

## Specialist Advisor Guideline

### Purpose

This Guideline<sup>1</sup> provides information and practical advice for public authorities when obtaining specialist procurement or contract advice. In reading this Guideline, procurement and contract managers will gain an understanding of:

- the types of procurements and contracts that may require specialist advice
- identifying when to engage specialist advisors at various stages of the procurement or contract management process.

This Guideline provides general advice only and is not a substitute for legal or other professional advice. It should be read in conjunction with your public authority's specific policy or guidance on procurement, contract management and obtaining legal and other advice.

### Specialist advisors and subject matter experts<sup>2</sup>

Specialist advisors have extensive knowledge, skills or ability in a particular field, based on research, experience, qualifications, or their occupation. They may be an expert in a particular area or topic relevant to the procurement.

### Why engage a specialist advisor?

Specialist advisors may be an existing employee of the public authority or may be engaged or employed for a fixed term by the public authority in circumstances where the public authority does not have the necessary capacity, capability or skills.

### Benefits of engaging a specialist advisor

Engaging specialist advisors can help public authorities to:

- save time
- undertake independent research
- provide expert advice on technical subject matters
- provide an objective perspective and analyse the need(s)
- strengthen accountability for the impact and outcome of the contract
- consider the experience of private organisations, industry, community and end-users
- identify the right sourcing strategy to achieve the procurement objectives
- ensure suppliers understand the procurement process and requirements
- ensure that public authorities achieve value for money (inc. whole life costs)
- identify and mitigate risks

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<sup>1</sup> Some content in this guideline was developed from the [Australian Government Contract Management Guide](#) and is licensed under a [Creative Commons Attribution 3.0 Australia CC BY 3 AU licence](#).

<sup>2</sup> Consultancy services are distinguished from specialist advisors and subject matter experts by the nature of the work performed, which typically involves developing intellectual output that reflects the independent views of the consultant. [Treasurer's Instructions \(Accounting Policy Statements\)](#) provides further information about how Government defines a consultant.

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- avoid overlooking vital steps that may later disrupt contract terms or delivery
- reduce or avoid subsequent fraud or litigation
- support transparency and probity in procurement processes.

### When to obtain specialist advice

There are specific stages of the procurement process when it may be useful to obtain specialist advice. For example:

A specialist advisor may be engaged during the planning phase to:

- identify the strategic objectives in the procurement planning stage
- demonstrate transparency and manage perceived bias when conducting market sounding or industry engagement activities
- conduct a survey or gather feedback from stakeholders, or consumers when a public authority is changing a product, program or service delivery model
- engage or consult with industry sectors, community groups and end-users
- brief potential suppliers

A specialist advisor can assist during the sourcing phase to:

- evaluate tenders and supplier offers
- manage any potential conflicts of interest

A specialist advisor can assist with establishing the contract and during contract management by:

- assessing the value, complexity and risk profile of the contract
- monitoring contract implementation and sequencing the project or work

At the end of the procurement a specialist advisor can assist with aspects such as:

- coordinating and/or delivering supplier debriefs
- providing milestone updates, data and reports
- evaluating success or otherwise of the procurement outcomes and process

Attachment 1 provides some more examples of how specialist advisors can assist at various stages of procurement and contract management.

### Types of specialist advisors

Commonly used specialist advisors for procurement include:

Procurement specialists assist with the procurement process (including contract management) and provide advice about establishing contracts, contract variations, supplier performance management, contract closure / termination or contract renewal. Public authorities may identify through their capability assessment that they do not have the adequate or appropriate resources, capability and expertise needed to manage their procurement processes. In these situations, public authorities may

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elect to use the procurement services or the guidance and advice of a third party<sup>3</sup>.

Probity practitioners provide independent, objective advice on procurement activities, complementing existing probity practices, and helping to achieve high standards of probity<sup>4</sup> in the conduct of a procurement activity. There are two types of probity practitioners that may be involved in a procurement activity – a probity advisor and a probity auditor. Each practitioner will perform a different role; these roles are not interchangeable, and the same individual cannot perform both functions within the same procurement process. Some procurements will require the services of both types of practitioners.

- A probity advisor provides independent advice and guidance on probity issues throughout the procurement activity, and should ideally be engaged at the initiation/planning stage.
- A probity auditor reviews compliance of procurement processes with the established invitation requirements, evaluation process and criteria, standards, or principles to ensure adherence to government policies and rules, and to provide appropriate assurance to the governance committee at completion (and/or other milestones).

