabel will not tolerate any form of discrimination.

Anybody involved in a Public Contract and Contract procurement procedure and/or performance procedure, at any level, must refrain from any attitude that might undermine the procedure with a suspicion, well-founded or not, of partiality, favouritism or unfairness.

If the Procurement Department asks a tenderer to improve their bid, they must give all **tenderers** the same opportunity (unless the special specifications stipulate that Infrabel has reserved the right to negotiate only with those tenderers who have submitted the best bids).

- ✓ **The employee responsible for analysing the bids** will do so with great care and impartiality, in compliance with the special specifications.
 - He will start by eliminating bids based on the criteria of exclusion and conformity;
 - He will then categorise them according to Public Contract award criteria;
 - In parallel, he will draft a fully reasoned report comparing the bids, including clear and precise arguments. The score for each award criterion must be given a number in accordance with the special specifications and justified with an explanatory note.

2.4 Conflict of interests

There is a conflict of interest in any situation in which, when a Public Contract is awarded or performed, the impartiality, independence or objective exercise of the function of any person connected in any way with Infrabel, as well as of any person who may have an influence in the award of a Public Contract or on its outcome, is compromised as a result of family ties, personal relationships, political affiliation or nationality, economic interests or any other direct or indirect personal interest.

- ✓ **Any individual involved in a Public Contract who is faced with a conflict of interests alleged or actual, is obliged to withdraw.** He will then inform his line manager and the Procurement Department of the situation in writing (electronically or on paper) without delay. He is therefore prohibited from intervening, personally or through an intermediary, in the procurement procedure and performance of the Public Contract.

Even though the legislature does not give a full definition of the notion of conflict of interests, it does give **examples** of situations for which conflict of interests is presumed in the procurement procedure and performance of a Public Contract:

- when there is a family relationship or relationship through marriage (in a direct line to the third degree and, in a collateral line, to the fourth degree), or legal cohabitation, between the person who has a relationship with Infrabel or the person liable to influence the procurement procedure for a Public Contract and one of the candidates or tenderers;
- when the person who has a relationship with Infrabel or the person liable to influence the procurement procedure for a Public Contract is owner, co-owner or active partner in one of the candidates or tenderers, personally or through an intermediary;
- as soon as the person who has a relationship with Infrabel or the person liable to influence the procurement procedure for a Public Contract holds one or more shares or units representing at least 5% of the registered capital of one of the candidates or tenderers, directly or through an intermediary;

Beyond these examples derived from law, there is a conflict of interests when a person in charge of a Public Contract:

- no longer has the necessary independence and objectivity to take a decision in the sole interest of the company and/or without discriminating against certain candidates and/or tenderers;
- feels obliged to grant a favour of some kind to the candidate or the tenderer.

This list is obviously not exhaustive.

When it comes to Contracts, the same rules apply in order to eliminate any conflict of interests.

2.5 Guaranteeing confidentiality

In all Public Contracts and Contracts, the confidentiality of information is of paramount importance.

All Suppliers must be treated in the same way. It is therefore essential that none of them receives any information that could favour them at any stage in the life of the Public Contract or the Contract.

2.5.1 Identifying confidential information

In the context of this 'Code of Conduct for Public Procurement and Contracts', 'confidential information' is understood to be:

1. Any information **not related directly to a Public Contract or a Contract** but which might harm Infrabel or favour a Supplier or group of Suppliers over the others.

This information may relate to:

- the procurement strategy for the Public Contract or the Contract;
- the planning of subsequent Public Contracts or Contracts;
- budgets and financial information;
- technical and commercial secrets, etc.

2. Any information **related directly to a Public Contract or a Contract**, at whatever stage.

This information may relate to:

- industrial secrets and know-how;
- ideas, processes, plans and industrial propositions, forecasts, schedules for the procurement procedure for Public Contracts;
- price lists for items;
- construction plans;
- capacity and production;
- data relating to Suppliers;
- commercial initiatives with clients and prospects;
- information about development, technology and research, etc.

It also applies to:

- **information generated during the procurement procedure phase**, notably that contained in the special specifications, the bids received, the minutes of negotiation meetings, correspondence (electronic or paper) between the Suppliers and Infrabel, internal reports relating to various stages of the Public Contract, etc.
- **information generated during the performance phase**, which relates in particular to orders, invoices, notes from meetings concerning the performance of a Public Contract, etc.

