Probity in Procurement
Objectives

The objectives of this module are to:

• Increase awareness of probity

• Provide guidance for personnel involved in or responsible for managing procurement processes and contracts
• What is probity?

• Why is probity important?

• Probity principles & tips

• Self-check questions

• Tools and references
What is probity?
What is probity?

• Probity is the evidence of ethical behaviour in a particular process

• Probity means acting according to strong moral principles of honesty and decency and complying with (and being able to demonstrate compliance to) probity principles, guidelines and requirements

• Maintaining probity involves more than simply avoiding corrupt or dishonest conduct. Probity requires the application of public sector values such as impartiality, accountability, transparency and fairness
What is probity?

- Probity ensures the expenditure of public sector funds is carried out in accordance with Government requirements; such as achieving value for money and ensuring that government funds are expended in an economical, efficient and effective manner.

- Probity should be considered throughout all phases of the procurement cycle, from planning though to approaching the supply market and contract management.
Why is probity important?
Why is probity important?

“The public service is critical to the lives of every Victorian, providing front line social, health, justice and emergency services and transport and other infrastructure that supports our daily lives.

The Victorian public has a right to expect that people working for the public sector perform their duties with integrity, fairly and honestly.

Corruption pushes taxes to higher levels than they need be, and reduces services to lesser quality than they might be.”

The public sector is not only responsible for the outcomes it achieves, but how it achieves those outcomes.

IBAC Victoria, Research Paper: Perceptions of Corruption in Victoria, September 2013
Perceptions of Corruption in Victoria

Victorian community perceptions

- 20% of members of the community believe state and local government is affected by corruption

Senior Victorian public servants’ perceptions

- 24% of Senior Victorian public servants identified buying goods and services as an activity at risk of corruption within their organisations

- 72% of Senior Victorian public servants believed there was the opportunity for conflicts of interest to occur within their department/agency

- 20% of Senior Victorian public servants indicated that they had personally observed conflicts of interest within their department/agency

Source: IBAC Victoria, Research Paper: Perceptions of Corruption in Victoria, September 2013
Why is probity important?

- Probity is critical in achieving value for money
- Ensuring appropriate probity arrangements provides assurance to the taxpayer that government funds have been expended to achieve the best possible outcome using equitable and measurable processes
- Probity, transparency and accountability in procurement gives suppliers confidence to participate in the government marketplace
Why is probity important?

• If suppliers doubt the fairness or impartiality of government procurement processes they may withhold valuable ideas or be deterred from bidding for Government contracts

• This can result in:
  – A reduction in the range of solutions and options available; and
  – A decrease in the competitiveness of government procurement
Why is probity important?

- Suppliers invest considerable time, effort and resources in preparing and submitting offers. In return, they are entitled to expect fair treatment at every stage of the procurement process.

- Suppliers who believe the process to be prejudiced or the outcomes tainted by bias may take legal or other action to redress the situation.

- Health Purchasing Victoria (HPV), Health Purchasing Policy 1. Procurement Governance, requires the development of a procurement complaints management policy that sets out the process and procedures for addressing complaints (or that procurement complaints are managed according to the HPV policy as part of a general complaints management policy).
• Probity and process integrity:
  – Protect government creditability and reputation
  – Are consistent with Public Sector Values
  – Provide a framework for avoiding corrupt practices
  – Support compliance with State and Commonwealth legislation and common law requirements relating to process integrity
  – Assist in avoiding the adverse consequences of conflicts of interest
  – Encourage commercial competition
  – Minimise the potential for complaints and litigation
  – Reduce the risk of adverse media coverage
The Victorian ombudsman today tabled a report into corruption in the public sector.

The ombudsman found that employees at nine organisations, including Arts Victoria and a prison, had engaged in a photocopying scam where they purchased more than a quarter of a million dollars worth of goods from a toner cartridge supplier at inflated prices in exchange for gifts.

The unnamed company at one point was charging $369 for a cartridge when a similar model cost $99.

Source: www.abc.net.au
Why is probity important?

Procurement in the news - *The Age:*

“Public the biggest losers in corruption case, IBAC chief says”

Two mid-level public servants who rigged tenders and inflated contracts for Victorian public transport projects in effect stole taxpayers’ money and damaged public confidence in the bureaucracy, the chief of Victoria’s anti-corruption watchdog said.

The alleged corrupt conduct also deprived the department of funds that should have been spent on transport infrastructure, Independent Broad-based Anti-corruption Commission chief Stephen O’Bryan, QC, said.

