

# GUIDE TO ENSURING PROBITY IN PROCUREMENT PRACTICE

How your health service can maintain an appropriate level of probity in procurement activities

## What is probity?

For the purposes of public sector procurement, probity means acting according to strong moral principles of integrity, uprightness and honesty. This incorporates complying with (and being able to demonstrate compliance to) all required probity principles, guidelines and requirements.

Probity makes good business sense as it ensures the integrity of procurement decisions. It cannot guarantee though that issues will not arise in relation to the management of the process or that the final outcome will not be contested. It can, however, support a defensible outcome and will ensure all parties are dealt with in a fair and equitable manner.

There must always be probity in the management of public sector procurement. This includes the need for measures to facilitate management of probity risk, documentation of the method by which probity procedures, policies and guidelines are implemented, and monitoring and reporting compliance with probity guidelines.

## Why is probity necessary?

Probity is necessary to ensure that expenditure of public sector funds is carried out in accordance with Government requirements; such as achieving value for money and ensuring that government funds are

expended in an economical, efficient and effective manner.

The public sector is not only responsible for the outcomes it achieves, but how it achieves those outcomes. Ensuring appropriate probity arrangements provides assurance to stakeholders including various sectors of Government and the community that government funds have been expended to achieve the best possible outcome using equitable and measurable processes.

## Who does probity?

There is an important distinction to be made between who "does" probity and who is responsible for the probity of a process.

Organisations can manage the probity of their procurement activities by applying internal expertise and/or engaging an external probity consultant as a probity advisor or probity auditor according to the requirements of the procurement.

In all cases, individuals whose primary role is to deliver probity services must be able to demonstrate a high level of skill and knowledge in regards to probity.

Whilst the Chief Procurement Officer (CPO) has accountability for ensuring probity of the process, each party involved in the process is responsible for maintaining probity throughout the procurement process. The engagement of external probity advisors and/or

auditors does not transfer this responsibility for probity to them and away from those involved in the process.

The implementation of an appropriate governance framework ensures the identification of those responsible for undertaking probity related tasks in procurement processes, and those who are accountable for ensuring compliance with all relevant probity requirements.

## What is a Probity Practitioner?

The term Probity Practitioner is usually applied to an individual who has specialised probity skills and knowledge. A Probity Practitioner can be an appropriately skilled employee of a government department/agency or an external contractor/consultant appointed to carry out a probity role.

An important requirement is that the Probity Practitioner (internal or external appointment) is independent from the procurement activity. For example, an internal Probity Advisor should report separately to the senior officer responsible for a procurement process, and should not have a direct line management relationship with this same senior officer.

Probity Practitioner is generally the term used to cover both lines of probity service – namely, probity advisory services and probity auditor services.

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## What is a Probity Advisor?

A Probity Advisor is a consultant engaged to work with a procurement team advising throughout the process to ensure appropriate protocols and procedures are in place, and identifying the risks of not meeting standards of probity. Typically, a Probity Advisor will provide advice on the establishment of probity arrangements in a procurement process which will assist in the preparation of documentation such as Strategic Sourcing Plan, information management protocols, Evaluation Plans and market documents such as Invitations for Expression of Interest and Invitations to Supply. The Probity Advisor will generally provide a report at the conclusion of the process advising as to whether, in their opinion, the process has been conducted in accordance with the Strategic Sourcing Plan and other relevant documentation, and whether all matters brought to their attention have been dealt with in an appropriate manner.

## What is a Probity Auditor?

A Probity Auditor is a consultant who retrospectively reviews procurement processes at key milestones to provide independent assurance that the process has complied in all material aspects with all relevant procurement policies, procedures and guidance. A Probity Auditor is independent of the procurement team, does not work under the direction of any person associated with the procurement process, and typically reports to the

Steering Committee or similar higher level governance body.

### Probity Advisor versus Auditor

There may be situations, such as in the case of high risk, high profile, and/or high value procurements where it will be necessary to engage both a Probity Advisor and a Probity Auditor. They must be sourced from different organisations and consideration should be given to early engagement at the planning phase.

## When to engage a Probity Advisor and/or Auditor and why?

The decision to engage a probity advisor and/or auditor should be made after due consideration of the complexity of the procurement activity as identified during the procurement strategic analysis phase. Understanding the complexity of the procurement will assist with measuring probity risk. HPV has developed a risk assessment tool, which includes a range of potential probity risk factors.