2.5.2 Protecting confidential information

Infrabel's policy on the protection of information will provide guidance to any employee who processes confidential information, in writing or orally, at any stage of the Public Contract or the Contract. Any breach of confidentiality will result in disciplinary measures.

To protect confidential information, every employee should:

- indicate in the document its confidential nature;
- protect confidential information in his possession (for example: locked cupboards, computer locked when moving away from his desk [press the Windows + L keys at the same time] and application of security procedures currently in force);
- limit the disclosure of a piece of confidential information to only those individuals who legitimately need it in the performance of their roles and in the interest of Infrabel (the same also applies to colleagues within Infrabel), which means, except in the case of legal constraint:
 - ✓ not disclosing confidential information to third parties, including members of his family, unless he has received authorisation to do so;
 - ✓ not revealing to a Supplier or a third party, under any circumstances, another Supplier's prices;
 - ✓ not disclosing to any third-party organisation information relating to a Supplier's performance;
 - ✓ not disclosing any information relating to Infrabel's Public Contracts or Contracts, namely the names of Suppliers and their rates.

Protecting confidential information also means:

- only sending emails to the addressees concerned;
- not leaving any confidential document anywhere where others could read it. If colleagues do happen to leave printed documents at the photocopier or in a meeting room, the documents should be taken and given to the person responsible for the file;
- refraining from discussing and handling confidential information in a public place, particularly on public transport, where the conversation can be overheard;
- destroying confidential documents that are to be thrown away;
- proactively informing the Procurement Department where a situation of poor management of confidentiality is established, in particular in the case of accidental access to a piece of confidential information.

In case of doubt when it comes to processing information, the employee must consult his line manager or the Procurement Department.

- In any event, he **must not seek to unduly procure confidential information**.
- If he feels that it is necessary to communicate a piece of confidential information to a Supplier, he must consult the Procurement Department.

As a reminder, non-compliance with these guidelines may have serious implications and result in legal action.

Confidentiality agreements

the Procurement Department will ensure that a confidentiality agreement is signed before any exchange of confidential information.

By this agreement, the parties undertake:

- not to disclose any confidential information exchanged between them;
- not to exchange any confidential information belonging to or relating to a third party and to the confidentiality agreement.

The corresponding model confidentiality agreements are published on //Workplace or can be requested in advance from the Legal Affairs department.

2.6 Applying the four eyes principle

Public Contracts and Contracts are complex matters that must be studied with care. That is why the four eyes principle must be applied during decisions regarding the procurement procedure, conclusion and performance. This method of collaboration reduces the risk of irregularities and errors.

What is the four eyes principle?

It is about involving at least two people in the validation of these decisions:

- one person in a **control role**, for example financial (budgetary control), procedural (control of compliance with legislation and company rules) and/or health and safety (prevention adviser);
- the other one in an **authorisation role**, in accordance with the delegation of powers and the chosen procedure.

The four eyes principle guarantees a high-quality result that conforms to legal, technical and financial aspects, as well as those relating to well-being at work and the environment.

2.7 Administrative follow-up and traceability

2.7.1 Communicating information relating to Public Contracts and Contracts

When the procurement procedure is launched for a Public Contract, the **Procurement Department** is responsible for the administrative and commercial management:

- it is accountable for compliance with legislation, rules and internal procedures;
- the Procurement Department ensures the coherence of the various documents relating to the Public Contract. Thus, the public contract notice, the special specifications and all other Public Contract documents must be drafted in such a way to ensure an optimal result for Infrabel. The various documents must also respect the principles of competition and equal treatment between the potential tenderers;
- the Procurement Department is the exclusive communication channel with the Suppliers and the various parties involved in the Public Contract, so that the information is transmitted to all Suppliers without discrimination. It is the role of the Procurement Department to ensure it transmits this information rapidly according to procedures that comply with the legislation, and to provide correct and complete responses (see also Chapter '2.5 Guaranteeing confidentiality').

If, as part of a Preliminary Consultation of the Market, an Infrabel employee wishes to ask questions to a potential supplier or provide him information, he must contact the Procurement Department. And if a Supplier contacts directly an employee involved in a Public Contract, this employee must redirect him to the Procurement Department.

Any request for submission of a new price must go through the *Procurement Department*, in writing and in an identical manner for everyone.

The same principles of communication of information relating to Public Contracts apply to Contracts.

