Procurement Conduct Plan

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| RFx: [Number and Name] | |
| Document number: [TRIM Record Number] | Date: Thursday, June 21, 2018 |

Contact details

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# Introduction

## Purpose of the procurement conduct plan

The purpose of this document is to:

* set out the obligations on all staff involved in the procurement project
* outline the governance framework applying to procurement, including the roles and responsibilities of all teams and committees involved in a procurement project.

## Code of conduct, probity and confidentiality agreement

After reading this document, all staff involved in the procurement project must sign the attached Code of Conduct, Probity and Confidentiality Agreement:

* at or before the commencement of the initial meeting or access to sensitive and/or confidential material related to the procurement project
* whenever a new person member is appointed to the project
* whenever other personnel are invited to attend meetings during the life of the procurement project.

Signed agreements are to be placed on the project file.

# Guiding principles for conduct

NSW Procurement observes high ethical standards and conduct in all procurement projects and processes. Staff must demonstrate high levels of integrity and impartiality whilst being fair, ethical, transparent and pursuing best value for money in the expenditure of public funds.

This document is to be read in conjunction with NSW Procurement Board’s Strategic Directions Statement, *NSW Procurement Policy Framework* for NSW Government Agencies and legislative frameworks and the DFSI Code of Ethics and Conduct.

## Principles of probity

All staff involved in the procurement project are to respect and adhere to the following fundamental guidelines.

Each person is to:

* act at all times in a professional manner
* act lawfully, fairly and honestly
* act impartially and not give preferential treatment to any respondent or individual
* maintain appropriate records of decision-making.

Each person must:

* avoid conflicts of interest and declare any interests (at regular intervals throughout the project) that may conflict with the performance of their public role
* avoid contact with potential respondents or related parties that may, or may be perceived to, affect the integrity of the project
* not accept gifts, gratuities or hospitality or other benefits (from respondents or related parties) that may or may be perceived to, affect the integrity of the project
* not trade in shares or similar financial transactions using information which is confidential to a tender or allow the improper use of such information to further any private interest
* not disclose proprietary or confidential information to any potential respondent or to any other person who is not authorised to receive such information
* not knowingly solicit or accept future employment or business opportunities with any representatives of the respondent(s) or related parties during the procurement process
* not make public comment about the project, without appropriate authorisation.

## Accountability and transparency

Accountability involves being able to justify the use of public resources by allocating and taking responsibility for past and expected performance. This includes aligning the decision making process with the appropriate delegated authority, and keeping adequate records that will leave an auditable trail. Transparency refers to the preparedness to open a project and its process to scrutiny. This involves providing reasons for all decisions that are taken and the provision of appropriate information to relevant stakeholders.

Everyone involved in the procurement project plays a part in obtaining maximum value for the goods and/or services purchased. Everyone should take reasonable steps to ensure that the information on which decisions or recommendations are based:

* are correct and complete
* exclude irrelevant information or unsubstantiated options
* are fully and properly documented
* minimise personal bias.

## Fairness, impartiality and honesty

The procurement project will be conducted in a transparent and fair way, consistent with a documented selection process made available to all potential respondents. Respondents will be evaluated in a systematic and comprehensive way against explicit predetermined evaluation criteria. Any form of bias, whether driven by personal interests or not, could jeopardise the integrity of the project.

## Conflict of interest management

Conflicts of interest (whether actual, perceived to exist, or potential to exist at some time in the future) should be avoided at all times. A conflict of interest is a situation arising from conflict between the performance of public duty and private or personal interests.

Staff must disclose in writing to the chairperson of the evaluation team any interest that they, or any member of their family, or any close friends and relationships, hold or are offered, which may be perceived to conflict with their obligations of confidentiality and probity.

## Gifts, gratuities, hospitality

These take the form of monies, credits, discounts, season or special occasion presents, edibles, drinks, appliances or furnishings, clothing, loans of goods or money, tickets to events or theatres, dinners, parties, transportation, vacation travel, hotel expenses and any other form of monetary or non-monetary benefit.

