



Organisational guideline

Probity in Procurement Guideline

Corporate Plan reference	As per the Procurement Policy	
Endorsed by Chief Executive Officer		
Manager responsible for policy	Manager Procurement & Contracts	

Purpose

This purpose of this guideline is to outline the probity environment and framework relating to Council Procurement and Contracting Activities.

Outcome

The intended outcome of this guideline is a probity environment and framework that ensures integrity, fairness and transparency in Council Procurement and Contracting Activities.

Scope

This guideline applies to any Procurement and Contracting Activity conducted by Council and any person whether internal or external to Council who participates in a Procurement and Contracting Activity.

Guideline statement

Probity is acting ethically, with integrity, honesty and propriety.

Council is committed to ensuring an appropriate probity environment and framework is established and maintained during any Procurement and Contracting Activity, in order to ensure:

- Public and supplier confidence is preserved;
- Accountability is achieved;
- Integrity within Council is maintained;
- Compliance with internal processes;
- Responses will be evaluated fairly against the same criteria;
- Conflicts and the potential for litigation are minimised;
- The best outcome is achieved in the Procurement and Contracting Activity;
- That the potential for misconduct, fraud and corruption is avoided.

A sound probity environment in Council's Procurement and Contracting Activities will help to ensure the ethical principles are met and this guideline sets out the framework for how Council will embed a sound probity environment in its activities.

Guiding principles

Council is committed to ensuring ethical principles outlined in the *Public Sector Ethics Act 1994* (Qld) are applied to its Procurement and Contracting Activities and these principles are:-

- Integrity and impartiality;
- Promoting the public good;
- Commitment to the system of government; and
- Accountability and transparency.

Council is also committed to the local government principles outlined in section 4(2) of the *Local Government Act 2009* (Qld).

Promoting probity and having a framework to embed probity in Council's Procurement and Contracting Activities is an integral element in ensuring that regard has been had for the Sound Contracting Principals as well as ensuring our conduct reflects the ethical principles and local government principles. It is the responsibility of all Council officers and Councillors associated with a Procurement and Contracting Activity to ensure probity is achieved as outlined in the Procurement Policy.

Probity is underpinned by the ethical principles, the local government principles and the fifth Sound Contracting Principle, ethical behaviour and fair dealing, and the broad objectives of probity in Procurement and Contracting Activities are to:

- ensure conformity to Council's Procurement Policy, principles and processes that are designed to achieve the most advantageous outcome for Council;
- improve accountability;
- encourage commercial competition on the basis that all Tenders will be assessed against the same criteria;
- preserve public and Respondent confidence in Council processes;
- improve defensibility of decisions to potential administrative and legal challenge;
- underpin a transparent and competitive process; and
- identify and resolve any conflicts of interest.

The framework for probity in Council's Procurement and Contracting Activities includes:

- Having a Probity Plan
- Setting evaluation criteria
- Declaring and Managing conflict of Interests
- Ensuring security and confidentiality in the process
- Having effective and appropriate communication including:
 - Requests for clarification
 - Post Tender negotiations
 - Feedback to respondents
- Consistent process for how Tenders, EOIs and Quotes are received and opened
- Undertaking evaluations
- Identifying critical issues and risks
- Engaging with probity advisors
- Dealing with breaches of probity

Details of each of these items that are integral to the framework are outlined below.

Probity Plan

A Probity Plan needs to be completed and signed by each Evaluation Panel Member, the Branch Manager and/or the Contract Sponsor for each Procurement and Contracting Activity that is carried out over the value of \$15,000. The Probity Plan needs to be completed and the evaluation criteria weightings set before any Procurement and Contracting Activity is conducted to ensure that these are pre-determined before any evaluation is undertaken.

The Probity Plan also requires the evaluation panel members to declare that they have read and understood Council's probity requirements details in the form.

This is an essential part of the Probity Framework that underpins Council's Procurement and Contracting Activities.

Evaluation Criteria

The evaluation criteria are set in the Probity Plan and are the pre-determined criteria against which each Respondent will be assessed prior to Council awarding a Contract to a Respondent.

Conflict of Interest

Members of the evaluation panel need to declare any relationships or connections they currently have, or previously had, with the Respondent or their employees. Throughout any Procurement and Contracting Activity process, members of the evaluation panel or advisors to the panel cannot accept offers of gifts, meals or any other benefit from any interested party and/or Prospective Respondent. Furthermore, members of the Evaluation Panel and advisors will be expected to declare in writing to the chair of the evaluation panel the existence of any actual, perceived, or potential conflict of interest as soon as they become aware of it.

