# Probity in procurement - Goods and services procurement guide

## Introduction

Victorian government procurement aims to achieve value for money in a manner that is compliant with relevant policy and is conducted in a fair, ethical, impartial and transparent manner.

Applying probity in procurement (and all government decision making processes involving the expenditure of government money) demonstrates propriety in dealings with the market, builds confidence to encourage market participation, through suppliers having confidence that their offers will compete fairly on their merits and requires personnel to be accountable for actions, decisions and outcomes.

## What is probity?

Probity can be defined as complete and confirmed integrity, uprightness and honesty. Upholding the highest standards of probity and integrity enables organisations to safeguard procurement activities to ensure those activities and processes are robust and can withstand scrutiny.

The principles of probity involving evidence of ethical behaviour and good process are demonstrated by:

* implementing processes and actions that are consistent, accountable, transparent and auditable;
* good record keeping;
* maintaining an audit trail;
* equity in decision making;
* clear, honest communication;
* independent checks and approvals that can identify probity issues;
* security and confidentiality of information; and
* identifying and managing conflicts of interest whether actual, perceived or potential.

## Probity in procurement

Probity is a fundamental part of every procurement project and activity. As probity issues can arise at any stage of a procurement activity, probity needs to be anticipated as early as possible when planning a procurement (pre-procurement) and must be considered throughout the entire procurement lifecycle including category management, early market engagement, market analysis, sourcing and the entire contract phase.

Should any probity issue(s) emerge, it is important that the organisation can clearly demonstrate that its decisions were made using proper and ethical processes and that any probity issues that have been identified have been appropriately addressed.

### Probity in practice

Good probity practice is the foundation for:

* ensuring business and community confidence in the integrity of government procurement processes;
* allowing buyers and suppliers to work together on the basis of mutual trust and respect;
* ensuring accountability for market engagement processes and procurement outcomes; and
* supporting decisions for spending public money.

Organisations can build a procurement culture that demonstrates high standards of probity by:

* implementing open and transparent processes;
* conducting probity briefings;
* training and awareness of responsibilities/accountabilities;
* highlighting and actively promoting ethical values; and
* staff throughout the organisation adopting, demonstrating and committing to those values.

Demonstrating the highest standards of probity reassures suppliers that all procurement processes, from planning to negotiations, are conducted fairly and in accordance with government policies and predefined plans.

### How to apply probity

To achieve an ethical and transparent approach, procurement processes should be clear, open and well understood and the decisions and actions of individuals involved in procurement activities must reinforce the fundamentals of probity.

Probity requirements will differ with each procurement and should be managed and aligned to the complexity, value and risk of the procurement activity, for example more independent oversight and greater process management should apply as value, complexity and risk increases.

### Probity in practice – practical examples for applying probity

Act with integrity, accountability and impartiality is demonstrated by:

* + being fair, honest, open and transparent in all dealings;
	+ using powers responsibly;
	+ addressing and managing improper conduct;
	+ managing any real, perceived or potential conflicts of interest;
	+ striving to earn and sustain a high level of public trust;
	+ making decisions and providing advice based on merit—without bias, unpredictability, favouritism or self-interest;
	+ acting fairly by objectively considering all relevant facts and criteria;
	+ ensuring all personnel involved in the project know their responsibilities and are accountable for their actions: and
	+ being aware of and complying with any government laws, policies and frameworks or organisational requirements e. g. gifts, benefits and hospitality, fair payment policy.

Ensure market equality – including early market engagement and market research is demonstrated by:

* + ensuring all suppliers (existing and potential) are provided with the same information regarding the procurement activity e.g. the same timeline and the same process for evaluating offers;
	+ treating all suppliers fairly and equally and protecting knowledge e.g.; and
	+ considering how to address bias and incumbent advantage (if applicable) during a tender process e.g. consider including at least one neutral observer/evaluator, consider blind evaluation processes.

Consistent and transparent processes is demonstrated by:

* + applying transparency and fairness throughout the procurement life cycle;
	+ creating clear and effective Governance arrangements;
	+ ensuring procurement processes, including evaluation and negotiations are conducted fairly and in accordance with organisational policies;
	+ maintaining an audit trail, thorough record keeping and documentation throughout the procurement process with enough information for independent review and verification; and
	+ making sure any change or variation to the process or scope doesn’t unfairly preference or impede any bidder.

