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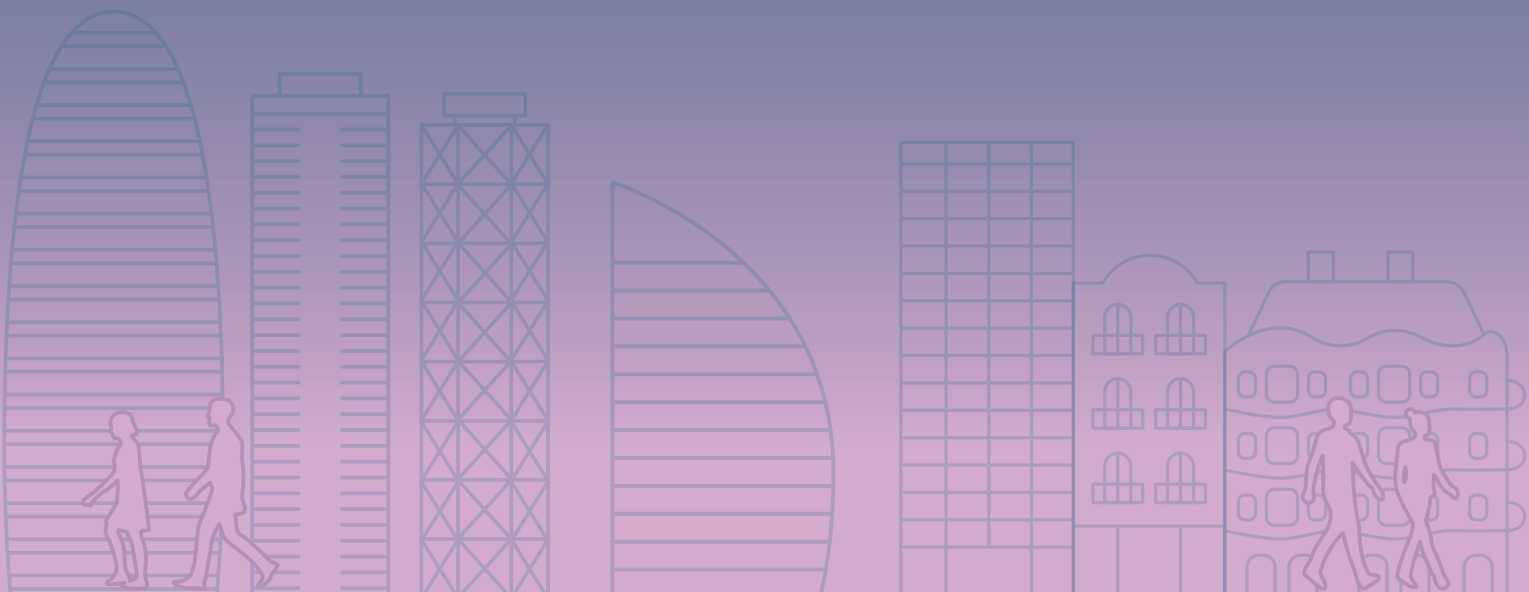
Barcelona  
Activa



PROCEDURE FOR

# CONFLICTS OF INTEREST

BARCELONA ACTIVA



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# INTRODUCTION

## BACKGROUND

Under Regulation (EU) 2021/241 of the European Parliament and Council, of 12 February 2021, establishing the Recovery and Resilience Facility, in accordance with the principle of good financial management, in all recovery and resilience plans that they submit member states must include details of a system that contains adequate measures to safeguard the EU's financial interests, including the prevention, detection and correction of conflicts of interest, corruption and fraud in the use of the funds awarded.

To comply with this mandate, under Order HFP/1030/2021 of 29 September, establishing the management system for the Recovery, Transformation and Resilience Plan —PRTR in Spanish— (henceforth 'Order HFP/1030/202'), any entity involved in implementing the measures of the Recovery, Transformation and Resilience Plan, whether it is in charge of making or carrying out decisions, must have an Anti-Fraud Measures Plan that enables it to ensure and state that, within its scope of action, the funds concerned have been used in compliance with the applicable regulations, particularly in regard to the prevention, detection and correction of fraud, corruption and conflicts of interest (Art. 6.1).

BARCELONA ACTIVA SAU SPM (henceforth, BARCELONA ACTIVA) is an organisation which participates in the implementation of PRTR measures in one way or another, and it must therefore have an Anti-Fraud Measures Plan (hereafter AMP) under the terms and conditions stipulated by the regulation.