Measuring probity risk requires qualitative assessment of a range of factors, with any combination of factors potentially creating high probity risk. Some of these could be mitigated, however, some may not.

The extent and nature of probity risk which can be only partly mitigated will be a factor in deciding how much specialist assistance is required to manage probity of the procurement.

*For example, an organisation with high levels of probity risk and no staff with specialist probity skills may need to engage an external probity advisor to work with the procurement team.*

A high value procurement attracting high levels of public interest, linked to the achievement of prominent policies, and legislative obligations, may require a probity advisor to strengthen the management of probity internally. It may also require a probity auditor who can provide assurance for the purposes of external accountability.

The engagement of specialist probity resources should strengthen the organisation's ability to better manage its probity risk. Bear in mind that engagement of external probity specialists does not transfer the responsibility for managing the probity of the process from the organisation to the specialist advisor or auditor.

### Risk Analysis Tool

For more information about risk analysis, refer to the Risk Analysis Tool, found available on the HPV website. [Resources > Health Purchasing Policies > Procurement Guidelines Tools and Templates](#)

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## Probity principles for procurement processes

The organisation must ensure that it establishes appropriately designed procedures and systems in order to demonstrate that it has adhered to the following generally accepted Government probity requirements:

- Consistency and transparency of the procurement processes
- Fairness and impartiality in carrying out the procurement related processes
- Identification and management of actual, potential and perceived conflicts of interest
- Maintenance of confidentiality and security of documentation and information
- Ensuring market equality
- Allocating appropriate capability to elements of the procurement process
- Engaging a probity service provider where the complexity of the process warrants independent oversight

## How to monitor compliance with probity requirements and how to measure performance?

Compliance with probity requirements is measured by referral to the relevant probity policies, procedures and guidance that apply to the procurement. This is generally done by reference to the Strategic Sourcing Plan which translates the probity policies, procedures and guidance into operational behaviour. The Strategic Sourcing Plan will provide the foundation for monitoring and measuring the compliance of procurement with probity requirements.

The choice of probity expertise for a project will be influenced by the outcome of a probity risk assessment process as this will indicate the level of probity management and sign-off that should be required. For example, a Probity Auditor provides a better level of independent assurance compared to that provided by an internal probity practitioner.

Some examples of performance criteria for monitoring the effectiveness of the probity measures established for a project include the:

- Number of probity issues related to the design of the probity framework, that arise during the process
- Efficiency with which these issues are addressed
- Effectiveness of measures established to resolve issues

- Quality of information available to resolve probity related issues
- Ongoing reporting of probity activities and issues
- Ability of the probity requirements to withstand external scrutiny.

## Probity Breaches

Health services should develop their own procedures to manage breaches of probity and include appropriate actions with regards to escalation and reporting.

## Consistency and transparency of the procurement processes

Consistency and transparency is achieved by establishing a robust process which is well-documented and then followed. This includes:

- Establishing appropriate decision making processes for the project
- Evaluation criteria and weightings being pre-agreed and pre-approved
- Evaluation criteria being published to potential respondents
- Submissions only being evaluated on their contents against the published criteria
- Establishing a straight-forward information trail that facilitates management of communications
- The evaluation process being documented along with reasons for any decisions made

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## Fairness and impartiality, and ensuring market equality

A fair process is the cornerstone of best practice procurement. Probity in procurement embodies the fairness, impartiality and integrity of the process.

Procedures to be implemented to support market equality, fairness and impartiality include:

- The opportunity is made widely available
- All respondents (potential and actual) have access to the same information
- There is a single point of contact nominated
- Invitation documents contain sufficient and appropriate information to prepare a submission
- Invitation documents do not contain any unreasonable condition or requirements that prevents or discourages suppliers from responding
- Adequate time is allowed for submission preparation
- Evaluation criteria and weightings do not favour one or more respondents
- Submissions are in a format that allows for a fair and comparable evaluation

## Allocating appropriate capability to elements of the process

People and systems involved in the project should be matched to process tasks and activities based on their skills, capabilities or strengths. This will include ensuring:

- Personnel such as managers or directors are given oversight and powers of approval that are commensurate with their roles
- Personnel are not expected to carry out duties above their normal delegations and/or level of experience and training
- Systems are assessed based on their capabilities to sufficiently support the required process tasks and activities
- Specialists and advisors (e.g. financial, legal) are engaged where deemed necessary

## Maintenance of confidentiality and security of documentation and information

Although transparency is fundamental to the work of public sector organisations and public officials, there is some information that must be kept confidential in order to protect the integrity of the process and give respondents the confidence to do business with government.