In the case where a member of the evaluation panel has declared a conflict of interest with a Prospective Respondent and due to the nature of the conflict, either the member or the evaluation panel feel that the person could not continue their involvement without potentially compromising the process, that person should be replaced on the evaluation panel and not take further part in the evaluation.

Security and Confidentiality

It is essential for the integrity of the Procurement and Contracting Activity and the evaluation process that security and confidentiality is maintained. Respondents have a right to expect that commercial information will be treated in confidence. Lapses in security on the part of any evaluation panel member may seriously jeopardise the Procurement and Contracting Activity and the evaluation process. Similarly, the panel must maintain the confidentiality and physical security of all documentation relating to the evaluation including evaluation reports and other information generated during the evaluation.

At the end of the procurement process all Tenders, Quotes, EOI's or other documents received from Respondents and other records created throughout the procurement process are to be captured into Council's Electronic Content Management System in a secure manner.

While it is understood that requests under the *Right to Information Act 2009* or related legislation could ultimately lead to the disclosure of confidential information, this does not diminish the need for the evaluation process to be conducted in a secure and confidential manner. Confidential information is to remain, and be shared only within the evaluation panel environment, unless otherwise authorised by the Chair of the Procurement Contracts Committee.

Communication

The chair of the evaluation panel is the only panel member authorised to deal with Prospective Respondents. Should any other panel member receive an enquiry, which relates to Procurement and Contracting Activity, that officer must direct them to the chair.

Any questions or requests from Prospective Respondents are to be put in writing and submitted to the central location (Internet Mailbox).

The chair of the evaluation panel is to use good judgment in responding to questions and all contact with Prospective Respondents is to be documented, transparent and unbiased.

Consistent information and responses to requests for information or questions are to be provided and supplied uniformly to all Prospective Respondents via a "Notice to Respondents" or email distributed by the chair. This communication could be necessary prior to, or post, the closing date for submissions.

Should telephone or personal contact be unavoidable, the officer will make file notes of all discussions and forward to the chair for record keeping.

Under no circumstances is information to be provided which gives, or has the potential to give, an unfair advantage to the enquirer.

The membership of the evaluation panel will not be disclosed to Respondents under any circumstances. This will minimise the likelihood of Respondents contacting evaluation panel members in an attempt to solicit information and/or influence the evaluation process.

In any situation where an evaluation panel member is concerned he or she may have been compromised, or that such a perception may exist, they should document details promptly and raise the matter with the chair of the evaluation panel.

Requests for Clarification

To enable the evaluation panel to thoroughly evaluate a Tenders, Quote, EOI or other submissions during a Procurement and Contracting Activity it may be necessary for the panel to request clarification of information provided.

To the extent practicable, clarification will be sought and recorded in writing. In the event that a Respondent is invited to an interview or to make a presentation, any matters of clarification will also be documented and there is to be more than one evaluation panel member present at the interview or presentation. In each case, the chair of the evaluation panel will coordinate the clarification process.

Clarification does not mean that Respondents can revise their original submission and therefore no new or additional information will be requested at this point.

Should evaluation panel members be asked a specific question during an interview or presentation, they must provide a factual answer, not a personal opinion.

Post Tender Negotiations

In cases where post tender negotiations are required, the following must be adhered to:

- The negotiation panel is to be kept to a minimum, but at least two Council representatives must be present at all negotiations.
- The negotiations are to be minuted and within 24 hours emailed to the Respondent requesting the Respondents to initial and date the minutes and return. The Council officers are also required to initial the minutes and then forward to the chair of the evaluation panel for record keeping.

Feedback to Respondents

Each unsuccessful Respondent will be sent a letter outlining that the evaluation process has been undertaken and they were unsuccessful. Respondents may also be offered the opportunity of feedback after the contract has been awarded to the successful respondent.

Feedback is designed to reinforce the probity of the evaluation process and to assist the Respondent in responding to future Procurement and Contracting Activities. The feedback should identify the relative strengths and weaknesses of the Respondent's Tender, but must not provide

information in respect of other Tender Response Forms or Respondents, nor provide any comparison between that Respondent and other Respondents. The Evaluation Panel scoring data is to remain confidential and not be provided to Respondents. A formal letter of acceptance and contract documents must be issued to the successful Respondent within the validity period detailed in the Invitation to Tender or Request for Quote.

Receipt and Opening of Tenders, EOIs and Quotes

Tenders and EOIs will not be publicly opened, but will be electronically opened by a Procurement and Contracts staff member via an encryption key after the closing date. The opening will be witnessed by another Procurement and Contracts staff member who will electronically sign in to verify their presence. A Download Response Report will be held by Procurement and Contracts staff. Council's Procurement and Contracts staff will forward Tenders to the evaluation panel.