2.7.2 Ensuring the traceability of the Public Contract or the Contract

A copy of all data relating to a Public Contract or a Contract must be kept on electronic or paper medium, to **ensure traceability in all circumstances**. These data are stored in accordance with the Confidentiality, Integrity & Availability (CIA) requirements laid down in the information security policies. If required, the employee must contact the Infrabel IT department's Service Desk or his team manager.

All important documents relating to the Public Contract or the Contract, for example the special specifications, must clearly mention identifying elements such as:

- the author's name;
- the name of the controller (i.e. the person who has reread the document);
- the date;
- the version number.

During the procurement procedure phase, it must be possible for all the contacts (negotiations conducted, queries, additional information requested, etc.) made by Infrabel with the various Suppliers to be identified precisely and completely on a time line using minutes of meetings, notes of conversations, etc. These must be documented on a paper or electronic medium.

As with the procurement phase, the same principles of administrative follow-up and traceability apply to the performance phase. As such, the General Rules for Performance prescribed by the legislature offer a very complete and precise framework.

The procurement procedure for small Public Contracts, i.e. those worth less than €30,000, follows a simplified procedure from an administrative point of view, in compliance with the principles of traceability set out above.

2.7.3 Chief Officer

No later than the award of the Public Contract, the Procurement Department will ensure that the Chief Officer is designated and that his name is communicated to the successful tenderer.

The Chief Officer and his reporting line will ensure the application of the principles of administrative follow-up and traceability mentioned in point 2.7 by applying the internal procedures as well as by respecting Infrabel's delegation of powers.

2.8 Environmental and social concerns

In compliance with the rules on Public Contracts, and whenever possible, Infrabel recommends incorporating environmental and/or social concerns for its Public Contracts and Contracts. As a public enterprise operating in the sector of sustainable mobility, Infrabel has a duty to set an example.

With that in mind, environmental and/or social concerns can be taken into account to the extent that they are related to the subject of the Public Contract or the Contract, are non-discriminatory and are clearly indicated as such in the subject of the Public Contract or the Contract.

In order to help the Procurement Department, Internal Clients and Chief Officers to acquire basic knowledge on the technical possibilities and legal aspects, Infrabel has developed a tailor-made training course with the title 'Sustainable Public Contracts'.

3. Working as a team in the interest of the business

3.1 Developing the spirit of collaboration

All stakeholders, that is, all the staff involved in a Public Contract or a Contract, must develop the 'Team' value laid down in the 2017-2020 Business Plan in these terms:

'Rich in our diversity, we cultivate team spirit and solidarity in work at all levels of our business. We encourage communication, sharing and mutual respect as well as professional and personal fulfilment.'

3.1.1 Promoting transparent, fluid and dynamic communication

Transparent, fluid and dynamic communication is essential for an effective collaboration and means, in particular that:

- every stakeholder informs the others at the right time, in a complete, accurate and correct manner;
- everyone develops his aptitude for active listening, so that he can understand the needs and constraints of others and reflect them faithfully in the contractual conditions.

3.1.2 Trust and mutual respect

All stakeholders must show respect, towards people and towards the opinions that they express. Everyone must recognise the competences and good intentions of his colleagues. All parties that collaborate must be on an equal footing. This will contribute fully to the implementation of Infrabel's 'Team' value.

3.2 Adopting proactive behaviour

Commitment and professionalism mean demonstrating proactiveness. Proactive behaviour avoids time-wasting, by anticipating needs and problems and by preventing risks.

Proactive behaviour may take several forms and bring several advantages, including ensuring the continuity of services, supplies and works. It involves:

- **identifying** current and future **needs** and bringing them together, detecting potential synergies, bringing together in a single Public Contract or Contract similar services and supplies, and estimating volumes on time to avoid subsequent disproportionate supplements, by taking into account stocks and renewals;
- **the Internal Client** communicating these needs to the Procurement Department in good time;
- **launching the procurement procedure process at the right moment** by choosing the right procedure. This involves the employee ensuring that he has all the information and documents necessary to realising the request for bids and/or drafting the special specifications, in good time;
- ensuring that if an amendment to the Public Contract or the Contract is needed, this is done before the procurement procedure phase, in order to ensure the best result in the proactive adaptation of the Public Contracts or Contracts;
- **communicating, spontaneously and rapidly, any changes** in the Internal Client's strategy (change of technology, adapted renewal plan, etc.) which could have an impact on the Public Contracts, in the procurement procedure phase and/or performance phase, or on the Contracts.