Barry Wells, a project officer at Public Transport Victoria, and his former colleague in the Department of Transport, Albert Ooi, are being investigated by IBAC over allegations they awarded $25 million in contracts to businesses they controlled, and diverted about $3 million into personal accounts, from 2006 until late 2013.

The money, which Mr Wells and Mr Ooi told the hearing they split 50/50, was spent on overseas properties, luxury goods and Mr Wells’ greyhound interests, among other things.
"I take it you appreciate, Mr Wells, that the corruption being exposed in these public examinations is completely unacceptable in terms of not only waste of public resources, but the impact on legitimate businesses who missed out on profits?" Mr O’Bryan asked on the final day of phase one of a public hearing for IBAC’s investigation, called Operation Fitzroy.

"I fully understand what you're saying, commissioner," Mr Wells said.

"You of course accept, don't you, that the process by which you were able to inflate or to have contract prices inflated for the purposes of ensuring returns to you obviously was a direct cost to the public purse?" Mr O’Bryan asked.

"Correct," Mr Wells said.

The investigation has also heard from contractors who were willing to collude with Mr Wells and Mr Ooi and give kickbacks in exchange for department work.

Mr Wells told the hearing on Tuesday that a culture within the department of turning a blind eye to improperly close relationships between staff and contractors helped him get away with his alleged corrupt conduct for so many years.

• Public sector organisations are entrusted with a significant responsibility for public expenditure.

• With this comes an obligation to have robust measures in place to ensure integrity in procurement practices.

• The IBAC report identified a number of factors as contributing to corruption risks. Ensuring robust practices in the following areas will help protect against corrupt conduct and ensure integrity in procurement practices:

  – **Contract management:** Good contract management practices are essential to managing corruption risks. It is good practice, for example, to continue to monitor projects once a tender process is finished and a contract awarded. Adequate performance monitoring may assist in detecting corrupt practices.
Why is probity important?

Victorian Government Solicitor's Office: *Lessons from Operation Fitzroy*

- Ensuring robust practices in the following areas will help protect against corrupt conduct and ensure integrity in procurement practices (cont.):

  - **Supplier due diligence:** Due diligence must be conducted on suppliers who are awarded contracts to enable Government to investigate any connections between individuals within a department, and companies that are being awarded contracts. Controls should be implemented to ensure that suppliers have the necessary skills, qualifications, financial viability and experience to deliver the required goods and services.

  - **Training and expertise:** There should be ongoing education and training for employees regarding procurement policies and procedures, probity standards and requirements, as well as associated corruption risks. There should be ongoing processes for employees and contractors to raise concerns about procurement misconduct and corruption.
Why is probity important?

Victorian Government Solicitor's Office: *Lessons from Operation Fitzroy*

- Ensuring robust practices in the following areas will help protect against corrupt conduct and ensure integrity in procurement practices (cont.):
  - **Management of conflicts of interest.** Departments must ensure that there are appropriate processes in place to manage conflicts of interest. This could include, for example, a register of interests in which department employees regularly record any relevant interests, training for identifying when conflicts of interests occur, and processes for referring conflict of interest issues to management.

  - **Timeframes for delivery of projects.** Tight timeframes and a culture of expediency may create corruption risks related to procurement planning, compliance and scrutiny of decisions. Regarding procurement policies as subservient to delivering significant programs of work as quickly as possible may lead to non-compliant or improper behaviour.

Probity Principles
Probity principles

• Guide how procurement is conducted in the Victorian public sector, regardless of what is being procured or the procurement approach used

• Apply through the whole procurement life cycle from planning to completion

• Probity principles:
  – Value for money
  – Accountability of the participants and transparency of the procurement process
  – Fairness and impartiality in carrying out the procurement process
  – Management of conflicts of interest
  – Maintenance of confidentiality & security of documentation & information
Video Scenario

Before reading the remainder of this section which elaborates on each probity principle, please view the video “Tender Gifts” available via the link below and note what you believe are the issues raised from a probity perspective.

https://vimeo.com/87429881

Running time: 2 mins. 15 seconds

Source: The Integrity Commission of Tasmania has developed and published this video scenario which is part of the Integrity Commission's Ethics & Integrity Training Program.
Value for Money

• Achieving value for money is the principal objective of public sector procurement

• Value for money is the:
  – achievement of a desired procurement outcome at the best possible price (not necessarily the lowest price), based on a balanced judgement of financial and non-financial factors relevant to the procurement
  – optimum combination of quality, quantity, risk, timeliness and cost, and should be determined on a whole-of-contract and whole-of-life basis

• Achieving value for money while maintaining process integrity is the ultimate goal of procurement
Accountability and Transparency

- Accountability and transparency are related concepts. Demonstrated accountability and transparency reduces the likelihood of unethical behaviour, reassures the community and instils confidence in all stakeholders concerning the integrity of decisions.