A significant amount of confidential information is likely to be generated during a procurement process. A potential risk to the procurement process is that there could be unauthorised access to confidential information.

Rigorous management of information in hard copy and electronic format is critical. Hard copy as well as information on mobile electronic devices such as tablets, mobile phones and USB, is harder to track and can easily be copied, lost, misplaced, leaked or accessed by unauthorised parties. Specific protocols for managing information include:

- Restricting the ability to download, print, and photocopy information
- Limiting the distribution of hard copy information and information on USB
- Ensuring that members of the procurement team do not maintain personal files of procurement process information. For example, copies of draft evaluation reports, assessment notes, meeting notes on hard drives and mobile devices
- Numbering or watermarking hard copies of confidential information
- Encrypting confidential information in electronic format
- Ensuring that hard copies of information provided at meetings are returned to the procurement team at the conclusion of meetings

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- Ensuring that dissemination of procurement process information is limited to a single source
- Creating a register of hard copy and electronic format information that is distributed to relevant parties.

Appropriate arrangements must be made to protect components of a proposal that are identified as commercial in confidence, confidential or comprising the intellectual property of the respondent. If there are doubts about the confidentiality status of any information, then it should be referred to the Project Legal and/or Probity Advisors. Any information that is deemed by the Project Legal and/or Probity Advisors to be confidential will be subject to restricted access.

The following items should be maintained as confidential:

- Contents of submissions from stakeholders and proposals of the respondents
- Clarification questions and responses during the evaluation process which will form part of the respondents submission
- Confidential information produced as part of the evaluation process (e.g. meeting minutes, evaluation reports, reports etc.)
- Other information related to the process that is not publicly available
- Any information deemed to be confidential and not appropriate for general access.

Any information that could give any respondent (s) an unfair advantage should be made publicly available to all participants.

## Maintaining confidentiality through managing communications

Effective communication is critical to the success of a procurement process. Many different types of communication will occur throughout the process, and there may be probity risks associated with a range of those communications.

At all times, care should be taken to structure, manage and record communications in order to minimise probity risks. Key considerations include:

- **Authorisation:** Procedures should be established to ensure review and authorisation of draft documents and correspondence, recognising the need to send consistent and internally agreed messages to all respondents
- **Contact points:** A single contact point should be nominated and authorised to deal directly with respondents and key stakeholders. Under special circumstances, these employees/advisers may also be given the authority to delegate to others to communicate on specific matters which arise
- **Maintaining records:** Arrangements must be made for formal documentation of key discussions, including minutes which record the main points and substantive

issues raised in face to face meetings and telephone conversations. To this end, participants in meetings should be encouraged to keep notes that reflect their personal action items and have the official minutes stand as the formal record of the meeting.

## General communications with the market

When interacting with the market seeking information and/or submissions, the following guidelines will apply:

- There must be consistent messages and information provided to the market and all respondents must have the same opportunity to access information
- Any information that is not general public knowledge must only be communicated to respondents if it is considered necessary.

Staff should direct respondents or their representatives requesting information to submit the request via the nominated contact's email account or, where an electronic sourcing system is used to conduct the procurement activity, via that system.

## Communication with media/special interest groups

Any requests for information from the media or special interest groups should be referred to the CEO's office or other nominated communication point for the organisation.

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## Identification and management of actual, potential and perceived conflicts of interest

Conflict of interest issues arise when individuals are influenced, may be influenced, or appear to be influenced by personal or other interests when carrying out their official duties and responsibilities. Conflicts of interest can result in a lesser standard of service delivery, diminished value for money, or create the perception of such. Most importantly, they bring into question the integrity of the process and the ability to defend it should the process be contested.

Every individual employed or engaged by the health service has a responsibility to follow all policy and procedural requirements established for a procurement process to manage any conflict of interest. Each individual employee, contractor or consultant is responsible for disclosing their own interests where there is a possibility that such interests may conflict with their role in the procurement activity/project.

The distinction between an actual, potential or perceived conflict of interest cannot be eliminated through a simple view that all conflicts are bad and of equal importance. Rather, it is critical to ensure that a conflict of interest is identified and defined, and that its context is understood so that appropriate and relevant mechanisms can be established to address any issues that may arise as a result of that conflict of interest.

