

# Instruction To User

The purpose of this Probity Guidelines and Tender Declaration document is to ensure that project team members:

* Appreciate why probity is important
* Are fully aware of the probity requirements of their role in the RFX process
* Understand their personal responsibilities associated with probity, including providing conflict of interest declarations

Please update all text highlighted in yellow and delete information that is not applicable.

Probity Guidelines and Tender Declaration

# 1. Probity Overview

* 1. Probity Principles

The meaning of probity is uprightness, honesty, proper and ethical conduct and propriety in dealings. Within procurement, the word ‘probity’ is often used in a general sense to mean ‘good process’.

The key probity principles to be followed in the University’s procurement process are:

* compliance with relevant legislation and government policies
* use of a competitive process
* accountability for the process
* transparency of the process
* ensuring confidentiality is maintained
* ensuring value for money is achieved.
  1. Probity Objectives

Probity practices ensure that fairness of process is achieved, and that no person or organisation improperly receive personal advantage or disadvantage through involvement in the process.

The key factors in adhering to probity principles through the procurement process are:

* fairness and impartiality – potential suppliers will be treated equally and will have the same opportunity to access information and advice
* consistent and transparent processes – Suppliers who participate in the RFx process (Respondents) will be evaluated in a systematic manner against explicit predetermined evaluation criteria and tender processes
* security and confidentiality – the processes adopted for receiving and managing supplier information will ensure the security and confidentiality of intellectual property and proprietary information
* identification and resolution of conflicts of interest – any person involved in the tender process will declare and address any actual or perceived conflict of interest prior to undertaking any quote or tender evaluation
* timeliness – the University acknowledges that it will respond in a timely and expeditious manner to Respondents and stakeholders in relation to procurement-related matters
* meeting general organisational requirements – stakeholders will abide by all relevant procurement procedures and policies.

When probity principles are upheld, it supports the University to achieve the following outcomes:

* Fair and transparent processes such that all potential suppliers have an equal opportunity
* Maintains organisational and supply market confidence in the procurement process and all stakeholders involved
* Protects the RFX process and the individuals involved from process related challenges or complaints
  1. Probity Obligations

The team of University stakeholders involved in the RFX process may have access to a range of information that, if not properly handled or inadvertently disclosed, might affect the success of the RFX process.

Probity obligations include exposing any identified opportunities for fraud and corruption, reporting any unethical or biased practices, as well as seeking advice on potentially other suspicious behaviour.

Potential consequences of non-compliance include the following:

* Criticism of the RFX process
* Complaints in relation to the RFX process and/or outcome
* Potential legal challenges
* Negative media coverage
* Exclusion of supplier submissions from the RFX process

# 2. Conflict of Interest

* 1. Defining a Conflict of Interest

A Conflict of interest is defined as a conflict between performing an official duty and another interest that has the potential to interfere with the proper performance of that official duty. A conflict of interest can be actual, perceived, or potential. Examples of where conflicts of interest might occur include:

1. personal relationships (inside and outside the University);
2. perceptions of bias in favour of, or against, another person or something, such as a political or religious conviction or belief; or

iii. acceptance of bribes or other financial incentives.

From time to time, conflicts of interest do arise and they need not be indicative of any wrongdoing, as long as they are identified early and managed effectively.

Adherence to probity principles requires the compliance of all stakeholders involved in the RFX process (staff, contractors, consultants etc.). That is, it requires that all stakeholders:

* act impartially
* act with integrity including avoiding actual, perceived or potential conflicts of interest.
  1. Declaration Overview

All University representatives have obligations to act honestly and in good faith at all times, including individuals who are involved in an RFx process. This includes being aware of the situations that can give rise to conflicts of interests and subsequently restricting the acts and/or activities that could lead to an actual, perceived, or potential conflict of interest.

As per the [Conflict of Interest Policy](https://policies.westernsydney.edu.au/view.current.php?id=00093), the obligation to disclose, and to avoid or minimise, conflicts of interests apply where:

1. there is a real or substantial possibility of the conflict of interest actually arising; and
2. the interest is a material interest, that is to say:
3. it is real and substantial, not theoretical, remote, contingent or otherwise insubstantial; and
4. ii. it has, or appears to have, the capacity to influence the conduct of a person (whether or not it actually does so).