- Accountability is the obligation to account for the way particular duties have been performed. Accountability for outcomes in procurement is being able to explain how the procurement has achieved its anticipated outcomes.

- Transparency refers to the openness of a procurement activity to scrutiny by interested parties. It involves providing documented reasons for decisions and the provision of appropriate information to relevant stakeholders.
Probity principles

Accountability

• Public sector accountability requires those entrusted with public resources to:
  – work to clear objectives in a transparent manner
  – accept responsibility for their decisions and actions
  – seek to achieve the best use of resources and submit themselves to appropriate scrutiny

Transparency

• Supported by appropriate record keeping

• Documentation should be created and maintained to:
  – Enable scrutiny of decisions taken
  – Demonstrate the application of the guiding procurement principles and compliance with established requirements
Tips to support Accountability and Transparency

- Records are maintained that enable hospitals, health services and individual procurement officers to justify decisions made and actions taken in complying with applicable legislation and policies.

- Appropriate separation of functions and responsibilities (e.g. evaluation and approval).

- Compliance with relevant financial and other delegations.

- Adherence to established procedures.

- The evaluation of offers, submissions, expressions of interests etc., by more than one person and in accordance with pre-approved plans.
Probity principles

Tips to support Accountability and Transparency

• The use of documentation that will elicit the information necessary for proper evaluation of offers against each of the evaluation criteria

• The evaluation of offers on a consistent basis, using predetermined criteria that are established and documented prior to calling for offers, and which are made available to all potential respondents

• Regular and systematic monitoring of the supplier’s performance to determine whether requirements are being satisfied

• Evaluation of outcomes and performance at the end of the contract taking into account quality, cost and any other key issues relating to the supply
Case Study: *Manipulation of purchasing process*

(The following is based on findings from the Ombudsman Victoria report “Probity controls in public hospitals for the procurement of non-clinical goods and services”, August 2008)

Mr W, the Manager of the Clinical Engineering Department at a hospital, engaged a private information technology company to develop electrical safety tester interface software.

At the time, the Director of this IT company, Mr G, was also employed by the hospital on a part-time basis in the Clinical Engineering Department.

Mr W initially approached the hospital’s IT Department regarding the development of the software. However, the IT Department was unable to commit any resources to the project.

In light of the alleged importance of the software, Mr W approached Mr G, in his role as Director of his IT company, to develop the program.

Mr W only obtained an oral quote from Mr G. The oral quote involved engaging a programmer from Mr G’s IT company at approximately $50 per hour, for an estimated 3-4 weeks of time over several months.
Case Study: *Manipulation of purchasing process*

The Ombudsman investigation revealed there had been no clear agreement on the total price of the software development or the delivery date. Little evidence was found of project planning and only minimal tracking was undertaken to determine how the project was proceeding.

Mr W did not obtain quotes from any other IT companies as he considered that Mr G’s IT company could provide the essential software program at a reasonable price and within a few months time.

The Ombudsman was concerned at the conflict of interest presented by Mr G’s role as an employee of the hospital, and as a Director of his IT company providing services to the hospital.

Mr G claimed that since commencing work at the hospital, Mr W and clinical engineering staff had been made aware of his financial and business interests, including his IT company. However, it was not until 4 years after his commencement that the hospital asked Mr G to make a formal declaration of his business interests.
Case Study: *Manipulation of purchasing process*

Ombudsman investigators also identified that Mr G’s IT company provided a total of six invoices for payment in relation to the software development. All invoices were less than $5,000 in value.

As Mr W has financial delegation up to $5,000, this meant that he could authorise payment of individual invoices without having to seek the approval of his line manager. The hospital’s policy does not permit invoice splitting.

The invoice description provided by Mr G’s IT company was also misleading, in that it referred to electrical safety testing, rather than an electrical safety testing software interface.