# INTRODUCTION

BARCELONA ACTIVA states its commitment to complying with the laws and holding itself to the highest ethical and integrity standards. For this reason, it has recently designed and implemented a crime-prevention programme.

In accordance with Article 2 of the Order, reinforcing mechanisms for preventing, detecting and correcting fraud, corruption and conflicts of interest is stipulated as a specific principle that must be taken into consideration in the planning and implementation of the Plan. This principle is discussed more specifically in Article 6, Section 4, of the Order, which states that every organisation must guarantee and declare that the corresponding funds have been used in accordance with applicable regulations, specifically in regard to the prevention, detection and correction of fraud, corruption and conflicts of interest.

In this regard, Art. 6.4 of the Order states that mandatory actions for management bodies include risk assessment for fraud, a statement of no conflicts of interest and the availability of a procedure to handle conflicts of interest. Similarly, Section 5 of the same article stipulates the minimum requirements for an anti-fraud measures plan, specifically mentioning the need to: *'define procedures relating to the prevention and correction of situations of conflict of interest in accordance with Sections 1 and 2 of Article 61 of the EU's Financial Regulation. In particular, any person taking part in PRTR implementation procedures must sign a Statement of No Conflicts of Interest, or DACI; their immediate superior must be notified of any potential conflict of interest; and that immediate superior must adopt the appropriate decision in each case.'*

It is therefore established that, as a minimum requirement, the Anti-Fraud Measures Plan should provide a response to, or contain preventative or corrective mechanisms for, situations of conflict of interest.

## PURPOSE

The purpose of this document is to take the necessary measures to prevent and detect situations of conflict of interest, and where they occur to establish mechanisms which report and respond to these situations, in order to avoid any bias in decision-making.

# WHAT IS A CONFLICT OF INTEREST AND WHY IS IT IMPORTANT TO MANAGE IT?

## DEFINITION

A conflict of interest is deemed to exist in any situation where private interests do or may interfere in a person's, organisation's or institution's ability to carry out an activity in accordance with the interests of the other party.

The Organisation for Economic Cooperation and Development (OECD) defines conflicts of interest as: *'A conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.'*

In other words, a conflict of interest may occur when there are factors such as personal relationships or economic interests which affect a person's level of objectivity, neutrality or independence, putting at risk their ability to act in compliance with their professional obligations and duties.

## THE DIFFERENCE BETWEEN CONFLICTS OF INTEREST AND CORRUPTION

Corruption normally requires an agreement between two parties and some kind of payment, bribe or benefit. By contrast, a conflict of interest occurs when a person may have an opportunity to put their own private interests before their professional duties.

Therefore, as we will see below, the mere existence of a conflict of interest does not necessarily entail objectionable or punishable behaviour. For this reason, it is important not to confuse the existence of a conflict of interest with an act of corruption.

## THE IMPORTANCE OF DEALING WITH CONFLICTS OF INTEREST

A conflict of interest that is not adequately dealt with has an impact on a procedure's regulation or processing, and this entails an infringement of the principles of transparency, equal treatment and non-discrimination which must govern actions in public functions.

Situations of conflict of interest that are inadequately identified and not managed endanger the integrity of the company and the individuals involved. Therefore, failing to identify a conflict of interest prevents it from being managed.

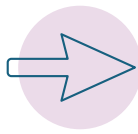
It is essential to identify these situations so that we can remove the person from the decision-making procedure, thereby ensuring a neutral decision while also avoiding third parties' potential suspicions regarding the procedure. A conflict of interest is therefore avoided while also protecting trust in the procedure.

# WHAT IS A CONFLICT OF INTEREST AND WHY IS IT IMPORTANT TO MANAGE IT?

The risks are greater when these conflicts of interest affect people who are in executive positions or members of the governing body, given that their actions are larger in scope and importance and may affect the entire organisation. It is important to adopt a risk-based approach and establish procedures that make it possible to identify and manage conflicts of interest while taking into account the procedures or activities where the risks are much greater. However, it is important to be aware that all Barcelona Activa personnel may be affected.

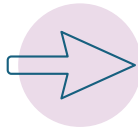
## TYPES OF CONFLICTS OF INTEREST

Generally speaking, three types of conflicts of interest can be distinguished:



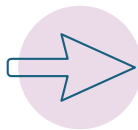
### REAL

A person has a particular interest in regard to a certain professional judgement or perception and is effectively in a situation where they are obliged to provide that judgement (present/real risk).