The table below summarises the tasks which may be performed by probity advisors and auditors:<sup>5</sup>

Task	Probity advisor	Probity auditor
Provide quality, strategic and timely advice on maintaining standards of probity during the procurement process	Yes	No
Contribute to developing/and or endorsing an acquisition plan	Yes	No
Provide advice and guidance to the project team on ensuring standards of probity when approaching the market	Yes	No
Monitor progress of the procurement for probity compliance	Yes	No
Alert appropriate levels of management to any probity issues	Yes	Yes
Help establish probity requirements and obligations for all levels of personnel involved with the procurement	Yes	No
Ensures integrity of procurement process is maintained	Yes	No
Provide advice and guidance in the event of disputes arising from the procurement process and provide status reports on probity matters	Yes	No
Review procurement project documents (e.g. invitations to supply and expressions of interest) to ensure potential registrants and respondents are treated fairly	Yes	No

<sup>3</sup> Procurement Services SA has a Client Services function which is available to public authorities through a fee-for-service arrangement.

<sup>4</sup> Probity provides a level of assurance to suppliers and public authorities that a procurement is conducted in a manner that is fair, equitable and defensible.

<sup>5</sup> ' [Probity in procurement – Goods and services procurement guide](#)', Victorian Government Purchasing Board, June 2019



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Review procurement governance processes, document flows and decision-making processes to assess compliance	No	Yes
Endorse the evaluation plan and evaluation reports	Yes	No
Oversight of the evaluation process (including review of the final evaluation report)	Yes	No
Attend meetings, interviews, presentations or negotiations when required, to ensure appropriate meeting protocols and established procedures are followed	Yes	No
Identify procurement policy and process risk management and/or mitigation strategies to minimise policy breaches	Yes	No
Undertake an independent review and gather evidence from procurement documents, processes and actions to form an objective opinion about the conduct of the procurement and report to the project control board	No	Yes
Contribute as required to ensure probity principles are achieved and provide appropriate probity report(s) at key milestones to the project control board that disclose any material probity issues that arose during the project even where the issues were managed to the satisfaction of the probity advisor and project governance group as necessary, along with an explanation as to how the advisor reached any conclusion expressed in the reports.	Yes	No
Provide independent audit and appropriate sign-off at the conclusion of the sourcing stage of the procurement project to the project control board providing probity signoff reports that include disclosing any material probity issues that arose during the project even where the issues were managed to the satisfaction of the probity practitioner and project governance group as necessary, along with an explanation as to how the auditor reached any conclusion expressed in the reports.	Yes	Yes

Technical and operational advisors (subject matter experts) help to better understand complex issues around the subject matter of your procurement. For example, these advisors can help determine and write specification requirements and evaluate whether goods or services offered by the supplier will meet the required quality or standard. They can also be helpful in generating solutions to contract disputes as well as provide advice in situations relating to the supplier's performance.

An independent verifier confirms compliance with a set of standards. They may also audit or review records, data, equipment and provide expert professional services that relate to an industry where they have direct experience and are appropriately qualified to provide verification.<sup>6</sup> For example the scope and technical specifications of an authority's ICT project can be reviewed by the independent verifier to ensure it will meet the South Australian Protective Security Framework requirements. An independent verification can also review the subsequent implementation and project delivery.

Legal advisors deal with the legal issues associated with procurement. For example, when there are formal contract disputes, when considering varying, novating or

<sup>6</sup> [https://www.hpw.qld.gov.au/data/assets/pdf\\_file/0014/3353/procurementguideprobityauditorsadvisors.pdf](https://www.hpw.qld.gov.au/data/assets/pdf_file/0014/3353/procurementguideprobityauditorsadvisors.pdf)



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terminating a supplier contract, and to help understand the meaning and implications of a contract's terms and conditions.

Financial advisors provide advice to inform decision-making, from early stage economic and strategic analysis to supporting procurement decisions. This includes advice on financial obligations, understanding and comparing pricing, securing competitive bids, identifying and quantifying savings and estimating whole-of-life costs. They can also help public authorities manage annual expenditure and improve transparency of public spending through improved data and reporting. Financial advisors may also assist with determining the optimal cost structure for a contract, provide advice on price escalation, indexation and using foreign currencies.

### Engaging a specialist advisor

Before engaging an external specialist advisor, the possibility of using (including through secondment) public sector employees for the project should be considered. Ideally, external advisors should not be engaged if the relevant expertise is available, at the required time, within the South Australian public sector.