The Ombudsman recommended that the hospital take appropriate action in dealing with Mr W’s conduct. Mr G has since resigned from the hospital.
Probity principles

Fairness and Impartiality

• Probity in procurement embodies the fairness, impartiality and integrity of the process

• Consistency in the treatment of, and interaction with, potential suppliers is important in ensuring probity standards are met

• To ensure competition is fair, and in accordance with policies and procedures, a range of suppliers should be encouraged to bid to provide goods and services or to deliver public construction projects

• The same information should be provided to all potential suppliers

• The market forces exerted where competition is fair are instrumental in achieving value-for-money
Tips to support Fairness and Impartiality

- Request for Offer documentation should clearly detail the conditions of offer, conditions of supply and evaluation criteria and be equally available to all interested parties.

- Request for Offer documentation must clearly identify and separate the mandatory conditions from those evaluation criteria that are ‘desirable’ or ‘optional’.

- Information should be available to all interested parties within the same time frame, and each supplier should have access to the same information (that is not commercial in confidence).

- Additional information or clarifications arising from individual supplier questions should be provided to all potential suppliers so that they have the same information on which to offer (that is not commercial in confidence).
Probity principles

Tips to support Fairness and Impartiality

• Where feasible, a single contact point should be established to manage all communications with suppliers and information should always be provided in writing

• Each supplier should be given due consideration and be treated objectively with no bias towards certain suppliers

• Decisions on the selection of suppliers must be made by independent and objective evaluation against the nominated evaluation criteria and supply conditions

• Selection criteria and specifications must not be changed during the process unless all suppliers are given an equal opportunity to revise their offers and approval for any changes is obtained at an appropriate level
Managing Conflicts of Interest

• The *Code of Conduct for Victorian Public Sector Employees* requires employees to model their behaviours based on the public sector values and at all times to act in an ethical manner.

• Ethical behaviour:
  – Encompasses the concepts of honesty, integrity, probity, diligence, fairness, trust, respect and consistency
  – Includes avoiding conflicts of interest
  – Avoiding improper use of an individual’s position

Probity principles
Managing Conflicts of Interest

• A conflict if interest exists when it is likely that someone potentially or actually could be influenced, or could be perceived to be influenced by a private interest in carrying out his or her duties as a public servant

• All public sector employees and contractors have a duty always to put the public interest above their private interests when carrying out their official duties

Creating a perception that the impartiality of government can be compromised can be as damaging as an actual compromise
Managing Conflicts of Interest

• Private interests include:

  – Pecuniary interests: an actual or potential financial gain or loss. Money does not need to change hands

    Examples include where an individual (or a relative, or other close associate) owns property, holds shares, has a position in a company bidding for government work, or receives benefits such as discounts, gifts or hospitality from a particular source

  – Non-pecuniary interests: does not have a financial component

    May arise from personal or family relationships, or involvement in sporting, social or cultural activities
Probity principles

Tips for Managing Conflicts of Interest

• Once an interest has been declared and registered, options available to manage the conflict of interest include:
  – **Remove**: the individual does not participate at all in the matter
  – **Restrict**: restrictions are placed on the individual’s involvement in the matter
  – **Recruit**: a “disinterested” third party is used to oversee part or all of the process that deals with the matter
  – **Relinquish**: the private interest concerned is relinquished
  – **Resign**: the individual steps down from the position they hold on a temporary or permanent basis
Tips for Managing Conflicts of Interest: Gifts, Benefits & Hospitality

• The Gifts, Benefits and Hospitality Policy Framework issued by the Public Sector Standards Commissioner incorporates minimum requirements for all public officials designed to reinforce requirements in the Act and Code of Conduct relating to impartiality, integrity and accountability.

• The following minimum requirements apply to everyone in an organisation, from front line staff to chief executives and board directors:

  1. Do not solicit gifts, benefits or hospitality

  2. Refuse all offers of gifts, benefits or hospitality that could be reasonably perceived as undermining the integrity and impartiality of their organisation or themselves.
Tips for Managing Conflicts of Interest: *Gifts, Benefits & Hospitality*

- Minimum requirements for Public Officials Accepting Gifts, Benefits and Hospitality (cont.):

  3. Refuse all offers of gifts, benefits or hospitality from people or organisations about whom they are likely to make decisions involving tender processes, procurement, enforcement, licensing and regulation

  4. Refuse all offers of money or items easily converted to money such as shares

  5. Refuse bribes and report bribery attempts to the head of the public sector organisation or their delegate and to Victoria Police

  6. If unsure about how to respond to an offer of a gift, benefit or hospitality of more than nominal value, seek advice from a manager or other appropriate organisational delegate
Case Study: Conflict of Interest

