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White paper

Procurement Integrity (Probity)

APRIL 2020

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Background

Purpose

The purpose of this white paper is to discuss the importance for organisations to have a formal approach to transparency and accountability in the procurement process, and to outline how this can be achieved.

Background

Probity seeks to ensure procurements are:

- > Legal.
- > Ethical.
- > Achieve value-for-money results.
- > Most of all, are defensible and fair.

Every organisation that procures goods and services should be seeking four things in their procurement process:

Efficiency – Getting the most from the procurement cost.
Example – *Where cost has been reduced over time through competitive procurement practice.*

Effectiveness – Achieving the pre-determined procurement objective.

Example – *Where the procurement process results in a satisfactory outcome for the procuring organisation and the successful bidder.*

Economy – Getting the best cost without compromising quality.

Example – *Where goods or services of a specific quality are procured at the best possible price.*

Ethics – Ensuring a transparent and accountable process.

Example – *Where goods or services are procured with all bidders having an equal opportunity to fairly participate.*

Probity should be a normal part of significant procurement decisions. To avoid against having probity oversight, some management will complain that it causes delay and adds cost, but the reality is that it is an integral part of a procurement process that occurs at the same time as procurement activities and therefore does not cause delays. And the benefits far outweigh the cost. In any event, procurement governance and integrity should be budgeted into overall procurement cost from the outset. Probity should be viewed as a key element of governance and set the tone for how things should be done properly.

Discussion

Issue

When organisations purchase goods and services, there are times when tenders and procurements go off the rails through bribery and corruption.

The question is:

How to effectively control the procurement process to assure it is transparent and accountable, especially for large, complex or risky procurements?

History

The involvement of probity specialists in decision-making is relatively commonplace in Australia, New Zealand and Canada, but not in other jurisdictions. In some countries, it may be known as 'fairness monitoring' or 'integrity monitoring'. Within Australia and internationally, there is limited information on probity, and limited opportunity for professionals to pursue professional development in the discipline of probity. There are many internal auditors and external auditors, and even more management consultants and lawyers, providing probity services, generally for large-scale procurements. The IIA–Australia believes internal auditors view probity as needing to be forward-focused and not 'black and white'.

Probity advising and probity auditing involve objectivity, independent assurance and insight, which is compatible with Internal Audit's mission of providing 'objective assurance, advice and insight', and its mandate of 'risk management, control and governance'. Internal auditors being involved in probity work builds upon the synergy of what internal auditors do every day. When coupled with internal audit

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training, internal auditors are well-positioned between the legal and accounting professions, and generalist management consultants, to provide probity services.

There is no specific Common Body of Knowledge (CBOK) around probity, though Standards Australia has issued HB 325–2008 ‘Assuring probity in decision-making’, which includes information about probity advisers and probity auditors, and was developed in conjunction with a number of IIA–Australia members specialising in probity. At present probity training in Australia is limited.

Discussion

Concept of Probity

Probity is evidence of ethical behaviour in a process, and is defined as ‘complete and confirmed integrity, uprightness and honesty’. It contributes to sound procurement processes that give equal opportunities for all participants. A good outcome is achieved when probity is applied with common sense upon a sound legal basis. Probity needs to be integrated into procurement planning, as well as its administration.

Procurement should be conducted with probity in mind, enabling organisations and suppliers to deal with each other on the basis of mutual trust and respect. Adopting an ethical and transparent approach enables business to be conducted fairly, reasonably, and with integrity. Ethical behaviour enables procurement to be conducted in a manner that allows all participating suppliers to compete as equally as possible. Procurement process rules must be clear, open, well-understood, and applied equally to all parties to the process.

Organisations should not seek to benefit from supplier practices that are objectionable, dishonest, unethical, or unsafe. Procurement of services should be conducted in a manner that recognises, in effect, that an organisation largely remains accountable for the delivery of services in the same way as if the organisation carried out the service itself.

Conflicts of interest may arise in the course of business operations, especially during a procurement process. Types of conflicts are varied, but may include pecuniary interests, legal interests, external associations in common, and direct or non-direct personal or family interests. In carrying out official duties, officials must not allow themselves to be improperly influenced by family, personal or business relationships and, unless able to be managed effectively, must not have an actual, perceived or potential conflict of interest in relation to their duties.

Probity in decision-making facilitates observable and highly desirable conditions:

- › Value-for-money.
- › Impartiality.

- › Removal of improper influence.
- › Accountability and transparency.
- › Confidentiality.

