

Ethics and Probity in Procurement Guidelines

TABLE OF CONTENTS

1. Using this guide	3
1.1 Objectives.....	3
1.2 Intended Users.....	3
1.3 Enquiries.....	3
1.4 Authority and delegations	3
1.5 Updating of these Guidelines	3
2. Principles	3
3. Practice	5
3.1 Applying Probity in Procurement.....	5
3.2 Industry Briefings	5
3.3 Identification and Management of Actual, Potential and Perceived Conflicts of Interest	6
3.4 Probity Experts	6
3.5 Establishing Probity Roles	7
4. Definitions.....	8
5. Policy Context	8
6. Document Control.....	9

1. Using this guide

1.1 Objectives

Procurement plays a critical role in helping the local government sector to achieve better Procurement outcomes while upholding a strong framework of accountability and transparency. These guidelines are designed to help ensure MAV Procurement contracts achieve these objectives through strong governance principles and sound procurement practice.

1.2 Intended Users

The Guidelines should be used by all employees, directors, consultants, and agents of MAV Procurement, as well as the client's staff involved in the tender evaluation process for MAV Procurement tenders.

1.3 Enquiries

If you have any questions about these Guidelines contact:

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1.4 Authority and delegations

MAV staff should always adhere to the relevant delegations and sub-delegations in place when making decisions about the procurement process.

1.5 Updating of these Guidelines

MAV may update these Guidelines from time to time in line with to reflect amendments to the *Local Government Act 2020 (VIC)* or other applicable legislation. In such circumstances a new edition of these Guidelines may be issued.

2. Principles

Probity is the evidence of ethical behaviours, and can be defined as complete and confirmed integrity, uprightness and honesty in a particular process.

Probity decisions should be:

- **Helpful:** Probity should be used to facilitate discussion of current approaches to market with suppliers in order to promote genuine engagement.
- **Inclusive:** Probity processes should be designed to enable innovative approaches to be adopted if required.
- **Tailored:** Probity roles can be tailored to the business need and range from using internal expertise through to engaging external specialist advice.

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- Sensible: Each individual process may require a different approach; one size will not fit all.

The principles underpinning ethics and probity in MAV Procurement processes are:

- MAV staff must act ethically, in accordance with the Victorian Local Government Procurement Best Practice Guidelines, the requirements of their responsibilities in accordance with position description and MAV Policies including the Code of Conduct, Fraud and Corruption Guidelines and Gifts, Benefits and Hospitality policy,
- MAV staff must not make improper use of their position,
- MAV staff should avoid placing themselves in a position where there is the potential for claims of bias.
- MAV Procurement must not seek to benefit from supplier practices that may be dishonest, unethical, or unsafe.
- All tenderers must be treated equitably. This means that all tenderers must be treated fairly - it does not necessarily mean that they are treated equally.
- Conflicts of interest must be managed appropriately.
- Probity and conflict of interest requirements should be applied with appropriate and proportionate measures informed by sound risk management principles.
- Value for money outcomes are best served by effective probity measures that do not exclude suppliers from consideration for inconsequential reasons.
- Confidential information must be treated appropriately during and after a procurement process.
- External probity specialists should only be appointed where justified by the nature of the procurement.
- Mechanisms for assuring probity should be applied sensibly in procurement processes, with the management of probity issues tailored to each individual process.
- Probity should not be used to justify avoiding reasonable discussion with potential suppliers during a tender. Officials are able to discuss current tenders in the market with potential suppliers. The level of detail and formality in providing information should be appropriate to the risk of the procurement. The procurement's level of risk will inform how officials engage with potential suppliers:
 - For lower risk (typically low cost and low complexity procurements), in line with the probity principles above, officials can discuss the procurement. This process can reasonably be dealt with by the tender contact officer with limited requirements for formalised or rigid probity processes. Information can be discussed in a meeting or over the telephone, or where necessary, via written correspondence (e.g., email). Any information provided to the potential supplier that would be useful for other potential suppliers should be de-identified and provided to them also. A file note documenting transactions should be recorded and retained for audit purposes.

