



Procurement and contract management

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Introduction

Procurement refers to the entire process by which a public sector organisation acquires resources such as goods, services, facilities, capital and human resources. It applies regardless of whether you are city or country based, or whether you are building multi-million dollar infrastructure or filling an office cleaning supply contract. It includes planning, design, determination of standards, writing specifications, selecting suppliers, financing, administering contracts, disposal and other related functions. As it involves spending public money, procurement is a high risk area for fraud and corruption.

If your agency's procurement practices and contract management are poor:

- public funds may be wasted through mismanagement, fraud and corruption
- good suppliers may lose confidence in the government marketplace
- you may face costly legal action to deal with unsuccessful and/or dissatisfied bidders
- you can fail to obtain value for money
- you may be subject to adverse reports in the media
- the public may lose confidence in your organisation.

Ethical standards

Your agency must ensure that its procurement and contracting practices are transparent and accountable, and meet the ethical standards enshrined in legislation, codes and policies. Breaches of these regulations can attract serious legal and administrative penalties for agencies and their staff.

A list of the references used for this Advisory appear at '*Further information and resources*' (See page 8).



Probity

Probity is the evidence of ethical behaviour in a particular process and supports integrity by minimising conflicts and avoiding improper practices. If implemented properly, probity will assist your organisation identify and deal with corruption risks. Demonstrating probity of process is fundamental to any procurement process in order to provide confidence that transparent processes have resulted in value for money.

Guide to ethical purchasing

The Queensland Government's Better purchasing guide: *Ethics, probity and accountability in procurement* (2006) sets out the main risk areas in detail and includes illustrative case studies. Although developed specifically for government agencies, the best practice advice it provides is applicable throughout the public sector. This guide is one of over 20 publications in the series of procurement guidance materials and sustainable procurement guidance¹ that has been produced for public servants involved in these tasks.

Major corruption risks

Lack of accountability and transparency mechanisms

The opportunity for fraud and corruption can increase substantially without appropriate mechanisms for accountability and transparency. Failure to maintain records may be an indicator of improper activity (e.g. unauthorised communication with parties making offers, biased decisions made in evaluating offers, or improper allocation of evaluation weightings or criteria) because well-kept records would reveal evidence of dishonest activities or negligently or poorly managed processes. Other problems can occur if only one person is responsible for multiple functions in the contract management or procurement system, and oversight of their activities is limited.

Conflicts of interest

Actual, potential, or perceived conflicts of interest can damage you and your organisation's reputation and performance. It is therefore vital that they be identified, declared, and managed transparently and effectively to avoid abuse of office, or the perception of abuse.

A conflict of interest will arise when an officer's private interests conflict with their duty to serve the public interest. They can occur when an officer:

- has a friend or family member who will potentially benefit from a purchase or contract either through employment or as an owner or shareholder of the business
- has feelings of ill-will towards a supplier or prejudices against a particular product or service which could unfairly bias the selection process
- has a second job with a supplier who is about to do, or is already doing, business with the organisation
- owns property that will be positively or negatively affected by the activities of the organisation
- has an interest in a sporting or cultural organisation, which could influence their decision making.

More Information about conflicts of interest can be found on the CCC website² and information about ethics in the public service can be found at Queensland Government website³.

1 Queensland Government guidance is located at: <http://www.hpw.qld.gov.au/aboutus/ReportsPublications/Guidelines/Pages/procurement.aspx>

2 CCC *Conflicts of Interest* webpage: <http://www.ccc.qld.gov.au/research-and-publications/publications/prevention/conflicts-of-interest>

3 Queensland Government *Ethics in the public service* webpage: <https://www.qld.gov.au/gov/ethics-public-service>

Perceived favouritism

To avoid the perception of partiality or favouritism and ensure that no one is advantaged or disadvantaged in the procurement process:

- treat all offers and offerors consistently
- communicate with all offerors in the same way, and give each the same material, advice and timelines
- use the same offer process and evaluation criteria in all cases. Accusations of bias can easily follow if you give allowances or information to one but not to others. Seek legal and audit advice if you need to vary the invitation materials, conditions, timelines, evaluation criteria or procedures.