To ensure the appropriate management of actual, perceived or potential conflicts of interest in an RFx process, all Evaluation Committee members to sign a Conflict of Interest Declaration and a Confidentiality Deed. This includes any member of the RFX process team, or individuals who may have access to RFX process–related data or Respondents’ data, or who may be in a position to influence decisions in any way. It is crucially important for conflicts of interest to the addressed at the earliest stages of the sourcing process and for declarations to be updated as circumstances change.

* 1. Declaring a Conflict of Interest

All University representatives must declare conflict of interest as soon as they become aware of their existence. To declare a conflict of interest, individuals are required to record details of the conflict and associated risk mitigation strategies on the Conflict of Interest Register, and actively monitor the conflict on a continuing basis and, if necessary, put in place additional or different arrangements to manage the conflict when circumstances change.

In the context of an RFx process, individuals may have a conflict of interest when they are personally or professionally linked to organisations that:

* are incumbent
* have responded to an RFX process, such as an RFI or an EOI
* are part of a consortia or a subcontractor to organisations that are incumbent of have responded to a Market Assessment
* provide expertise (e.g. legal, taxation or commercial advisers) to organisations that are incumbent or have responded to a Market Assessment.

Note – this is a non-exhaustive list of examples of typical conflicts that may arise during an RFx process. Individuals are required to actively and continuously monitor their individual circumstances to identify situations where other potential conflicts may arise, in addition to the examples listed above.

Please refer to the Conflict of Interest policy for further details on declaring a conflict f interest, including the disclosure, management and reporting of conflicts in the Conflict of Interest Register.

* 1. Dealing with Conflicts of Interest

Once declared a potential conflict of interest will be assessed with a managing authority to:

1. Undertake an impact analysis to consider how the conflict may have the potential to affect:
   1. the individual and their official duties
   2. the judgement, motivation, actions and/or behaviours of the individual
   3. the other person or organisation who is the subject of the conflict of interest
2. Determine the appropriate and relevant risk mitigation strategies, including:
   1. Appointing an independent third party to review or oversee the activity which the conflict pertains to
   2. Appointing another person to the Evaluation Committee
   3. Removing the individual from the decision making process
   4. Restricting the individuals access to particular information
   5. Segregating duties to which the conflict of interest relates to
   6. Obtaining quotes from other providers who are independent and assessing if the terms and price are comparable.

Responses to an actual, perceived or conflict of interest will vary depending on the circumstances.

In an RFx context, expert advice usually from the Probity Advisor or Strategic Procurement (if an external Probity Advisor is not appointed), may be necessary to ensure the appropriate resolution of any issues. The important point is to ensure that all members of the RFx process team, and their advisers, declare any conflicts of interest, as per the Conflict of Interest Policy.

Equally important is the establishment of arrangements to identify and address any new or enlarged conflicts arising during the RFX process. This is particularly the case with respect to advisers, whose firms invariably work on a range of projects with a range of clients at one time. In particular, declarations of interest will be reviewed when the identity of Respondents and associated parties is known.

The RFx process will manage conflicts of interest, but also the perceptions of a conflict of interest. Where perceptions of a conflict of interest have been identified, communication of the actual situation to interested parties (particularly Respondents) may be warranted.

# 3. RFX Process Guidelines

* 1. General

The University must be able to continue to transact business during an RFX process. Parties related to an entity involved in a tender process may contact staff (who may not have a direct involvement in the tender) as part of the normal day-to-day relationship. It is important that all staff follow the guidelines below throughout the entire process:

* No discussion should be held with any Respondent about the selection process in relation to any aspect of any tender or the selection process without the prior approval of the Project Sponsor or his or her nominee, or at their direction
* No Respondent should receive, or be perceived to have received, information about the selection process, apart from that which is available under the published process
* Respondents should be advised to deal directly with the person nominated in the tender documents in all matters relating the selection process, their tender or its current status. Staff should refuse to enter discussions of this nature
* Should any Respondent request a copy of any document, he or she should be referred to the nominated person. No documents should be provided by staff
* Unusual or exceptional invitations from any party with a declared interest in the project should not be accepted
* Routine business meetings and social activities continue as usual, but University managers and employees must exercise caution, and must not discuss the evaluation, selection procedures, or contents of any tender
* Where any party in an unrelated business meeting or social situation seeks to raise issues in respect of the evaluation and selection procedures or contents of any tender, the employee should indicate that it is not appropriate to discuss such matters.
  1. Confidentiality

RFX process evaluation panel members will be required to keep the evaluation process and contents of the RFX responses confidential. However, it may be appropriate to disclose information regarding the RFX process to senior members of the University. In this event, the relevant evaluation member should exercise prudence in disclosure and must inform the Evaluation Chair (preferably in writing) of such disclosure, including details as to:

* the person to whom information was disclosed;
* the reasons why disclosure was necessary; and
* the information which was disclosed.

