



Aboriginal and Torres Strait Islander Health Practice	Occupational Therapy
Chinese Medicine	Optometry
Chiropractic	Osteopathy
Dental	Pharmacy
Medical	Physiotherapy
Medical Radiation Practice	Podiatry
Nursing and Midwifery	Psychology

Australian Health Practitioner Regulation Agency

## Procurement Probity Guidelines

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## 1. Introduction

One of our most important responsibilities as AHPRA employees is to spend the organisation's money efficiently, ethically, and for maximum value to our stakeholders.

The Probity Guidelines provide clear direction on probity, accountability, planning and risk management requirements. It is vital that we all follow these guidelines when engaging in procurement activities to ensure openness and transparency and the best overall result for AHPRA

### 1.1. Need for probity

In its commercial dealings and engagements, AHPRA is required to observe the highest standards of probity.

There are a number of principles to promote probity and these are intended to achieve an equitable, justifiable and sound process affording equal opportunity to all tenderers.

This document is intended to assist personnel involved with procurement processes to understand their obligations with respect to probity and establish and maintain the required probity standards.

### 1.2. Probity Defined and Principles

Probity in the context of AHPRA's commercial dealings means a process that is fair, ethical and demonstrates propriety.

The principles used to promote probity throughout all stages of the procurement process are:

- fairness and impartiality;
- use of a competitive process;
- consistency and transparency of process;
- security and confidentiality; and
- identification and resolution of conflicts of interest.

### 1.3. Objectives of a Probity Process

The issue of probity in the sourcing and contracting process is the responsibility of all stakeholders involved in the process. The broad objectives of probity in procurement activities should be to:

- ensure conformity to best practice procurement processes;
- provide accountability;
- ensure that the interests of tenderers are protected by an equitable process;
- ensure that bids will be evaluated against the same selection criteria;
- preserve public and tenderer confidence in our procurement processes; and
- ensure defensibility of decisions to potential legal challenge.

### 1.4. Why Probity is Important

The positive outcomes that should result from procedural integrity include:

- avoidance of conflicts/problems;
- avoidance of corrupt practices;
- reassurance to stakeholders and those wishing to do business with AHPRA that the process and outcome can be trusted;
- provision of an objective and independent view on the probity of the process; and
- minimisation of the potential for litigation.

## 1.5. Accountability for Probity

All personnel directly or indirectly involved in leading procurement activities must be fully accountable for the probity of the processes.

For some processes a probity advisor and/or auditor may be appointed to provide independent oversight of probity issues, this is usually for high value or complex processes. However, the appointment of a probity advisor and/or auditor does not reduce the accountability of AHPRA personnel for running a 'best practice' process. AHPRA cannot transfer this responsibility to an outside advisor or auditor.

## 2. Probity Rules

### 2.1. Introduction

The following sections describe the probity requirements for procurement processes.

### 2.2. Conflict of Interest

A conflict of interest arises where personnel have an affiliation or interest which might be seen to prejudice his or her own impartiality with respect to the process.

Personnel involved with the assessment process must make a full declaration of their interest in any organisation, which may be a tenderer to AHPRA.

A Conflict of Interest Declaration is therefore to be completed prior to commencing work on the process. This declaration enables consideration of the relevance of any interests (pecuniary or otherwise) to the specific process at hand.

### 2.3. Conflict of Interest and Private Interest declarations

The declarations must be updated with any change in circumstances immediately as:

- the respondents to the procurement process have been identified;
- personnel have new private interests that may compromise or be perceived to compromise their ability to exercise their duty impartially and without bias.

Conflicts of interests can be actual, potential or perceived, and should be declared to ensure that any risks are managed.

#### **How can I avoid a conflict of interest?**

Conflict of interest with official duties may arise for various reasons and, as an individual, you may have private interests that from time to time conflict with your professional duties at AHPRA. However, there is a reasonable expectation that where such conflict occurs it will be resolved in favour of the professional interest rather than your own.

Disclose potential conflicts of interest to management when dealing in the course of official duties with relatives, close friends or business acquaintances. It is not possible to define all potential areas of conflict of interest and if you are in doubt as to whether a conflict exists, raise this with the appropriate manager. In some circumstances, the appearance of a conflict of interest could itself jeopardise your professional integrity.

