

Procurement Probity Guidelines

Purpose and scope

The purpose of this guideline is to help Ahpra staff understand and implement probity requirements as part of the procurement process. It provides an explanation of probity, why it is important and guidance on how to deal with probity under certain circumstances.

This guideline applies to all Ahpra staff (including contractors and consultants) undertaking procurement activities through the discharge of their responsibilities under the Australian Health Practitioner Regulation Agency National Law (2009) ('the National Law').

Guideline

Probity defined

Probity is evidence of ethical behaviour in a particular process. For Ahpra procurement activities, demonstrating probity means more than just avoiding corrupt or dishonest conduct. It involves proactively demonstrating that any procurement process is robust enough to withstand public scrutiny.

Probity requires acting in such a way that there can be no perception of bias, influence or lack of integrity. This requires ethical conduct that exceeds legal requirements. Consequently, probity in procurement should not be regarded as a last minute 'box ticking' exercise. It must be integrated into all stages of the procurement process.

The principles to be upheld by staff to promote probity throughout all stages of the procurement process are:

- Integrity and impartiality
- Confidentiality
- Security
- Fairness
- Accountability and transparency
- Promoting value for money outcomes

How probity helps achieve value for money

Competition between suppliers must be maximized so that suppliers are putting forward their best possible offers. To enable this, it is important that suppliers have confidence that the procurement process adheres to ethical principles supported by transparent processes.

Prospective suppliers may be disinclined to put their best offer forward or may not make any offer at all if they perceive the procurement process is being conducted improperly. This puts the National Scheme at risk of missing out on the best value for money offers. It can also have the effect of lessening competition between suppliers over time as suppliers may no longer seek to do business with Ahpra.

Making probity part of Ahpra's procurement culture

Probity needs to be part of the procurement culture. Individual staff and senior leaders including Ahpra's executives have a responsibility to embed this culture by:

- Ensuring all staff involved in procurement activities move beyond basic compliance to proactively demonstrate integrity
- Ensuring procurement excellence through investment in staff capability training
- By ensuring staff are aware of their probity obligations
- Ensuring that procurement policies, procedures and tools sufficiently integrate probity considerations
- There are adequate controls in place to respond to breaches of both a serious and less serious nature. (e.g. Code of Conduct Policy, Fraud and Corruption Policy and the Statement of Non-Compliance).

For Ahpra's senior leaders and executives, probity should be reflected in their decision making and modelled in their behavior at all times in recognition of the integral role they play in promoting positive workplace behaviours.

Probity focus areas

To put probity principles into practice, there are four focus areas that staff should incorporate into their procurement activities. These are outlined in the tables below.

Fairness and impartiality

<p>Planning</p>	<p>All tender documentation should be clear and unambiguous</p> <p>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.</p> <p>Specifications must be free from bias or favouritism</p> <p>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.</p> <p>Use of a competitive process</p> <p>The type of procurement must be justifiable and documented and should facilitate delivery of the best procurement outcome.</p>
<p>Go to market</p>	<p>All prospective suppliers should be given the same time to respond to a tender</p> <p>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.</p> <p>All prospective suppliers should have the same level of access to materials and information during the tender process</p> <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> <p>Evaluation methodology and criteria should be documented and decided before suppliers are invited to submit offers</p> <p>If any alteration to the agreed evaluation process is required, this must be communicated to all suppliers participating in the process. Suppliers must be given adequate time to respond to the change.</p>
<p>Evaluation</p>	<p>Evaluation of supplier offers must occur against the documented criteria and be objective</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.
Award	The contract must be awarded in an open, clear and defensible manner.