If you are in doubt that a fair process exists, consider distributing supplementary information and invitations, or even abandoning the process and starting again. Decisive and transparent steps like this may delay your original time-lines but in the long run they could save time, money and reputations.

Integrity of suppliers

Dishonest or unethical suppliers can:

- attempt to influence the procurement process
- collude with other suppliers or government officers
- falsify invoices or timesheets
- make multiple bids through different business names
- make dummy bids
- split orders to avoid thresholds.

You can limit the opportunities for dishonest contractors to corrupt the procurement system by:

- ensuring your agency has good process planning, accountability mechanisms and controls
- educating staff on how to recognise and report suspicious supplier activity or documentation
- noting suppliers who have previously engaged in such activities, and precluding them from contracting to your agency.

Gifts and benefits or bribes

As a rule, any government employee involved in procurement should refuse any gift or benefit offered to them, because acceptance creates the perception of undue influence and this can compromise the appearance of impartial decision making. A considerable number of corruption cases have involved government procurement officers accepting sizeable 'perks' and 'kickbacks' from contractors and suppliers.

Any offer made with the expectation that a person or an organisation will be treated favourably may be a criminal offence.

More Information about gifts and benefits can be found on the CCC website⁴ and information specifically tailored for the public service can be found on the Queensland Government website⁵.

4 CCC *Gifts and benefits* webpage: <http://www.ccc.qld.gov.au/research-and-publications/publications/prevention/gifts-and-benefits>

5 Queensland Government *Gifts and benefits in the public service* webpage: <https://www.qld.gov.au/gov/gifts-and-benefits>

Close relationships with suppliers

Officers in an agency who work with suppliers and contractors can begin to favour (sometimes unconsciously) those with whom they have a good relationship. If these officers fail to regularly retest the market, it can affect the quality of information available which informs the decisions made by the agency, and this may cause it to lose value for money. More seriously, a close relationship with a supplier may lead to allegations of a conflict of interest and bias.

Improper use of information

The security and integrity of commercially sensitive or confidential information related to the offer or offerors' bids is critical to the procurement process. Inappropriately releasing confidential information to third parties (e.g. other suppliers) can lead to allegations of partiality and lack of competitive neutrality.

Post-separation employment or employment offers from suppliers

New employment taken up by a former public sector officer can involve actual or perceived conflicts of interest. Current employees of an organisation may be promised future employment with a supplier, or former public sector employees working with suppliers may maintain close ties with those they used to work with. These situations can create both perceptions of bias or actual bias (even if unconscious). There may also be concerns associated with misuse of confidential information or intellectual property.

Failure to monitor and evaluate contractors' performance

Unless your agency regularly monitors the performance of contractors it can be vulnerable to poor quality and inefficient practices, and even subject to fraud. The CCC has dealt with cases of organisations being supplied with invoices for work that had not been done, work done with inferior or substituted materials and/or workmanship, and even for additional work done to a contractor's private premises and the homes of public sector officers. In these cases, the cost was hidden in invoices to the organisation.

Small markets and regional communities

A lack of suppliers in a particular market or community may result in less than competitive bidding, possible collusion, and more acute conflicts of interest. If your agency operates in a small or remote community, you may need to make special arrangements to enable you to preference local suppliers without losing transparency.

Strategies to prevent corruption

The strategies for preventing corruption suggested below are general guides only and are not exhaustive.

Implement clear and effective governance arrangements

- Review and understand the authority provided by your relevant Act (or responsible authority) to undertake procurement activities, and that your organisation has properly created appropriate written delegation instruments under your Act. For example: local government financial delegations arise from the *Local Government Act 2009* and the *Local Government Regulation 2012* requires the preparation of a Procurement policy (s198); state agencies must comply with the guidance provided by the Department of Housing and Public Works and the Queensland Procurement Policy.