It is important to document the advice given by specialist advisors even if it is not acted upon.<sup>7</sup>

### Fees and payment for specialist advisors

Engaging the services of specialist advisors can incur costs and it is important to determine and budget for these accordingly.

Fees may depend on whether the services are provided by a specialist advisor within the public authority or procured externally. For example, some public authorities have technical or legal experts 'in-house' and utilising their expertise may come at no cost or simply involve an internal cost-centre 'cross-invoicing' process.

Alternatively, if legal advice is sought from the Crown Solicitor's Office, then charges will be incurred by the public authority, likewise with external specialists such as probity advisors.

### Skills and attributes of specialist advisors

The following attributes and skills are considered relevant, but these may also need to be expanded depending on the advice required for the specific procurement or contract:

- independence, objectivity, and impartiality<sup>8</sup>
- experience in a procurement advisory role in the public sector
- track record in similar work - evidenced from internal and/or external sources

<sup>7</sup> <https://www.finance.gov.au/sites/default/files/2019-11/Australian%20Government%20Contract%20Management%20Guide%20-%20Nov%202019.pdf>

<sup>8</sup> Further guidance provided at Attachment 2

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- technical skills - specialist advisor credentials/qualifications, systems used
- management skills - project management, quality systems to be used
- time management and availability - the ability to complete the project on time
- ensures the application of probity principles; maintains the highest ethical standards; and
- understands the procurement objective and adds value to the procurement process.

If the specialist advisor is internal (employed by the public authority) it is important that they can clearly demonstrate their impartiality in relation to the procurement. It is recommended that public authorities verify the suitability of any internal specialist advisors prior to final appointment, just like you would an external specialist.

### The specialist advisor contract

When engaging an external specialist advisor, the following are some suggestions on what to include in the contract between the advisor and the public authority:

- procurement detail - e.g. background, objectives, documents and data
- timeframes for work to be achieved - e.g. milestones and key delivery dates
- deliverables - e.g. research, evaluation, advice/recommendations, meetings
- resources - e.g. equipment and/or support staff allocated, advisor location
- level of supervision by the public authority and their procurement officer/s
- method or approach - e.g. how the project or procurement will be undertaken
- reporting measures – e.g. to demonstrate a successful outcome, KPIs
- record keeping requirements - format, quality, number of copies
- costing requirements - e.g. hourly/daily/capped rates, fee reviews, overheads
- relevant jurisdiction and applicable governing law - e.g. South Australia
- conflict of interest, disclosing information and confidentiality agreements.
- proof of insurance, liability levels, warranties and indemnity requirements
- intellectual property
- knowledge transfer opportunities, if considered appropriate
- work, health and safety compliance
- dispute resolution, remedies and contract terminations

### Managing the specialist advisor engagement

Specialist advisors should be monitored to ensure that satisfactory outcomes are achieved on time and within the budget.

Typical measures to ensure effective management of specialist advisors include, but is not limited to:

- appointing a project manager with clearly defined responsibility for managing the advisor and appointing a dedicated officer to liaise with the advisor (often the procurement officer)

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- clearly communicating performance standards expected of the advisor
- specifying the reporting requirements and meetings with the advisor
- maintaining adequate records or issues log to record disputes that arise
- recording any agreement that changes the scope of the work undertaken
- ensuring payment schedules align with the contract milestones
- maintaining an 'open door' to ensure that communication is always possible.

It also involves developing procedures for dealing with:

- a specialist advisor's unsatisfactory performance or poor advice
- variations in cost and time
- assessing the performance of the specialist advisor at regular intervals.

### What if performance issues arise?

If performance issues arise it is important to discuss these with the specialist advisor before they significantly disrupt the procurement. Issues that may arise when engaging a specialist advisor include for example:

- performing additional work without prior approval
- poor response to requests for information or updates on progress
- lack of a shared understanding about key contract issues or requirements
- providing poor advice or research information
- failing to share findings such as research or community consultation
- submitting invoices for more than the fee specified in the contract
- failing to deliver on the agreed terms or timeframe of the contract.

In these or any other scenarios, public authorities should meet with the specialist advisor to learn why these issues are occurring. Public authorities may also need to:

- check if the contract and specification is clearly understood by the advisor
- check the contract to determine if the milestones are fair and reasonable
- schedule more regular contract management meetings with the advisor
- discuss the specific non-compliance and/or performance issues
- provide an opportunity for the advisor to explain their performance
- document an agreed plan of action with the advisor to address the performance issues, including timeframes for implementation or extensions
- amend the contract if extensions are warranted and document new timelines

All performance discussions and agreed remedies should be documented in writing through meeting minutes, file notes or follow up email correspondence.