Accountability and transparency of decisions and process

Evaluation panel composition	<p>Multiple staff should undertake a tender evaluation process</p> <p>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>Staff should check the Procurement Policy for further information about the composition of the evaluation panel.</p>
Record keeping	<p>Keep accurate records for all stages of the procurement process</p> <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 staff involved and who gave approvals at sign-off points.</p> <p>Staff must also ensure that they meet Ahpra's legislative and policy 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>
Supplier communication	<p>While it is related to record keeping, particular attention should be paid to documenting any and all communication with prospective suppliers</p> <p>This includes both written communications, along with appropriate records of any verbal discussions (e.g. minutes of a meeting, file notes).</p> <p>Ensure that negotiated agreements are confirmed in writing.</p> <p>If verbal post-offer negotiations are used, any agreed outcomes or actions should be documented and subsequently agreed to in writing by both parties.</p>
Receipt of goods / services	<p>Ensure that the procured good or service has been satisfactorily delivered (in accordance with the agreed contract) before issuing payment.</p> <p>Do not simply pay a supplier because they issue an invoice – perform the appropriate checks before making payment.</p>
Confidentiality and security of materials	<p>Confidentiality</p> <p>Confidentiality during the procurement process is required to protect the competitive position of tenderers, as well as the commercial interests of Ahpra. Ahpra staff are reminded that their conditions of employment or engagement include a confidentiality undertaking.</p> <p>Staff 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.</p>

	<p>Security</p> <p>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.</p> <p>To ensure the security of tenderer's information is maintained, Ahpra staff should abide by the following guidance:</p> <ul style="list-style-type: none"> • Documents and electronic information which contain tender-related information are to be stored at all times in secure conditions with access only for authorised staff • Extra copies of tender documents and other sensitive information are not to be produced unless authorised by the authorised personnel note: any authorised copies produced should be numbered and a register kept of who they have been distributed to; • Only authorised personnel 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.
<p>Delegations</p>	<p>Ensure that all relevant documents are signed off by a person with the appropriate delegation.</p>

Managing conflict of interest

<p>For staff conducting the procurement process</p>	<p>A Conflict of Interest Declaration must be completed prior to commencing work on the process. Conflicts of interests can be actual, potential or perceived, and should be declared to ensure that any risks are managed.</p> <p>Conflict of interest declarations must be made by each member of the Evaluation panel where the contract value is \$50k or more and in all cases regardless of value where the procurement is strategic in nature.</p> <p>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.</p> <p>Include conflicts of interest as a standing item on all meeting agendas</p> <p>Ask potential suppliers to disclose all actual, perceived or potential conflicts of interest at the time they provide an offer</p> <p>Failure to make adequate disclosure at any time may be grounds for later ending the contract.</p> <p>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</p> <p>The appropriate delegate should approve any conflict of interest management strategy.</p>
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Managing conflicts of interest	<p>Conflicts of interest are to be reported through a centralised register.</p> <p>The primary goal of managing conflicts of interest is to ensure that decisions are made on proper grounds, for legitimate reasons, and without bias</p> <p>In the first instance you should always refer to any Ahpra policies or procedures that may apply. There are several management strategies available:</p> <ul style="list-style-type: none"> • register – details of the conflict of interest are declared and registered (in low-risk situations this single strategy may be sufficient) • restrict – restrictions are placed on the staff member’s involvement in the matter • recruit – an impartial third party is used to oversee part or all of the process • remove – the staff member chooses, or is requested, to be removed from the matter • relinquish – the staff member relinquishes the private interest that is creating the conflict <p>Conflicts of interest must always be resolved in the public interest.</p>
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Managing probity relative to value and risk

	For low value and low risk	As value and risk increase
Probity auditor / adviser	Unlikely to be necessary	Consider using probity auditor and / or probity adviser
Probity briefing for evaluation committee members	General reminder regarding probity likely to be sufficient	Formal briefing to be conducted
Conflict of interest declaration	General reminder of obligations	Obtain formal Conflict of Interest Declaration
Evaluation panel composition	Small evaluation panel likely to suffice	Consider increasing the size of the panel

How to deal with probity in certain situations

What to do if you confront a situation that you don’t 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 this guideline, Ahpra’s Code of Conduct and the Procurement Policy to see if they provide the necessary guidance.
- Alternatively, you may seek guidance from your line manager or the Procurement team.
- For more complex situations, it may be appropriate to engage Corporate legal or an external probity adviser in consultation with the Procurement team.

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

Gifts and benefits

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 in accordance with Ahpra's Gifts and Benefits Policy.