Examples of possible conflicts of interest:

- A spouse, close family member or close friend, employed by a potential tenderer
- A spouse, family member or close friend who may gain financially from decisions made by the individual
- Membership of a social, sporting, educational, political or special interest group, and/or membership of a family member or close friend; where the group may gain financially or otherwise by the individual's decisions.

Table 1. provides an outline of key conflict of interest terminology.

### Possible conflicts of interest

The above are examples only. There may be other factors that determine whether an actual, potential or perceived conflict of interest may exist.

### Managing conflict of interest

It is not always possible to avoid a conflict of interest. Therefore it is important to ensure procedures are in place to manage the conflict of interest after it has been identified. Procedures include:

- Always request declaration even if the individual is unsure as to whether it is a conflict of interest
- Place restrictions on the role and duties of the individual in relation to their involvement with the procurement process.

- Assign an independent third party to be involved to oversee the individual's activities
- Divest or remove the matter giving rise to the conflict (if possible)
- Remove the individual declaring the conflict from the process

Which procedures are followed will generally depend on the significance of the conflict of interest to the probity of the process. In all cases however individuals involved in the procurement process must be requested to declare any actual, potential or perceived conflict of interest. In addition, all action taken to address any actual, potential or perceived conflict should be recorded and monitored. Monitoring may include verbal confirmation of no change to conflict of interest status at the commencement of meetings, and observation of behaviours.

### Managing conflict of interest of Reference Group or Evaluation Team members

In the case of procurements where product or service reference groups, or other expert stakeholder groups, are involved, as with any other party involved in the process, it is necessary to ensure early identification of any conflicts of interest. As these members have been included for their specialist knowledge, they may also be involved with respondents across a range of situations, for example as members of advisory boards, consultants or on project teams.

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For example, Pharmacists who are members of Advisory Boards convened by pharmaceutical companies. In such cases, along with the task of deciding if a conflict of interest exists, it would be important to consider mitigating factors such as:

- The extent of the commercial relationship (if any) between the individual group member and the respondent
- The extent and nature of involvement of the group member with the Advisory Board and the respondent
- The length of time over which such an involvement has existed
- The actual amount of influence that the group member may have over evaluation outcomes
- Whether the group member can easily be replaced by another member with equal knowledge and standing in their specific field of expertise.
- In cases where it is determined that the Reference Group or evaluation team members must be included in the evaluation process, despite having a conflict of interest, it would be prudent to disclose the involvement of this individual in the market documentation and include clauses to the effect that in lodging a proposal, the respondent waives their rights to take action in relation to the participation of this individual. In such a case, it is important to seek legal advice to ensure the correct drafting of market documentation.

Term	Explanation
Actual conflict of interest	Where an individual's personal interests or associations improperly influence their ability to undertake their official duties and responsibilities without bias; or the individual's personal, professional or social relationships and/or interests influence the individual's execution of their official duties. In such cases, the individual gives precedence to their own interests over their official duties and responsibilities.
Perceived conflict of interest	Where an individual's personal interests or associations are perceived, or seen, to improperly influence their ability to undertake their official duties and responsibilities without bias; or the individual's personal, professional or social relationships and/or interests are perceived to influence the individual's execution of their official duties. Note: A perceived conflict of interest can exist without proving an actual conflict of interest.
Potential conflict of interest	Where the possibility of an individual's personal interests or associations improperly influencing their ability to undertake their official duties and responsibilities without bias is dependent on a future event; or where the possibility of an individual's personal interests or associations may be perceived, or seen, to improperly influence their ability to undertake their official duties and responsibilities without bias is dependent on a future event.
Personal interest	Arises from the personal, professional or business interests of an individual, and may include the personal, professional or business interests of any individual or groups that person associates with, or any other associate or associated person with whom they have a connection.
Pecuniary interests	An interest where the individual and/or their associates have the potential of financial gain or loss, which may influence the individual's ability to execute their professional duties and responsibilities without bias.
Non-pecuniary interests	Personal interests (refer above definition) that may impact your ability to make decisions without bias even though no financial gain or loss may arise.

Table 1. Key conflict of interest terminology

## More information

Related documents and templates are available on the HPV website [www.hpv.org.au](http://www.hpv.org.au).