## Can I accept gifts, benefits and entertainment?

People and organisations that are undertaking or likely to undertake business with AHPRA sometimes wish to provide AHPRA or Board employees (including contract workers) with gifts and benefits.

It is often difficult for employees to decide between the improper and proper acceptance of gifts and benefits. The Gifts and Benefits Policy provides clear guidelines as to when gifts and benefits may or may not be accepted and to provide a transparent process for proper handling including completing a Gift Declaration Form.

Immediately report to management any circumstances where an offer of a benefit or gift is made, regardless of whether it is accepted or not, if you feel that such circumstances involve an attempt to induce favoured treatment. **Note:** excessive or increasing offers of entertainment by existing suppliers/service providers could also constitute “grooming” over a period of time in order to gain preferential treatment for future tenders.

## How can I prevent patronage or favouritism?

You must not use your position to obtain a private benefit for someone else. Your decisions must not be improperly influenced by family or other personal relationships.

### 2.4. Confidentiality

Confidentiality during the procurement process is required to protect the competitive position of tenderers, as well as the commercial interests of AHPRA.

AHPRA and Boards personnel are reminded that their conditions of employment or engagement include a confidentiality undertaking.

Personnel involved in procurement processes should avoid casual discussion of tender issues with any persons not directly and legitimately involved in the tender as part of their assigned duties. Care needs to be taken with access to tender information and documents. Physical and digital security measures need to be planned and enforced. In some cases, plans will need to be made to establish “conflict walls” process to ensure information is not available to unauthorised AHPRA personnel.

### 2.5. Communication with Tender Participants

All participants in a tender process are to have the same opportunities to access tender-related information. There is to be no discrimination between tenderers in the provision of information.

No discussion should be held with any known tender process participant in relation to any aspect of the tender.

In order to ensure that there is no discrimination in the provision of information the following procedures are to be followed by AHPRA and Board personnel involved in the process:

- **Contact points:** only the authorised and nominated contact person for the particular procurement process should communicate any information on the tender to participants in the process.
- **Documenting discussions:** any discussions with tenderers regarding the process should be documented.
- **Providing information:** responses to specific questions during a presentation or interview must be confined to factual material. Personnel should not under any circumstances provide a personal opinion. Should you believe that the information provided in your answer is relevant to all tenderers and could be perceived as providing an unfair advantage to that bidder please consult with the Procurement team.

- **Correspondence:** any correspondence with tenderers regarding the tender process is to be consistent.
- **Other contact:** all tenderers are to be afforded the same opportunity to acquire information about the tender process with respect to site visits, briefing sessions, clarification meetings and other direct contact.

### **What if I have to deal with a tender process participant on other matters?**

Routine business meetings with potential tender process participants (e.g. in relation to ongoing contracts) may continue as usual, but personnel must exercise caution and must not discuss the tender process and contact must be kept to a minimum.

Where any party in a business meeting or social situation unrelated to the tender process seeks to raise issues in respect of the tender, they should be advised that it is not appropriate for you to discuss such matters. Where inappropriate inquiries or comments persist, personnel should terminate the meeting. A file note should be prepared detailing the conversation. A copy of this file note should be forwarded to procurement. The issue of perception should be considered in all instances.

In any situation where personnel are concerned that the probity of the process may have been compromised or that such a perception may exist, they should document all details immediately and raise the matter with their manager or the appointed Probity Auditor.

### **2.6. Evaluation and Selection**

An important feature of a well-managed tendering process is consistency in the application of tender evaluation criteria. It is critical that:

- evaluation criteria are applied consistently and transparently to all tenderers; and
- the evaluation process is documented in advance, with allocation of responsibility between those evaluating the tenders and those responsible for making final decisions.

Personnel dealing with other personnel should not rely or be influenced by views relating to a particular tender participant or proposal which are:

- hearsay;
- not honestly held, vexatious and/or slanderous in nature;
- contrary to the intent of any Act of the government of the Commonwealth of Australia or State Governments;
- of a personal nature not related to the tender; or
- of a matter which is unable to be substantiated.

### 3. Security of Information

Tenderers expect that information they provide to AHPRA and the Boards as part of the process is secure and does not leak to competitors or pass into the public domain. The incorrect release of information can cause a tender process to be aborted.

