

# Probity and integrity in procurement

Office of the Chief Advisor - Procurement

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**Queensland**  
Government

***Probity and integrity in procurement***  
v2.1 September 2019

**The State of Queensland (Department of Housing and Public Works) 2019**



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The Office of the Chief Advisor – Procurement is committed to continuous improvement. If you have any suggestions about how we can improve this guide, or if you have any questions, contact us at [betterprocurement@hpw.qld.gov.au](mailto:betterprocurement@hpw.qld.gov.au).

**Disclaimer**

This document is intended as a guide only for the internal use and benefit of government agencies. It may not be relied on by any other party. It should be read in conjunction with the Queensland Procurement Policy, your agency's procurement policies and procedures, and any other relevant documents.

The Department of Housing and Public Works disclaims all liability that may arise from the use of this document. This guide should not be used as a substitute for obtaining appropriate probity and legal advice as may be required. In preparing this document, reasonable efforts have been made to use accurate and current information. It should be noted that information may have changed since the publication of this document. Where errors or inaccuracies are brought to the attention of the Department of Housing and Public Works, a reasonable effort will be made to correct them.

## Table of Contents

<b>Introduction .....</b>	<b>4</b>
Purpose of this guide	4
Guidance to support the Queensland Government Procurement Strategy	5
<b>Definition of probity .....</b>	<b>5</b>
Probity – the broader context	5
<b>Section A: Making probity part of procurement culture .....</b>	<b>6</b>
1. Fairness and impartiality	7
2. Accountability and transparency of decisions and process	8
3. Conflict of interest management	9
4. Managing probity relative to value and risk	11
<b>Section B: How to deal with probity in certain situations .....</b>	<b>12</b>
1. What to do if you confront a situation that you do not know how to handle?	13
2. Gifts and benefits within procurement	13
3. Conducting early market engagement and industry briefings	14
4. Attending trade shows, conferences, seminars or similar events	15
5. Evaluating innovative offers	15
6. Anti-competitive supplier behaviour	16

## Introduction

**Principle 3** of the Queensland Procurement Policy (QPP) outlines the government's requirements and expectations about integrity, probity and accountability within procurement.

Under this principle it is expected that we:

- respect the trust place in us by the community
- are accountable for delivering timely outcomes using public resources
- ensure our decisions are transparent and defensible
- meet expected standards of probity and accountability.

The QPP also makes clear the government's expectation that:

- high standards of integrity and probity must always be observed
- accountability for decisions made must be demonstrated
- probity must be part of the procurement culture and not a standalone consideration.

The QPP sets out specific requirements which agencies must enact. These include:

- observing applicable legislation including the *Disability Discrimination Act 1992* (Cth), policies, agreements and industrial instruments
- ensuring that appropriate governance mechanisms for procurement are in place (including systems to manage conflicts of interest and complaints)
- ensuring that procurement processes are defensible and appropriately documented, and that decisions are able to withstand public scrutiny and preserve confidence in the process.

The QPP requires agencies to integrate probity within their procurement frameworks. To improve transparency the QPP also requires agencies (apart from government owned corporations, which have their own quarterly reporting requirements to shareholding ministers) to disclose details for awarded contracts valued at \$10,000 and over (this requirement is separately covered by the [Procurement Guidelines: Contract Disclosure](https://www.forgov.qld.gov.au/procurement-guides)[https://www.forgov.qld.gov.au/procurement-guides]).

## Purpose of this guide

This guide is designed to help government buyers understand and implement probity requirements into their procurement practices, as contained under **Principle 3** of the QPP. In doing so, this guide is structured in two sections:

- **Section A** provides an overview on why probity must be part of your procurement culture
- **Section B** focuses on how to deal with probity in certain situations.

This guide should be read in conjunction with your agency's policy, procedures and guides on procurement, as well as the current requirements under the QPP.

## Guidance to support the Queensland Government Procurement Strategy

To support the Queensland Government Procurement Strategy – *Backing Queensland Jobs*, the Office of the Chief Advisor – Procurement, has released a range of guidance materials. These guides should be read together. They include:

- Putting Queenslanders first when securing value for money
- Probity and integrity in procurement
- Optimising opportunities for local suppliers
- Local benefits test.