### POTENTIAL

A person has a particular interest which may influence them when making a professional judgement in their post or position, but they are not yet in a situation where they must make this judgement (future/potential risk).



### APPARENT

The person has no conflict of interest —either real or potential— but someone may reach the reasonable conclusion that there is one. It is apparent when it can be resolved by providing all the information required to demonstrate that there is no conflict of interest.

# FACTORS LINKED TO SITUATIONS OF CONFLICT OF INTEREST

In BARCELONA ACTIVA's viewpoint, we can distinguish between internal and external factors.

## Factors that are external or beyond the control of BARCELONA ACTIVA

- Family members (including spouses or partners).
- Economics. Economic involvement or controls in other organisations.
- Others. For example: former working relationships, friendly relationships or manifest hostility, situations with pending litigation. This may also include receiving gifts, incentives or invitations to events or benefits for a third person or company.

## Internal BARCELONA ACTIVA factors

- Inadequate organisational structure.
- The performance of activities or provision of services that enter into conflict.
- The remuneration system (internal promotion based exclusively on financial goals).
- Establishing very stringent goals. Too much pressure to achieve goals.





# **HOW TO MANAGE CONFLICTS OF INTEREST APPROPRIATELY**

One of the essential principles for managing conflicts of interest is proactiveness, which includes prevention. This means anticipating the occurrence of risk. The tools we have for doing this are as follows:

## **COMMUNICATION AND RECORDS**

Communicating and informing all the personnel of the different conflict of interest categories and the ways to avoid them. In this regard, it is necessary to understand what a conflict of interest consists of, the various ways in which it may present itself and how it can be avoided by referring to the applicable regulations, either international recommendations or Spanish regional or local regulations.

Staff involved in any contracting procedure must periodically report and update the existence of any family, economic or other links with third parties which put, or may put, their impartiality at risk in the performance of their duties. In order to do so, they may choose to sign a Statement of No Conflict of Interest, which is attached as Annexe 1.

This annexe must at least be signed by the head of the contracting body and any person to whom they delegate functions, the members of the negotiation board or committee, the personnel who help to prepare/draft the tender documents, the members of the technical team responsible for the assessment, the experts who carry out any tasks related to the preparation of the tender documents or assess bids, and, in short, everyone who participates in the management of each project.





Therefore, in order to prevent these risks from occurring, these people are obligated to fill out and sign a Statement of No Conflict of Interest at the start of the corporate project, file or activity. Thus, from the very beginning, everyone taking part in the project is predisposed to be aware of the importance of identifying private interests that may improperly influence the decisions that are taken. All of these statements must be documented and recorded so they are easily accessible and this traceability can be proven.

In the case of collegiate bodies, this statement may be filled out at the beginning of the meeting by everyone taking part, which should be reflected in the minutes. The Statement of No Conflict of Interest must be filled out whenever there is a change in the situation of the person signing it. If a person is privy to new information during the procedure, or if there is a change in their circumstances, they must immediately report this apparent, potential or real conflict of interest to their immediate superior, either via a new Statement of No Conflict of Interest or directly via any other means.

BARCELONA ACTIVA must keep a record of any conflict that has arisen in order to have proof of how it was managed and what measures were taken. This will also provide a reference for future conflicts. The statements may be checked by BARCELONA ACTIVA personnel, maintaining proportionality between the administrative post and the need for proof. They may be checked with internal information (correlation of personal data), external information (databases, public records, tax authorities, etc.), checks in high-risk situations of conflict of interest or in a random manner.

When an employee thinks/believes that they may be involved in a situation which may lead to a conflict of interest, they must immediately inform their superior or the Compliance Committee. All of these communications must be recorded.

### **THE OBLIGATION TO ABSTAIN FROM TAKING ACTION IF INVOLVED IN A SITUATION OF CONFLICT OF INTEREST**

All BARCELONA ACTIVA personnel are obliged to withdraw or abstain from acting or making decisions if they have identified that their professional judgement may be affected by a private interest.

In particular, the members of the Compliance Committee who are affected by a situation of conflict of interest must abstain from participating in the proceedings.

### **EMPLOYEE TRAINING AND AWARENESS-RAISING**

With the aim of fostering prevention, employees will receive training on this matter, which must be undertaken when new personnel join or when a person starts a job that involves the public procurement of services, goods or works, or the management of contracts or orders.