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- For higher risk (typically higher cost and complexity procurements run via open tender), it is appropriate to implement more rigor in dealing with suppliers. This may include formalised approaches to handling requests from suppliers, specified probity roles and utilising additional expertise where necessary.

3. Practice

3.1 Applying Probity in Procurement

Probity provides a level of assurance to approving officers, suppliers, and the local government sector that a procurement was conducted in a manner that is fair, equitable and defensible.

In keeping with the probity principles, MAV staff should:

- Enter discussions with the intent to promote genuine engagement, including assisting the potential supplier to understand the procurement outcomes. Where a potential supplier is provided clarification, this can may assist in achieving better value for money outcomes.
- Make potential suppliers aware that where topics are discussed, this may be suitably de-identified and made available to other potential suppliers. Probity arrangements should not always automatically require that any questions raised in a tender process must be published for all potential tenderers. While questions of a generic nature should be provided to all tenderers, questions that may disclose a tenderer's Intellectual Property should be handled appropriately (for example, by generalising the query), while maintaining the need to treat all tenderers equitably.
- Not feel pressured into providing information that they consider might be sensitive, provides an unfair advantage or concerns another potential supplier's bid. If unsure, it is appropriate to take the request on notice and to respond after suitable consideration.
- Retain appropriate records - for low-risk procurements this may be as simple as a file note indicating who the discussion was held with, and key discussion points.

3.2 Industry Briefings

- Industry briefings provide potential suppliers with an opportunity to engage directly with MAV Procurement and increase their understanding of the tender requirements or processes. It also provides MAV Procurement with an opportunity to gauge the level of market interest in the procurement. Such engagement may assist MAV Procurement in achieving better value for money outcomes and stronger links to new innovative practices in particular industries.
- Industry briefings provide an opportunity for suppliers to receive consistent information from MAV Procurement on the procurement, improving clarity on the procurement need and reducing the risk of suppliers receiving differing information over the course of a procurement. In line with the probity principles above, while industry briefings provide a forum for responding to potential supplier questions, MAV Procurement can continue to engage with potential suppliers outside of these forums. The level of risk within the

Procurement's risk management plan should guide the engagement of potential suppliers beyond the industry briefing process.

- Procurements which most benefit from industry briefings are medium to high complexity procurements that exhibit a degree of uniqueness. Briefings for open tenders should be advertised in line with the tender advertisement (i.e., via public notice and Tenderlink). For selective tenders, officials should retain appropriate records of meetings with potential suppliers that, for low-risk procurements, could be as simple as a file note indicating who the discussion was held with, and key discussion points.

3.3 Identification and Management of Actual, Potential and Perceived Conflicts of Interest

A conflict of interest arises where a member of the panel, an official, an adviser or a supplier has an affiliation or interest that might prejudice, or be seen to prejudice, his or her impartiality.

Effective management of conflicts of interest does not require conflicts to be avoided at all costs; rather, they must be managed appropriately.

MAV Procurement should in the first instance seek to eliminate actual, potential and perceived conflicts of interest. When this is not possible (such as where it would exclude needed expertise or the conflict is so widespread as to be impossible to avoid completely), effective management strategies should be implemented.

MAV Procurement employees must be mindful of potential conflicts of interest that might arise and must not use their position to gain or seek to gain a benefit for themselves or any other person. MAV Procurement employees should strive to avoid situations in which there may be actual, potential, or perceived conflicts of interest including not allowing themselves to be improperly influenced by family, personal or business relationships.

In situations where a conflict of interests arises it should be documented and raised with the Manager Procurement and the Manager Governance. A determination will then be made by the Manager Procurement (or the Chief Executive Officer if it involves the Manager Procurement) as to whether the person's continued involvement in the relevant tender process.

3.4 Probity Experts

External probity experts may include 'probity advisers' and 'probity auditors':

- A 'probity adviser' would typically advise on probity issues as they arise during a tender process, possibly in accordance with a probity plan that provides guidance on how probity is to be addressed during the procurement. If the probity expert is an adviser and will not be involved in auditing the process, they can offer advice and solutions if any problems occur.
- A 'probity auditor' seeks to report an objective opinion on probity issues, generally after the process has been completed. A probity auditor should not be called in during a process to try and remedy problems but could provide sign-off after a problem has occurred to ensure the probity issues have been addressed and it is appropriate to continue with the process. If a probity expert is engaged as an auditor, they need to

maintain their independence and objectivity, and should therefore not be involved in offering advice to solve any probity problems that arise during the tender process.

