

Probity Guidelines for Procurement

INTRODUCTION

Tasmanian Government procurement activity should conform to expected probity standards. Probity is evidence of ethical behaviour and integrity in a procurement process. Applying probity throughout a procurement process provides assurance that the procurement was conducted in a fair and equitable manner, using processes that give equal opportunities for all participants. Potential suppliers must have confidence that the procurement process is competitive and robust.

PROBITY OBJECTIVES

The broad objectives of probity in procurement are to:

- Ensure compliance with processes designed to achieve value for money.
- Provide accountability.
- Ensure that all bids are assessed against the same criteria.
- Preserve public and bidder confidence in government processes.
- Improve defensibility of decisions to withstand potential legal challenge or external scrutiny.

PROBITY PRINCIPLES

To meet the objectives listed above, the four principles outlined below should be considered throughout a procurement process, including at the pre-procurement planning stage.

Open and competitive processes

A competitive process for procurement should be used unless otherwise provided for in the Treasurer's Instructions.

- Market testing should be undertaken on a regular basis as it allows new suppliers to compete for procurement opportunities, encourages existing contractors to improve performance and has the potential to identify new procurement solutions.
- Specifications should be reflected in pre-determined evaluation criteria, and should include the expected outcomes of the procurement and the skills and expertise expected of the service provider.

Fairness, consistency and transparency of process

Potential suppliers should be treated equitably and all suppliers should have the same opportunity to access information and advice.

In practice this means that:

- Evaluation criteria and weightings are established and documented prior to the calling of bids. Criteria are not biased and are not changed during the procurement process unless all bidders are given an opportunity to revise their bids. The criteria are available to all potential bidders.
- There is transparency in decision-making. Bids are evaluated consistently, in a systematic manner against the pre-determined evaluation criteria.
- All bidders have access to the same information and for the same amount of time.
- Where additional information is provided to one potential supplier, that information is made available to other potential suppliers. If additional information is provided, bidders have adequate time to take this into consideration prior to submitting bids.
- Confidential information is protected, in accordance with the requirements of the Government's confidentiality policy requirements.
- Common deadlines, including dates for submission of bids, should be enforced. Any extension of time permitted must be granted to all bidders.

Identification and resolution of conflicts of interest

A conflict of interest arises where an official, supplier or adviser (providing services in relation to the procurement process) has an affiliation or interest that might prejudice or be seen to prejudice, the impartiality of the official, supplier or adviser. Policies to deal with potential conflicts of interest must be in place within agencies.

Members of an evaluation committee should disclose any actual, perceived or potential conflicts of interest prior to their appointment, or as soon as they become aware of any actual, perceived or potential conflict of interest.

Bidders should be required to disclose all potential conflicts of interest at the time they offer to provide services.

Accountability in relation to decision-making

Accurate records must be kept throughout the procurement process (including during any Early Market Engagement¹) to justify the process and decisions made. These records should detail evaluation

¹ See Early Market Engagement guidance publication, available at www.purchasing.tas.gov.au, for further information.

criteria, weightings, decision-making processes and final decisions made. Documentation should provide sufficient information and detail to enable audit and independent review functions to be carried out.

Bids, submissions, expressions of interest and any other document intended for market engagement or communication should be evaluated by a panel (i.e., not one person).

The appointment of a Probity Adviser should be considered for large, complex, high value or high risk procurements to provide external scrutiny and ensure integrity of process.

EXTERNAL PROBITY SERVICES

What is a Probity Adviser?

A consultant who is external to (and independent of) a procurement process may be engaged as a probity adviser to:

- Provide scrutiny of the procurement process, ensuring that prescribed processes have been or are adhered to.
- Provide advice on probity issues which may arise before and during the procurement process.
- Ensure that the process is equitable and conducted with integrity.

A probity adviser can provide an independent opinion on probity issues that may arise during the procurement process. The probity adviser's final report may provide the agency with documented confirmation that the concluded process has met all applicable probity requirements and adhered to government policies, in the opinion of the probity adviser. This advice would also include confirmation that the evaluation process was conducted in accordance with the process set out in the evaluation guidelines issued to suppliers.

Probity Adviser vs. Probity Auditor

A probity adviser is actively involved in a procurement process, providing advice on probity and strategies to mitigate or overcome any potential issues which may arise. The pro-active approach taken by a probity adviser is anticipated to achieve best practice procurement processes and outcomes.

