FACT SHEET

Procurement governance probity and integrity - public authorities

Governance is the system of oversight, direction and agreed standards that guide how an organisation or process operates. Good governance during procurement describes the planned and documented framework of rules, policies and procedures that guide decisions and activities. It ensures outcomes are **transparent** and **ethical**, with strong lines of **accountability** and **probity**. Good governance is also a characteristic of high quality procurement outcomes delivered by suppliers as it is fundamental to managing risk and achieving value for money.

Common factors in all good governance outcomes

Good governance during procurement is supported by documenting and following well-considered procedures and processes and recording all decisions, activities and authorising environments.

Good governance in the delivery of procurement requirements is demonstrated through robust record keeping against established governance models and standards.

What is probity in procurement?

Probity is the act of being (and of being able to show evidence of being) fair, honest and equitable.

In how procurement is carried out: probity is the fair, honest and equitable process of selecting and working with a supplier to meet a procurement need.

In how procurement requirements are delivered: probity is the fair, honest and equitable behaviour during delivery of a procurement requirement.

What is ethical procurement?

Ethics are associated with moral duties, principles and behaviours.

In how procurement is carried out: ethical behaviour is the treatment of a procurement need and of suppliers that meets the ethical expectations of stakeholders.

In how procurement requirements are delivered: ethical behaviours is the delivery of requirements that meet the ethical expectations of stakeholders.

What is transparency in procurement?

Transparency is the sharing of information to enable appropriate scrutiny of actions and outcomes.

In how procurement is carried out: transparency is the equitable and appropriate availability of information to suppliers and the public.

In how procurement requirements are delivered: transparency is the equitable and appropriate availability of information to government and the public.

What is accountability in procurement?

Accountability is the acceptance of responsibility for actions and decisions.

In how procurement is carried out: accountability is the ownership of decisions and their consequences relating to a procurement outcome.

In how procurement requirements are delivered: accountability is the ownership of decisions and their consequences relating to the delivery of procurement requirements.

Governance failures in procurement - corruption, misconduct and maladministration

Corruption, misconduct and maladministration are all failures of good governance.

Corruption in public administration is defined by the *Independent Commission Against Corruption Act 2012* and includes conduct that constitutes:

- an offence against Part 7 Division 4 of the Criminal Law Consolidation Act 1935
- an offence against the Public Sector (Honesty and Accountability) Act 1995 or the Public Corporations Act 1993
- an offence against the Lobbyists Act 2015, or an attempt to commit such an offence
- being complicit in any of those offences.

Misconduct in public administration is defined by the *Ombudsman Act 1972* as an intentional and serious contravention of a code of conduct by a public officer that constitutes a ground for disciplinary action against the officer.

Maladministration in public administration is defined by the *Ombudsman Act 1972* as conduct that results in irregular or unauthorised use of public money or substantial mismanagement of public resources, or conduct involving substantial mismanagement of official functions including impropriety, incompetence or negligence.

Procurement is vulnerable to all 3 forms of governance failure because it can involve large sums of public money and can be impacted by devolved decision-making, oversight and staff training.

SA public sector requirements for ethical behaviour in procurement

The *Code of Ethics for the South Australian Public Sector* (Code of Ethics) is a code of conduct for the purposes of the *Public Sector Act 2009* and sets out foundational values and standards.

Foundational values

- Democracy
- Impartiality
- Accountability
- Diversity
- Conflicts of interest

Professional conduct standards relating to procurement

- Conflicts of interest
- Handling official information
- Use of government/public resources
- Acceptance of gifts and benefits
- Reporting unethical behaviour

Complying with the Code of Ethics: probity advisors and probity auditors

For **routine and transactional** procurements the procurement lead is generally able to implement appropriate governance controls and ensure compliance with the Code of Ethics.

An **independent probity advisor** may be appropriate for complex and strategic procurements to help identify and mitigate or remedy probity issues. Probity advisors are actively involved in the procurement process and are usually experts in procurement as well as probity.

A **probity auditor** may also be appropriate for complex and strategic procurements. Probity auditors are not actively involved in the procurement process itself but are an independent auditor who reviews and express an opinion about whether the process has complied with probity principles. They are not necessarily procurement experts but maintain a specific focus on probity itself.

