



Local Government Procurement Professionals Masterclass Webinar Series

Part 3. Mastering Probity

Presented by
Sonali Cordeiro

Thursday 27 March 2025



A woman with short grey hair and glasses, wearing a beige blazer over a patterned top, is seated and looking down at a document. A man with a beard, wearing a light blue shirt and a dark tie, is also seated, looking at the same document. They are in an office environment with a lamp and framed pictures in the background. A teal diagonal graphic element is on the left side of the image.

Who is Peak Services?

The Relationship between the Entities



Independent systems ensure compliance with regulations supported by annual QAO audit.

Ministerial approval sought for Peak Services to be appointed to a Local Buy Panel.

Both entities independently and wholly owned by the LGAQ.



Governed by an independent Board of Directors

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 - Probity and Assurance Office
 - Grant Office
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Peak's Procurement Specialists

Supported by our broader Consulting and Advisory Team



Brian Jackson
General Manager
Consulting Services



Sonali Cordeiro
Senior Advisor - Procurement Office
Probity & Assurance Office



John Lee
Principal Advisor - Procurement Office
and Probity & Assurance Office



Michael Byrne
Principal Advisor - Probity
& Assurance Office



Peter Morichovitis
Principal Advisor - Procurement Office
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Joneil Palenzuela
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The 6 Building Blocks for Enhancing Local Government Procurement





Masterclass Webinar Series

#3.

Mastering Probity



Topics for Masterclass #3

1. What is probity?
2. Key principles of probity
3. Typical probity issues and risks of getting it wrong
4. Practical tips
5. Scenarios to ponder



What is Probity



Derived from the Latin word “probus” meaning good, morally upright, honest.

What is Probity

'At its core, probity means that decisions are made with integrity, honesty and fairness while observing due process as necessary elements in the pursuit of value for money'.

- Australian Standard AS325-2008: Assuring Probity in Decision Making

For the CCC, Probity is evidence of ethical behavior in a particular process. For QLD Government procurement:

- *It is more than just avoidance of corrupt or dishonest conduct.*
- *It involves proactively demonstrating that a 'procurement' process is robust, and 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.*

Ref: QLD Crime and Corruption Commission: Probity as a means of managing corruption risks in procurement 2021

What is the legislative Context for probity?

Legislation	Local Government Agencies	QLD Government Agencies / Statutory Authorities
Local Government Act (Qld)	✓	
Local Government Regulation(Qld)	✓	
Public Sector Ethics Act 1994 (Qld)	✓	✓
Auditor-General Act 2009 (Qld)	✓	✓
Ombudsman Act 2009 (Qld)	✓	✓
Right to Information Act 2009 (Qld)	✓	✓
Financial Accountability Act 2009 (Qld)		✓
Crime and Corruption Act 2001 (Qld)	✓	✓
Judicial Review Act 1991 (Qld)	✓	✓
Fair Trading Act 1989 (Qld)	✓	✓
Competition and Consumer Act 2001 (Cth)	✓	✓

What is the Policy Context for Probity?

Council Procurement Policy

- Subject to the Council's Procurement Policy, Procedures & Processes including the Strategic Contracting Procedures, Procurement and Contract Manual.
- Other policies such as Gifts and Conflict of Interest Policy, Employee and Contractor Code of Conduct and Risk Management Policy

Queensland Procurement Policy

- In addition to the QPP 2023, which is principles based, State Government Agencies and Statutory Authorities are subject to the Agency/Authority Procurement Policy & Procedures
- Other policies such as Gifts and Conflict of Interest Policy, Employee and Contractor Code of Conduct, Financial Management Performance standards, and Risk Management Policy

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Key Principles of Probity

- Independence – managing conflicts of interest
- Equity – fairness and impartiality
- Transparency – open and clear decision making and communications
- Accountability ensuring good audit trail
- Confidentiality and Security of information and materials



Independence: What is a conflict of interest?

- A conflict of interest arises where your public duty (your role) is influenced or can be seen to be influenced by your private or personal interests (including the interests of family members or close friends).
- Your private interests can be financial or non-financial and means anything that can influence you: your personal, family, professional or business interests, and those interests of people with whom you have a close association.
- Conflicts of interest should be avoided but often happen without anyone being at fault.

Actual

- When a person's private interests directly clash with their official duties, compromising their ability to be impartial.
- Their personal financial or other interest are in direct conflict with their professional obligations.

Perceived

- A perceived conflict occurs when a situation appears to compromise a person's ability to act impartially, even if no actual conflict exists.
- It arises when stakeholders or the public might reasonably believe that personal interests could improperly influence professional decisions.

