Probity in SA Health Procurement Policy Directive

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1. **Policy Statement**

This policy is to document the requirements of SA Health employees, to exercise probity in all procurements and applies to all SA Health Procurements.

2. **Roles and Responsibilities**

2.1 **All SA Health employees are responsible for:**

- ensuring probity before, during and after all procurement and contract management processes,
- completing a [Conflict of Interest Declaration](#) form to declare an actual, potential or perceived conflict of interest, if a conflict of interest arises during the course of general duties, and providing it to their line manager,
- completing a [Conflict of Interest Declaration](#) form as may be requested, by the procurement manager or the ED, PSCM, if working on a specific procurement,
- if a member of a procurement evaluation team, completing a [Conflict of Interest Declaration](#) form, and
- complying with legislative requirements and state government and SA Health policies relating to probity in procurement.

2.2 **All SA Health Managers and employees leading a procurement process are also responsible for:**

- ensuring employees involved in procurement processes:
  - understand their obligation to declare a conflict of interest at any time,
  - complete the [Conflict of Interest Declaration](#) Form if they are members of the evaluation team,
  - maintain confidentiality and
  - have access to the [Code of Ethics for the South Australian Public Sector](#) and the [State Procurement Board’s Probity and Ethical Procurement Guideline](#),
- preparing a management plan, in consultation, with an employee who has declared a conflict of interest,
- facilitating through PSCM Governance and Business Services the ED, PSCM is to review and approve the management plan and return to the line manager or chair of the evaluation team,
- preparing a briefing for the Chief Executive, SA Health to provide a copy of any declaration of a conflict of interest, the corresponding management plan and any relevant attachments, approved or not after the ED, PSCM (Chief Procurement Officer) review,
- considering probity, beginning in the earliest stages of planning, at all stages of
a procurement process,
• managing any issues and maintaining records relating to conflict of interest and/or confidentiality,
• maintaining an official file as a record of the whole procurement process and management of the contract,
• maintaining an electronic record of the procurement and the management of the contract on PCMS,
• developing acquisition and probity plans as appropriate, and
• engaging probity practitioners as required.

2.3 Policy and Compliance, Procurement and Supply Chain Management is responsible for:

• probity advice as required, at any stage of a procurement,
• probity advice in relation to the completion of a management plan where an actual, potential or perceived conflict of interest has been declared,
• advice about probity in developing acquisition and probity plans,
• managing probity during tender administration, for competitive processes, where PSCM is managing the tender call,
• advice about the availability of probity practitioners in the market place, and
• advice about engaging a probity practitioner.

3. Policy Requirements

3.1 Principles

The State Procurement Act 2004 (the Act) outlines the framework for the procurement operations of all agencies of the Government of South Australia.

The object of the Act is to advance government priorities and objectives by a system of procurement for public authorities directed towards:

• obtaining value in the expenditure of public money,
• providing for ethical and fair treatment of participants, and
• ensuring probity, accountability and transparency in procurement operations

The State Procurement Board (the Board) has been established under section 12 of the Act to ensure transparency and fairness for procurement processes of public authorities. The functions of the Board under section 12 include but are not limited to:

• Developing, issuing, reviewing policies, guidelines and principles relating to procurement operations of public authorities including electronic procurement systems;
• Give directions relating to the operations of public authorities;
• Investigate and keep under review levels of compliance with the Board’s procurement policies, principles, guidelines, standards and directions.
In particular, under section 19 of the Act, public authorities (including every member or officer of the public authority) must comply with applicable principles, policies and guidelines given by the Board and / or the Minister. This means compliance with the Board's Probity and Ethical Procurement Guideline is a legal obligation on public authorities and their staff.

All SA Health employees, including contractors and consultants, undertaking procurement activities are required to:

- comply with the highest standards of ethical procurement and probity in every aspect of the procurement, and
- ensure they adhere to the Code of Ethics for the South Australian Public Sector.

In 2009 the Parliament of South Australia enacted the Public Sector Act 2009 establishing a set of principles which define a modern and streamlined employment framework designed to support a high performing public sector guided in all of its actions by the highest standards of ethical conduct.

The Code of Ethics for the South Australian Public Sector, established under the Public Sector Act 2009, embodies and builds upon those principles and is legally binding on all SA Health employees.

Further, the Public Sector (Honesty and Accountability) Act 1995 imposes duties of honesty and accountability on public sector office holders, employees and contractors.