A probity auditor's role is generally confined to reviewing a procurement process after it has been completed, with a report completed providing an objective assessment of that same process. It is expected that, in most cases, agencies will engage probity advisers as opposed to probity auditors.

While a probity adviser can be engaged at any stage during the procurement process, for best results it is recommended that they be engaged early in the procurement process. A probity adviser may also be

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engaged if significant Early Market Engagement is to be undertaken prior to the commencement of a procurement opportunity.

What does engaging a probity adviser achieve?

Probity risks can occur at any stage of the procurement process. The engagement of a probity adviser should help ensure a procurement process is:

- open and fair;
- free of undue influence or interference by any interested party;
- conducted in compliance with government policies and guidelines; and
- secure and confidential.

The probity adviser, upon completion of the process:

- confirms that the process was fair and nothing more needs to be done;
- recommends how to implement future processes;
- advises how to redress any errors or omissions; and
- as a last resort, recommends the process be repeated.

Do I need to engage a probity adviser?

Probity must be considered when undertaking any procurement. A probity adviser is not always necessary and engaging a probity adviser is not a substitute for good management practices. Agency procurement processes incorporate a number of review mechanisms such as a Procurement Review Committee that assesses a procurement process to ensure it has been fair and equitable, and that the procurement principles and procedures outlined in the Treasurer's Instructions (as well as any agency specific procurement requirements) have been followed.

For difficult or complex procurements, a procurement plan should be developed. It is during this time that a decision should be made as to whether a probity adviser is required. The responsibilities of all relevant participants, including the probity adviser, should be determined at the outset of the procurement process.

Key factors to consider when deciding to engage a probity adviser include:

- value of the transaction (is it a high value procurement?);
- the complexity or potentially contentious nature of the procurement;
- the risk that the integrity of the project may be questioned;

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- the history of controversy, complaints or litigation related to the procurement or area of procurement;
- whether it is anticipated that a bid may be received from another Tasmanian Government entity;
- whether the procurement or related policy or project area is politically sensitive;
- whether the nature or current environment of the marketplace makes bidder grievances more likely; and
- whether there is a high probability of conflict of interest associated with the purchasing process or participants.

This list is not exhaustive. The benefits of engaging a probity adviser should be weighed against the additional cost of the service.

Selecting a Probity Adviser

Probity advisers must be engaged in accordance with the Treasurer's Instructions.

The Department of Treasury and Finance has established a multi-use list (the [Probity Adviser Directory](#)) to assist agencies in streamlining the process of selecting a probity adviser.

Probity advisers have been selected to be listed on the Directory based on the following criteria:

- demonstrated understanding of probity issues in a government context and independence from government;
- proven experience in dealing with probity issues in a relevant field;
- ability to analyse complex issues;
- high level inter-personal and communication skills; and
- professional conduct.

It is not mandatory for agencies to use the list when engaging a probity adviser. However, if the procurement of the probity adviser is not subject to free trade agreement obligations² and the agency uses the list exclusively, the process is simplified. Where an agency chooses to use the list, the mandatory procurement requirements are set out in Treasurer's Instruction PP-2 *Procurement Processes - Market Approaches*.³

Prior to engaging a probity adviser, an agency should seek confirmation that the adviser does not have any conflicts of interest and can provide evidence of current professional indemnity insurance.

² See [International Procurement Obligations](#) for more details.

³ [Procurement Treasurer's Instructions | Treasury and Finance Tasmania](#)

Project Brief and Scope of Work

The scope of work will vary with the size, cost and complexity of a project. It may be necessary for a probity adviser to undertake some or all of the following tasks:

- provide advice in relation to information to be presented to market as part of the procurement opportunity;
- check that procedures are documented and conducted fairly, impartially and honestly;
- examine and evaluate information and processes;
- advise on the management of probity issues that may arise;
- document significant findings, recommendations and considerations; and
- provide a final report to the agency which includes the probity adviser's assessment of the probity of the process.

What if a Probity Adviser criticises a process or decision?

An important role of the probity adviser is to report any act or omission they observe in the procurement process that affects, or may affect, its integrity. This role must be agreed at the outset and form part of the probity adviser's terms of engagement.

The probity adviser should have full and free access to all aspects of the process they are engaged to assess. The probity adviser should ultimately report to, and have direct access to, the Accountable Authority concerned, should matters worthy of comment arise.