

Probity in SA Health Procurement Policy Directive

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**Government
of South Australia**

SA Health

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Probity in SA Health Procurement Policy Directive

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 this policy preparing a management plan, in consultation, with an employee who has declared a conflict of interest,
- facilitating through Governance and Business Services, PSCM the Executive Director (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 Governance and Business Services, 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 marketplace, and
- advice about engaging a probity practitioner.

3. Policy Requirements

3.1 Principles

3.1.1 Probity, Accountability, Transparency and Ethical Procurement

Probity is the evidence of ethical behaviour commonly associated with the practice of adopting and following well-considered procedures and processes to ensure that procurement decisions are fair, transparent and defensible. Accountability and transparency are integral in the procurement process. Probity requires ethical behaviour commonly associated with the practice of adopting and following well-considered procedures and processes to ensure that procurement and contract management actions and decisions are fair, honest, transparent and defensible.

Being accountable means that public officers are responsible for the actions and decisions that they take in relation to the procurement process and outcomes. Transparency involves public authorities taking steps to enable appropriate scrutiny of their procurement activity.

Ethical Procurement relates to the ethical conduct (e.g. moral, just and proper) of SA Health employees (and/or representatives) in undertaking and managing procurement. It also encompasses the expectation by government that suppliers ensure ethical practices in the conduct of their business and the actions of key providers in their supply chain.

Probity aims to maintain the integrity and honesty of the public sector, minimise conflicts and problems, and avoid improper practices (actual or perceived).

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, integrity and respect.

The [Better Customer Charter](#) sets out what current and potential suppliers can expect from the South Australian government when they bid for procurement opportunities. The Charter sets out expectations in key areas of:

- fairness and respect
- clear information;
- good practice; and
- certainty and confidence.

All SA Health employees, contractors and consultants, undertaking procurement and contract management activities are to maintain good probity by ensuring that:

- the highest standards of ethics and probity are upheld at every stage
- appropriate record keeping is maintained and auditable
- conflicts of interest are identified and appropriately managed
- confidential information is kept confidential
- there is transparency in decision-making
- consistency and continuity is maintained throughout the procurement process
- all participants are treated equitably and respectfully
- public officers are kept accountable for their actions
- they adhere to the [Code of Ethics for the South Australian Public Sector](#) and relevant Acts.

The [Public Sector Act 2009](#) established 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 or consultants.

3.1.2 Corruption, Maladministration and Misconduct

The [Independent Commissioner Against Corruption Act 2012 \(SA\) \(ICAC Act\)](#) and [Directions and Guidelines](#) issued by the ICAC, stipulate obligations of public authorities and public officers in relation to matters which are reasonably suspected of involving corruption, misconduct or maladministration in public administration.

The following provides an explanations of these reportable activities:

- Corruption in public administration generally involves criminal behaviour by a public officer while acting in their capacity as a public officer and may include theft, bribery, assault or abuse of public office.
- Misconduct in public administration means the contravention of a code of conduct by a public officer that constitutes a ground for disciplinary action, or other misconduct of a public officer

when acting in their capacity as a public officer.

- Maladministration in public administration involves the conduct of a public officer or the practice, policy and procedure of a public authority that results in an irregular or unauthorised use of public money, the substantial mismanagement of public resources, or the substantial mismanagement in the performance of official functions. Maladministration is often associated with poor governance, and includes conduct resulting from impropriety, incompetence or negligence.

3.1.3 Ensuring Understanding of Probity Obligations

SA Health line managers, procurement managers and Chairs must ensure that all participants involved in a procurement and/or contract management process fully understand their probity obligations regarding:

- ethical behaviour, and
- confidentiality, and
- declarations of any conflict of interest (actual, potential or perceived), and
- reporting of unethical behaviour that they suspect violates law, represents corrupt conduct, misconduct or maladministration.

The [Code of Ethics for the South Australian Public Sector](#) and this Policy Directive are to be made available to all participants and both documents must be read and understood by all participants.

3.2 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 Governance and Business Services, Procurement and Supply Chain Management (PSCM).

Governance and Business Services, PSCM 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.

3.3 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](#) which contains guidance, is available via PSCM on the SA Health intranet.

3.4 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.

3.5 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.

All participants in procurement evaluation processes, that is, public authority employees, project consultants, probity advisors etc. must complete a [Declaration - Conflict of Interest](#) form which will be kept by the chair of the evaluation team. The [Declaration - Conflict of Interest](#) 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 [Declaration - Conflict of Interest](#) 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 [Declaration - Conflict of Interest](#) form and management plan (approved or declined) will be provided as attachments to the briefing. The SA Health [Declaration - Conflict of Interest](#) 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.

3.6 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.

Employees:

- will not, for themselves or others, seek or accept gifts or benefits that could be reasonably perceived as influencing them;
- must strive to avoid actual, or perceptions of, conflict of interest, or of undue influence; and
- must refuse, offers of gifts during the evaluation of tenders or at any other point in the decision-making process and note and report 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 Wellbeing (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.

3.7 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.

All SA Health employees and contractors 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.

3.8 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 (inc GST). 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](#).

3.9 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.

3.10 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](#).

3.11 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.

3.12 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.

3.13 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 Governance and Business Services, 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 Wellbeing, 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

[Acquisition Plan Template](#)

[Probity Plan Template](#)

[SA Health Supplier Interaction and Engagement Factsheet](#)

[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 Declaration - Conflict of Interest \(includes the conflict of interest management plan\)](#)

[SA Health Confidentiality Undertaking](#)

[SA Health Gifts and Benefits Policy Directive](#)

8. Document Ownership & History

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Approval Date	Version	Who approved New/Revised Version	Reason for Change
7/7/2021	V3.0	Deputy Chief Executive, Corporate and System Support Services	Amendments related to the new <i>SA Government Procurement Policy Framework</i> , including <i>Treasurer's Instruction 18 Procurement</i> .
23/04/2019	V2.4	Acting Executive Director, Procurement and Supply Chain Management	Minor update. Fixed broken links and corrected CPO approves conflict of interest Management Plans at Sections 2.2 and 4.
27/9/2017	V2.3	Executive Director, Procurement and Supply Chain Management	Incorporated reference to the Gifts and Benefits Policy Directive and Gifts and Benefits Procedures.
8/12/2016	V.2.2	Executive Director, Procurement and Supply Chain Management	Document links updated/added for the following sections; Supplier and Interaction and Engagement, Records Management and Reporting a Breach of Probity. 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.
21/8/2014	V.2.1	Executive Director, Procurement and Supply Chain Management	Probity Plan requirements amended. Evaluation plan requirements for all procurements valued above \$220,000.
31/7/2014	V.2.0	PE Approved	Conflict of interest declarations to be reported to the CE, SA Health. 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.
01/11/2011	V1	PE Approved	PE Approved version.