SA Health managers must ensure that all employees involved in a procurement and/or contract management process understand their obligation to declare a conflict of interest, actual, potential or perceived, and that the Code of Ethics for the South Australian Public Sector and the State Procurement Board’s Probity and Ethical Procurement Guideline are available. Both documents must be read and understood.

### 3.2 What is Probity?

Probity in procurement requires ethical behaviour commonly associated with the practice of adopting and following well-considered procedures and processes to ensure that procurement and contract management decisions are fair, transparent and defensible. Probity aims to maintain the integrity of the public sector by minimising conflicts and problems and by avoiding improper practices (actual or perceived).

Probity relies on transparency and honesty in the procurement process. In a general sense, probity means being ethically and morally above reproach and having integrity.

Procurement processes and procedures must be clear, open, well understood, communicated and applied equally to all parties to ensure SA Health business units and suppliers are able to deal with each other on the basis of mutual trust and respect.

### 3.3 Advice about Probity

SA Health employees involved in a procurement process should obtain early advice about probity
matters and develop an appropriate Probity Plan if required.

As a Probity Plan is developed or a procurement process progresses it may be necessary to revisit probity considerations and further advice may be required.

Probity advice can be obtained at all stages of a procurement process from Procurement and Supply Chain Management (PSCM) - Governance, Training and Communications.

PSCM - Governance, Training and Communications will liaise with the employee, line manager, the manager for the procurement, the chair of the evaluation team or the ED, PSCM with respect to the appropriate course of action if a probity issue is identified by or raised with Governance, Training and Communications.

3.4 Probity Plan

A Probity Plan should be used for higher value and risk procurements and is a useful source of reference to ensure that probity issues are considered throughout the procurement process. The Probity Plan Template is available via PSCM on the SA Health intranet.

For further information on probity plans refer to the Board’s Probity and Ethical Procurement Guideline.

3.5 Supplier Interaction and Engagement

All SA Health employees, contractors and consultants must comply with the requirements of SA Health protocols for supplier interaction and engagement, including possible conflict of interest, gifts & benefits, confidentiality and communicating with suppliers. The SA Health Supplier Interaction and Engagement Factsheet is a reference guide on relevant issues and provides direction to appropriate documents.

3.6 Conflict of Interest

Conflicts of interest are generally divided into two types: pecuniary and non-pecuniary.

- Pecuniary interest – an actual or potential financial gain or loss. A pecuniary interest exists if a person (or a relative, or other close associate) own property, hold shares, have a position in a company bidding for government work, or receive benefits, i.e. concessions, discounts, gifts and hospitality from a particular source. Money does not need to change hands for an interest to be pecuniary.

- Non-pecuniary interest – does not have a financial component. Includes any favour or prejudice resulting from personal involvement with another person (i.e. friendship) or group. Non-pecuniary interests include personal or family relationships or involvement in sporting, social or cultural activities.

Conflicts of interest may be actual, perceived or potential:

- An actual conflict of interest is where there is a real conflict between public duties and private interests.
• A potential conflict of interest is where an employee’s private interest could conflict with their public duties.
• A perceived conflict of interest is where a third party could view private interests of an employee could improperly influence the employee’s actions.

Section 27 of the Public Sector (Honesty and Accountability) Act 1995 creates a legal onus on public sector employees to disclose pecuniary or personal interests if they conflict or may conflict with the employee’s duties. As this is a legal onus on employees, failure to do so constitutes as grounds for termination of the employees employment in the public sector or other disciplinary action.

Conflicts of interest must be identified and managed at the beginning of all procurement processes. However, the onus on SA Health employees to disclose and manage a conflict of interest exists at any time during the procurement process, including during the ongoing management of a contract and at any time throughout their employment.

SA Health managers must ensure that all employees involved in a procurement process understand their obligation to declare a conflict of interest, either actual, potential or perceived.

Under the State Procurement Board’s Probity and Ethical Procurement Guideline all participants in procurement evaluation processes, that is, public authority employees, project consultants, probity advisors etc. must complete a Conflict of Interest Declaration form which will be kept by the chair of the evaluation team. The Conflict of Interest Declaration form requires employees to declare that a conflict of interest does not exist or is actual, potential or may be perceived. The line manager or chair of the evaluation team will place the original of all completed Conflict of Interest Declaration Forms on the official records management file for the procurement.