## Definition of probity

Probity is evidence of ethical behaviour in a particular process. For Queensland Government procurement, demonstrating probity means more than just avoiding corrupt or dishonest conduct. It involves proactively demonstrating that any procurement process is robust and the outcome beyond reproach. Probity requires acting such a way that there can be no perception of bias, influence or lack of integrity. This requires ethical conduct that exceeds the legal requirements.

To this end probity within procurement should not be a last minute add on, but must be integrated into all stages of the procurement process.

**The QPP clearly states that high standards of integrity and probity must be observed at all times. Achieving the best value for money outcome must occur in a way that maintains these standards.**

However, probity should not be used as an unreasonable barrier to undertaking appropriate and legitimate procurement practice. For example, there are ways to appropriately engage with the supply market and still maintain probity of process. Clear probity guidelines can enable rather than inhibit interaction with the supplier and can facilitate more interactive tender processes.

Ultimately it is important that probity of process is observed and is applied relative to value and risk.

## Probity – the broader context

Queensland Government employees should be aware that their actions are covered by the *Public Sector Ethics Act 1994*, along with the *Code of Conduct for the Queensland Public Service*.

Under the *Act* employees are to observe the following ethical principles:

- integrity and impartiality
- promoting the public good
- commitment to the system of government
- accountability and transparency.

The *Code of Conduct for the Queensland Public Service* elaborates on these principles. It is strongly recommended that you are familiar with the requirements under both the *Act* and *Code of Conduct*. You should also check whether your agency has specific policies and procedures that govern the area of ethics and probity.

### Probity and how it helps achieve value for money

To help achieve value for money, competition between suppliers must be maximised so that suppliers are willing to put forward their best possible offer. To enable this, it is important that suppliers have confidence that the procurement process is robust and beyond reproach.

Prospective suppliers may be disinclined to put their best offer forward, or may not make an offer at all, if they perceive that the procurement process is being conducted improperly. This may mean that government misses out on the best value for money offer it could have gotten. It can also have the effect of lessening competition between suppliers over the longer term as suppliers may no longer seek to do business with the government.

## Section A: Making probity part of procurement culture

Probity needs to be part of the procurement culture, not a standalone consideration. It is important that both individual officers, senior executives and government agencies take responsibility to embed this culture by:

- **individual officers** ensuring that their adherence to probity moves beyond simple compliance, and proactively demonstrates integrity
- **senior executives** ensuring procurement excellence through investment in officer capability and training, and by ensuring employees are aware of their probity obligations. Senior executives should also ensure their engagement with suppliers is appropriate and would withstand public scrutiny <sup>1</sup>
- **agencies** ensuring that their governance, procedures and processes are robust and properly integrate probity. They also need to detail and clearly set out the behaviour expected of employees. Agencies that implement a probity oriented culture are less likely to have probity issues arise. Agencies should develop an effective fraud and corruption control program and complete a fraud and corruption risk assessment for each procurement.

To put this into practice, individual officers, senior executives and agencies should look at the four focus areas outlined in this section and incorporate the actions set in each focus area. For officers this should be incorporated into day-to-day practice. For senior executives, this should be remembered during their decision making processes and modelled in their behaviour. For agencies this should be incorporated in agency procurement procedures and frameworks. The four focus areas are:

1. fairness and impartiality
2. accountability and transparency of decisions and process
3. conflict of interest management
4. managing probity relative to value and risk.

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<sup>1</sup> Senior executives should also be aware that under the [Integrity Act 2009 \(PDF, 667KB\)](https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2009-052) [https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2009-052] designated persons can request confidential advice regarding ethics or integrity issues. Further information, including who is considered a designated person, is available from the Queensland Integrity Commissioner website - [www.integrity.qld.gov.au](http://www.integrity.qld.gov.au)

### Other things agencies can do to create a probity culture

The Crime and Corruption Commission Queensland has issued a corruption prevention advisory in relation to procurement and contract management.