To ensure the security of tenderer's information is maintained the following rules are to be adhered to:

- documents and electronic information which contain tender-related information are to be stored at all times in secure conditions with access only for authorised persons;
- extra copies of tender documents and other sensitive information are not to be produced unless authorised by the authorised officer note: any authorised copies produced should be numbered and a register kept of who they have been distributed to;
- only authorised staff should be privy to tender-related commercially sensitive information; and
- after the evaluation is complete, all commercial-in-confidence information is to be returned to the tender process manager.

### 4. Probity Practitioners

For certain procurement activities AHPRA should appoint a Probity Adviser and/or Auditor.

The extent of the roles of the Probity Advisor/Auditor will vary according to the size and complexity of a particular tender.

#### 4.1. Probity Risk Assessment

Where the risk and complexity associated with a procurement process is considered high, the responsible officer has the option of appointing a designated probity adviser and/or probity auditor.

The decision regarding the type and scope of the probity services required for a specific project, i.e. probity advisory, probity auditing or both will be based on factors such as:

- the complexity of the procurement;
- the inherent process risk; and
- the experience of the procurement lead for the project.

The services provided by the Probity Practitioner will typically include one or more of the following:

- independent assessment and/or advice throughout the procurement process as to whether processes are:
  - i. developed according to AHPRA's Procurement Policy;
  - ii. managed according to the procurement process and the procurement conduct plan; and
  - iii. completed according to the tender requirements.
- ongoing independent advice on probity issues; and
- an independent and appropriate sign-off, at designated milestones in the process, on probity requirements.

## 4.2. Difference between a Probity Adviser and a Probity Auditor

The terms probity auditor and probity adviser are often used interchangeably. However, there is a distinct difference between these roles.

- **Probity Adviser** works closely with those conducting the procurement process from the beginning, providing advice on probity/process issues which may arise, and providing advice on strategies to overcome potential problems. The probity adviser is therefore expected to give advice which is proactive and strategic in nature. A probity adviser is closely involved in the procurement process, and so cannot be regarded as an 'independent' party.
- **Probity Auditor** role will generally have an 'after the fact' role, auditing the process after the process is completed, or at key stages during the process. The process and associated documentation are audited and any probity issues are identified. The issues are addressed in a probity audit report. A probity auditor must be completely independent, and therefore cannot be the legal adviser or otherwise involved in the project. Often the probity auditor is engaged by an interested person who is external to those conducting the procurement process to obtain a level of assurance as to how the process was conducted.

Where both a probity adviser and an auditor are appointed on a project different Service Providers must be engaged. Clear and precise terms of engagement need to be developed and agreed as appropriate.

## 5. Probity in Contract Management

Contract management covers all activities at the commencement of, during and after the contract period, to ensure that all contractual obligations are fulfilled.

It occurs on two levels: at the procurement activity level with the management of individual contracts made with suppliers; and at the level of organisational planning with a contract management planning strategy that forms part of the business planning for the organisation.

It is imperative that AHPRA maintains the highest standards of probity in all of its dealings with suppliers, at both levels of the contract management stage.

Practical ways of ensuring probity throughout the full contract lifecycle include, but are not limited to:

- Give contractors a statement of business ethics or a contractors' code of conduct that clearly spells out their ethical responsibilities when contracting with AHPRA. This includes their obligations to report improper conduct of our employees.
- Make it a condition of the contract or tender that bidders and contractors disclose any conflict of interest as soon as they become aware of it and that you actively and transparently manage the disclosure.
- To avoid information transfer and potential conflicts of interest, consider including a contract condition that forbids contractors to employ staff from AHPRA during the life of the contract or for a certain period (e.g. 12 months) after it has expired.
- As part of the tender or request for offer, require potential contractors to declare any past complaints of unethical or illegal conduct with respect to their organisation or their employees. Regardless of how well you conduct the procurement process, you should not award a contract to a firm with a record of illegal or unethical activity.
- If you have any doubts about the honesty or integrity (probity) of potential contractors consider implementing 'due process' or 'due diligence' testing if the circumstances warrant it (e.g. for high risk procurements with significant expenditure).