Secure and confidential information is demonstrated by setting up procurement processes to ensure that information from suppliers, including intellectual property, remains secure and confidential.

Identifying, managing and resolving conflicts of interest is demonstrated by:

* + setting up procedures and processes to identify, address and manage actual, perceived or potential conflicts of interest. It is worth noting that conflicts can occur at any stage of a procurement process and procurement practitioners need to be aware of the requirement to immediately disclose the conflict and manage it accordingly; and
	+ record all action taken to address conflicts.

Aligning procurement processes with capability is demonstrated by:

* + ensuring all personnel involved in the procurement activity:
		- understand their obligations regarding probity, conflict of interest, confidentiality and security of data;
		- are appropriately qualified, supervised or trained/experienced for the project; and
		- understand relevant procurement policies and procedures and can appropriately manage risks.
	+ making sure to align procurement expertise, experience, resources, systems, capability and processes to enable each part of the procurement activity to be completed successfully; and
	+ ensuring probity practitioner(s) have appropriate capability.

Engaging a probity practitioner

* + Identifying the need to engage a probity practitioner if the procurement is complex or identified as being high risk;
	+ considering probity requirements for all procurement projects and activities:
		- low value/complexity – internal independent procurement professional
		- mid value/complexity – external probity professional
		- high value/complexity – external probity advisor and independent auditor

## Use of probity practitioners

Probity practitioners provide independent objective advice on procurement activities. Engaging a probity practitioner helps ensure high standards of probity in the conduct of a procurement activity and should complement existing probity practices.

To get the most from services offered by probity practitioners, you need to engage them as early as possible, ideally at the procurement initiation/planning stage.

There are two types of probity practitioners that you might consider in a procurement activity – a probity advisor and a probity auditor. Each practitioner will perform a different role; these roles are not interchangeable, and the same individual **cannot perform both functions within the same procurement activity**. Some procurements will require the services of both practitioners.

For low risk and some medium risk procurement activities, internal probity services may be used where capability exists in the organisation. They must be independent of the procurement team and in those cases where a probity auditor is also required, you should consider appointing an external auditor.

It is essential where the procurement is strategic, of high importance to the organisation or is sensitive in nature that you ensure to engage a separate independent probity auditor and probity advisor (external probity practitioners can be engaged through the Professional Advisory Services State Purchase Contract).

A good probity practitioner:

* is independent of the procurement process;
* maintains objectivity so that advice and opinions are viewed as impartial;
* possesses appropriate professional proficiency to provide the services required;
* ensures application of probity principles; maintains the highest ethical standards; and
* understands the procurement objective and adds value to the procurement process.

Note**:** Probity of the process is an obligation of each member of the procurement/decision making process. Use of the services of a probity practitioner does not absolve, remove or replace the procurement practitioner’s responsibility to ensure the conduct of the procurement is consistent with the probity requirements.

## Probity practitioner roles

In general, a probity advisor provides advice and assistance and monitors probity matters throughout the project while a probity auditor reviews the conduct of the procurement activity at one or more key milestones reporting on the outcome of the process.

The tasks which a probity practitioner is being engaged to perform needs to be defined in the procurement planning stage**.**

### Probity advisor

The probity advisor provides the procurement team, the project manager and project control board, as required, with **independent advice and guidance on probity issues** throughout the procurement activity.

A probity advisor may also assist in anticipating issues, proactively managing problems and advising on potential courses of action.

A Probity advisor may, as required:

* advise on compliance with VGPB policy and any other government procurement policies with respect to probity;
* undertake probity risk assessments for a procurement, and recommend strategies and develop controls to manage these risks;
* attend meetings and observe the procurement team performing procurement activities etc;
* undertake probity tasks on behalf of the procurement team, which may include preparation of the probity plan;
* make initial assessments on whether declared related interests amount to a conflict of interest and advise on management (avoidance or mitigation);
* review, from a probity perspective, the tender documentation and other internal documentation relating to the procurement; and
* undertake investigations on behalf of the procurement manager into any suspected probity breaches and report findings.