It is recommended that agencies review and incorporate this advisory into their procurement procedures and guidelines. It includes information on:

- the implementation of clear and effective governance arrangements
- informing suppliers about public sector values and ethics, and their responsibilities
- procurement-related structures and systems
- training and awareness.

This resource, if read and implemented collectively with this guide, provides a solid basis on which an agency can build a probity culture.

**Source:** *Crime and Corruption Commission Queensland (2016). [Corruption Prevention Advisory: Procurement and contract management](http://www.ccc.qld.gov.au/research-and-publications/publications/ccc/prevention-advisories/corruption-prevention-advisories)*[<http://www.ccc.qld.gov.au/research-and-publications/publications/ccc/prevention-advisories/corruption-prevention-advisories>].

## 1. Fairness and impartiality

**This focus area involves ensuring that everyone involved in the process is treated the same – that no supplier is given an advantage or discriminated against.**

<b>Planning</b>	<ul style="list-style-type: none"> <li>• <b>All tender documentation should be clear and unambiguous</b> This should include the conditions of tender, tender evaluation criteria and the proposed conditions of contract. In particular mandatory criteria should be distinctly identified from desirable criteria. Ensure that any mandatory criteria are legitimately required and are as limited in number as possible.</li> <li>• <b>Specifications must be free from bias or favouritism</b> Ensure that specifications are not written to elicit a certain outcome from the tender process, or include requirements which are not genuinely needed and thereby prevent certain suppliers from tendering. Seek to develop supplier agnostic specifications.</li> <li>• <b>Government agencies should always use an appropriately competitive process</b> The type of procurement method used (open, selective or limited) must be justifiable and documented, and should facilitate the delivery of the best procurement outcome. For example, when considering whether to use a limited or selective method, you should comply with the specific requirements of QPP and follow your agency’s procurement procedures to ensure it is justifiable and defensible to use this procurement method.</li> </ul>
<b>Go to market</b>	<ul style="list-style-type: none"> <li>• <b>All prospective suppliers should be given the same time to respond to a tender</b> Ensure all suppliers have the same closing date and time by which to submit an offer. If this changes, information about the change must be given to all suppliers to ensure equal access of opportunity.</li> <li>• <b>All prospective suppliers should have the same level of access to materials and information during the tender process</b></li> </ul>

	<p>Responses to requests for information or clarification from any supplier which may materially assist them should be de-identified with any confidential supplier information removed and provided to all prospective suppliers.</p> <ul style="list-style-type: none"> <li>• <b>Evaluation methodology and criteria weightings should be documented and decided upon before suppliers are invited to submit offers</b></li> </ul> <p>If any alteration to the agreed evaluation process is required this must be communicated to all suppliers participating in the process. In turn, all suppliers must be allowed adequate time to respond to this change – this may require an extension to the closing date/time or, in some circumstances, cancellation of the current process and the commencement of a new process.</p>
<b>Evaluation</b>	<ul style="list-style-type: none"> <li>• <b>Evaluation of supplier offers must occur against the documented criteria and be objective</b></li> </ul> <p>Each supplier’s offer must be afforded due consideration free from any preconceived ideas or bias. Information used to evaluate a supplier must be evidence-based.</p>
<b>Award</b>	<ul style="list-style-type: none"> <li>• <b>The contract must be awarded in an open, clear and defensible manner.</b></li> </ul>

## 2. Accountability and transparency of decisions and process

This focus area aims to maintain the integrity of procurement decisions and processes.