Secondary procurement processes, that is, purchasing from SA Health or across government panel arrangements do not require the automatic completion of the declaration forms.

If a conflict of interest, either actual, perceived or potential is declared, then the line manager or the chair of the evaluation team will ensure that a management plan is developed. It will be agreed by the line manager or the chair of the evaluation team and the employee, forwarded through PSCM Governance and Business Services for consideration and approval by the ED, PSCM. The line manager or chair of the evaluation team will then prepare a briefing for the Chief Executive, SA Health as all conflict of interest declarations must be provided to the Chief Executive, SA Health as outlined in the Public Sector (Honesty and Accountability) Act 1995 and the Code of Ethics for the South Australian Public Sector.

A copy of the Conflict of Interest Declaration form and management plan (approved or not) will be provided as attachments to the briefing. The SA Health Conflict of Interest Declaration form is available via PSCM on the SA Health intranet.

It is not improper for a SA Health employee to have a conflict of interest, but it must be identified, declared and managed appropriately. Effective management may include:
• the employee being removed from involvement in the procurement process or any aspect of the process they have conflict with,
• the employee removing the interest,
• restricting the involvement of the employee to certain parts of the procurement or contract management process,
• engaging an independent officer to oversee the process, and
• monitoring the impact of the conflict of interest as the process develops.

3.7 Gifts and Benefits

Section 26 of the Public Sector (Honesty and Accountability) Act 1995 provides the duty on a public sector employee to act honestly at all times in the performance of their duties. Further, the State Procurement Board’s Probity and Ethical Procurement Guideline includes, with regard to gifts and hospitality, that:

• employees will not, for themselves or others, seek or accept gifts or benefits that could be reasonably perceived as influencing them;
• employees must strive to avoid actual, or perceptions of, conflict of interest, or of undue influence; and
• offers of gifts during the assessment of tenders or other commercial decision-making must be refused, noted and reported to the chair of the procurement process.

The Code of Ethics for the South Australian Public Sector also includes legal obligations on SA Health employees about the acceptance of gifts and benefits, including:

• the acceptance of any gifts or benefits by public sector employees has the potential to secure the influence or favour of an employee. The public expects the public sector and its employees to be impartial and not to be improperly influenced in the performance of their duties
• public sector employees will not, for themselves or others, seek or accept gifts or benefits that could be reasonably perceived as influencing them
• non-pecuniary gifts or benefits offered to employees by representatives of other Governments may be accepted, as may gifts from non-Government sources if they are obviously mementos or gifts of a symbolic nature
• all employees will comply with any policies of their agency in relation to accepting, declaring and/or recording the receipt of gifts or benefits

Gifts are free items or hospitality exceeding common courtesy that are offered to staff in association with their work. They may be enduring or consumable. They range in value from nominal to significant and may be given for different reasons.

Benefits are the giving of preferential treatment, privileged access, discounts, favours or other advantage offered to staff. While the benefit may be hard to quantify in dollars, they may be highly valued by the intended recipient and therefore used to influence their behaviour.
Supplier motivation when they offer gifts and benefits may include:

- Efforts to avoid competition;
- Solicit additional information;
- Slant the development of requirements specifications towards one particular supplier's solution where there are similar competing products in the market; and
- Attempting to influence procurement decisions to gain favourable treatment.

Therefore, employees involved in any aspect of a procurement or contract management process are not to accept gifts or benefits, as they can be, or may be seen to be, a means of influence that can compromise or appear to compromise neutrality and integrity.

Gifts and benefits offered may include incentives and/or tickets for:

- Sponsored travel
- Seminars
- Sporting Events
- Entertainment
- Meals
- Items
- Liquor
- Money

Any gift or benefit that is accepted must be approved by an employee's manager. If at a later date the staff member becomes involved in a procurement or contract management process, where a conflict of interest may arise, or be perceived to arise, from the acceptance of the gift or benefit, this conflict of interest must be declared.

For further information on behaviour in relation to gifts and benefits in the general course of public sector employment, refer to the Commissioner for Public Sector Employment - Guideline on Gifts and Benefits.

The SA Health Gifts and Benefits Policy Directive details employee obligations with respect to the receipt of gifts and benefits valued at over $50. Such gifts must be recorded in the registers held by the Department for Health and Ageing (DHA), Local Health Networks (LHN) and South Australian Ambulance Service (SAAS).