Everyone who has any involvement in or influence over any procurement activity must avoid giving any indication that gifts, gratuities or hospitality will be accepted, or that these may influence decisions, during the procurement activity. During an RFx process, staff involved in the procurement process must not accept any gifts or hospitality, no matter how modest. Staff involved in the procurement process must immediately inform the chairperson of the evaluation team of any offers received of gifts, either on an individual or committee basis, received from respondents or potential respondents.

## Confidentiality

Confidentiality of information is the responsibility of everyone with access to confidential information (which refers to all RFx documents, including draft versions and related materials).

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| Access | Before gaining access to confidential information, a person must have signed the *Code of Conduct, Probity and Confidentiality Agreement*. |
| Release | The chairperson of the evaluation team (or delegate) may authorise the release of confidential information and/or in accordance with the *Government Information (Public Access) Act 2009*, where appropriate. |
| Conversations | Confidential conversations should be held in a private location. If this is not possible, then participants should use generic terms instead of specific terminology relating to the project. |
| Office security | The evaluation team members are to work within a secure office area and to secure all hard copy confidential information in locked cabinets within the secure office area when not under the personal control of the authorised user or where unauthorised persons may gain access. |
| IT arrangements | Confidential information must be stored on a secure IT system. Access to the system is to be password controlled and available to authorised persons only. Authorised persons need to be mindful of who they give access to their email and calendar and should consider requesting these people to sign the *Code of Conduct, Probity and Confidentiality Agreement*. Care needs to be taken when sending emails not to attach files or otherwise include confidential information to unauthorised persons. |
| Information removed from secure premises | Confidential information may be removed from the secure premises when it is required to progress the project. The safekeeping of confidential information is the responsibility of the authorised person removing the information. Confidential information must at all times be in the personal possession of the authorised person or locked in a secure environment. |
| Printing | Confidential information must be immediately removed from printers. |
| Facsimile | Confidential information is not to be sent via facsimile. |
| Social media | No project related information is to be posted on any social media, without appropriate delegate approval. |

# Terms of reference

## Steering committee (where required)

Steering committees are established for some projects due to complexity of procurement or sensitivities that may exist. The purpose of the committee is to provide an additional level of review and decision making that sits outside of the evaluation team and to provide guidance on the project.

Members of the steering committee will generally consist of senior officers with delegation and relevant knowledge and expertise in the subject matter of the procurement project.

The specific terms of reference for the steering committee are to:

* endorse RFx timelines and approve any timeline variations
* approve any variations after the original RFx documentation which are referred to it by the chairperson of the evaluation team
* provide advice, direction and decisions to the evaluation team as required during the RFx process
* sign-off the completion of each stage in the RFx process
* receive the probity report, where applicable, with the engagement of an independent probity advisor and the evaluation report
* consider the draft evaluation reports and endorse the recommendations, prior to seeking approval
* request the evaluation team to conduct further evaluation, if appropriate.

## Project team (where required)

A project team is generally formed to represent key stakeholders and contract users to provide input and make recommendations. The project team is responsible for overseeing the incorporation of procurement strategy recommendations approved by the secretary or delegate, and may oversee the implementation of the strategy.

The terms of reference for the project team may involve:

* contributing to developing appropriate procurement strategies and consultation of current stakeholder requirements and market conditions
* contributing to the development of specifications and other technical requirements consistent with the requirements of potential users across Government
* contributing to the development of the evaluation strategy.
* providing higher level advice on project progress and priority/sensitive matters raised by the evaluation team (where a steering committee is not in place).

Members of the project team will generally consist of key stakeholder representatives and procurement and other subject matter experts.

## Evaluation team

The evaluation team facilitates the integration of the agreed procurement strategies into the RFx documentation, undertakes a detailed assessment and evaluation of responses, and reviews probity aspects throughout the procurement process. Where there is no project team or steering committee in place for the project, the evaluation team would bear their responsibilities.

The specific terms of reference for the evaluation team are to:

* undertake an initial assessment of each RFx response
* evaluate the RFx responses in accordance with all relevant criteria
* identify any clarifications required from respondents
* hold meetings with respondents for clarification purposes, where required
* review responses to clarification questions, undertake reference checks, if required
* score all responses against agreed criteria, as per evaluation methodology
* summarise the assessment results and recommend the respondent that should be appointed
* recommend, if appropriate, areas for negotiating with respondent
* sign-off the final evaluation report (including recommendation).