Probity Adviser versus Probity Auditor

There are two roles that can be used in a procurement process to advise on transparency and accountability.

A probity adviser provides advice on issues which may arise before and during the procurement. A probity auditor will be self-directing and exercise a higher level of independence than a probity adviser. Think advisory service (probity adviser) versus assurance service (probity auditor).

| Probity Adviser | Probity Auditor |
|--|--|
| <ul style="list-style-type: none"> › Advises the client, but not third parties, unless specifically authorised. › May provide that advice at any time. › May investigate any probity concerns, including conflicts of interest and breaches of confidentiality. › Must apply objectivity and independence. › May or may not be part of the client organisation. › May or may not have a connection with the process in question, but must not have a conflict of interest. › Should preferably not have decision-making authority, but may contribute as part of the process eg by drafting the probity plan. › May typically be expected to submit a report or reports to the client. | <ul style="list-style-type: none"> › Advises the client principally, but may also provide advice to third parties. › May provide that advice at any time. › Must investigate any significant probity concerns. › Must apply objectivity and independence. › May or may not be part of the client organisation. › Must not have a connection with the process in question. › Must have no decision-making authority in the process in question, but may assist the client to make appropriate decisions. › Must report to the client on probity of the process, the basis of the audit opinion, and matters of significance noted during the audit. |

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Probity Process

A probity process would generally cover:

Preparation

- › Preparing a procurement probity plan that considers risk to the procurement activity.
- › Meeting and briefing the evaluation team.
- › Collecting and evaluating relevant information.

Desktop Review

- › Reviewing roles and responsibilities.
- › Reviewing process for identifying potential conflict of interest.
- › Reviewing effectiveness of the communication process.
- › Ascertaining security of information.
- › Reviewing integrity of the evaluation process.
- › Assessing compliance with law and policy.

Monitoring

- › Attending all evaluation meetings.
- › Reviewing compliance with the approved process.
- › Providing advice to address probity issues as they may arise.

Reporting

- › Reporting significant deviations from the approved process.
- › Making recommendations for improvement.
- › Providing a final probity report that includes an opinion on fairness and transparency of the procurement activity.

Probity Touchpoints

A tender process and independent procurement integrity (probity) activities will generally cover such things as:

Tender Planning

- › Procurement plan
- › Tender process and timeline
- › Procurement probity plan
- › Confidentiality and security
- › Approval for tender
- › Integrity and probity issues
- › Conditions for non-acceptance of bid responses
- › Tender risk assessment

- › Tender communication strategy
- › Advertising of tender
- › Evaluation terms of reference and process
- › Evaluation team expertise and qualifications
- › Evaluation criteria and weightings
- › Evaluation scoring matrix
- › Compliance with special requirements eg free trade agreements, local content, etc
- › Conflict of interest process
- › Tender bid lodgement process
- › Pre-lodgement bid enquiries and addenda
- › Confidentiality agreements
- › Conflict of interest declarations
- › List of prospective bidders kept
- › Pre-tender briefings and site visits

Tender Lodgement and Opening

- › Appropriate, controlled and transparent communication process
- › Tender bids kept secure and chain of custody can be proven
- › Tender opening follows an approved procedure
- › Tender opening overseen by probity auditor
- › All tender bids registered and accounted for
- › Public disclosure of tender opening
- › Dealing with late tenders
- › Evaluation process approved before tender opening
- › Any conflict of interest reported and addressed
- › Any complaints received and investigated in accordance with grievance redress process
- › Risk assessment updated to reflect new or changed risks

Bid Evaluation

- › Tender bids kept secure and chain of custody can be proven
- › Forward schedule of evaluation meetings
- › Evaluation meeting minutes kept that accurately reflect meeting deliberations
- › Probity auditor at every evaluation meeting
- › Evaluation committee log of issues and actions items kept
- › Log of issues and actions followed-up and communicated in a timely way
- › Evaluation committee evaluations consistent with approved evaluation criteria and weightings
- › Any evidence evaluation committee deliberations depart from approved evaluation criteria

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- › Non-conforming tenders
- › Bid clarification requests and additional information
- › All tender bids accounted for
- › Evaluation report consistent with evaluation committee deliberations, tender document and procurement plan
- › Evaluation report is a sound basis for the evaluation committee recommendation
- › Evaluation scoring independently reviewed for correctness by probity auditor
- › Professional referees contacted and confirmed, with professional referee reports prepared
- › Any complaints received and investigated in accordance with grievance redress process
- › Risk assessment updated to reflect new or changed risks

