

Procurement Better Practice Guidelines (Principles and Policies)

Annex A - Probity Guidelines for Procurement

Probity principles include:

- open competitive processes;
- fairness, consistency and transparency of process;
- identification and resolution of conflicts of interest;
- accountability in relation to decision making; and
- monitoring and evaluating performance.

The broad objective of the probity process is to:

- ensure conformity to processes designed to achieve value for money;
- provide accountability;
- ensure that all bids will be assessed against the same criteria;
- preserve public and bidder confidence in government processes; and
- improve defensibility of decisions to potential legal challenge or other external scrutiny.

Open competitive processes

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

- market testing should be undertaken on a regular basis as it allows new suppliers the opportunity to compete, encourages existing contractors to improve performance and has the potential to identify new procurement solutions; and
- project specifications should be reflected in predetermined evaluation criteria, and include the expected outcomes and the skills and expertise expected of the service provider.

Fairness, consistency and transparency of process

Potential suppliers should be treated equally and all suppliers should have the same opportunity to access information and advice. This means that:

- Evaluation criteria and weightings are established and documented prior to the calling of bids, they are not biased and are not changed during the procurement process unless all bidders are given an opportunity to revise their bids. The criteria is available to all potential bidders.
- Bids are evaluated consistently, in a systematic manner against these predetermined criteria.
- All bidders have access to the same information and for the same amount of time.

- 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, and any extension of time permitted must be granted to all bidders.

Identification and resolution of conflicts of interest

- Policies to deal with potential conflicts of interest should be in place within the agency.
- Members of an evaluation committee should disclose any actual, perceived or potential conflicts of interest prior to their appointment.
- Bidders should be required to divulge all potential conflicts of interest at the time they offer to provide services.

Accountability in relation to decision-making

- Accurate records should be kept during the procurement process to justify the process and decisions made. These records should detail evaluation criteria, weightings, decision-making processes and decisions made. They should provide sufficient information to enable an audit and independent review functions to be carried out.
- Bids, submissions, expressions of interest etc, should be evaluated by more than one person, preferably a panel.
- The appointment of a Probity Adviser should be considered for large, complex or controversial contracts, as they can provide external scrutiny and ensure integrity of process.

Monitoring and evaluating performance

- Regular and systematic monitoring of contractor performance during the term of the contract should be undertaken to determine whether milestones are being met and that key performance indicators are being satisfied. Milestones and key performance indicators should be developed during the planning stages of the purchase, specified at the time bids are sought and finalised during negotiations with the preferred supplier prior to the contract being awarded.
- An evaluation should be undertaken at the end of the contract to determine whether the contractor has met the needs of users and delivered the required outputs and outcomes identified at the time the contract was initially established. The identification of innovative approaches, useful specifications, evaluation criteria, and problems experienced will greatly assist in improving future procurement processes.

External Probity Services

Probity Adviser

Probity advising involves the engagement of a consultant, who is external to and independent of a procurement process to:

- provide scrutiny of the procurement process, to ensure that prescribed processes have been or are adhered to;

- provide advice on probity issues which may arise before and during the procurement process; and
- ensure that the process is equitable and conducted with integrity.

The probity adviser can provide an independent opinion on probity issues that may arise during the process and confirm, in writing, that the concluded process has met all probity requirements. This advice would involve confirmation that a procurement process followed applicable government policies and that the evaluation process was conducted in accordance with the process set out in the evaluation guidelines issued to bidders.

Probity Adviser vs Auditor

The terms “probity auditor” and “probity adviser” are generally used interchangeably. However, a probity adviser is more actively involved providing advice on probity issues, which may arise, together with advice on strategies to overcome potential problems. The pro-active approach by the probity adviser should help to achieve best practice procurement processes and outcomes.

A probity auditor’s role is more generally confined to observing and reviewing the procurement process after it has been completed. 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 on in the procurement process.

What does Probity Advising achieve?

The immediate task of a probity adviser is to ensure that the procurement process is open and fair. In this regard, responsibilities of relevant participants, such as the evaluation committee conducting the evaluation need to be determined.

Probity advising ensures the process is:

- open and fair;
- not tainted by 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 the process is fair and nothing more needs to be done;
- recommends how to supplement 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?

Issues of probity need to be considered for all procurements. Agency procurement processes incorporate a number of review mechanisms, including the agency Procurement Review

Committee, that assess the process to ensure it has been fair and equitable, and that the procurement principles and procedure, outlined in the Treasurer's Instructions have been followed. For difficult or complex procurements, a procurement plan should be developed and it is during this time that a decision should be made as to whether a probity adviser is required.

Key factors to consider deciding to engage a probity adviser are:

- the value of the transaction, that is, is it of high value (> \$500 000);
- the complexity or potential contentious nature of the procurement;
- risk that the integrity of the project may be questioned;
- history of controversy or litigation;
- it is anticipated that a bid may be received from within the agency, or from another Tasmanian Government entity;
- the matter is politically sensitive;
- the nature of the market place makes bidder grievances more likely; and
- there is a high probability of conflict of interest, associated with the purchasing process or participants.

Once engaged, the probity adviser will assist in anticipating problems and preventing them from arising, through suggesting workable solutions to keep the project on track.

Selecting a Probity Adviser

Generally, all probity advisers are to be engaged in accordance with the usual procurement procedures detailed in the Treasurer's Instructions. However, 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 on the list 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. However, if the procurement is not impacted by free trade agreement requirements 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*.

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

Project Brief and Scope of Work

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

- 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's adviser's opinion 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 a 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.