Potential

- Where a situation has the possibility of developing into an actual conflict of interest in the future.
- While no direct conflict currently exists, circumstances suggest that a person's private interest could interfere with the professional duties.

Conflict of interest

Quick Poll:

Is it wrong to have a conflict of interest?

Yes

No

Unsure

Managing Conflict of interest

Register

- Details of the conflict of interest are declared and registered.
- Suitable to low-risk situations.

Restrict

- Restrictions placed on the person's involvement in the matter.
- Suitable when they can be involved in only parts of the process.

Recruit

- Independent third party used to oversee part or all the process.
- Suitable for when the individual cannot be replaced.

Remove

- Individual is removed from the process.
- Where no other COI management options are available.

Relinquish

- Person relinquishes the private interest that is creating the conflict.

Resign

- Person resigns from their position in the organization.

Case Study:

Procurement Fraud and Misconduct leading to Prison sentence

Case Study 1: Conflict of Interest

Following a CCC investigation, a former Infrastructure and Operations Manager at Racing Queensland (RQ) was charged with fraud and misconduct in relation to public office, both of which are criminal offences.

Facts:

- During their employment at RQ, a former Infrastructure and Operations Manager's role included arranging tenders for five separate contracts over a period of one and half years
- This RQ employee had a close friend (co-accused) who was bidding for the RQ work.
- As a favour to the friend, the RQ employee disclosed confidential information about competitor's pricing and RQ's budget allocation.
- Although the employee was aware of their COI declaration obligations, they failed to declare their association from the contractor.

Outcome:

- Despite finding that the former employee did not personally receive any financial benefit from their actions, their actions had given a friend considerable advantage and subverted the proper commercial tender process.
- The former RQ employee plead guilty to fraud, and they were convicted and sentenced to two years imprisonment, wholly suspended for 3 years.

Lessons Learned

- Importance of having controls in place to manage conflicts of interest, and to ensure direct supervision or oversight across the procurement process.
- Implement processes to identify and assess corruption risks at each stage of procurement, establish a framework for employees to manage conflicts of interest throughout the process.
- Releasing confidential information to friends and associates to give them an advantage in a procurement process is a serious criminal offence – even if an employee gains no benefit and believes it will result in a better outcome for the agency.
- Failing to properly declare and manage conflicts of interest can have very serious consequences.
- Accessible policies and procedures must provide clear guidance about conflicts of interest and raise staff awareness about their obligations to fully disclose any conflict – potential, perceived or actual – including those arising from secondary employment, personal associations and other commitments.

Independence – Key Takeaway Points



- Conflict of Interest

All participants in a procurement process must be independent and free from conflicts of interest.

- Management Plan

All actual and perceived conflicts must be addressed, with a clear plan in place on how to manage the conflicts.

- Declarations

All potential conflicts must be declared in a timely manner.

- Material Conflicts

Any Project team member with material conflict (actual or perceived) should stand aside from decision making responsibilities and not participate in an evaluation panel or committee.



Equity: Impartiality and Fairness

Why is it Important?

- Tenderers spend considerable time, effort and resources preparing and submitting tenders and they are entitled to and expect fairness throughout the process.
- Any form of bias can jeopardise the integrity of the procurement and impact the confidence of contractors and public.
- If tenderers believe the process outcome to be biased, they could challenge or litigate the outcome causing costly and lengthy delays.
- Tenderers may withhold valuable ideas and/or be deterred from submitting for future government tenders.

Equity – How do we achieve it

- ☑ All tenderers must have access to the same information.
- ☑ All material communication with stakeholders should be carried out in the same timeframe and in the same substantive manner.
- ☑ All offers must be treated objectively with no conflicts of interest or bias.
- ☑ Where feasible, information should always be provided in writing, whether in hard copy or electronic form.
- ☑ Evaluation Plan including evaluation criteria and weightings must be documented and approved during the planning/preparation stage, prior to offers being invited.

Reference: Ethics, Probity and Accountability in Procurement, Queensland Department of Public Works and Crime and Misconduct Commission, 2006

Equity – How do we achieve it

- ☑ Request for Offer documentation should clearly:
 - Detail conditions of tender and evaluation criteria.
 - Identify and separate the mandatory criteria from desirable evaluation criteria. Mandatory criteria should be targeted, clearly measurable, and not excessive in number.
- ☑ Evaluation Plan, evaluation criteria and tender conditions must be followed throughout the evaluation process. Evaluation criteria and performance specifications must not be changed midstream unless all offerors are given an equal opportunity to revise their offers, and approval for any changes is obtained at an appropriate level.
- ☑ Timely notifications of tender outcomes to unsuccessful suppliers.