The chairperson of the evaluation team will be designated to:

* take overall responsibility for the evaluation process
* act as contact person for both evaluation team members and respondents.

Members of the evaluation team will generally consist of relevant project team members, subject matter experts, and such other individuals chosen to be members as detailed in the evaluation plan. The actual members must be documented in the evaluation plan, including the nature of their role, such as a voting or non-voting member.

For some projects, experts or independent reviewers will be called upon to undertake some elements of an evaluation, or review the evaluation process. Details of their roles must be noted within the evaluation plan. Other experts may be required for IT projects, where speciality pricing, technical knowledge or other expertise is required.]

### Probity advisor (where required)

The independent probity advisor to the evaluation team will have the following responsibilities:

* Attend meetings with the evaluation team to monitor their activities during the evaluation.
* Ensure the evaluation methodology has been adhered to by the evaluation team.
* Assist in the resolution of any probity issues that may arise during the course of the evaluation process.
* Complete a final report on the evaluation process to be attached to the final submission for approval or subsequent recommendations.

### Financial reviewer (where required)

The financial reviewer to the evaluation team will have the following responsibilities:

* To review and note recommendations to the financial criteria only for the evaluation team to consider.
* Provide any additional feedback on concerns noted or need for further clarification with any financial aspects of the proposals.

### Legal advisors

Legal advisors may be engaged to review proposed contract terms and assist with contract negotiations and finalisation.

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| NSW Procurement | Department of Finance, Services and Innovation  Address: Level 11, McKell Building, 2-24 Rawson Place, Sydney NSW 2000  Phone: 1800 679 289 | TTY: 1300 301 181 |

# CODE OF CONDUCT, PROBITY AND CONFIDENTIALITY AGREEMENT

I confirm that I have been provided the document entitled Procurement Conduct Plan and have read and understood the contents of this document. I agree to be bound by its contents in respect of my duties relating to:

RFx No: [Insert RFx Number]

RFx Name: [Insert RFx Name]

**Declaration of interests**

I also acknowledge that as a member of the Project Team | Evaluation Team | Steering Committee | Negotiation Team | advisor / or \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, I must declare information or circumstances perceived as a possible “conflict of interest”, that is information that may inappropriately influence my participation in this procurement project, for example:

* involvement with a respondent
* funds received or that will be received that may be perceived as advantage such as paid employment, shares, board memberships, grants
* other pecuniary interests such as involvement with supplier products and/or services.

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| □ | I hereby declare the following: |
| □ | I hereby declare that, to the best of my knowledge, my current private and financial interests including taxation affairs do not conflict with my duties as a member of the Project Team | Evaluation Team | Steering Committee | Negotiation Team | advisor / or \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for the above procurement project; and my independence and objectivity in dealing with this procurement has not been or is not likely to be compromised. |

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_ / \_\_\_\_\_\_ / \_\_\_\_\_\_\_\_

Position: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Organisation: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Chairperson**

I acknowledge that as chairperson of:

RFx No: [Insert RFx Number]

RFx Name: [Insert RFx Name]

I have considered member \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
declaration of interest and confirmed that:

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| □ | The member has declared that they do not have any related interests or associations that represent an actual, perceived or potential conflict of interest in relation to this procurement project. |
| □ | A related interest has been declared, but the nature of the interest is not such that it represents, or could create, an actual or perceived or potential conflict of interest in relation to this procurement project. |
| □ | An interest has been declared which may represent an actual, perceived or potential conflict of interest in relation to this procurement project/process and:   * the interest has been registered * a strategy to manage the conflict of interest has been recorded and is attached * where relevant, advice has been sought from Audit Branch or the relevant probity representative in relation to the management strategy for the interest. |

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_ / \_\_\_\_\_\_ / \_\_\_\_\_\_\_\_

**Executive Director, NSW Procurement**

I agree / disagree with the Chairperson’s decision. My reason for disagreeing is:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_ / \_\_\_\_\_\_ / \_\_\_\_\_\_\_\_

(Note: Endorsement or the Chairpersons decision by the Executive Director, NSW Procurement is only required where a conflict of interest has been declared)