Code of Ethics standard: *Conflicts of interest*

Conflicts of interest arise when the **personal interests of a public officer or someone close to them come into conflict – or could be perceived as coming into conflict – with the duties and responsibilities that public officer has**.

All public officers have interests outside their public roles - there is nothing inherently wrong with having a conflict of interest.

Conflict of interest obligations arise under Acts of Parliament (e.g. *Public Sector (Honesty and Accountability Act) Act 1995*), regulations and codes of conduct and vary for different types of public officer.

Three fundamental principles arise when it comes to conflicts of interest.

- **Identify** the actual, potential or perceivable conflict of interest
- **Disclose** the conflict of interest in sufficient detail as soon as possible to the appropriate authority in sufficient detail
- **Manage** the conflict of interest under the direction of the appropriate authority

See ICAC report 'Identify, disclose and manage: conflicts of interest in public administration'

Code of Ethics standard: *Handling official information*

Public sector employees frequently have access to **information that needs to be treated as confidential** either because it is personal data about individuals, or sensitive information relating to the operations of a business or the government.

- Public officers **must not** access official information that is not legitimately connected to their duties.
- Public officers **must** handle information accessed legitimately in the course of their duties according to:
  - *Premier and Cabinet Circular 12* (PC012) - Information Privacy Principles that regulate the way public officers collect, use, store and disclose personal information.
  - The government's *Information Management Strategy* - how agencies should handle government information to achieve their own business objectives and to meet legislative and policy obligations.
- Public officers **must not** use information accessed legitimately in the course of their duties for:
  - purchasing shares or other property on the basis of confidential information about a business or the government
  - personal benefit or gain for themselves or for someone else.

Information handling measures that are of particular importance to procurement include confidentiality agreements, and protections for commercial interests and competitive positions.

Code of Ethics standard: *Use of resources*

The *Public Sector Act 2009* requires the public sector to manage **resources effectively, prudently and in a fully accountable** manner.

Public resources are resources that are purchased, owned or controlled by public authorities and made available to public officers for official purposes.

- **Tangible** resources. For example: funding, computers, mobile phones, stationery, vehicles, tools and equipment.
- **Intangible** resources. For example: reputation, skills, knowledge, intellectual property.

Appropriate use of public resources can be supported by the implementation of robust policies, training, authorising environments and auditing processes.

Code of Ethics standard: *Gifts and benefits*

Public sector employees may be offered gifts, benefits or hospitality as a consequence of undertaking their duties.

Usually these will be a token of appreciation and carry no expectation. In other cases, accepting a gift, benefit or hospitality could give the impression a public sector employee will favour a particular person or organisation when making decisions. This may not be the intention of either the public sector employee or person offering the **gift**, **benefit** or **entertainment**, however, perceptions matter.

- a **gift** is anything of value offered to an employee above their normal salary or employment entitlements
- a **benefit** relates to preferential treatment, privileged access, favours, or other advantages
- hospitality relates to **entertaining** stakeholders, conference delegates, and/or other official visitors

Code of Ethics standard: *Reporting unethical behaviour*

Office for Public Integrity South Australia

The Office for Public Integrity (OPI) was established by the *Independent Commissioner Against Corruption Act 2012* (ICAC Act) to receive complaints and reports about corruption, misconduct and maladministration in South Australia's public administration and police. OPI can refer reports and complaints for investigation or action to agencies such as:

- Ombudsman SA
- Independent Commissioner Against Corruption
- Judicial Conduct Commissioner.

OPI also oversees public interest disclosures under the *Public Interest Disclosure Act 2018* which provides protections for those who make disclosures about public administration or environmental and health matters.

Independent Commission Against Corruption (ICAC)

The Independent Commission Against Corruption (ICAC) investigates and prevents corruption in South Australian public administration. Procurement is vulnerable to being corrupted because it can involve large sums of public money, and be impacted by devolved decision-making, oversight and staff training.

The ICAC Act stipulates obligations of public authorities and public officers in relation to matters which are reasonably suspected of involving **corruption, misconduct or maladministration in public administration**.

Under the ICAC Act **'public officers' include** members of the South Australian Parliament, public service employees and contractors performing work for a public authority or the Crown.