3.3 Looking after the interests of the business

Any employee involved in one of the phases relating to a Public Contract or a Contract must, in all circumstances, look after Infrabel's interest and not his own. The latter must never conflict with Infrabel's mission, nor harm its image and/or its security.

- Infrabel's interest is understood to be the fulfilment of its public service remits in the most optimal way;
- An employee's personal interest is understood to be any advantage that he might obtain for himself or for his family or loved ones, or for an organisation with which he has or has had a relationship of any kind whatsoever.

For any employee involved in one of the phases of a Public Contract or of a Contract, looking after the interest of the business means:

- acting, in all circumstances, with an eye to the company's corporate object, its public service remit, its values and its procurement strategy;
- protecting Infrabel's economic and financial interest, and in particular ensuring the confidential management of data;
- respecting the normal conditions of competition.

3.4 Developing and maintaining win-win partnerships

Infrabel's objective is to always obtain the best conditions on the market. With markets being more and more competitive and technologies more and more complex, they involve more contractual risks. For Public Contracts or Total Cost of Ownership (TCO) Contracts for example, all the supplies, works and/or services throughout the life of a system used in railway infrastructure must be taken into consideration.

In this context, it is necessary to implement measures maintaining a win-win partnership. These measures may relate, for example, to:

- the management of the communication between the two partners;
- the management of the transactions in the Public Contract or Contract;
- the monitoring of compliance with the contractual conditions;
- the monitoring of quality and deadlines through Key Performance Indicators (KPIs), Service Level Agreements (SLAs), etc.;
- the organisation of coordination meetings (management of outstanding points, etc.);
- the organisation of steering committee meetings;
- the management of change requests for the Public Contract or Contract;
- the management and sharing of contractual documents;
- etc.

4. Across all phases of the Public Contract or Contract

4.1 Contact with Suppliers

Whether it be during Prospecting or at other stages of the Public Contract or Contract, it must be kept in mind that contacts with Suppliers cannot have the effect of conferring an advantage on certain candidates or tenderers during a subsequent procedure, or of putting in default Infrabel's procurement strategy.

During these contacts, caution is required when it comes to information exchanged. Everyone must ensure that they transfer the pertinent information to other Infrabel staff involved in these Public Contracts or Contracts.

Thus, one must ensure that neither Prospecting nor the Preliminary Consultation of the Market prevent or distort competition.

4.2 Obligation to open up to competition

The legal framework governing Public Contracts provides for the obligation to open these up to competition, at the contracting authority's expense.

The basic principle of opening up to competition is effected by a publication of the Public Contract at Belgian and/or European level according to the financial thresholds laid down in the legislation.

The law provides for exceptions to this publication requirement. In this case, it prescribes consultation with several Suppliers. Infrabel imposes the principle of three requests for bids.

The law requires that claiming an exemption be justified on the basis of facts and with reference to the legal terms.

In even more restrictive cases, the law provides for the total absence of opening up to competition. The law requires that claiming this exemption also be justified on the basis of facts and with reference to the legal terms justifying why it is impossible to open the Public Contract up to competition.

The estimation method and/or the splitting of a Public Contract cannot **have as one of its purposes** the evasion of the rules of publication and/or the rules of consultation of the market.

4.3 Different Public Contract procurement procedures

Infrabel applies the following Public Contract procurement procedures:

- open/restricted procedure with price as the sole award criterion;
- open/restricted procedure with a set of award criteria determining the best bid;
- negotiated procedure with prior call for competition;
- direct negotiated procedure with prior call for competition;
- negotiated procedure without prior call for competition but with consultation of the market;
- negotiated procedure without prior call for competition and without consultation of the market;

The choice of procurement procedure to use is determined taking account of the instructions of I-FBA.5 Procurement Department

4.3.1 Open/restricted procedure with price as the sole award criterion

For all public works and services contracts of the Direction "Asset Management", Infrabel's Management Board has chosen, as standard procedure, the open procedure with price as the sole award criterion.

In the open procedure, the Public Contract is handled in a single stage: the publication of the contract notice and the special specifications allow tenderers to submit their application and bid at the same time.

Infrabel proceeds in one single phase to the selection and award of the Public Contract. It is awarded to the tenderer who has submitted the lowest regular bid.