3.5 Establishing Probity Roles

Probity roles can be implemented in a number of ways. This includes using expertise from other areas of MAV Procurement and the local government sector, through to engaging external specialist advice.

External probity specialists should only be appointed where justified, and not automatically just because an open tender process is being undertaken. The decision on whether to engage an external probity specialist should weigh the benefits of receiving advice independent of the process against the additional cost involved and include consideration of whether or not skills exist within MAV Procurement or local government sector to fulfil the role.

- Factors that will influence the appointment of an external probity specialist include:
- The transaction is of high value, complex, unusual or highly contentious,
- The integrity of the project may be questioned,
- A prequalified or selective tender process is proposed that is in accordance with the Victorian Local Government Best Practice Guidelines but the integrity of the selection of suppliers to be invited to tender may be questioned,
- There has been a history of controversy or litigation in relation to the matter.
- The matter is of high political sensitivity.
- The nature of the marketplace makes supplier grievances more likely (such as where competition is strong and commercial confidentiality is particularly important).
- The nature of the procurement is such that there is a high expectation of a material conflict(s) of interest.

Probity and, if required, the role of a probity expert will be addressed within either a tender evaluation plan or a probity plan. It is important that the tender evaluation plan or probity plan is carefully drafted, and all parties clearly understand the role a probity expert is being engaged to perform.

Before the process commences, all parties should have a clear understanding about the level of assurance that MAV Procurement will be seeking from the adviser.

MAV Procurement should specify whether a final sign-off is needed for the entire process, whether signoffs should be provided at the end of specified phases of the tender process, or at particular milestones, and should clearly specify the timing and the nature of the sign-offs required.

MAV Procurement should ensure that external probity experts clearly understand the nature and extent of sign-off they will be asked for, with this requirement appropriately documented, such as through the external probity expert's contract.

Probity experts should be independent and free from conflicts of interest and have a sound knowledge of all relevant government policies and procedures. Sign-off by external probity experts

cannot replace MAV staff's own accountabilities and obligations in regard to the proper conduct of procurement activities.

4. Definitions

Unless stated or implied otherwise, the following terms used in this document are defined as follows:

MAV Procurement	Is a service unit established by the MAV to focus on achieving better procurement outcomes for local government sector through aggregated procurement, professional development and policy support.
MAV Staff	Includes full-time and part-time MAV Staff, and temporary employees, contractors, and consultants while engaged by the MAV.
Probity	Within Local Government, the word "probity" is often used in a general sense to mean "good process." A procurement process that conforms to the expected standards of probity is one in which clear procedures that are consistent with the MAV's policies and relevant legislation are established, understood, and followed from the outset. These procedures need to consider the legitimate interests of suppliers and ensure that all potential suppliers are treated equitably.
Procurement	Within Local Government, the word "probity" is often used in a general sense to mean "good process." A procurement process that conforms to the expected standards of probity is one in which clear procedures that are consistent with the MAV's policies and relevant legislation are established, understood, and followed from the outset. These procedures need to consider the legitimate interests of suppliers and ensure that all potential suppliers are treated equitably.
Tenderlink	Is an e-tendering website for local government tenders.
Tender Process	The process of inviting parties to submit a quotation by tender using public advertisement, followed by evaluation of submissions and selection of a successful bidder or tenderer or a panel of suppliers.

5. Policy Context

Legislation, standards & external guidelines	<i>Local Government Act 2020 (Vic.)</i> Tenderlink electronic portal
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MAV Policies, procedures, and related documents	Procurement Policy Procurement Process Overview Code of Conduct for Employees, Consultants and Contractors Conflict of Interest Policy for Staff, Contractors & Consultants Gifts, Benefits and Hospitality Policy Risk Management Policy Public Interest Disclosures Procedures Fraud and Corruption Control Policy Fraud and Corruption Control System Sponsorship Policy
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6. Document Control

Approval Authority	Chief Executive Officer
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