<b>Evaluation panel composition</b>	<ul style="list-style-type: none"> <li>• <b>Multiple officers should undertake a tender evaluation process</b></li> </ul> <p>All evaluation panel members must agree on the evaluation criteria. The panel members should be briefed on the evaluation process, procedures and probity requirements prior to commencing (e.g. protocols covering how communication with suppliers is to occur).</p> <p>Where possible, evaluation panel members should include Queensland Government employees. In circumstances where an external consultant is required to form part of the evaluation panel it is prudent to request that the consultant disclose both personal and organisational conflicts of interest. Officers should check agency procedures for further information about the composition of the evaluation panel.</p>
<b>Record keeping</b>	<ul style="list-style-type: none"> <li>• <b>Keep accurate records for all stages of the procurement process</b></li> </ul> <p>All decisions (and the process used to arrive at a decision) need to be documented to provide sufficient information for audit or other review. This should include details on specification development, how criteria and weightings were decided, and the tender evaluation process, including the officers involved and who gave approvals at sign-off points.</p> <p>Officers must also ensure that they meet their agency’s legislative obligations when it comes to capturing, managing and disposing of records.</p> <p>Panel chairs must ensure that all documentation is completed properly and in a timely manner.</p>
<b>Supplier communication</b>	<ul style="list-style-type: none"> <li>• <b>While it is related to record keeping, particular attention should be paid to documenting any and all communication with prospective suppliers</b></li> </ul> <p>This includes both written communications, along with appropriate records of any verbal discussions (e.g. minutes of a meeting, file notes).</p> <ul style="list-style-type: none"> <li>• <b>Ensure that negotiated agreements are confirmed in writing.</b></li> <li>• If verbal post-offer negotiations are used, any agreed outcomes or actions should be documented and subsequently agreed to in writing by both parties.</li> </ul>

<b>Receipt of goods/ services</b>	<ul style="list-style-type: none"> <li>• <b>Ensure that the procured good or service has been satisfactorily delivered (in accordance with the agreed contract) before issuing payment.</b></li> </ul> <p>Do not simply pay a supplier because they issue an invoice – perform the appropriate checks before making payment.</p>
<b>Confidentiality and security of materials</b>	<ul style="list-style-type: none"> <li>• <b>Ensure that there are defined document management procedures and security controls for either hard or soft copy documents to ensure confidentiality.</b></li> </ul> <p>This could include, for example:</p> <ul style="list-style-type: none"> <li>– ensuring electronic documents are on secure drives and password protected</li> <li>– requiring documents to be locked away and using document registers</li> <li>– ensuring evaluation team members are given rooms where they can privately review offers.</li> </ul> <ul style="list-style-type: none"> <li>• <b>Confidentiality and conflict of interest deeds must be obtained from all participants in significant tender evaluations in line with their agency’s specific requirements.</b></li> </ul>
<b>Delegations</b>	<ul style="list-style-type: none"> <li>• <b>Ensure that all relevant documents are signed off by a person with the appropriate delegation.</b></li> <li>• <b>Functions and responsibilities must be structured to ensure there is an appropriate separation of powers.</b></li> </ul> <p>Any person involved in the procurement process or exercising a delegation, should not provide financial approval.</p>

### Guard against improper influence over a procurement process

Sometimes a situation may arise where a person external to the process seeks to exert influence over aspects of a procurement process (e.g. hinting that a particular supplier is preferred, asking inappropriate questions about the process).

**Situations such as this are serious and may constitute corrupt conduct.**

In such situations an officer should:

- maintain strict confidentiality over the process and not disclose any information
- document details regarding the approach
- report the incident to a manager, or ethical standards/integrity unit or departmental Crime and Corruption Liaison Officer, or the Director-General, or the Crime and Corruption Commission.

## 3. Conflict of interest management

**This focus area aims to ensure that any conflict of interest is identified and appropriately managed.**

As per the *Code of Conduct for the Queensland Public Service*, ‘a conflict of interest involves a conflict between our duty, as public service employees, to serve the public interest and our personal interests’.

It is important to remember that an actual conflict of interest does not need to exist for there to be an issue. Conflicts of interest can be either actual, perceived, or potential:

- **actual**, where an officer is in a position *to be influenced* by their personal interests when doing their job
- **perceived**, where an officer is in a position *to appear to be influenced* by their personal interests when doing their job
- **potential**, where an officer is in a position where they *may be influenced in the future* by their private interests when doing their job.

Managing all three types of conflicts (not just actual conflicts) is vital to ensure the integrity of any procurement activity – even a poorly managed perceived or potential conflict can be just as damaging as an actual conflict.