Conducting early market engagement and 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 staff members 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 senior leaders or 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.

Preventing patronage or favouritism

Ahpra staff must not use their position to obtain a private benefit for someone else. Decisions must not be improperly influenced by family or other personal relationships.

Communication

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 guidance should be applied:

- **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.
- **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.

Response to incumbent advantage

In a procurement lifecycle, an incumbent or previous supplier can have, or is perceived to have an advantage over other potential tenderers of goods or services through the experience, knowledge and existing relationships gained by working with Ahpra.

To avoid complaints and ensure the procurement process is fair and impartial to all potential suppliers, the following mitigation strategies can be introduced:

- Ensure the incumbent/ previous supplier is not involved in developing requirements for the approach to market
- Ensure the incumbent/previous supplier is not asked to comment on, and does not have access to, draft approach to market documentation
- Provide all tenderers with use case scenarios that detail how services are operated / performed, with sufficient data to help them prepare the tender responses where applicable (subject to confidentiality requirements and agreements)
- Ensure all tenderers have adequate time to review the information, ask questions and prepare their tenders
- Ensure that there are appropriate separations of roles well before the procurement process is undertaken (contract managers should be separated from tender evaluation if applicable)
- Ensure that intellectual property rights under the current contract are sufficiently broad to allow Ahpra to access and use the intellectual property.
- Appoint an external probity adviser to independently monitor the fairness of the process
- Consider including at least one neutral observer/evaluator
- Consider blind evaluation processes
- Providing meaningful debriefs to unsuccessful tenderers.

There will be times when significant transition costs are involved and need to be factored into the overall cost of ownership when evaluating the financial submissions. This will give the incumbent supplier a transition cost advantage over other tenderers. The mitigation potential in these instances is limited.

Although contracting entities such as Ahpra have a duty to neutralise incumbent advantage as much as possible and to present a level playing field, there will not automatically be unequal treatment if a tenderer has acquired an advantage through performance of a previous contract.

Business as usual dealings with tender process participants

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 and a member of the Procurement team.

Attending trade shows

There is no issue, in itself, with a member of staff attending either a trade show, conference, seminar or other similar events. In fact these are quite common particularly for information technology. Such events can often be very useful for developing our understanding of supply markets. However, it is important that staff 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, staff should be mindful of how their attendance could be perceived by external parties (e.g. suppliers within the market). Staff 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
- Whether attendance is open to all or by invite only.

Ahpra staff should also be aware of suppliers offering to pay for their attendance. Such offers are gifts and need to be treated as such.

Engaging probity advisers / auditors

For certain high risk / complex procurement activities, it may be appropriate to appoint a Probity Adviser and / or Auditor. The extent of the roles of the Probity Advisor / Auditor will vary according to the size, inherent risk, complexity of a particular tender as well as the experience of the staff members leading the procurement.

The services provided by the probity adviser and / or probity auditor will typically include one or more of the following:

- Independent assessment and / or advice throughout the procurement process as to whether processes are:
 - developed according to Ahpra's Procurement Policy;
 - managed according to the procurement process and the procurement conduct plan; and
 - completed according to the tender requirements.
- Ongoing independent advice on probity issues
- An independent and appropriate sign-off at designated milestones on probity requirements.

The Procurement team must be consulted before external probity services are commissioned.

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.

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

- Give contractors a statement of business ethics or a contractors' code of conduct that clearly defines their ethical responsibilities when contracting with Ahpra. This includes their obligations to report improper conduct of Ahpra 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 Ahpra authorised personnel 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 the procurement process is conducted, a contract should not be awarded to a firm with a record of illegal or unethical activity.
- If there are 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).

Related documents

- [Procurement Policy](#)
- [Code of Conduct](#)
- [Gifts and Benefits Policy](#)
- [Records Management Policy](#)
- [Financial Delegations Policy](#)
- [Conflict of Interest Policy and Procedure](#)

Definitions

Term	Definition
Probity adviser	<p>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.</p> <p>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.</p>
Probity auditor	<p>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.</p> <p>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.</p>

Document control

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