- Keep and maintain a delegations register for all delegations including those automatically provided by your relevant Act.
- Regularly review your delegations and your policies to ensure they continue to meet your procurement needs. A review must be done whenever there is a structural change to your organisations' hierarchy to ensure your procurement functions support, and are supported by, the change.
- Ensure that if your relevant Act has specific purchasing or tendering requirements or value thresholds, that these are implemented by your organisation (State agencies must follow the requirements of the Queensland Procurement Policy whilst local governments must comply with the *Local Government Regulation 2012*).

Put contractors in the picture — inform potential contractors about public sector values and business ethics, and their responsibilities.

- Give contractors a statement of business ethics or a contractors' code of conduct that clearly spells out their ethical responsibilities when contracting with your agency. This includes their obligations to report improper conduct of your employees. Make sure your public interest disclosure policies and processes cater for complaints made by suppliers and that your suppliers are aware of them.
- Make it a condition of the contract or tender that contractors comply with your organisation's statement or contractors' code of conduct, and ensure that you stringently enforce these conditions.
- 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 your organisation 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).

Get your structures and systems right — look for gaps

- Regularly review your procurement policies and procedures against the guidance provided by your peak advisory body. For example, your agency should regularly review the Department of Housing and Public Works' website for procurement advice and mandatory requirements, update your policies accordingly, and provide training to those involved in procurement about the changes.
- Establish clear procurement and contract management procedures. Ensure that your organisation has accountable and transparent processes that incorporate probity principles and responsibilities for both staff and contractors. The process should include:
 - mechanisms to ensure that all offerors are treated consistently and fairly (i.e. that all offerors are given the same information, and all offers are assessed against the same criteria)
 - guidance on how to ensure this occurs at each stage of the procurement process

- evaluation of all contract and procurement risks and implementation of effective treatments
- information on when and how to resolve probity issues
- instructions on how to check for conflicts of interest and transparent management processes for effectively dealing with them
- procedures for managing purchasing at each threshold (e.g. the Queensland procurement policy⁶ requires that basic details of all contracts over \$10,000 be published, the Local Government Regulation 2012 stipulates the number and type of quotes required depending on the planned expenditure)
- decision making processes and authorisation procedures
- explicit and documented criteria for evaluating bids
- requirements to document all actions and decision making (including maintenance of a continuous record of contract expenditure)
- separation of functions within the process — in particular, assessment of bids by more than one person
- informing tenderers and your organisation’s management about any decision to vary the tender process, criteria or conditions
- monitoring and oversight of contract performance, including recording of problems.
- Link your procurement and contract management procedures to your organisation-wide integrated fraud and corruption control policy and code of conduct.
- Create a central register for procurement and contract management practices and policies. Ensure that registers of conflicts of interest and material personal interests are up to date.
- Develop and implement measures to protect confidential and commercially sensitive information and intellectual property.
- Develop unambiguous, tailored policies with clear case examples for managing conflicts of interest, and gifts and benefits. Ensure that procurement and contract management staff receive regular training on these issues.

Training and awareness

- Conduct regular training to help staff understand your agency’s procurement policies and to differentiate between appropriate and inappropriate procurement practices. Educate them on their responsibilities including those under your organisation’s code of conduct, conflicts of interest, and gifts and benefits policies.
- Clearly explain that proven instances of behaviour outlined in this advisory as major corruption risks may result in disciplinary or criminal action against them.
- Provide clear instruction on how to recognise, report and manage suspect activity by suppliers and officers, particularly with respect to:
 - efforts by suppliers to elicit information on upcoming or current processes (including ‘chance’ social discussions)
 - attempts by potential contractors to develop relationships with your staff (e.g. by inviting them to social events such as lunch, golf or the football)
 - splitting of tenders to avoid the additional scrutiny that would be triggered by higher thresholds

⁶ Queensland Government Department of Housing and Public Works *State Procurement Policy* webpage: <http://www.hpw.qld.gov.au/supplydisposal/GovernmentProcurement/ProcurementPolicyGuidance/StateProcurementPolicy/Pages/Default.aspx>

- attempts by contractors to seek variations to the contract
- efforts by incumbent contractors to obtain urgent renewals or extensions
- collusion between suppliers or officers of your agency
- collusive behaviours amongst suppliers to your agency
- potential interest of your officers in a transaction.

