Information Sheet | June 2021

Probity as a means of managing corruption risks in procurement

CCC procurement audit

In March 2021, the CCC completed its Local Government Procurement Audit across four councils in remote and Indigenous areas. The audit examined whether councils have effective procurement processes and practices in place to manage corruption risks.

The CCC audit revealed that, although the required goods or services were delivered, the reasons the procurement decisions were made were unclear. The standard of record-keeping needed to improve to demonstrate that a systematic process was conducted. Poor record-keeping is a corruption risk. Failure to keep accurate and complete records means that decision-makers cannot justify to their communities why money was spent, that the purchase achieved value for money, and that the decision to award a procurement contract was free from bias.

In addition to the need to keep accurate and complete records, the audit found there was a need to strengthen procurement governance and processes. Accordingly, the CCC prepared this guidance for council staff[1] involved in managing effective procurement with probity.

Probity defined

Probity is evidence of ethical behaviour in a particular process. For Queensland Government procurement, demonstrating probity means more than just avoiding corrupt or dishonest conduct. It involves proactively demonstrating any procurement process is robust and that the outcome is beyond reproach. 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 the legal requirements.[2]

Probity within a government procurement process is the responsibility of everyone who has a role that results in the supply of goods or services to the government entity, regardless of whether these are to be used by employees of the entity or the wider community. This responsibility applies to the officers who directly arrange the procurement, their managers and supervisors who oversee the activity. It also applies to senior managers when they carry out their strategic and business planning for the coming years.

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1   For example, the policy owner, procurement manager, the procurement team, evaluation panel members and delegates.

2   Department of Housing and Public Works, Probity and integrity in procurement, p 5

Probity professionals

Procurement officers are trained to carry out their role with probity; however, some procurements can be specialised or very complex, or in some instances new to a particular procurement officer. When your organisation is involved in specialised, complex, or new matters, there is help available. Asking for additional help to ensure a procurement is delivered with economy and efficiency — without bias — will demonstrate that your organisation is working in transparent ways that maximise the public interest.

A probity advisor provides advice and assistance before and during the procurement process, as a basis for improving the procurement outcome and addressing unexpected probity issues that arise. There is no threshold that defines when a probity advisor should be engaged. However, any procurement involving specialised, complex or new matters is likely to benefit from a probity advisor's review.

A probity auditor provides independent scrutiny during, or at the end of, a procurement process and expresses an objective opinion about whether the prescribed probity requirements have been met. The conclusion expressed should be based on evidence gathered against prescribed criteria.

The key difference between a probity advisor and a probity auditor is that a probity advisor does not verify the intended procurement process or provide an opinion about whether the probity requirements have been met (as in the case of a probity auditor).

For more information about probity advisors and auditors, see the Department of Housing and Public Works publication: *Use of probity auditors and advisors* (November 2018), available at www.forgov.gov.au/search-procurement-resources.

Common procurement corruption risks

Our investigations have revealed that any system is open to improper influence and procurement is no different.

Throughout the procurement process – from planning through to evaluating and concluding the procurement – our investigations show that council staff and potential suppliers have opportunities to commit fraud and corruption. These opportunities range from bribes, acceptance of gifts/benefits, delivery of sub-standard goods/services[3], collusion, and release of confidential information.

Apart from deliberate wrongdoing, there are other factors that can result in poor procurement outcomes. Examples include failing to properly follow the approved processes, lack of attention to detail or misplaced trust on the part of the procurement officer. Our investigations have shown that all of these can result in the procurement officer and their supervisors and managers unwittingly enabling fraud or corruption by suppliers.

For these reasons it is important to implement clear policies and processes to guide employees in their role and to implement checking mechanisms and controls that independently ensure that these processes and policies are followed.

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[3] Sub-standard goods and services can include an officer knowingly receiving goods and services from a supplier when the goods are different to what was agreed in the contract or offer. The goods and services may be of a lesser quality or lower cost, and not fit for purpose.

What is your role?

Procurement officers are responsible for assessing products, services and suppliers and negotiating contracts to meet the planned needs of their organisation. They are obligated to always act according to the laws, policies and processes applicable to their role and make their procurement decisions ensuring that approved purchases are of a sufficient quality and are cost-efficient.

Those who **supervise or manage** procurement officers must ensure they implement effective controls and processes to check that the procurement officers act according to the requirements of their role. Failure to do this, and to actively monitor these checking mechanisms, may constitute corrupt conduct.