# HOW TO MANAGE CONFLICTS OF INTEREST APPROPRIATELY

### PENALTIES

In cases where a situation of conflict of interest is not reported or there is a false statement, the person involved may be subject to penalties in accordance with the provisions outlined in BARCELONA ACTIVA's disciplinary regime. Non-compliance by failing to fill out the Statement of No Conflict of Interest or update it if the situation changes may lead to the corresponding disciplinary penalties, in accordance with BARCELONA ACTIVA's disciplinary regime.

### OBLIGATION TO MAINTAIN CONFIDENTIALITY

This even applies to employees who leave the organisation. This duty of secrecy shall remain over time, even though the contractual relationship with BARCELONA ACTIVA has been terminated. This prevents the person benefiting from any situation of conflict of interest.

### OTHER SPECIFIC MECHANISMS AND MEASURES

These include having a policy for the segregation of functions and dual-signature systems.



## WHAT SHOULD BE DONE IF THERE IS A REASONABLE SUSPICION OF A CONFLICT OF INTEREST?

The people affected by a situation that may entail the existence of a conflict of interest must immediately report this to their immediate superior in writing, who will then carry out the checks and investigations needed to clarify the situation. If the conflict of interest is considered to exist, they shall confirm this in writing.

However, any BARCELONA ACTIVA employee who has knowledge of a conflict of interest which affects someone in the organisation must inform the company using the mechanisms established for this purpose, mainly via BARCELONA ACTIVA's own Whistle-Blower Channel.

The Compliance Committee must analyse all the information it receives in this regard. If the results of the check confirm the initial information and the conflict of interest is administrative, the facts may also be referred to the competent authority:

- Where pertinent, analysing the facts concerning the person involved in the situation.
- Administrative measures should be taken, and, where necessary, disciplinary penalties against the alleged offender in regard to a conflict of interest who has not fulfilled their duty of notification. In particular, Article 24 of Law 40/2015 of 1 October, concerning the public sector legal system in the matter of recusal, shall be applied.
- Removing employee from the decision-making process. This applies whether they are a staff member or an external expert, and regardless of their professional category. The employee's exclusion must be considered not only if there is a real conflict but whenever there are reasons for doubting their impartiality. In very exceptional cases, it may not be possible to exclude the employee or expert, due to a lack of resources or experts specialising in certain fields. In this case, the contracting body must ensure that their decision is completely transparent, must set precise limits on the employee's contribution and must ensure that the final decision is based on fair, transparent evidence. Personnel must also notify the competent authorities of this situation. They must document all the measures taken during the procedure.
- Limiting the employee's functions. When the conflict of interest is likely to be repeated and abstaining is not sufficient, limiting the scope of action of all or some of the person's functions must be considered.
- Cancelling the public procurement procedure in cases where it has been affected.
- Correlating its conclusions with other data and using these data to conduct a risk analysis.
- Making the facts public in order to guarantee the transparency of decisions and to serve as a deterrent in order to prevent similar situations from occurring.

## **WHAT SHOULD BE DONE IF THERE IS A REASONABLE SUSPICION OF A CONFLICT OF INTEREST?**

If the conflict is criminal in nature:

- Reporting the facts so that a criminal procedure may be initiated.
- Overseeing the administrative aspects of the case.
- Correlating its conclusions with other data and using these to conduct an internal risk analysis.



## RED FLAGS

Red flags are indicators that warn of a possible incident of fraud, corruption or conflict of interest. They are factors that are atypical or differ from normal activity. They are categorised as signs of factors that fall outside the norm that must be examined in greater detail.

Therefore, when one of these red flags is detected, vigilance must be increased and the measures needed to confirm or discard the existence of a conflict of interest must be taken immediately.

These anomalies may appear in:

- Tender documents: when, for example, there are bids from various candidates, but they are sent from the same email address or submitted by the same person.
- Financial records: for example, there are invoices paid in amounts that exceed the value of the contract.
- The behaviour of project personnel: for example, they pressure the assessment committee to choose a certain contractor.

The presence of red flags shall cause the personnel and the people in charge to increase their vigilance. Any measures needed to confirm or rule out the presence of a conflict of interest must be taken, and it is extremely important to react to these indicators. The existence of a red flag does not mean that fraud has been or may be committed, but rather that the situation must be checked with due diligence.