Case Study 2 - Equity

- *Wild West Council* is tendering core business systems. *Hi-Tech consulting* has been engaged to conduct a review of Council requirements and system standards.
- At a pre-tender briefing *Hi-Tech Consulting* declared to Council that they were interested in tendering with *Big Blue Technologies*.

Case Study 2 Outcome

Council has a range of options to manage the probity risks:

- A. Exclude Hi-Tech and consider exclusion of Big Blue from tendering.
- B. Include all documents that *Hi-Tech* had access to as part of the tender documents.
- C. Establish a Data Room to provide all the relevant information that *Hi-Tech* would have had access to in preparing the tender specifications. Council staff involved in the evaluation panel and decision-making process who had close professional relationships with *Hi-Tech* declared conflicts and restrictions put in place on decision making roles.

Equity: Key Takeaway Points

There should be level playing field for all interested parties at all times.

Evaluation Plan to be defined in planning stages prior to market release.

Timely communications and communications through a central point of contact.

Must protect intellectual property (IP) of all tenderers.

No interested party should receive or perceive to receive additional information.

Must follow the published evaluation criteria and cannot introduce new evaluation criteria without a formal addendum.



Transparency

Transparency refers to the openness of the procurement activity to scrutiny by interested parties to enable confidence in the process.



Procurement activities and decisions must be able to withstand a 'public defensibility' test in the context of fairness, equity and value for money.



Public advertising of tender opportunities, evaluation criteria and contract award decisions.



Clear and transparent documentation evidencing the criteria, processes and decision making.

Accountability

- Individuals act in accordance with ethical principles and legal requirements.
- Individuals and organisations are responsible for their actions ,outcomes and consequences.
- Decisions made are supported by good records and audit trail and explainable to stakeholders.



How to Ensure Transparency & Accountability

- ☑ Appropriate separation of functions and responsibilities.
- ☑ Timely response to tenderer clarifications.
- ☑ Appropriate management reporting and evaluation processes.
- ☑ Good audit trail and record keeping maintained throughout the procurement process to support the process and decisions made.
- ☑ Probity principles promoted in procurement procedures and training.

Reference: Ethics, Probity and Accountability in Procurement, Queensland Department of Public Works and Crime and Misconduct Commission, 2006



How to Ensure Transparency & Accountability

- ✓ Offers must be evaluated by a mix of suitable internal and external experts to ensure sound and accountable decision-making.
- ✓ The appointment of a probity advisor for large, complex or controversial contracts.
- ✓ The evaluation of offers in line with the Evaluation Plan – no changes mid-stream.
- ✓ Implementation confidentiality and security protocols and measures.

Reference: Ethics, Probity and Accountability in Procurement, Queensland Department of Public Works and Crime and Misconduct Commission, 2006



Case Study 3- Transparency & Accountability

- A request for tender was (RFT) was issued by a local government agency (Council) to renew its Painting Services Panel Contract which was due to expire.
- *Tenderer X*, a long-time (15-years) incumbent contractor under the previous Painting Services Panel Contracts, submitted a tender response for the tender and was unsuccessful in being appointed to the new panel.
- *Tenderer X*, surprised and disappointed by the outcome, wrote a letter of complaint to the Mayor advising that they had been treated unfairly in the process and were planning to lodge a complaint with the Ombudsman as well as considering their options for legal action.

Case Study 3 Outcome

- An investigation of the tender evaluation process revealed that the panel members did not record reasons for their scoring nor was there any record of the rationale behind the consensus scores agreed at the evaluation panel meeting.
- This resulted in a requirement for the scoring process to be undertaken again, this time with documented rationale for initial and consensus scores, providing greater transparency.
- All the unsuccessful tenderers, including *Tenderer X* who challenged the outcome of the process, were provide a post tender debrief with information on how they were assessed as not meeting Council's requirements.
- *Tenderer X* was ultimately satisfied with the debriefing and additional information provided and decided not to progress with their complaint.

Transparency & Accountability: Key Takeaway Points

Transparency ensures that the process is open, clear and visible to all stakeholders, and decisions are made in a way that it is easily understood.

Accountability means that decision makers are responsible for their actions and there is good audit trail to support decisions.



Confidentiality & Security

- The integrity of competitive procurement hinges on maintaining appropriate confidentiality that will protect information and give offerors the confidence to do business with Government.
- All evaluation panel members and advisors must treat and keep strictly confidential all information relating to the project other than information which is in the public domain.
- At the earliest opportunity all participants should review and sign the declaration of independence and Confidentiality.
- All participants must keep all written and recorded information under their control securely stored and labelled confidential, particularly information at home offices and vehicles must be securely stored.
- All members should be alert to actual or suspected breaches and report to procurement lead and probity advisor (where appointed).
- A breach of confidentiality can jeopardise the competitiveness of bidding!