Opportunities to reduce the risk of fraud and corruption include:

- improved procurement fraud and corruption risk assessment
- clearer procurement policies and processes
- internal audit strategies integrated with regular procurement audits
- procurement planning activities, tailored to your organisation's business and operational planning
- improved training material relating to your organisation's procurement activities and needs
- conflicts of interest, ethics and probity training for all staff (including managers and supervisors) involved in procurement processes
- clear conflicts of interest declarations that are easy to access and use
- enhanced documentation and record-keeping
- clear and easy to follow information about how to make a complaint if staff or suppliers suspect wrongdoing
- thorough training in all of the above during employment induction, and at least every two years post induction.

Further details on how councils can make improvements in these areas are detailed later in this guide and the *Probity plan checklist for procurement*.

Ethics and probity in procurement

Council staff should be aware of their obligations to act in accordance with the requirements of their Code of Conduct. Their Code reflects the ethics principles set out in the *Public Sector Ethics Act 1994*, and guides all staff behaviours and decisions at all times, including in procurement activities. The ethics principles are:

- integrity and impartiality
- promoting the public good
- commitment to the system of government
- accountability and transparency.

It is important to remember that failing to follow your Code of Conduct can result in disciplinary action against you.

In managing probity in procurement, councils and staff must comply with the following inter-linked contracting principles[4]:

- value for money
- open and effective competition
- development of competitive local business and industry
- environmental protection
- ethical behaviour and fair dealing.

Risk management in procurement

Councils and staff must ensure that probity is managed relative to the value and risk of the procurement project. The greater the complexity, size and sensitivity of a purchase, the more likely that a poor procurement decision will have adverse consequences.

To ensure all those involved in procurement activities understand their role, councils must provide additional guidance and mitigation strategies proportionate to the scale and relative risk of the proposed procurement project.

Ways to get the right approach

The CCC promotes a four-step approach[5] for implementing control mechanisms that will assist a council in preventing wrongdoing in procurement.[6] The following is a guide to the process which must be adapted to the size and complexity of your council.

Four steps:

1. Undertake comprehensive procurement fraud and corruption risk management
2. Get your procurement policy and procedure right
3. Promote a probity-oriented culture through training and awareness
4. Develop and implement the right internal control activities.

1. Undertake comprehensive procurement fraud and corruption risk management

Fraud and corruption risk assessments help councils and staff to understand their operating and environmental risks and enable better decision making about how to manage them. If council knows where it is vulnerable, it is better placed to design internal controls to prevent corruption occurring or reducing the impact if it does.

Suggested fraud and corruption risk assessment activities

- Fully understand your procurement needs, the markets in which you must operate, and the environment in which you will use your procured goods and services.

- Based on these things, undertake comprehensive procurement fraud and corruption risk assessments each year.

- Prepare and update your fraud and corruption risk register.

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4   See section 104(3) of the *Local Government Act 2009*, and for Brisbane City Council, section 103(3) of the *City of Brisbane Act 2010*.
5   Crime and Corruption Commission, *Procurement and contract management*, September 2016.
6   The CCC uses the term "wrongdoing" because it covers corrupt conduct under the *Crime and Corruption Act 2001*, misconduct relating to councillors under the relevant local government Acts, offences under the Criminal Code, breaches of the Code of Conduct, and breaches of council policies and procedures.

- Identify the specific procurement risks that could happen throughout the procurement lifecycle. For example, the methods employed, your vulnerabilities and other opportunities to commit procurement fraud.

- Map your current internal controls to each risk in the register to ensure the identified risk is effectively treated.

- Determine your risk tolerance for the corruption risk relating to the procurement activities.

- Implement further internal controls to mitigate the risk to an acceptable level.

- Show in the register the residual risk ratings for the identified risks.

- Review your risks, their controls, your risk treatments, and review the risk register every time there is a change to your operations or the environment in which you use your procured goods and services.

When the procurement fraud and corruption risk assessment is completed, use it to inform internal audit strategies. Internal audits are your opportunity to demonstrate that your control measures are working and to show that your procurement function is operating with probity.[7]

Suggested internal audit activities

- Review council's procurement fraud and corruption risk assessment to understand your high-risk areas.

- Develop a targeted audit program that verifies specified procurement activities are conducted according to your procurement plan and the identified needs of the procurement proposal.

- Review the procurement activity to ensure it was conducted according to your policies and process and test the procurement activity against the effectiveness of your internal controls.

- Ensure recordkeeping is complete and accurate for all actions and decisions.

- Ensure your internal audit processes report on the effectiveness of your control mechanisms, that systematic improvements are captured in your risk registers and that these improvements result in updates to your procurement policy, procedures, processes and employee training.

- Consider rolling internal audits across all procurement areas, with full coverage every two years.