In a restricted procedure, the Public Contract is handled in two phases:

- publication of either a contract notice or a notice concerning a system of qualification, allowing the submission of applications;
- sending the special specifications to the selected or qualified candidates allowing the introduction of bids.

To be able to proceed with the classification of regular bids on the sole basis of price, in an open or restricted procedure, Infrabel must draft special specifications that:

- set out the way in which the Contract will be performed;
- identify all the technical features of the work to be realised, all the supplies to be delivered, and/or all the services to be performed;
- set an optimal quality level for all aspects of the Contract;
- describe, in detail, all the performance constraints.

During the handling of the procedure (open or restricted), from bid submission until notification of the Public Contract, Infrabel is prohibited from negotiating with the tenderers.

However, Infrabel is always allowed to ask them for additional information on the bid they have submitted. But under no circumstances can there be any negotiations on any aspect of the bid.

These contacts with the tenderers must go through the Procurement Department.

4.3.2 Open/restricted procedure with a set of award criteria determining the best bid

The same procedures as explained in point 4.3.1 apply, except that it is the set of award criteria submitted in the special specifications that the contracting authority must take into account in order to proceed with the classification of the regular bids.

4.3.3 Negotiated procedure with prior call for competition

The Public Contract is handled in at least two stages:

- publication of either a contract notice or a notice concerning a system of qualification, allowing the submission of applications;
- sending the special specifications to the selected or qualified candidates allowing them to introduce bids.

After the submission of bids, Infrabel may decide to conduct negotiations on certain of their aspects (price, technical points, etc.), potentially with a limited number of tenderers, in accordance with what is set out in the special specifications, and in compliance with the fundamental principle of competition and equal treatment.

The Public Contract is then awarded to the tenderer who has submitted the best regular bid on the basis of the award criteria.

4.3.4 Direct negotiated procedure with prior call for competition

This procedure is similar to the negotiated procedure with prior call for competition (4.3.3). Here, the special specifications are appended to the publication. The Suppliers send in their application and bid at the same time.

Just like in the negotiated procedure with prior call for competition, the contracting authority may conduct negotiations with the tenderers.

The Public Contract is then awarded to the tenderer who has submitted the best regular bid on the basis of the award criteria.

This procedure applies to Public Contracts that do not exceed the financial thresholds for European publicity.

4.3.5 Negotiated procedure without prior call for competition but with consultation of the market

This procedure is similar to the negotiated procedure with prior call for competition (4.3.3). But this time, the contract notification publication stage is replaced by consultation of the market. This takes the form of an invitation addressed to at least three Suppliers.

This procedure is exceptional and cannot be used except in the cases provided for by law. Choosing this procedure must be justified in fact and in law.

The Public Contract is then awarded to the tenderer who has submitted the best regular bid on the basis of the award criteria.

4.3.6 Negotiated procedure without prior call for competition and without consultation of the market

This procedure is similar to the previous one (4.3.5). Here, the consultation of the market stage is replaced by sending an invitation to a sole Supplier, provided it is actually the only one on the market to be able to provide the requested product or service.

This procedure must be used sparingly. It can only be used in the cases provided for by law and if, in a practical sense, there is only a single Supplier on the market. Choosing this procedure must be justified in fact and in law.

The Public Contract is then awarded to the consulted tenderer who has submitted a regular bid in accordance with the special specifications.

4.4 Performance and amendments

The employee in charge of the performance of a Public Contract or Contract will ensure that the reciprocal contractual engagements are respected throughout the entire performance phase. He will ensure its monitoring and management. He will control the quantity, quality, progress of works, receipts of goods, etc.

During the performance of a Public Contract or Contract, amendments may be needed for technical reasons or due to a technological development.

In this case, these amendments will be processed in strict compliance with:

- the external rules, including the legislation on Public Contracts or Contracts;
- the internal rules, including delegation of powers.

The employee in charge of the performance of a Public Contract or Contract will carefully check that all contractual obligations are properly performed. If he finds any irregularities, he will take the appropriate legal measures in collaboration with the Procurement Department. To find out more about the current regulatory and practical provisions, he will refer to the instructions published and updated by the Procurement Department.

These instructions, available on the Procurement Department's intranet, give a complete and precise picture of the framework to be respected in terms of amendments during the Public Contract.

5. Accepting gifts and invitations

It is customary for certain Suppliers to offer their clients – existing or potential – gifts or invitations. These are distinguished according to whether or not they are related to professional activities.

