

s22(1)(a)(ii)

**From:** Evans, Nick <Nick.Evans@colliers.com>  
**Sent:** Tuesday, 21 April 2020 1:29 PM  
**To:** PSCP  
**Cc:** s22(1)(a)(ii); s22(1)(a)(ii); s22(1)(a)(ii); s22(1)(a)(ii); Zwangobani, Elliot; s47F; @broadspectrum.com; s47F; s47F  
**Subject:** Conflict of interest matter - ATO Canberra EOI process  
**Attachments:** RE: ATO Canberra; Part C - Tenderers details and declaration - ATO CBR.PDF; Part C - Respondents Details and Declaration - AEC MEL.PDF; Conflict of interest [DLM=For-Official-Use-Only]; RE: Canberra market process; Conflict of Interest Declaration- Colliers ATO Canberra - NE.pdf; Conflict of Interest Declaration- Colliers ATO Canberra - s47F.pdf; Conflict of Interest Declaration- Colliers ATO Canberra - s47F.pdf  
**Importance:** High

PSCP,

I am writing to bring your attention to a conflict of interest matter, and provide further information and steps for resolution as required under the WOAG PSP Deed and Department of Finance Conflict Guide.

The Colliers International Government Team is currently representing the Australian Taxation Office (ATO) under the Whole of Australian Government property arrangements to secure premises in the Canberra CBD. To deliver this project, Colliers International released an Expression of Interest (EOI) document to the market through its TenderLink system on 17 March 2020 with a closing date of 30 April 2020. The market approach is designed as a two stage process, with a Request for Proposal (RFP) process to be undertaken following assessment of the EOI submissions and subsequent shortlisting.

### Conflict of interest

It has recently come to our attention that the Colliers International Agency business has been engaged to provide a range of services to a potential Tenderer for the process. We have assessed that this gives rise to a potential conflict of interest, and following initial consultation with both ATO and Finance we now submit a formal notice for your consideration in line with direction from the ATO. Details are summarised below:

- On 6 April 2020 we were made aware that the Colliers Canberra Office Leasing team had been engaged to provide a range of services for the DOMA Group (potential tenderers) in the current ATO Canberra market process. We immediately made the ATO aware of this issue, and sought direction on raising through the formal PSP conflict management arrangements to Finance. (Relevant email attached for reference).
- As a result of the matter, we reviewed the EOI documentation to ensure that conflict had been covered and found that our team had made an administrative error in the drafting of one of the declaration forms and also made the ATO aware of this immediately. (Relevant email attached for reference).
  - For reference we have attached the relevant part of the EOI documentation (i.e. details and declarations) for the ATO Canberra process, and also another recent process we are running for the AEC. While these are differing requirements, we draw Finance's attention to the differences under 'Tenderer's Conduct' section on the last page of each document. Please note that the AEC documentation is our new and standard template and the ATO documentation is an older one. That process had been developed over a 12 month+ period of time and that form had not been updated – unfortunately we believe that the wording is an administrative error that was not picked up through the drafting process. (Refer attachments).
- On receipt of s47F's (ATO) email of 20 April 2020 (attached) requesting further details of the matter, we wrote to the Colliers International ACT Chief Executive Paul Powderly to seek clarity on the matter. Attached is a copy of the correspondence received back today (21 April 2020) for reference. To summarise:

- On 18 March 2020 the Colliers International Agency business held discussions with the DOMA Group in relation to the ATO's Canberra market process;
- Services discussed were:
  - *Market Information and feasibility inputs including advice on Market rentals and market outgoings;*
  - *Real Estate management advice on operational matters from the proposed design;*
  - *Valuation advice by CIVAS.*
- The Agency business is awaiting clarification on the conflict before providing further assistance to the DOMA Group.
- Further, in s47F's email of 20 April 2020 it was requested that we formally notify Finance of the potential conflict of interest and detail our management of the matter. As noted above this email seeks to cover all requirements of that email and also under the WOAG Deed as a PSP for the ATO.

Our response to the management of potential conflicts of interest is outlined below.

### **Management of conflict**

Outlined below is background as to how our WOAG Account Team manages potential conflict of interest matters. A key element of any probity plan for the procurement of leased office accommodation relates the management of conflicts of interests, and this is something our team implements and delivers through every market approach.

Colliers International also has a strong Code of Ethics Policy that covers all employees to provide guidance and policy on a variety of matters pertaining to this issue. The policy covers principles and standards relating to personal relationships, conflicts of interests, Government clients and anti-bribery etc. All Colliers International employees are held accountable to the Code, and if we act in a way that is unethical or irresponsible, we are in breach and can be reported for a violation or termination of employment.