To the extent possible, consent of the Evaluation Chair should be obtained prior to such disclosures.

* 1. Security of Information

In order to provide for the security of procurement documentation (including supplier responses), the following procedures will be adopted:

* A formal process to handle the receipt, distribution and storage of all responses (including drafts);
* All commercially confidential information identified during the RFX process (e.g. clarification questions), in whatever form, related to or contained in the responses will be stored securely at all times;
* All responses, evaluation reports (including drafts) and any other confidential project documentation are to be secured in a secured network unless in the direct possession of an authorised evaluation team member or project member. Procurement material is not to be duplicated without the consent of a Probity Advisor. In the event that an external Probity Advisor is not engaged, Strategic Procurement would play the Probity role typically carried out by an external advisor.
* During evaluation:
  + only evaluation team members will be granted access to RFX related commercially sensitive information, including responses and evaluation reports;
  + the numbers of copies of tender related documents will be controlled;
  + confidential project documents (including responses) are not to be removed from the evaluation area without the approval of the Evaluation Chair;

The Evaluation Chair will ensure a register is maintained to track all authorised evaluation team members who have been granted access to response information.

* 1. Respondent Communication Protocols

The following communication protocols will be followed to ensure consistent communication and engagement with Respondents:

* No discussion is to be held between an Evaluation Committee member and Respondents about the Project without the prior written approval of Strategic Procurement.
* Only Strategic Procurement or their nominated delegate will initiate any contact with Respondents during the evaluation process
* In the event that a Respondent contacts any member of the evaluation team or project team directly to discuss any matter related to the RFX process, the contact should be immediately terminated and Strategic Procurement is to be advised
* Unrelated routine business meetings with Respondents may continue as usual, but Evaluation Committee members must not discuss the Project and should disclose any actual, perceived or potential conflict of interest as per the Conflict of Interest Policy, as well as the Conflict of Interest Declaration Form (located in Attachment A).
* Where an external party seeks to raise issues in relation to the RFX, Evaluation Committee members must indicate that they are not at liberty to discuss the RFX and, at the earliest opportunity, advise Strategic Procurement that contact was initiated by a Respondent and the nature of issues raised
* Any background information that is not public knowledge or proprietary must only be communicated to a Respondent if it is communicated to all Respondents. Should any external party request a copy of any document, they should be referred to Strategic Procurement. No documents should be provided to external parties unless it is approved by Strategic Procurement and the Evaluation Chair
* Information provided by the University during the RFX process must be supplied in a consistent manner to ensure that no Respondent receives an advantage. The information presented must be based upon information approved for distribution in advance by Strategic Procurement and the Evaluation Chair
* Respondents should not receive, or be perceived to have received, from the University, additional information to that which is available to all Respondents unless this information is expressly approved in writing by Strategic Procurement and the Evaluation Chair, and is in accordance with RFX procedures expressed in the RFX documentation.

# 4. Attachment A - Conflict of Interest Declaration Form

**CONFLICTS OF INTEREST FORM – Evaluator’s DECLARATION**

The Evaluation Team Member must submit an executed declaration in relation to Conflicts of Interest.

I, [Insert name and position]

declare that I have read and I understand the concept of conflict of interest as set out in the Conflict of Interest Policy and this Probity Guidelines and Tender Declaration document and that I:

1. am aware of the potential situations that can give rise to conflicts of interests
2. have not received and will not receive any financial reward or other inducement of any kind from any Respondent or Staff Member of the Respondent with respect to any of my dealings or the dealings of the aforesaid company with the Respondent in relation to this RFX/contract.
3. have not since publication of the Principal's RFX, been in contact with Respondent(s) for any purpose whatsoever, including without limitation the circumvention of the competitive objective of the Principal's RFX selection process, except as per of my day to day operational duties, as required; and
4. are not in any way connected with and do not have any actual, perceived or potential Conflict of Interest with any Respondent whether:
5. it is real and substantial, not theoretical, remote, contingent or otherwise insubstantial; and
6. it has, or appears to have, the capacity to influence the conduct of a person (whether or not it actually does so) except as disclosed hereunder:

………………………………………………………………………. ……../……../……..