2. Get your procurement policy and procedure right

Procurement policy and procedures are vital for equipping staff with the governance and risk management processes to follow. These set a benchmark for governance performance that, if followed, will help prevent corruption.

Suggested policy and procedure measures

Legislation and policy	- Specify the relevant legislative compliance provisions - Specify the scope and application of the policy. - Detail definitions of procurement terms.
Strategic objectives and deliverables	State the operational objectives for procurement, explaining how the activity meets council's strategic and business deliverables.
Probity in process	Specify best practice contracting principles for every procurement, irrespective of the value and complexity of the procurement.

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[7] The Australian Standard 8001-2008: Fraud and Corruption Control position internal audit as an essential control in the management of fraud and corruption risks.

	• Specify probity requirements for all types of procurement, including by preparing a probity checklist/plan. • Detail the step-by-step procurement processes (e.g. planning procurement, preparing to approach the market, approaching the market, evaluating submissions and concluding the process stages.
Management and responsibilities	• Detail roles and responsibilities of councillors, the chief executive officer, senior executives and other staff in procurement activities.
Compliance and review	• Specify that procurements will be managed in accordance with council's risk management and internal controls frameworks. • Specify that council's audit committee charter will allow the committee to monitor and review the procurement policy and its implementation, and the related internal controls. • Specify the procurement thresholds and methods, including the required documentation that will demonstrate that open and competitive procurement practices are in place, in compliance with the legislation. • Specify exceptions to the procurement processes. • Specify the requirement to publish contracts over $200,000 (exclusive of GST). • Specify the requirements for monitoring the performance of suppliers. • List all related documents to support the accountability and transparency of the procurement processes.

3. Promote a probity-oriented culture through training and awareness

Councils must have "zero tolerance" for wrongdoing. This is achieved by proactively establishing a probity-oriented culture which demonstrates that the procurement process is robust and the outcome is beyond reproach. Staff in procurement must demonstrate integrity throughout the procurement project.

Suggested training measures

• Provide all staff involved in procurement with effective training and awareness to ensure they understand their council's procurement policy and processes, including probity requirements.

• Deliver training during induction and at regular intervals thereafter (recommended every two years).

• Deliver 'evaluation and selection process training' to members of the evaluation panel.

• Develop procurement-related training material, which includes the following:

– Public sector ethics principles	– Probity planning and implementation
– Code of Conduct for employees	– Significant procurement
– Contracting principles	– Procurement methods and processes
– Policy and procedure awareness	
– Procurement planning	– Contract disclosure
– Risk management	– Contract management

– Conflict of interest declaration and management	– Supplier performance – Record keeping

4. Develop and implement the right internal control activities

The next logical step involves designing and implementing the right internal control activities to match your procurement processes. It is critical these controls are well designed to achieve the intended monitoring and reporting outcomes, while allowing enough flexibility to identify procurement irregularities occurring outside of the approved system.

The CCC's *Probity Plan Checklist for Procurement* provides steps, tasks and suggestions about the types of records that may meet the requirements.

The following list sets out the key steps. More details about the tasks within these steps, and examples of documentary evidence, can be found in the *Probity Plan Checklist for Procurement*.

Procurement planning activities

Procurement planning activities are opportunities to manage procurement and probity risks during the entire procurement process.

This includes activities such as: determining and documenting procurement objectives, conducting a supply market analysis, conducting procurement risk assessments, and developing a procurement strategy.

Probity plan

A probity plan is a document that outlines the steps to follow and the processes to implement for the procurement project to ensure it is conducted with impartiality, accountability and transparency. It also deals with probity issues that are associated with the invitation to offer (ITO)[8] process.[9]

Written specification

A specification is a statement of needs. It details what council wants to buy and what the suppliers are required to supply. By having clearly written and unambiguous specifications, potential suppliers can offer to provide the goods/services required by the council and accurately determine their costs. This would minimise suppliers claiming for variations from the contract. Written specifications form part of an ITO document and any future contract that might result from submissions received from suppliers. Inviting offers, or preparing a specification document, is not restricted to complex or expensive procurements by councils; these may also be appropriate for simpler, day-to-day purchases.

Evaluation plan

An evaluation plan[10] is essential in procurement. It controls the management and conduct of evaluation. It sets out responsibilities in the evaluation process, a timetable for the evaluation. It also details the processes that are to be followed. The plan must align with the ITO so that the guidelines for evaluation are consistent with the evaluation criteria specified in the invitation documentation.

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[8] Request for quote (RFQ), request for offer (RFO) or request for tender (RFT) are some other procurement expressions used.