### Managing conflict of interest

<p><b>For individual officers conducting procurement processes</b></p>	<ul style="list-style-type: none"> <li>• <b>Obtain conflict of interest declarations, as per agency requirements, from all personnel involved in significant tender activities as soon as possible</b> Maintain a register of all conflict of interest declarations received. Remember to ensure that declarations are obtained from persons who have entered later into the process after the initial declarations were sought. Be mindful that previously unidentified conflicts of interest may arise throughout the procurement process (e.g. a change in personal circumstances, information is obtained during the process that was not previously known) – conflicts of interest should therefore be revisited throughout the process.</li> <li>• <b>Include conflicts of interest as a standing item on all meeting agendas</b></li> <li>• <b>Ask potential suppliers to disclose all actual, perceived or potential conflicts of interest at the time they provide an offer</b> Failure to make adequate disclosure at any time may be grounds for later ending the contract.</li> <li>• <b>If you become aware that you, or someone involved in the process, has a conflict of interest, you must register and document the conflict of interest. You must also discuss it with the appropriate manager/supervisor to determine the most appropriate course of action and way to manage the situation in accordance with the requirements</b> You should check your agency’s appropriate delegate to approve any conflict of interest management strategy.</li> </ul>
<p><b>For agencies managing conflicts of interest</b></p>	<ul style="list-style-type: none"> <li>• <b>It is recommended that the agency maintain a centralised conflict register.</b></li> <li>• <b>The agency should nominate a responsible officer to review and manage and ensure currency of the register.</b></li> <li>• <b>The primary goal of managing conflicts of interest is to ensure that decisions are made on proper grounds, for legitimate reasons, and without bias</b> In the first instance you should always refer to any policies or procedures that your agency may have in place. If your agency does not have a policy or procedure in place then the QPP (Clause 3.1) requires that a system to manage conflicts of interest for procurement be developed. There are several management strategies available: <ul style="list-style-type: none"> <li>– register – details of the conflict of interest are declared and registered (in low-risk situations this single strategy may be sufficient)</li> <li>– restrict – restrictions are placed on the officer’s involvement in the matter</li> <li>– recruit – an impartial third party is used to oversee part or all of the process</li> <li>– remove – the officer chooses, or is requested, to be removed from the matter</li> <li>– relinquish – the officer relinquishes the private interest that is creating the conflict</li> <li>– resign – where the officer resigns from their position with the agency (this strategy should be considered only if the conflict of interest cannot be resolved in any other workable way)</li> </ul> </li> <li>• Conflicts of interest must always be resolved in the public interest.</li> </ul>

### Some examples of conflict of interest in a procurement context

- A family member works for a company that is looking to submit a tender for a procurement process you are running
- You or a family member own shares in a company that is looking to submit an offer for a tender you are managing
- A former colleague, with whom you frequently socialise, has now started working for a supplier who is not currently under contract, but will likely be submitting an offer to a forthcoming tender.

Remember, if you are any in doubt about whether a conflict of interest exists you should disclose it.

The following Victorian case study shows how a breach of probity requirements could result in significant failure in procurement processes.

### Case Study

The Victorian Department of Education has recently been the subject of a Victorian Independent Broad-based Anti-corruption Commission (IBAC) investigation.<sup>2</sup> This focused on the procurement of 'Ultraneet', a school based intranet program, supplied by CSG Limited. The investigation heard that the procurement was poorly planned, and demonstrated significant lapses in probity (specifically in the tendering process and ultimate awarding of the contract) largely attributed to undeclared conflicts of interest.

An independent consultant to the department testified that concerns about corruption in the procurement activity had been reported to the project manager. The concerns included: disproportionately high gradings for the CSG tender; concerns that CSG was not equipped to deliver the large-scale project and had tendered an inflated offer; and suspected connections to government officials involved in the procurement activity.

The Ultraneet project failed and was scrapped by the government in 2013 due to ongoing and unresolved technical issues. The IBAC investigation concluded that department officials purchased shares in CSG, and were influenced during the tender process by accepting inappropriate gifts from the supplier.