DHA employees should refer to the Gifts and Benefits Procedure which provides details of the process to be followed when declaring gifts and benefits. Employees are required to make a declaration of gifts and benefits within seven (7) days of receipt by completing the Gifts and Benefits Register template and emailing it to Health: Gifts & Benefits for registration.

3.8 Confidentiality

Suppliers need to be confident that commercially sensitive information will not be released to competitors or pass into the public domain as a consequence of the procurement process. Security
concerns could deter suppliers from submitting offers, or reduce the detail and volume of information provided in support of offers, which could adversely affect the procurement outcome. Therefore all information that is part of a procurement process must be treated as confidential and not communicated without appropriate authorisation.

Under the State Procurement Board’s Probity and Ethical Procurement Guideline, all SA Health employees participating in a procurement evaluation process must complete a Confidentiality Undertaking. The original copy of the Confidentiality Undertaking will be kept by the chair of the evaluation team (placed on the official file for the procurement) and a scanned copy will be loaded on to PCMS by the chair of the evaluation team. The SA Health template for a Confidentiality Undertaking is available via PSCM on the SA Health intranet.

Documents and copies of documents containing offer-related, commercially sensitive information should be stored at all times under secure conditions with access authorised only for employees holding a direct ‘need to know’ status.

The security arrangements adopted by the procurement project team for higher value and risk procurements should be subject to review by an appropriate person who is independent of the particular process, such as the SA Health manager leading the procurement, auditors or a probity advisor.

3.9 Consistency and Continuity

All potential suppliers must be treated equitably with equal access to relevant information.

Specifications must be generic, outcome focussed and not favour any particular product or supplier.

An evaluation plan is required for all procurements valued above $550,000. An evaluation plan for the procurement must be prepared prior to approaching the market. The plan must be applied consistently so that all tenders are considered on the same basis. The evaluation criteria must be based on objective measures that do not unfairly advantage or disadvantage any particular supplier and cannot be changed following the release of tender documents.

For further information regarding evaluation planning, refer to the SA Health Guide to Tender and Bid Evaluation.

3.10 Communication

Clear protocols should be developed for communication with suppliers to ensure a uniform approach and consistent message. All communication with suppliers during a tender process must be in writing and directed through the nominated tender contact officer. Any communication that may give advantage to a supplier must be sent to all potential tenderers. Communications must be clear, complete, formal, and every effort must be made to avoid ambiguity. Informal communications, such as very brief email responses, are not permitted.

Appropriate records of all communications (written or verbal) should be placed on the official file and also loaded on to PCMS, i.e. minutes, briefings, file notes, emails.
There should be no discrimination between tenderers in the provision of information. All tenderers should have the same opportunities to access offer-related information provided by the agency and all tender submissions should be evaluated with neutrality and integrity in mind.

3.11 Tender Management

PSCM provides a tender administration service for SA Health business units. This includes arranging the tender advertisement, tender box management, and registration and security of tender responses. Procedures to be followed by all SA Health employees involved in a tender administration process, applying to all competitive processes, where PSCM is responsible for managing the tender call are detailed in the SA Health Tender Administration Procedure.

3.12 Records Management

An appropriate record of all documentation, decisions and communications relating to a procurement process must be kept on the official file for the procurement, in the SA Health official records management system. Scanned copies of documents about contract management must also be entered into PCMS. Documentation may include, but is not limited to, reports, plans and all communications, for example emails, records of phone conversations, confidentiality undertakings etc. Refer to the Records Management for Procurements Factsheet and Records Management Checklist for further information.

3.13 Probity Practitioners

For most procurement processes, procurement officers and evaluation teams can effectively manage probity issues. However, an external probity advisor may be engaged by SA Health business units to assist in high risk procurements at the planning stage, that is, prior to the commencement of the procurement process. Probity auditors are typically engaged to review completed procurement processes.

The role for each type of probity practitioner can be outlined as:

- A Probity Advisor can provide advice and guidance on the development and implementation of probity plans and processes; as well as on any issues which may arise before and/or during the procurement. Probity advisors do not act as decision makers but rather are involved in ensuring the integrity of the procurement process in real-time and are usually under the broad direction of a SA Health business unit.
- A Probity Auditor can provide a review of a procurement process, or a review of the key phases, after completion of the procurement. A probity auditor is largely self-directing and, as a result, will have a higher degree of independence.