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Typical Probity Issues

- Conflict of Interest Issues
- Lack of transparency
- Breach of Confidentiality
- Inconsistent application of Evaluation Criteria
- Undue influence or Improper communications
- Inadequate Record Keeping
- Bias or favoritism
- Failure to provide access equally to information
- Noncompliance with Procurement policies
- Misleading and Deceptive Conduct



Risks of getting probity wrong?

Quick Poll:

Can a government employee be exposed to “individual risks” such as criminal prosecutions from getting probity wrong?

Yes

No

Unsure



Litigation Risks

Private law Risks : breach of process contract risks. Examples include changing evaluation criteria, lack of equal treatment of bidders

Negligent Misrepresentation Claims: This could result from a government agency providing inaccurate or misleading information in a procurement process causing a bidder or supplier to suffer loss because they relied on that information.

Competition and Consumer Act misleading and deceptive conduct claims: for example, advertising a tender with misleading specifications or project timelines.

Consequences

- Damages awarded.
- Substantial fines.
- Reputational Damage.
- in some extreme cases imprisonment for individuals.
- Ongoing scrutiny from regulatory bodies such as the ACCC and QCCC.



Individual Risks

Breach of Public Sector Ethics Act: Failure to maintain probity could lead to legal claims against an individual. For example, a procurement officer awarding a contract to a supplier with whom they have a personal relationship may breach the Public Sector Ethics Act, resulting in criminal prosecutions relating to fraud and corruption.

Reputational risks: Failing to uphold probity can damage personal and professional reputation eroding public trust in not just the individual but the wider organisation.

Consequences

- Criminal prosecutions resulting in imprisonment where probity violation involves fraud and corruption.
- Individuals held personally accountable for failing to ensure probity in a procurement process.
- Reputational damage.
- Termination of employment.
- Substantial fines for the organisation.



Organisational Risks

Breach of Law: Where probity is not maintained organisations can result in breach of legislations. For example, non-disclosure of conflicts of interest during a procurement process can result in legal action and penalties for breaching procurement rules.

Regulatory Scrutiny: Increased scrutiny from QCCC resulting in audits investigations and penalties. Repeated incidents of probity failure can lead to long-term oversight from regulators.

Financial risks: Public sector agency found guilty of corruption or failing to ensure probity can be fined heavily.

Consequences

- Legal action and penalties for breaching procurement rules.
- Reputational damage
- Substantial fines

Case Study 4:

Hughes Aircraft Systems International v Airservices Australia [1997]

Breach of Process Contract

Hughes, an unsuccessful tenderer in a two-party bid for a multi-million contract for an Australian Advanced Air Traffic System sued the Civil Aviation Authority (CAA), Airservices Australia for breach of contract as well as several other legal breaches.

Facts:

- To avoid tender process issues, AA required the final two tenderers to sign a letter setting out the assessment criteria.
- However, AA awarded the contract to one of the final tenderers using different assessment criteria.
- Hughes argued that the signed letter and the offer it made under the RFT created a contractual relationship with CAA that included an obligation to use the agreed assessment criteria.

Outcome:

- Hughes succeeded in their claim in the Federal Court based on the formation of a process contract. The Court found that a process contract was formed when a tender was invited and response submitted.
- An "implied" term of that contract was that the AA would conduct its tender evaluation fairly and that AA acted in breach of its contract with Hughes in that it:
 - failed to evaluate the tenders in accordance with the priorities and methodology prescribed by the RFT
 - failed to ensure that confidentiality of information in tenderers' proposals per the RFT, and
 - accepted an out-of-time change to the rival bid

Impact of the Ruling

- The outcome from the has created a strong legal precedent for process contracts and ensuring probity in a procurement process.
- Procurers need to ensure that the tender conditions clearly and thoroughly disclose all the criteria that will influence its contract award decision.
- Procurers must follow the evaluation criteria as stated in the tender conditions and predetermined evaluation plan when assessing tenders.

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Engaging a Probity Advisor or Auditor

Quick Poll:

Does your procurement policy require you to engage a probity advisor over certain thresholds or if it doesn't have you engaged a probity advisor or auditor in the past for procurement processes.

Yes

No

Unsure

Probity Advisor will:

- Provide independent advice, guidance and assurance on probity issues during the procurement process as a basis for improving the procurement outcome and addressing unexpected issues.
- Review documentation, observe and report on major activities and provide briefings eg tenderer briefings, site visits, tender panel meetings.
- Be available to all participants including tenderers to express concerns throughout the tendering and evaluation process.
- Prepare a report at the end of the evaluation process covering compliance with the evaluation plan and how probity requirements were met.