IBAC also determined that proper procurement processes had not been observed in the evaluation process and that the decision to award the contract to CSG was unreasoned and inexplicable.

Further allegations were explored, whereby IBAC heard that a complementary procurement in 2011 to evaluate the project was also corrupt. The supplier, Alliance Recruitment, was alleged to have received a payment, to ensure that funds were corruptly injected into CSG to ensure it remained viable.

The investigation resulted in recommendations including: acting to strengthen internal procurement and governance arrangements for major projects; proper record keeping; maintenance of conflict of interest registers; and proper documentation of complaints regarding probity.

## 4. Managing probity relative to value and risk

**This focus area aims to ensure that probity is integrated within an agency's framework to ensure that it is managed relative to the value and risk of a particular procurement activity.**

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<sup>2</sup> Information in this case study was sourced from the Victorian Independent Broad-based Anti-corruption Commission (2017). [Operation Dunham](https://www.ibac.vic.gov.au/investigating-corruption/public-examinations/operation-dunham). [https://www.ibac.vic.gov.au/investigating-corruption/public-examinations/operation-dunham]

This requirement stems from clause 3.2 of the QPP. The below table provides guidance to agencies on how various probity considerations, such as probity plans, can be incorporated as value and risk increase. It is intended as a guide only – agencies are ultimately responsible for deciding how this clause is implemented relative to the characteristics of their agency.

	For low value and low risk....	As value and risk increase....
<b>Probity planning</b>	Use a probity checklist for each procurement activity. Ensure that the checklist is revisited at the end of each key stage	Consider use of a full probity plan for each procurement activity. Ensure that the probity plan is revisited at the end of each key stage
<b>Probity auditor/advisor</b>	Unlikely to be necessary	Consider using probity auditor and/or probity advisor
<b>Probity briefing for evaluation committee members</b>	General reminder regarding probity likely to be sufficient	Formal briefing, possibly from a probity auditor/advisor, should be conducted
<b>Conflict of interest declaration</b>	General reminder of obligations	Obtain formal conflicts of interest declaration
<b>Confidentiality deeds</b>	General reminder of obligations	Obtain formal confidentiality deed
<b>Evaluation panel composition</b>	Small panel likely to be sufficient	Increase the size of the panel <sup>3</sup>

### Probity auditors and advisors in procurement

The Office of the Chief Advisor – Procurement, has guidance on the use [of probity auditors and advisors](https://www.forgov.qld.gov.au/procurement-guides) [https://www.forgov.qld.gov.au/procurement-guides].

The Queensland Government has a standing offer arrangement for the provision of probity advisors and auditors for procurement (ref QGCPO835-10). Further details are available on the Queensland Contracts Directory.

## Section B: How to deal with probity in certain situations

The section provides advice on following:

1. general advice: what to do if you confront a situation that you do not know how to handle
2. gifts and benefits within procurement
3. conducting early market engagement and industry briefings
4. attending trade shows and conferences

<sup>3</sup> This can also include ‘splitting’ aspects of the evaluation. For example, by using technical or financial specialists. If you do this the role and function of each officer must be clearly defined in the evaluation plan.

5. evaluating innovative offers
6. anti-competitive supplier behaviour.

## 1. What to do if you confront a situation that you do not know how to handle?

Situations may arise for which there is no clear course of action. While each situation will be unique, here are some steps that may help guide you toward a resolution:

- do not feel pressured to act immediately. Take the situation on notice, ask to get the request/question in writing and come back later
- refer to various probity materials, such as probity plans, to see if they provide guidance. You may also look to your agency's procedures, this guide, or the QPP
- seek external advice. In the first instance this can be from your manager/supervisor. Alternatively, and for more complex situations, you may need to engage the services of your procurement unit, a probity auditor/advisor, or your agency's legal services area or ethics unit.

Remember to document any action taken – this may become particularly important at a later date.

## 2. Gifts and benefits within procurement

Public service employees cannot be offered, accept, or give gifts and benefits that affect, could affect, or be perceived to affect their doing their jobs impartially ([Gifts and Benefits Directive 22/09](https://www.forgov.qld.gov.au/gifts-and-benefits) [https://www.forgov.qld.gov.au/gifts-and-benefits]). This requirement is particularly important within procurement given the constant interaction officers have with suppliers. The ability to maintain integrity and confidence within the supply market, and a view that decisions are made impartially and with objectivity, is paramount.