This section analyses the typical cases of suspected fraud relating to conflicts of interest in public procurement procedures.

### PREPARATION FOR AND START OF THE PROCEDURE

- The person responsible for drafting the tender documents or a manager insists on contracting an external company to help in drafting the documents, even though this is not necessary or the need is not apparent.
- Two or more preparatory studies are requested from external companies on the same subject, and someone applies pressure to use one of these studies to draft the tender documents.
- The person in charge of drafting the documents organises the procedure in such a way that there is no time to properly review the documents before putting the contract out to tender.
- Two or more contracts with identical objectives are endorsed within a short period of time without any apparent reason, which leads to the use of a procurement method that is less competitive.
- A negotiated procedure is prioritised over an open procedure.

## PROCEDURE FOR CONFLICTS OF INTEREST

### RED FLAGS

- There are unjustified selection or concession criteria that favour a particular company or bid.
- The regulations concerning the provision of goods or services are too strict, allowing only one company to submit a bid for the tender.
- An employee of BARCELONA ACTIVA's contracting body has relatives who work for a company that may submit a bid.
- An employee of BARCELONA ACTIVA's contracting body worked for a company that may take part in the bidding just before joining BARCELONA ACTIVA.
- There is unusual behaviour in an employee who insists on getting information about the tender process even though they are not involved in the procedure.
- An employee monopolises the management of the file or the drafting of the specifications or any other activity relating to the procurement or purchasing procedure.
- The work from employees involved in the procurement processes is low quality.

### THE TENDER PROCESS, THE ASSESSMENT OF OFFERS AND THE FINAL DECISION

- The official documents or the document-receipt certificates have been altered in an obvious way (e.g., words crossed out).
- Members of the assessment committee do not have the technical knowledge needed to evaluate the bids submitted and are dominated by a single person.
- There are many subjective factors in the adjudication criteria.
- Some obligatory information about the successful bidder is missing.
- Certain information provided by the successful bidder refers to the personnel of the contracting body (e.g., the address of a BARCELONA ACTIVA employee).
- The address of the successful bidder is incomplete.
- The specifications for the tender are very similar to the successful bidder's product or services. This is especially important in cases where the specifications are very specific and very few bidders can meet them.
- Very few of the organisations that showed an interest in the procedure submit bids, especially if more than half of the organisations that were given tender documents drop out.
- Unknown companies, without any track record, are awarded the contract.



### EXECUTION, AMENDMENT AND MODIFICATION OF CONTRACTS

- Changes are made to the standard contract clauses (auditing, avenues of legal redress, damages, etc.).
- The methodology and work plan are not consistent with the contract.
- The company's name and legal entity are changed and the person in charge of awarding the contract the adjudication does not question this.
- There are numerous or questionable changes to orders made by a specific contractor, and they are approved by the same person who was in charge of the tender.
- There is a long, inexplicable delay between the successful bidder being announced and the contract being signed. In general, there are unjustified delays in the activity of an employee involved in procurement procedures.
- Substantial changes are made to the technical specifications or the list of terms and conditions.
- The quantity of products that must be supplied is cut without a proportional reduction in the amount paid.
- The number of working hours is increased but there is no corresponding increase in the materials used.
- The contract is missing or the documents proving a purchase are inadequate.
- The behaviour of the contracting body employee processing the file is unusual (reluctance to answer questions from managers concerning inexplicable delays or the absence of documents).
- Numerous administrative revisions are carried out, and public procurement procedures are cancelled.
- There are changes to the quality, quantity or specifications of the contract's goods and services which differ from the tender documents (terms and conditions, technical specifications, etc.).
- An employee does not submit the corresponding DACI or fails to provide information about a change in their circumstances.
- An employee involved in purchasing or procurement refuses promotion to another position in another area or department.
- An employee working on behalf of BARCELONA ACTIVA has their own business.
- A company employee involved in purchasing or procurement has an unjustified or sudden improvement in their standard of living.