Early engagement of a probity advisor is key!



Probity Auditor will:

- Provide independent scrutiny during, or at the end of a procurement process.
- Express an objective opinion about whether the prescribed probity requirements have been met based on evidence gathered against the prescribed criteria.
- Prepare a report at the end of the audit process concluding that the probity requirements were met.
- Generally, does not provide advice or assistance in ensuring compliance during the procurement.



Key difference: probity advisor does not verify the outcome (as in the case of a probity auditor).

Tips for Managing Probity

- ✓ Plan your procurement early and establish clear governance structures and approve the probity management approach at the outset.
- ✓ Ensure your procurement plan is fit for purpose and you identify key risks and mitigation strategies for the process.
- ✓ Development and use of template tools such as Procurement Plans, Evaluation and Probity Plans, and Evaluation Recommendation Reports.
- ✓ Ensure your tender conditions properly and accurately represent how you want to conduct your procurement process.
- ✓ Ensure Probity briefing and training is a key part of your procurement process. Early engagement of probity advisor for complex or significant procurement.
- ✓ Ensure all submissions are evaluated and compared on the same terms in line with the Evaluation Plan.
- ✓ Good record keeping and audit trail, along with development of secure and appropriate protocols.



Tools and Checklist

- Conflict of Interest Checklist

https://www.integrity.tas.gov.au/__data/assets/pdf_file/0003/645393/COI-CH02-identifying-coi-risk-areas-for-individuals.pdf

- QCCC – Probity Checklist

<https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/Probity-plan-checklist-for-procurement-June-2021.pdf>

- QLD Government Procurement Guidance Templates

<https://www.forgov.qld.gov.au/finance-and-procurement/procurement/procurement-resources/procurement-guidance>



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Scenario: Conflict of Interest

- Tom is the contracts manager for Wild West Council. He is required to develop a tender for a new telecommunications system. He has also been asked to be on the Evaluation Panel due to his expertise.
- Until two years ago he worked as a consultant locally and interstate across the telecommunications industry in a specialized area particularly relevant to this tender.
- He hasn't really stayed connected with former colleagues, but suspects given the specialised area that many of them will still be in the business.

Conflict of Interest

Quick Poll:

Is there a conflict of interest to be declared?

Yes

No

Unsure

How to identify a Conflict of Interest

- Tom hasn't worked in the industry for two years and hasn't stayed connected to former colleagues in the telecommunication industry.
- However, he may be perceived:
 - to still have friends in the business
 - to hold opinions as to the capability and capacity of staff and/or companies he previously worked with in the telecommunications industry
- That could influence his ability to be impartial in carrying out his public duty to award the best tender.
- Tom may no longer have any connections with the industry but does he or Council stand to gain (or lose) now or in the future from his involvement in the tender process.
- Would Tom and Council be comfortable defending his involvement in the tender process if an unsuccessful tenderer challenged the outcome and went to the media?
- Would the perception of a Conflict of Interest undermine public confidence and cast doubt on its objectivity?

Conflict of Interest

Quick Poll:

How should Tom's conflict be managed?

A. Resign from his position in Council, as he will continue to have these conflicts in his role.

B. Register the conflict of interest and restrict his involvement in the decision making once the tender specification is developed. Appoint an independent advisor to oversee the process.

C. Register the conflict of interest but continue to be involved in the decision-making process.

Key Takeaway Points



Establish probity protocols and plan for probity at the outset. Focus on the approved and published evaluation criteria – it's easy to lose focus.



Establish clear communication protocols at the outset of the procurement. Disseminate information about the process on a need-to-know basis and maintain one contact point for tenderers.



Until the decision is made, it's important that company names are not disclosed to anyone outside the process. A good approach is to establish who has executed the COI & confidentiality decs. It is quite normal practice to refer to tenderers by a number (eg "tenderer A") leading up to a decision.



Implement ongoing conflict of interest declarations ensuring all actual, perceived and potential conflicts of interest are addressed. Anyone with a material conflict (actual, or perceived) must stand aside.



Take great care with anything that has been presented by a tenderer during a presentation on their submission. It can be very tempting to ask a subsequent presenter a question on a good idea that you have just heard and you could unwittingly compromise a tenderer's IP.



Ensure confidentiality and security of information. Don't be afraid to play the "commercial on confidence" card and don't forget "physical" security.



Q&A + FEEDBACK

We'd love to know what you think!





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Thank you



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