Negotiation

- › Rules around negotiation with bidders, if permitted
- › Technical and financial negotiation issues
- › Clear terms of reference for negotiation team
- › Scope of negotiations consistent with tender requirements
- › Negotiations limited to negotiation team terms of reference

Awarding the Contract

- › Evaluation report prepared with a recommendation and basis for the recommendation
- › Sound due diligence process undertaken and a post-tender probity report written
- › Contract in approved format
- › Contract matches the tender requirements
- › Appropriate payment schedule
- › Contract consistent with evaluation team recommendation
- › Appropriate approval to award contract
- › Successful bidder changes to contract and basis for any changes
- › Independent review of contract by probity auditor prior to signing
- › Contract appropriately signed and executed without changes
- › Notifications to unsuccessful bidders
- › Post-tender debriefings to unsuccessful bidders

Ask these Questions

- › What would be the reaction if the decision was front-page news?
- › Would a reasonable person come to the same decision?
- › Can the decision be supported?
- › Is the decision legal?
- › Is the decision consistent with the organisation's code of conduct?
- › Is the decision consistent with law and the organisation's policy?
- › Is anyone involved in the procurement process going to get a benefit from the decision?
- › What will be the outcome for the organisation from the procurement – will the objective be achieved in a transparent and accountable way?

Five Action Steps

Every organisation should:

1. Have a robust governance framework that includes such things as a code of conduct, conflict of interest arrangements, gift and entertainment policy, mandatory reporting, whistleblowing policy, etc. Make sure this applies to procurement activities.
2. Have formal business rules governing procurements, including requirement for a detailed risk assessment.
3. Ensure the business rules are disseminated via awareness activities to both internal and external stakeholders involved with procurements.
4. Appoint independent probity oversight for large, complex or risky procurements.
5. Have a formal probity policy that ensures procurement activities and reporting are visible to top management, audit committee and board of directors.

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Conclusion

For public and shareholder trust, it is imperative tenders and procurements are not only seen as transparent and accountable, but actually are.

Good procurement practice requires a number of key components:

- › Transparency and accountability.
- › Sound governance and business rules.
- › Awareness.
- › Independent oversight.
- › Visibility to decision-makers.

Probity means decisions are made with integrity, honesty and fairness in the pursuit of getting value-for-money. Without probity, there may be:

- › Loss of confidence in the organisation.
- › Loss of confidence in the procurement process.
- › Delays in achieving outcomes if procurements may be delayed due to integrity issues.
- › Additional cost, especially if a procurement process needs to start again.
- › Disciplinary action or dismissal from the organisation.
- › Scrutiny by third parties such as the media, government agencies and sometimes parliament.

Bibliography and References

Handbook (HB) 325–2008 'Assuring probity in decision-making', Standards Australia

Factsheet – 'Procurement Integrity (Probity)', IIA–Australia

Purpose of White Papers

A White Paper is an authoritative report or guide that informs readers concisely about a complex issue and presents the issuing body's philosophy on the matter. It is meant to help readers understand an issue, solve a problem, or make a decision.

Author's Biography

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About the Institute of Internal Auditors–Australia

The Institute of Internal Auditors (IIA) is the global professional association for Internal Auditors, with global headquarters in the USA and affiliated Institutes and Chapters throughout the world including Australia. As the chief advocate of the Internal Audit profession, the IIA serves as the profession's international standard-setter, sole provider of globally accepted internal auditing certifications, and principal researcher and educator.

The IIA sets the bar for Internal Audit integrity and professionalism around the world with its 'International Professional Practices Framework' (IPPF), a collection of guidance that includes the 'International Standards for the Professional Practice of Internal Auditing' and the 'Code of Ethics'.

The IIA–Australia ensures its members and the profession as a whole are well-represented with decision-makers and influencers, and is extensively represented on a number of global committees and prominent working groups in Australia and internationally. The IIA was established in 1941 and now has more than 200,000 members from 190 countries with hundreds of local area Chapters. Generally, members work in internal auditing, risk management, governance, internal control, information technology audit, education, and security.

Historians have traced the roots of internal auditing to centuries BC, as merchants verified receipts for grain brought to market. The real growth of the profession occurred in the 19th and 20th centuries with the expansion of corporate business. Demand grew for systems of control in companies conducting operations in many locations and employing thousands of people. Many people associate the genesis of modern internal auditing with the establishment of the Institute of Internal Auditors.

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The examples included in this paper are intended to be illustrative in nature, and no professional advice is provided or intended.