The appointment of an external probity advisor/auditor must be in accordance with established SA Health procurement process requirements. The business unit, which is the owner of the procurement, is required to meet the costs of the external probity adviser services.

3.14 Reporting a Breach of Probity
SA Health employees that become aware of any breach of probity should report it to their line manager, the procurement manager, the chair of the evaluation team for the procurement, the ED, PSCM or the Office for Public Integrity as appropriate. The line manager, procurement manager, chair of the evaluation team must seek advice from Policy and Compliance, PSCM on how to address the identified breach of probity.

Refer to the SA Health SA Health Fraud and Corruption Control Policy Directive for further information on obligations and processes for reporting fraud and/or corruption to the Office for Public Integrity under the Independent Commissioner Against Corruption Act 2012.

4. Implementation & Monitoring

SA Health staff exercising a procurement authority will ensure that the procurement process complies with the requirements of this policy.

SA Health conflict of interest declarations must be reported and provided to the Chief Executive, SA Health (see section 4.5), as required by the Public Sector (Honesty and Accountability) Act 1995 and outlined in the Code of Ethics for the South Australian Public Sector via a briefing that is endorsed by the ED, PSCM (Chief Procurement Officer).

In addition, Procurement and Supply Chain Management will, as part of the Procurement Assurance Program, undertake regular reviews of selected procurement processes to ensure compliance with the requirements of this policy.

5. National Safety and Quality Health Service Standards

N/A

6. Definitions

In the context of this document:

- **Business Unit** means: a unit within SA Health, including a Local Health Network, the Department for Health and Ageing, and the South Australian Ambulance Service.

- **Conflict of interest** means: Conflict of interest may be actual, potential or perceived, and concerns conflict between personal interests and the interests of the Government and/or SA Health.

- **SA Health employee** means: staff employed under the Public Sector Act 2009, the Health Care Act 2008 and all contractors and consultants.

- **Minister** means the:
  - Minister for Health and Wellbeing

7. Associated Policy Directives / Policy Guidelines and Resources

State Procurement Board Probity and Ethical Procurement Guideline
Probity Plan Template

SA Health Supplier Interaction and Engagement Factsheet

State Procurement Act 2004

Public Sector Act 2009

Public Sector (Honesty and Accountability) Act 1995

Commissioner for Public Sector Employment – Guideline on Gifts and Benefits

Commissioner for Public Sector Employment – Code of Ethics for the South Australian Public Sector

SA Health Fraud and Corruption Control Policy Directive

SA Health Guide to Tender and Bid Evaluation

SA Health Records Management for Procurements Factsheet

SA Health Records Management Checklist

SA Health Conflict of Interest Declaration (includes the conflict of interest management plan)

SA Health Confidentiality Undertaking

SA Health Gifts and Benefits Policy Directive

8. Document Ownership & History

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Does this policy amend or update and existing policy? Y
If so, which version? V2.2
Does this policy replace another policy with a different title? N
If so, which policy (title)?

<table>
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<th>Approval Date</th>
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<th>Who approved New/Revised Version</th>
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<tr>
<td>23/04/2019</td>
<td>V2.4</td>
<td>Acting Executive Director, Procurement and Supply Chain Management</td>
<td>Minor update. Fixed broken links and corrected CPO approves conflict of interest Management Plans at Sections 2.2 and 4.</td>
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<tr>
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<td>V2.3</td>
<td>Executive Director, Procurement and Supply Chain Management</td>
<td>Incorporated reference to the Gifts and Benefits Policy Directive and Gifts and Benefits Procedures.</td>
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<td>Document links updated/added for the following sections; Supplier and Interaction and Engagement, Records Management and Reporting a Breach of Probity.</td>
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<tr>
<td>21/8/2014</td>
<td>V.2.1</td>
<td>Executive Director, Procurement and Supply Chain Management</td>
<td>Conflict of Interest section updated and Declaration of Conflict of Interest form process amended. Roles and Responsibilities updated. Updated to reflect Procurement Reform changes i.e. threshold change and removal of quadrants.</td>
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<td>31/7/2014</td>
<td>V.2.0</td>
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<td>Conflict of interest declarations to be reported to the CE, SA Health. SPB requirements for Confidentiality Undertakings and Conflict of Interest declaration forms to be completed for all members of Procurement Evaluation Teams. Copies of forms to be loaded to PCMS and originals kept on the official file.</td>
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Probity Plan requirements amended. Evaluation plan requirements for all procurements valued above $220,000.