Probity advisors provide reports to the project control board (or similar decision-making body), expressing their expert opinion regarding probity requirements describing how all probity issues were managed.

Note: Probity advisors may be at risk of compromising their independence through their involvement as part of the procurement team. There is the potential to feel an affinity with, or ownership of the procurement and there is a risk the advisor can be influenced by the procurement team over time. The risk is heightened where an organisation frequently engages the same advisor. A key challenge for a probity advisor is to be both “collaborative” with the project team yet at the same time remain independent and provide objective advice.

The probity auditor’s independence from the organisation and probity advisor is a useful risk mitigation.

### Probity auditor

A probity auditor’s role is to focus on **compliance to procurement processes** according to the tender requirements, set criteria, standards or principles, to ensure adherence to government policies and rules and to provide appropriate sign-off to the project control board at completion (and/or designated milestones). A probity auditor should not provide advice or offer any solution to any probity issues that arise during the procurement process.

A probity auditor essentially provides an independent scrutiny of a procurement process and expresses an objective opinion as to whether the prescribed probity requirements have been adhered to. As the probity auditor works independently of the procurement team and has not been involved in the procurement, the conclusion expressed should be based on the evidence gathered from the audit of the process. The probity auditor may however attend any meetings deemed relevant by the probity auditor to gather evidence about the conduct of the procurement.

Where a probity auditor is appointed, the Accountable Officer and project control board as applicable, should receive and consider the report from the probity auditor before finalising any recommendation or decisions on the outcome of the procurement.

### Overview of the tasks which may be performed by each probity practitioner

The following table describes tasks performed by probity practitioners**:**

|  |  |  |
| --- | --- | --- |
| Task | Probity advisor | Probity auditor |
| Provide quality, strategic and timely advice on maintaining standards of probity during the procurement process | Yes | No |
| Contribute to developing/and or endorsing a procurement conduct plan (PCP)  | Yes | No |
| Provide advice and guidance to the project team on ensuring standards of probity when approaching the market  | Yes | No |
| Monitor progress of the procurement for probity compliance | Yes | No |
| Alert appropriate levels of management to any probity issues  | Yes | Yes |
| Help establish probity requirements and obligations for all levels of personnel involved with the procurement  | Yes | No |
| Ensures integrity of procurement process is maintained | Yes | No |
| Provide advice and guidance in the event of disputes arising from the procurement process and provide status reports on probity matters | Yes | No |
| Review procurement project documents (e.g. expressions of interest and requests for tender) to ensure potential registrants and respondents are treated fairly | Yes | No |
| Review procurement governance processes, document flows and decision‑making processes to assess compliance | No | Yes |
| Endorse the evaluation plan and evaluation reports | Yes | No |
| Oversight of the evaluation process (including review of the final evaluation report) | Yes | No |
| Attend meetings, interviews, presentations or negotiations when required, to ensure appropriate meeting protocols and established procedures are followed | Yes | No |
| Identify procurement policy and process risk management and/or mitigation strategies to minimise policy breaches  | Yes | No |
| Undertake an independent review and gather evidence from procurement documents, processes and actions to form an objective opinion about the conduct of the procurement and report to the project control board | No | Yes |
| Contribute as required to ensure probity principles are achieved and provide appropriate probity report(s) at key milestones to the project control board that disclose any material probity issues that arose during the project even where the issues were managed to the satisfaction of the probity advisor and project governance group as necessary, along with an explanation as to how the advisor reached any conclusion expressed in the reports. | Yes | No |
| Provide independent audit and appropriate sign-off at the conclusion of the sourcing stage of the procurement project to the project control board providing probity signoff reports that include disclosing any material probity issues that arose during the project even where the issues were managed to the satisfaction of the probity practitioner and project governance group as necessary, along with an explanation as to how the auditor reached any conclusion expressed in the reports. | Yes | Yes |

## When to engage a probity practitioner

The decision to engage a probity practitioner is based on the complexity of the procurement activity as shown in the table below**,** however other important considerations in determining whether to engage a probity practitioner can include:

* complexity, risk or value (see table below) effort/costs required to submit a tender;
* nature of the industry or market i.e. to avoid perception of bias;
* political sensitivity or potential for controversy involving the procurement, selecting the successful supplier and awarding the contract.