Quotes and other submissions relating to a Procurement and Contracting Activity (that are not a Tender or EOI) will not be opened publically but will be opened electronically by the chair of the evaluation panel after the closing date.

Evaluation

Evaluation criteria are to be included in the Invitation to Tender document. However, the evaluation criteria weighting is not to be released to any Respondent, Prospective Respondent or enquirer.

All evaluation panel members are to conduct their individual evaluations in isolation from the other panel members using Council's standard evaluation process.

All evaluation panel members are to compare individual scores given by each evaluator and to discuss areas of variance before agreeing on the final scores (this is called a moderation). A final evaluation spreadsheet is prepared and signed by the chair of the evaluation panel.

Personal file notes documenting the basis for individual panel member's evaluation of each submitting must be forwarded to the chair of the evaluation panel.

Critical Issues or Risks

Risk management is the process of identifying risks, analysing their consequences and mitigating those risks. An assessment of risk should be undertaken to provide greater certainty that this Procurement and Contracting Activities will produce a successful outcome. Dependent on the nature, cost and complexity of the Procurement and Contracting Activity, the evaluation panel may need to develop a formal risk management plan.

Probity Advisor or Auditor

Advice in relation to probity matters can be obtained internally from the Procurement and Contracts Branch or Legal Services, however there will be instances where an external probity advisor and/or auditor may be required. Consideration should be given to engaging an external probity advisor for Procurement and Contracting Activities that are high value, high risk or complex and this should be identified in the procurement planning phase as to whether a probity advisor or auditor is likely to be required. This decision should be monitored throughout the Procurement and Contracting Activity and if circumstances arise that a procurement becomes complex, protracted, probity risks are identified, the risk of the activity increases or the value increases then engagement of an external probity advisor or auditor may be required.

An external probity advisor or probity auditor may be also appointed at the direction of the CEO, Director or Manager Procurement and Contracts should circumstances arise in which it is considered necessary to engage such services.

Breach of Probity

Should any breach of probity processes occur at any time, then officers are required to report in such breaches in writing to the chair of the Procurement Contracts Committee.

Roles and responsibilities

Council Officers with a role or responsibility to Procurement and Contracting Activities are:

Director, Corporate Services Department is responsible for overseeing all financial management systems and services, including Contracting Activities.

Manager Procurement & Contracts is responsible for implementing and maintaining a probity framework which includes this guideline and is also responsible for providing advice on probity related matters.

All Managers are responsible for ensuring all Officers comply with this Guideline and for appointing probity auditors and advisors where necessary.

Procurement Contracts Committee is responsible for providing an effective decision making forum regarding Contracting Activities including decisions in relation to probity related matters.

All Officers are responsible for complying with this Procurement Policy and associated guidelines, processes and procedures including this guideline.

Definitions

Invitation to Tender means a document released to the public by Council titled "Invitation to Tender".

Procurement and Contracting Activity means any procurement or contracting activity identified in the LGR 2012, Chapter 6 Contracting, Part 3 Default contracting procedures (sections 223 to 238).

Probity Plan means Council's internal document titled Probity Plan to be completed and signed when undertaking a procurement and Contracting Activity.

Procurement Contracts Committee means the committee established and governed by the Procurement Contract Committee Terms of Reference.

Procurement Policy means the current strategic policy adopted by Council and titled Procurement Policy.

Prospective Respondent means a person or entity that has requested or received an Invitation to Tender or Request for Quote but has not submitted a Tender Response Form or Request for Quote Response Form.

Quotes means a quote or quotes (including Alternative Quotes) submitted by Respondents in response to a Request for Quote.

Respondent/s means a person or entity that has submitted an offer in response to an Invitation to Tender or Request for Quote.

Request for Quote/s means a document released by Council to Prospective Respondents titled "Request for Quote".

Request for Quote Response Form means the response form set out in the Request for Quote.

Sound Contracting Principles means the principles provided in the LGA 2009, section 104 and described in sections 4.1 to 4.1.5 of the Procurement Policy.

Tender/s means a tender or tenders (including Alternative Tenders) submitted by Respondents in response to the Invitation to Tender.

Tender Response Form means the response form set out in the Invitation to Tender.

Related policies and legislation

Public Sector Ethics Act 1994 (Qld)

Local Government Act 2009 (Qld)

Local Government Regulation 2012 (Qld)

Procurement Policy (as updated from time to time)

Version control:

Version	Reason/ Trigger	Change (Y/N)	Endorsed/ Reviewed by	Date
1.0	Create new			DD/MM/YYYY

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