Name & signature of person making declaration Date

# 5. Attachment B – Confidentiality Deed

**Confidentiality Deed For [Insert RFX Name]**

The Evaluation Team Member (Recipient) must submit an executed deed in relation to confidentiality.

……………………………………………………………………………………………………………… [Insert name and position]

In favour of Western Sydney University (WSU)

**Background**

As a result of the Recipient’s role in WSU’s RFX for [Insert RFX project name] (the Project), the Recipient will become acquainted with Confidential Information.

**Confidential Information**

1. For the purposes of this deed "Confidential Information" is any information relating to the Project which has come to the knowledge of the Recipient by any means and which is given to the Recipient either directly or indirectly by WSU or by a person on behalf of WSU, but does not include:

(a) information which, at the time of disclosure, was in the public domain; or

(b) information which, subsequent to disclosure, enters the public domain except through breach of this deed or any other obligation of confidence.

**Acknowledgement, warranties and covenants**

2. The Recipient acknowledges and agrees that:

(a) the Confidential Information is of a secret and confidential nature;

(b) it is a requirement of the Recipient's role in relation to the Project that strict confidentiality as described below is maintained at all times; and

(c) improper use or disclosure of any Confidential Information may be detrimental to WSU in connection with the performance of its functions, and may cause harm to WSU.

3. The Recipient undertakes to treat and keep the Confidential Information in the strictest of secrecy and confidentiality and not disclose the Confidential Information except as expressly authorised and permitted to do so under paragraph 5 below.

4. Further, the Recipient undertakes not to disclose to any person that the Confidential Information has been made available to the Recipient and undertakes:

(a) to protect and safeguard Confidential Information against unauthorised publication or disclosure; and

(b) not to use, copy or reproduce Confidential Information for any reason or purpose except as directed by WSU or in the discharge of the Recipient’s duties in connection with the role in the Project; and

(c) safeguard the physical security and storage of Confidential Information and comply with any specific security and storage measures in connection with Confidential Information that may be required by WSU.

**Authorised disclosure**

5. The Recipient may disclose Confidential Information:

(a) if a duly authorised representative of WSU approves in writing the disclosure of Confidential Information in accordance with the terms of that approval;

(b) if required under a binding order of a government agency or any legal proceedings;

(c) if required under any law or any administrative guideline, directive, request or policy having the force of law; and

(d) to employees, consultants and other advisers of WSU who have executed undertakings in favour of WSU substantially the same as this one.

**Return of Confidential Information**

6. If WSU request it, the Recipient must:

(a) promptly return to WSU all documents and other physical records of Confidential Information in the Recipient’s possession, custody, power or control except where the Recipient is required by law to retain them or such documents or records are required to be retained in accordance with any administrative guideline, directive, request or policy by which the Recipient is bound; and

(b) provide a statutory declaration to WSU confirming that all those records have been returned.

**Conflict covenant**

1. The Recipient confirms that:
   1. by indicating a "NIL" response on the Conflict of Interest Declaration form (Declaration) set out as Attachment A, the Recipient does not have a conflict of interest in relation to his/her role in the Project;
   2. any interest of the Recipient that may create, or may be perceived to create, a conflict of interest as at the date of this deed is documented in the Declaration; and
   3. he/she will promptly notify the appropriate representative of WSU and the Probity Adviser of any interest of the Recipient arising after the date of this deed that may create, or may be perceived to create, a conflict of interest in relation to his/her role in the Project.

**Non-waiver**

8. The failure of WSU to enforce any of the provisions of this deed or the granting at any time of any other indulgence is not to be construed as a waiver of that provision or of the right of WSU to enforce that or any other provision at a later date.

**Continuing Obligations**

9. Each obligation of the Recipient under this deed is a continuing, perpetual obligation and survives any expiry, performance or termination of this deed.

**Governing law**

10. This deed is governed by and subject to the laws of New South Wales.

………………………………………………………………………. ……../……../……..

Name & signature of person making declaration Date