When deciding to engage a probity practitioner, a government buyer should consider whether the project may be publicly scrutinised, whether there’s been a history of controversary or litigation or where there are high stakes for bidders, if it’s an innovative project where bidders are likely to be concerned about the security of their ideas and intellectual property, or the process or project is unique.

If both a probity adviser and a probity auditor are engaged on a project or process, it is advisable for the project manager to convene a meeting early in the process with both probity practitioners to ensure that there is clarity between all parties of the respective terms of engagement, with no gaps or unnecessary duplication of probity tasks. This is to ensure that the project receives appropriate value and assistance from the engagement of each practitioner.

The decision to engage a probity practitioner(s) should not be used to avoid sound processes or business decisions.

Engaging a probity practitioner based on complexity quadrants:

|  |  |  |
| --- | --- | --- |
|  | Standardised goods and services market | Specialised goods and services market |
| High value generated through procurement | **Leveraged**Auditor and advisor role applicable in some instances | **Strategic**Separate auditor and advisor role recommended |
| Low value generated through procurement | **Transactional**Auditor and advisor role may be required in limited cases | **Focused**Separate auditor and advisor role highly recommended |

## Benefits of engaging a probity practitioner

The benefits of engaging a probity practitioner include:

* pre-empting and proactively managing possible probity issues;
* helping to identify and address emerging probity issues and risks;
* ensuring procurement staff meet the highest standards;
* minimising potential for complaints by having an independent third party monitor the procurement process;
* giving suppliers confidence in the integrity of the procurement process;
* providing an independent viewpoint;
* contributing to accountability and transparency of the procurement process;
* mitigating and reducing risk; and
* ensuring procurement decisions are documented and defensible.

## Probity Plan

A Probity Plan is an important tool (particularly where a procurement is sensitive or of high value, high risk or subject to a high degree of public scrutiny) to ensure that all probity issues are considered and addressed prior to the start of a procurement project.

 A probity Plan should be developed during the procurement planning process and may cover some or all the following:

* description of the procurement;
* the probity requirements and how they are being applied in this process;
* the decision-making process for the procurement;
* probity tasks and steps;
* description and scope of probity practitioner services required;
* management of any conflicts of interest;
* security and confidentiality of information;
* communication with bidders;
* procurement staff behaviour guidelines;
* record keeping;
* evaluation plan, evaluation criteria and measures;
* communication between the probity practitioner and the evaluation panel; and
* written reports to be provided by the probity practitioner including format, content and timing (for a probity auditor this information is critical).

## Probity completion and sign off

Probity reports and/or sign off letters produced by a probity advisor/probity auditor to the project control board (or similar decision making body) during or at the completion of the process or their assignment, must give a view as to the adherence or otherwise of the process to the probity requirements and must disclose any material probity issues that arose during the relevant process or project, even where those issues were managed to the satisfaction of the probity practitioner and project governance group.

## Using this guide

This guide highlights the importance of probity in procurement, describes the differences in the roles of probity practitioners and provides government buyers with practical advice about engaging a probity practitioner.

This guide accompanies the [goods and services supply policies](https://buyingfor.vic.gov.au/goods-services-supply-policies). There are 5 supply policies:

* Governance policy
* Complexity and capability assessment policy
* Market analysis and review policy
* Market approach policy
* Contract management and disclosure policy

This guide supports all five of the policies.

© State of Victoria 2019 (Victorian Government Purchasing Board)



This work is licensed under a [Creative Commons Attribution 3.0 Australia licence](http://creativecommons.org/licenses/by/3.0/au/). You are free to re-use the work under that licence, on the condition that you credit the State of Victoria as author. The licence does not apply to any images, photographs or branding, including the Victorian Coat of Arms, the Victorian Government logo and the Department of Treasury and Finance logo.

Copyright queries may be directed to IPpolicy@dtf.vic.gov.au