We would also like to assure you that the Colliers International Government WoAG Account Team is careful to ensure early identification of any potential or perceived conflicts of interest in any of our dealings, and always hold ourselves to the highest ethical, industry and professional standards. The following key points demonstrate our ability to manage and process any perceived conflicts:

- To ensure that our client's interests are guaranteed, the Colliers International Government WoAG Account Team represents Government clients, and we have a Fiduciary Duty to them.
- Colliers International methodology and processes are transparent, robust and equip our clients to make informed decisions. It is important to recognise our clients, not Colliers International, make their property decisions.
- Colliers International has acted exclusively for many large national and global companies and Government Departments governed by stringent corporate governance laws.
- While the 'Leasing/Agency' service line of the company represents a number of landlords and institutions, our WoAG Account Team is recognised as an independent business/service line within Colliers International and is highly respected throughout the market in this regard. Furthermore, the WoAG Account team cost centre is separate to that of the 'Leasing/Agency' side of the business, ensuring one side of the business is not positively or negatively influenced by the financial performance of the other.
- The WoAG Account team located in Canberra is a separate business of the broader Colliers International business, and operates as an independent body within the broader company structure. Our Team operates on separate IT systems and firewall infrastructure which are not accessible by any other parts of the business.
- To further ensure the security and probity of the ATO processes we have established specific IT protocols which ensure that only identified staff (Nick Evans, s47F, s47F) have access to the Drives which store ATO documentation. These protocols lock down ATO information to three Colliers employees who are all identified on the account, and included with the probity project group.

To further support our position on the management of potential conflicts of interest, we have also attached signed declarations from Nick Evans, s47F and s47F that note the potential for conflict between the

WOAG Team and the broader Colliers International business. This reflects our commitment to highlighting any perceived or actual conflicts within the business.

As part of our ongoing work as a PSP, we believe it is important to note the following:

- **Transaction register:** Our WOAG Account Team maintains a transaction register of any current or past transactions undertaken under the WoAG Deed. This register includes details of where any perceived or real conflicts were present (including any buildings considered for lease that were being managed or marketed by Colliers International), and the outcome of those transactions. We share this register regularly with the SPA and Finance.
- **Colliers International market share:** Colliers International have significant market share in the commercial office leasing industry across Australia, including across all major CBD markets. As outlined above, we take the management of risk and conflict extremely seriously and have in place robust procedures/mechanisms to protect against such activity. Our management of the above (and all) processes ensures that the Commonwealth receives the best possible outcome, and value for money.

### Proposed steps to resolve

Our recommendations to manage this matter are as follows:

- The Colliers International WOAG Account Team adhere to the strict protocols outlined above under 'Management of conflict' for the ongoing delivery of the market process, and provide any further documentation required to Finance and/or ATO in support of these protocols;
- The Colliers International WOAG Account Team work closely with the ATO and their Probity Advisor (McGrath Nicol) through the process to ensure all communication and processes are transparent and well documented;
- The Colliers International WOAG Account Team work closely with Finance through the Strategic Property Advisor (Deloitte) to provide updates, and progress reports, on the process and management of any potential matters relating to conflict.
- The ATO considers the issuance of an addendum prior to the closing date of the EOI current process for three key reasons including:
  - We believe that our management of potential conflicts (outlined below) is strong and robust, and minimises risk to the Commonwealth on the matter;
  - From a market process perspective, we do not seek to limit the responses available to the ATO for consideration in any way; and
  - This would be consistent with the management of such matters in recent Commonwealth market processes.

In the event that an addendum is issued we recommend it occurs by 24 April 2020 at the latest.

- That, if deemed suitable, the Colliers International WOAG Account Team does not participate in the 'review and scoring' for the identified potential response through the tender evaluation process; and
- All relevant information relating to this or any other potential the conflict continues to be immediately raised and formally reported to the ATO and Finance.

In the event Finance require additional information, our team is able to meet and discuss immediately.

We look forward to working with Finance and the ATO in progressing this matter and market process as a priority.

Regards

**Nick Evans**

National Director | Head of Government Property Services and Strategic Accounts

Dir s47F | Mob s47F  
Main s47F | Fax s47F | [vCard](#)  
Level 8, 68 Northbourne Ave | Canberra, ACT 2600 | Australia



---

Colliers International respects your privacy.

[Australian Privacy Policy](#) | [Unsubscribe from all emails](#)

If outside Australia, please refer to your local Colliers International website for more information.

This e-mail, its content and attachments (if any) ("E-mail") are for the addressee(s) only. This E-mail contains information which may be sensitive, secret and confidential. If you are not the intended recipient of this E-mail, please immediately notify the sender, do not use or disclose any of the E-mail, and delete this E-mail and your reply email from your system.

Unless specifically stated, this E-mail does not constitute advice or commitment. We do not accept liability for computer viruses, data corruption, interruption, unauthorised access or unauthorised amendment. Colliers International does not guarantee, warrant or represent, either implied or express, that the information contained in this E-mail is accurate, complete or current.

We exclude all inferred or implied terms, conditions and warranties arising out of or in connection with this E-mail, including any liability for loss or damage arising.

This notice should not be removed.

**Be careful with this message**

External email. Do not click links or open attachments unless you recognise the sender and know the content is safe.