[9] Probity is relevant to the entire ITO process — from the decision to undertake the procurement, through to the preparation of the ITO documentation, to the conduct during the evaluation process and any negotiations with preferred suppliers.

[10] A template evaluation plan is available at https://www.forgov.qld.gov.au/search-procurement-resources/evaluation-plan

Probity obligations and conflicts of interest (COI)

In councils, it is recognised that evaluation panel members may have associations with suppliers either in business as former employees, or through previous and current dealings as a council employee. These members are required to undertake procurement with integrity, ensuring probity and accountability for outcomes. This includes ensuring all decisions throughout the entire procurement process are transparent, defensible, well documented, and that decisions will withstand public scrutiny. Officers with COIs should ensure that COIs are documented and there is a record of how the COI is being managed and that the proposed management of the COI has been approved by a supervisor or manager.

Evaluating offers from suppliers

Evaluation allows the selection of the offer that achieves the best performance for the money being spent.[11] The absence of systematic and documented evaluations of supplier submissions means that the evaluation panel cannot demonstrate a transparent process that resulted in the best value for money was followed.

Case study — examples of observations from the audit

- As part of the CCC's audit, the CCC examined 12 procurement projects across four councils. Some of the concerns identified in the audit related to how councils assessed the responses from the suppliers.

- Procurement one — none of the suppliers' responses addressed two of the three evaluation criteria. The CCC was not able to determine how the evaluation panel came up with evaluation comments relating to the criteria. The successful supplier was selected due to having the lowest price and had been used in the past (e.g. very good supplier). The CCC advises that if a council intends to enquire into a supplier's past performance, it should inform suppliers of this intention in the offer documentation. This action substantially reduces the risk that the supplier will object to the fairness of the evaluation process.

- Procurement two's evaluation report had three criteria for evaluating the offers; however, they did not appear to have been communicated to invited suppliers in the invitation document. The CCC's concern was that the evaluation process was not fair.

- In procurement three, there was no evidence of the evaluation results, the adopted evaluation process and method, and the recommendations made by the evaluation panel members.

- Procurement four had recommendations made by the evaluation panel members; however, could not be supported by their individual assessments of the submissions against the three evaluation criteria.

- Procurement five was undertaken by an external panel which did not have any evidence of the names of the evaluation panel members, evaluation results, and the justification for the preferred supplier.

Suggested control measures

- If you are using the VendorPanel system, determine if it provides what is needed and consider looking at alternative solutions. It may involve upgrading to the next version.

- Include the following Information in evaluation reports:
    - names and positions of the evaluation panel members
    - information about the declaration and management of COIs of panel members

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11   A template evaluation and recommendation report is available at https://www.forgov.qld.gov.au/search-procurement-resources/evaluation-and-recommendation-report

    – detailed description of the adopted process of evaluation and the evaluation method

    – copies of the individual evaluations completed for each offer, against the selection criteria

    – results of the comparative assessment of the offers

    – other information related to the assessment of value for money and contact with offerors (such as site visits or requests for clarification)

    – justified ranking of offers received

    – supported recommendation of a preferred supplier

    – evaluation report sign-off by all members of the evaluation panel.

Recordkeeping practices

Procedural integrity is fundamental in managing procurement risks. Following sound procedures, including probity principles, will reduce the likelihood of poor procurement decisions. As a minimum, an entity needs to be able to demonstrate that it used procedures that were consistent with government procurement policies and guidelines.

In accordance with section 7 of the *Public Records Act* 2002, public authorities are required to make "full and accurate records" of their activities.

Additional resources:

Queensland Government Procurement Guide
The Queensland Government's procurement guide: *Probity and integrity in procurement* (2019) details the main risk areas and includes illustrative case studies. Although developed specifically for public service departments and large statutory bodies, the best practice advice it provides is applicable to councils.[12]

CCC publications
The CCC has a range of other prevention resources that can assist councils manage corruption risks during procurement activities. They include:

- *Probity plan checklist for procurement* to help councils in managing procurement projects
- Crime and Corruption Commission Audit report: *Integrity in procurement decision making: An audit of Queensland Health and other public sector agencies* (May 2019) [13]
- Crime and Corruption Commission Advisory: *Procurement and contract management* (September 2016)[14]
- Crime and Corruption Commission Prevention in focus: *ICT procurement – what are the corruption risks?* (August 2018)[15]

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[12] https://www.forgov.qld.gov.au/procurement-guides
[13] https://www.ccc.qld.gov.au/publications/corruption-audits-2017-2019
[14] https://www.ccc.qld.gov.au/publications/corruption-prevention-advisories
[15] https://www.ccc.qld.gov.au/publications/prevention-focus-case-studies