**For this reason, public officials involved in any aspect of a procurement process are strongly advised not to accept gifts or benefits, as they can or may be seen to be, a means of influence that can compromise or appear to compromise integrity and impartiality.**

Any gift of benefit offered must be handled under the *Gifts and Benefits (Directive 22/09)* issued by the Public Service Commission, along with any relevant agency policy or procedure.

### Case study: The impact gifts and benefits can have on procurement

In 2011, separate reports by the [Corruption and Crime Commission of Western Australia \(PDF, 5MB\)](https://www.ccc.wa.gov.au/sites/default/files/Misconduct%20Allegation%20in%20Relation%20to%20the%20Purchase%20of%20Toner%20Cartridges%20in%20Exchange%20for%20Gifts.pdf) [https://www.ccc.wa.gov.au/sites/default/files/Misconduct%20Allegation%20in%20Relation%20to%20the%20Purchase%20of%20Toner%20Cartridges%20in%20Exchange%20for%20Gifts.pdf] and the [Victorian Ombudsman \(PDF, 613KB\)](https://www.ombudsman.vic.gov.au/getattachment/554534e7-6201-4eb4-9fed-85a37e89bdba) [https://www.ombudsman.vic.gov.au/getattachment/554534e7-6201-4eb4-9fed-85a37e89bdba] identified that several government bodies in both states had purchased toner cartridges outside each state's purchase contracts. The reports identified that government officers had:

- purchased outside the state's purchase contract
- purchased goods at inflated prices, and that were not required
- engaged in improper expenditure of public money
- altered invoices

- destroyed public records.

Driving this behaviour was the acceptance of gifts offered by the supplier as an inducement or reward. These gifts included digital cameras, GPS navigators, televisions, coffee makers and gift vouchers. This created an ethical hazard, as noted by the Victorian Ombudsman:

*'Once a public officer accepts a gift, and fails to declare it, there is potential for that public officer to engage in a pattern of corrupt behaviour'.*

### 3. Conducting early market engagement and industry briefings

**Early market engagement** provides an opportunity to understand the capability and capacity of suppliers within the market before developing your procurement strategy and requirements. Doing this can be highly beneficial, particularly for larger procurements and projects.

Like all procurement activities, it is important that early market engagement is properly conducted with due regard to probity. This should include ensuring that:

- the approach undertaken is logical, defensible and would withstand public scrutiny
- a good sample of suppliers are engaged, both incumbent and those not currently under contract, and that a consistent approach is taken with each
- no undertakings or commitments are made to suppliers as part of the process
- no 'inside information' is provided
- multiple government officers participate in the process and attend all meetings
- any engagement is appropriately documented and recorded  
your probity advisor attends (if you have engaged one).

For larger procurements, agencies may wish to consider undertaking market engagement more formally as part of a 'request for information' process.

**Where prospective suppliers approach agency senior executives to meet** regarding a procurement, the executives concerned should not engage unless such engagement is formally required. If such engagement is necessary, probity advice should be sought prior to the meeting and, ideally, the probity advisor should attend any such meeting.

#### Early engagement of probity advisor

A probity advisor should be engaged at the commencement of a procurement process. On commencement, the probity advisor should be given sufficient information so they can be across all aspects of the procurement. This gives the probity advisor a chance to provide advice on strategies and helpful tools to overcome potential problems throughout the procurement process. The probity advisor can also be used to provide advice and general briefings to other officers in an agency, including senior executives, to ensure robust probity practices are followed.

**Industry briefings** can be beneficial for a procurement activity and should be conducted whenever necessary. They allow the government the opportunity to explain a procurement activity in detail. They can also clarify any supplier misconceptions, particularly through question/answer engagement with suppliers.