# RED FLAGS

### SUGGESTIONS

In order to mitigate or find a response to these red flags, some of the actions that could be taken are listed below:

- Reviewing the procedure, taking these red flags into account.
- Ensuring that contractual auditing rights and avenues of legal redress are included, as required.
- Ensuring that the members of the negotiation board or committee are chosen in accordance with the project's implementation manual.
- Ensuring that the person in charge of the tender is available to answer any questions about the procedure.
- Confirming that the technical team has the knowledge needed to assess the bids.
- Checking that the members of the negotiation board or committee sign a statement and declare that they have no conflict of interest and no present or past relationship with any of the bidders.
- Assessing any request for a change in an order, checking its legitimacy and requesting the corresponding proof, as appropriate, before approving the change in the order.
- Checking that the results of the key goods supplied, work and services really exist. Reviews can confirm that the progress of the work is in line with the certificates of completion issued, that the corresponding proof is appropriate and that the employees correctly certify that the goods and services have been received in a timely fashion.
- Requesting independent annual technical, financial and public procurement audits for high-risk projects.
- Introducing training on managing contracts for employees working on projects.
- Introducing complaint-management procedures and making them public.
- Specifically checking the supervision of contract management: list of payments per contract and contractor, checks for duplicated payments and certification of goods and services received.

# ANNEXE 1. STATEMENT OF NO CONFLICT OF INTEREST FOR CONTRACTING-BODY PERSONNEL

I, (Name)....., [post/position in the contracting body] ....., as a person involved in procedure/file....., in the..... stage, and under my own responsibility,

**HEREBY DECLARE:**

1. That I am aware of what is stipulated in current applicable regulations concerning conflicts of interest, especially Order HFP/1030/2021, of 29 September, which stipulates the management system for the Recovery, Transformation and Resilience Plan, and Article 64.2 of Act 9/2017, of 8 November, on public-sector contracts, as well as the anti-fraud and conflict of interest policy, which prohibit the actions of all its personnel and third-party collaborators under any situations of conflict of interest that may interfere in the proper exercise of their professional responsibility.

In this regard, a conflict of interest is considered to be any situation in which BARCELONA ACTIVA personnel directly or indirectly have a financial, economic or personal interest that may compromise, or seem to compromise, their impartiality and independence, within the context of their professional activities.

2. I know that article 64, 'Combating corruption and preventing conflicts of interest', of Act 9/2017, of 8 November, concerning public-sector contracts, aims to avoid any distortion of competition, guarantee transparency in the procedure and ensure equal treatment for all candidates and bidders.

3. That I must abstain from taking part in a procedure when I have:

- a) A personal interest in the matter in hand or in another one whose resolution may influence the outcome of the former, whether it be company administrator or interested body, or having pending litigation with any interested party.
- b) A matrimonial or similar bond or a fourth-degree blood or second-degree family relationship with any of the interested parties, the administrators of interested organisations or companies, as well as their advisers, legal representatives or proxies who participate in the procedure, and share a professional office or are associated with them for advice, representation or stewardship.
- c) Close friendship with, or manifest hostility to, one of the people mentioned in the previous section.
- d) Having participated as an expert or a witness in the procedure in question.

## **ANNEXE 1. STATEMENT OF NO CONFLICT OF INTEREST FOR CONTRACTING-BODY PERSONNEL**

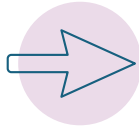
- e) A service relationship with a natural person or legal entity directly interested in the matter, or having provided them with professional services of any kind, in any location and under any circumstances within the last two years.
- 4. That I am not involved in any apparent, potential or real conflict of interest connected to the procedure cited in the heading.
- 5. That I have no background or circumstances that may cause an apparent, potential or real situation of conflict of interest in the near future which would call into question my independence in the eyes of any of the parties.
- 6. Should a possible situation of conflict of interest in which I am implicated arise during the course of the procedure in question, I shall immediately inform Barcelona Activa's Compliance Committee. If, consequently, the effective existence of this or any other conflict of interest is detected, I shall abstain from participating in the procedure in question and in any activities related to it.
- 7. That I have not taken, and will not take, any type of action which could lead to a competitive advantage in the procedure cited in the heading.
- 8. That I shall treat all the matters of which I have knowledge by virtue of the functions I carry out as part of the procedure in question as confidential, I shall refrain from using this information improperly, and I shall only use it within the framework of the procedure.
- 9. I have been warned that if I fail to disclose a conflict of interest or if I falsify this statement, Barcelona Activa shall refer this to the Compliance Committee so that it may issue the corresponding report, notwithstanding other penalties that may be determined.
- 10. That I have been warned that where the seriousness of the facts deem it necessary, the contracting body shall inform the Catalan Anti-Fraud Office or the oversight and inspection bodies with authorities on this subject matter.

Signature

-----  
[Name and surname(s)]

[job title]

Date



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