(The following is based on findings from the Ombudsman Victoria report “Probity controls in public hospitals for the procurement of non-clinical goods and services”, August 2008)

• A complaint was made by a supplier in relation to a manager in the Engineering Department at a hospital

• It was alleged the manager engaged in improper conduct in the selection of a contractor to perform maintenance works for the hospital (value in excess of $830,000 over a 4 year period)

• The Ombudsman investigation found:
  – The manager had a business association with the maintenance company that pre-dated his employment with the hospital and an ongoing social association with its managers
  – This conflict of interest had not been disclosed to the hospital
Case Study: *Conflict of Interest*

- The Ombudsman investigation found:
  - The maintenance contractor had not tendered for the work and there was no contract with the hospital
  - The Engineering Department Manager and other staff had regularly attended corporate hospitality such as World Cup Rugby, AFL Football, Australian Open Tennis, Australian Formula One Grand Prix as guests the maintenance company
  - Gifts and benefits received were not disclosed as required by the hospital’s gifts and benefits policy

- The Ombudsman concluded that the Engineering Department Manager’s ability to impartially carry out his duties was compromised
Case Study: *Conflict of Interest*

- As a result of the investigation, the hospital:
  - Took disciplinary action against the engineering department manager
  - Reviewed its process for awarding contracts to ensure greater probity, accountability and transparency
  - Reviewed its gifts and benefits policy
  - Provided training to staff in managing conflicts of interests and gifts and benefits
Probity principles

Maintenance of confidentiality & security of information

• The integrity of competitive procurement is underpinned by maintaining appropriate confidentiality to protect information and give suppliers the confidence to do business with Government

• A significant amount of confidential information is likely to be generated during a procurement process. A potential risk to the procurement process is that there could be unauthorised access to confidential information

• Confidential information may include designated or defined (and as agreed) elements of the supplier’s offer, specific intellectual property and pricing structures
Probity principles

Tips for maintaining the confidentiality & security of information

• Defined document management and control procedures

• Establishing clear physical security measures for the handling of hard copy documents including use of a tender box or room; keeping a document register; providing secure storage and working areas (e.g. evaluation rooms); limiting the number of document copies; restricting access to controlled documents to authorised personnel; and ensuring strict document movement controls

• Implementing electronic security provisions for information storage and communication processes including controls over electronic delivery of offers and protection of data stored on networks
Video Scenario: Reflection

Now that you have read the probity principles section, reflect on the probity issues that you identified previously when viewing the video “Tender Gifts”.

Are there any additional issues raised during the video from a probity perspective that you would now note?
Self-check Questions
1. Which of the following are **not** probity principles?

A. Value for money

B. Evaluation criteria

C. Accountability of the participants and transparency of the procurement process

D. Fairness and impartiality in carrying out the procurement process

E. Management of conflicts of interest

F. Code of Conduct

G. Maintenance of confidentiality & security of documentation & information
2. Is the following statement True or False?

If suppliers doubt the fairness or impartiality of government procurement processes they may withhold valuable ideas or be deterred from bidding for government contracts. This can result in:

• A reduction in the range of solutions and options available; and
• A decrease in the competitiveness of government procurement
3. Which of the following provides the best definition of a conflict of interest?

A conflict if interest exists when:

A. An individual listens to input from the community and stakeholders in the process of making decisions in their role as a public servant

B. It is likely that someone potentially or actually could be influenced, or could be perceived to be influenced by a private interest in carrying out his or her duties as a public servant

C. Someone allows aspects of their role as a public servant to influence decision or actions made in their personal life
4. Which of the following is correct?

The ultimate goal of procurement is to:

A. Get the lowest price for the tax payer

B. Avoid complaints from suppliers

C. Achieve value for money while maintaining process integrity

D. Ensure that only the highest quality goods and services are purchased
5. Is the following statement True or False?

The integrity of competitive procurement is underpinned by maintaining appropriate confidentiality to protect information and give suppliers the confidence to do business with Government.
6. Which of the following is correct?

Probity and process integrity:

A. Protect government creditability and reputation
B. Are consistent with Public Sector Values
C. Provide a framework for avoiding corrupt practices
D. Support compliance with State and Commonwealth legislation and common law requirements relating to process integrity
E. Assist in avoiding the adverse consequences of conflicts of interest
F. Encourage commercial competition
G. Minimise the potential for complaints and litigation
H. All of the above.