It is important that probity matters are properly handled – you should ensure that:

- adequate notice is given to suppliers about the session
- your tender documents are clear on whether attendance at the briefing is mandatory if a supplier wishes to submit an offer

- your tender documents are clear on whether information provided at the briefing will be made subsequently available (e.g. by providing a copy of the presentation via QTenders). You are under no obligation to provide any information from the session – however, you should make your approach clear in your notice about the briefing (for non-mandatory briefing sessions, the information provided and subsequent questions and answers should be recorded and distributed to all potential suppliers)
- you have a standardised presentation that is delivered to all suppliers
- any questions and answers are dealt with publicly so all attendees can hear the question and response. Alternatively, you may choose not to have a question and answer session
- you do not deal one-on-one with any particular supplier
- records are kept including which personnel and suppliers attended
- your probity advisor attends (if you have engaged one)
- suppliers are given sufficient time to incorporate the received information within their offers.

#### **4. Attending trade shows, conferences, seminars or similar events**

There is no issue, in itself, with an officer attending either a trade show, conference, seminar or other similar events. Such events can often be very useful for government buyers in developing their understanding of procurement and supply markets.

However, it is important that officers are mindful of the following:

- not discussing any confidential or commercially sensitive information
- maintaining professional conduct and presentation
- not forming any verbal agreements, making false promises, or making any other inappropriate undertaking to a supplier.

In addition, officers should be mindful of how their attendance could be perceived by external parties (e.g. suppliers within the market). Officers should particularly take into account:

- the nature of the event, especially where it is more social in nature (e.g. a breakfast function compared to an industry conference)
- who is hosting the event, especially where these events are hosted by suppliers who may also be involved in tender opportunities, and whether attendance is open to all or by invite only.

Officers should also be aware of suppliers offering to pay for their attendance. Such offers are gifts and need to be treated as such. It is highly preferable that any attendance fee is paid by the government.

#### **5. Evaluating innovative offers**

Increasingly, procurement is being used as a mechanism to drive innovation. Such processes often require a greater degree of professional capability and supplier interaction than more traditional procurement processes. Government buyers can therefore feel uncertain about how to maintain probity in such situations.

While this may be the case, probity can still be managed through the application of the guidance provided in this document. In particular, it is important to:

- develop a probity plan including guidelines to manage any interactive phase of the process to ensure fairness (i.e. equal time available, not sharing confidential information between competing suppliers, ensuring requirements remain consistent for all suppliers and are not changed for some suppliers during an interactive process)

- clearly document the evaluation method to be used. As part of this it can be useful to include more detailed guidance to evaluation panel members on what to look for during the process
- involve a number of officers in the evaluation process, so that a justifiable and defensible consensus view is reached
- ensure that the evaluation process, and rationale to reach a conclusion, is appropriately documented
- consider engaging a probity advisor. The advisor can then be used to observe any supplier interactions and provide assurance that things were properly conducted.

#### **Difference between a probity advisor and a probity auditor**

A probity auditor provides independent examination of a procurement process and expresses an objective opinion as to whether the prescribed probity requirements have been adhered to. The examination is usually conducted after the procurement activity has been finalised. Independence is essential when appointing a probity auditor.

The role of probity advisor involves the provision of advice and assistance before and during the course of the procurement process, as a basis for improving the procurement outcome and addressing unexpected probity issues that arise.

## **6. Anti-competitive supplier behaviour**

Often we focus on managing probity within government. However, officers should be aware that the integrity of their procurement process can be impacted via anti-competitive behaviour within the supply market. Such activity can include a range of things such as bid rigging, price fixing, market sharing and output restrictions.

Detecting these things can often be difficult. To assist government buyers the [Australian Competition and Consumer Commission \(PDF, 665KB\)](#)

[[https://www.accc.gov.au/system/files/308\\_Cartels\\_Deterrence%20and%20detection\\_26-Feb-2016.pdf](https://www.accc.gov.au/system/files/308_Cartels_Deterrence%20and%20detection_26-Feb-2016.pdf)] has made available a guide on deterring and detecting cartels. Officers involved in procurement are strongly encouraged to read and implement strategies contained within this guide and if uncertain, seek further legal advice.