



Procurement and contract management

One of the high risk misconduct areas in the public sector is in procurement. All employees are required to follow processes and procedures to maintain the integrity of procurement practices.

What is procurement?

Procurement refers to the entire process by which a public sector organisation acquires resources such as goods, services, facilities, capital and human resources. 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 misconduct, fraud and corruption, and requires stringent adherence to policy and procedures. Your organisation must ensure that its procurement and contracting practices are transparent and accountable, and meet the standards set out in legislation, codes and policies. Breaches of these regulations can attract serious legal and administrative penalties for agencies and their staff.

Examples of misconduct in procurement

Lack of accountability and transparency mechanisms

The opportunity for misconduct 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 may 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

It is imperative that conflicts of interest arising in conjunction with procurement or contract management be identified, declared, and managed transparently and effectively to avoid misuse of position or authority, or the perception of misuse.

Examples of conflicts that could occur include when a public sector employee:

- ▼ 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 that 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 or owns property that will be positively or negatively affected by the activities of the organisation, or
- ▼ has an interest in a sporting or community organisation, which could influence the officer's decision making.

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, and
- ▼ 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 timelines but in the long run they could save time, money and reputations.

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 misconduct 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 Integrity Commission website.

Close relationships with suppliers

Officers in an organisation 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 organisation, 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 organisation regularly monitors the performance of contractors, it can be vulnerable to poor quality and inefficient practices, and even subject to fraud. The Commission 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 organisation 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 misconduct

The strategies for preventing misconduct 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 to undertake procurement activities, and ensure that your organisation has created written delegation instruments under your Act.
- ▼ 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 organisation's 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, these are implemented by your organisation.

Inform potential contractors of their ethical and business responsibilities

- ▼ Make it a condition of the contract or tender that contractors comply with your organisation's code of conduct or the 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 public sector organisation should regularly review the [Tasmanian Government website for purchasing](#), update your policies accordingly, and provide training to those involved in procurement about the changes.
- ▼ Establish clear procurement and contract management procedures that incorporate probity principles and responsibilities for both staff and contractors.
- ▼ Link your procurement and contract management procedures to your organisation-wide misconduct prevention 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.

Maintain currency of training and awareness

- ▼ Conduct regular training to help staff understand your organisation'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 and conflicts of interest and gifts and benefits policies.
- ▼ Clearly explain to staff that proven instances of behaviour outlined in this fact sheet as serious misconduct 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
 - ▽ 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 organisation
 - ▽ collusive behaviours amongst suppliers to your organisation, and
 - ▽ potential interest of your officers in a transaction.

Make probity 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 checkbox 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.

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 organisation’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 organisation, and
 - ▽ 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.

*From [Corruption Prevention Advisory](#), December 2021
Adapted with the permission of Crime and Corruption Commission, Queensland*



The Commission can help

We are available to provide support and assistance with identifying, reporting, investigating, managing and preventing misconduct: prevention@integrity.tas.gov.au or 1300 720 289.

For more Misconduct Prevention resources go to www.integrity.tas.gov.au/resources