Gifts or invitations, the content of which is **not related** to professional activities (e.g. bottles of wine or alcohol, sporting, cultural or entertainment events, etc.) should be refused. Failing that, their value must only be symbolic.

The use of gifts or invitations, the content of which is **related** to professional activities (e.g. visits to trade fairs, participation in conferences, factory visits, etc.), is allowed, provided the following rules are respected.

If the Supplier is a candidate or tenderer:

- Any benefit, whatever its nature, **must be politely and firmly refused**. This is the case during the Preliminary Consultation and Public Procurement procedure phases and from the first contact until the conclusion of a Contract.

In other cases, that is, if the Supplier is not a candidate or tenderer, one should refer to points 5.1 to 5.4 and refrain from:

- requesting any donation or any contribution at all from Suppliers;
- benefiting himself or allowing anyone else to benefit, personally, from services or pecuniary benefits offered by Infrabel Suppliers, existing or potential.

The decision tree at the end of the chapter will help with making the right choice.

5.1 Gifts and gratuities

When a gift is acceptable, it cannot, however, under any circumstances affect the independence and impartiality of the staff receiving it. **If this happened, Infrabel's integrity would be undermined, with all the legal and financial consequences this could have.**

5.2 Invitations to events, seminars and study trips

Infrabel staff are sometimes invited to participate in seminars or study trips. They will only participate in these if they are related to their professional activities and if they behave as representatives of the company.

- When an invitation involves major travel or travel of an unusual duration, the employee's participation must be authorised by his team manager.
- In the case of a factory visit, a Supplier's technical audit, or a study trip or seminar, the internal business travel procedure applies. An employee may only consider participating if the programme is of a professional nature directly related to his position.
- When the mission relates to a technical audit or a reception, the employee will retain total objectivity vis-à-vis the Supplier so that he can write up the report of his visit with complete freedom and independence. To this

end, he will ensure that all travel expenses (accommodation, meals, travel fares, etc.) are paid by Infrabel, unless the special specifications stipulate otherwise.

5.3 Business meals

Business meals are intended to strengthen existing professional relationships with Suppliers. They can also help to resolve sticking points between the Supplier and Infrabel or to re-establish a win-win situation. The economic value of these meals must remain reasonable.

- Business meals must only be accepted by the Infrabel employee if their frequency is reasonable. Mindful of ensuring a balanced relationship, he will ensure that there is relative reciprocity.