Probity: it should be integral to your procurement processes

Probity refers to ‘honesty’, ‘integrity’ and ‘equity’ and is fundamental to establishing transparent and accountable processes. Probity is more than simply avoiding corrupt or dishonest conduct, or a check-box approach as part of a compliance activity. Probity means applying your most honest ability to get the best possible outcome in the public interest taking into account all of the circumstances at the time.

Implementing probity is a reflection of your organisation’s culture, and demonstrates your preparedness to be assessed on your procurement decisions, and that these can withstand scrutiny. Therefore:

- Recruit for probity – ensure that your selection processes include opportunities for those seeking employment with you to demonstrate their understanding and ability to apply probity during procurement processes.
- Train for probity – ensure you provide probity training at regular intervals. This may be included in your regular ethics and code of conduct refresher training.
- Monitor probity – probity should be integrated into assurance frameworks, and be part of your procurement culture. Regularly review the execution and effectiveness of key controls within your process that ensure probity.
- Procure with probity – ensure probity is a core element of your procurement process, regardless of your purchasing thresholds.
- Seek probity assistance – use probity advisors or auditors on a case by case basis, taking into account such factors as:
 - Your agency’s exposure and tolerance level for the risk associated with the procurement activity
 - The circumstances and complexity of the planned procurement
 - Your organisation’s capability and maturity to select and implement the best outcome for your agency
 - The public interest.
- Plan for probity – ensure probity is considered early in your process and use probity plans and self-assessment tools to assist you to identify and deal with the risks associated with the planned procurement and demonstrate transparency of process and decisions.

Consider highlighting these issues in the procurement and/or contract management area using posters and other communication methods.

- Foster transparency, accountability and an ethical culture in your organisation.
- Monitor your procedures for fairness, and ensure they guarantee all suppliers and contractors equal access to information and opportunities.

Further information and resources

Legislation, policy and guidance:

- [Financial Accountability Act 2009](#)
- [Financial and Performance Management Standard 2009](#)
- [Government Owned Corporations Act 1993](#)
- [Local Government Act 2009](#)
- [Public Sector Ethics Act 1994](#)
- [Department of Housing and Public Works 2013, Queensland procurement policy](#)
- Crime and Corruption Commission, [Fraud and corruption control: guidelines for best practice](#) (2005)
- Department of Public Works & Crime and Corruption Commission, [Ethics, probity and accountability in procurement](#) (2006) (PDF)
- Your Code of Conduct
- Your statutory procurement plans, policies and procedures
- Your governing legislation (e.g. for universities)
- [Queensland Audit Office, Report No. 5 for 2012 - Results of audits: Internal control systems](#)
- [Queensland Audit Office, Leading Accountability – Governance](#) (2015)

Visit the Resource centre for government buyers and for suppliers for the Queensland Government. Resources include:

- [Buying for the Queensland Government](#)
- Department of Housing and Public Works: [Procurement portal](#)
- Probity and legal services buyers' advice
 - Professional services – [Probity advisors and auditors](#)
 - Legal services – [Buyers' guide](#)
- [Supplying to the Queensland Government](#)
- [Working in procurement](#) (training opportunities, policy and frameworks, and procurement document templates)



Crime and Corruption Commission

QUEENSLAND

Please contact us if you would like further detailed guidance and information on any aspect of this advisory.

Crime and Corruption Commission

Level 2,
North Tower Green Square
515 St Pauls Terrace,
Fortitude Valley QLD 4006

GPO Box 3123, Brisbane QLD 4001

Phone: 07 3360 6060

(Toll-free outside Brisbane: 1800 061 611)

Fax: 07 3360 6333

Email: mailbox@ccc.qld.gov.au

www.ccc.qld.gov.au

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