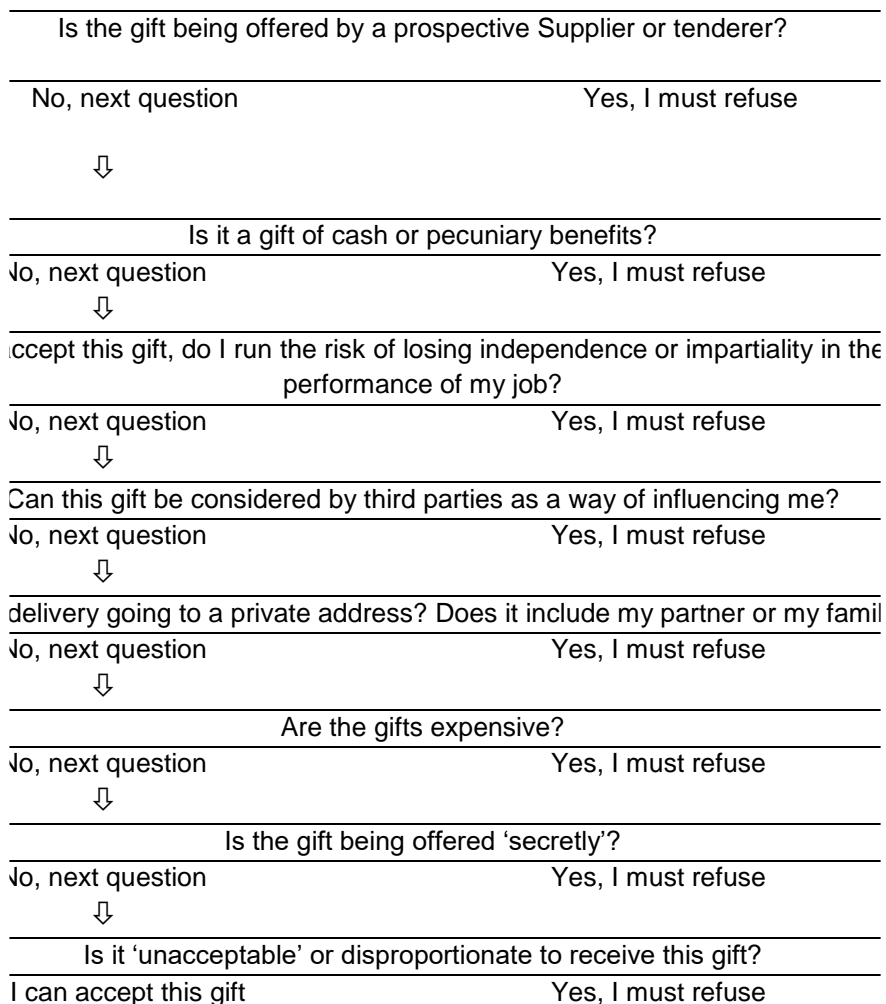
5.4 Decision tree

The decision tree has been devised to help staff make the right decision. In case of doubt, staff should seek the advice of their team manager or the Compliance Officer.

In this flowchart, the term 'gift' covers all types of benefits, material and other gifts, invitations, business meals, seminars, trips, etc.

As throughout this Code, the term 'Supplier' means an 'economic operator meaning a supplier of goods, a provider of services and/or a works contractor – potential or otherwise – within the context of a Public Contract or a Contract.'

Decision tree



How to refuse ?

If the gift does not meet the authorised criteria, the Infrabel employee will politely and firmly refuse the Supplier's offer. If necessary, he will mention the law and the 'Code of Conduct for Public Procurement and Contracts' to explain and support his refusal. He will inform his line manager.

If refusing seems too delicate a matter for him, the employee should talk about it to his line manager, who will contact the Compliance Officer if necessary.

6. Role of the Compliance Officer

The Compliance Officer, under the authority of the Chief Executive Officer, monitors compliance with the 'Codes of Conduct' and the regulations applicable within the company.

He does not replace the line manager, who must ensure in the first instance that his staff comply with these Codes and regulations.

Every employee or team manager is invited to report any alleged breach of this Code to his line manager and/or the Compliance Officer.

The Compliance Officer can be contacted:

- > By email: codeconduite@infrabel.be
- > By telephone: 02/525.29.44
- > By internal post: 10-31 I-CO

6.1 Inquiry procedure

If he is informed of an alleged breach of this Code of Conduct, the Compliance Officer will take the following action:

- assess the validity and credibility of the information;
- conduct an informal or formal inquiry, as appropriate;
- inform the relevant line manager of the results of the inquiry for further action and inform the Legal Affairs department if necessary.

Every file is treated with discretion and with respect for confidentiality. The anonymity of anyone reporting an alleged breach of the Code is preserved.

6.2 Performance of the inquiry

In the context of an inquiry, the Compliance Officer shall have unrestricted and immediate access to all the places (offices, installations, etc.) and to all the information necessary for the smooth handling of this inquiry. This is

done in compliance with the laws, applicable regulations and security rules.

6.3 Amendments to the Code

Infrabel staff are invited to submit any suggestions of their own for improving this Code. Through their comments they will be able to contribute to the implementation of its principles and its rules. They will allow problematic ethical practices to be modified. These suggestions can be addressed to the Compliance Officer, or sent by email to codeconduite@infrabel.be.

7. Appendix

7.1 Applicable laws

- Law of 17 June 2016 on public procurement and its Royal Decrees (Royal Decree of 18 June 2017 on public procurement procedures in special sectors and Royal Decree of 14 January 2013 laying down general rules for the performance of public contracts).
- Law of 17 June 2013 concerning the motives, the information and the legal remedies with regard to public procurement contracts and certain contracts for works, supplies and services, and concessions.

7.2 Applicable internal documents

- Asking yourself the right questions, Code of Conduct for Infrabel Staff (Blue Booklet)
- Code of Conduct for Infrabel Suppliers and Contractors
- 2017 – 2020 Business Plan
- Competency Model
- Rules on delegation and sub-delegation of powers and on signatory powers, as well as frequently asked questions about these Rules.
- Fascicless 61 'Additional provisions for Public Contracts for Works, Supplies and Services' and 63 'Health and safety measures during the performance of works managed by Infrabel'.
- CSR Summary Table for Sustainable Markets