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### Attachment 1 – Advice at various stages

#### Identifying the type and scope of the procurement need

Technical and operational advisors can assist with understanding and assessing the procurement subject matter and need. For example, these advisors can help determine specification requirements and evaluating whether goods or services will meet the required contractual standard and deliver the identified procurement need.

#### Analysing the supply market and consulting with key stakeholders or industry sectors

Market experts and specialist advisors can assist public authorities to identify the supply market based on characteristics such as size, capability, specific expertise, financial stability, location, type, service, and price points. Advisors can also consult with industry and suppliers and assist public authorities to better understand market directions, supplier competitiveness and identify suitable supply chains.

#### Community engagement and needs analysis

Community engagement experts can undertake a focused analysis of community-based issues and priorities to identify the procurement need and market approach. The analysis can involve stakeholder engagement and consultation with peak bodies, service providers, end-users, clients and community members.

For example, the consultation can help to forecast the emerging service needs of a particular community or multicultural group or help identify and prioritise the needs of people living in rural and remote regions.

Public authorities that fund services in the Not-for-Profit sector can benefit from engaging experts to assist and guide them with activities such as service delivery co-design and understanding cultural authority.

Experts can help to ensure procurement outcomes are in line with need and that contract reporting requirements reflect the proportionality elements as outlined in the [South Australian Funding Policy for The Not-for-Profit Sector \(PC 044\)](#).

#### Sourcing process and market documentation

Procurement and product specialists can help public authorities with product specification and sourcing processes and to secure the best fit to required specifications that will achieve value for money. Their expertise can be used to identify the most suitable product, verify the supply chain, establish the value of the contract, define the best sourcing process and prepare market documentation.

#### Identifying, managing and treating risks

Risk management is an essential part of procurement and specialist advice can assist with identifying and managing risks and identifying emerging issues.

Risk management advisors can provide advice on operational, financial and regulatory risks, conduct audits and supplier risk assessments and advise on



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treatment methods and assess how best to manage the procurement risks.

### Evaluating the offer

Specialist advisors can assist with evaluating complex and mandatory financial (quantitative) and non-financial (qualitative) elements of suppliers' offers. This includes:

- checking supplier's compliance with mandatory criteria
- assessing offers against evaluation criteria, weightings and scoring
- ensuring probity and fairness to all suppliers
- preparing a final probity report at the conclusion of the selection process.

Independent verification and evaluation by qualified advisors can assure public authorities that these steps are completed impartially, fairly and professionally.

### Financial advice

Financial experts can help optimise the procurement outcomes and identify additional savings opportunities and alternative procurement strategies. They can help public authorities manage annual expenditure and improve transparency of public spending through improved data and reporting.

### Records or data and reporting management

Data specialists and information technology (ICT) experts specialise in providing data solutions by creating, analysing, collecting and storing electronic data. Experts in this field can develop data management architecture that manages information more securely, dispose of it more efficiently and identify potentially new data sources.

Data specialists can liaise with public authorities to identify their IT and data management requirements and precisely scope the need. This advice can inform procurement decisions and these specialists can identify suitable suppliers and assist with industry engagement and product sourcing.

### Probity advice and audits

Probity provides a level of assurance to suppliers and public authorities that a procurement is conducted in a manner that is fair, equitable and defensible. Probity advisors can be engaged at any stage during the procurement process, but for best results it is recommended that they be engaged early in the procurement process. The probity advisor can provide advice on issues that arise and strategies to overcome problems before and during the procurement.

A probity auditor's role is usually confined to observing and reviewing the completed procurement process. For example, the probity auditor can confirm, summarise and report to the public authority's procurement governing body or Chief Executive on issues that affect the integrity of the procurement process and prepare an

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independent report on how the process was managed.

### Establishing contracts with suppliers

Specialist advisors can assist public authorities with understanding contract terminology and the preparation of contracts with appropriate terms and conditions that comprehensively consider complexity and risk. This can include matters such as intellectual property rights, copyright, warranties, guarantees, indemnities, insurance.

Public authorities may need advice on whether additional terms or special conditions should be included in the contract. Though not an exhaustive list this advice can cover compliance with international obligations, contract disclosure, confidentiality, intellectual property<sup>9</sup>, child safety, third party risk, liability, performance and bank guarantees, information sharing, insurance, force majeure and investigations.

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<sup>9</sup> The Intellectual Property Guideline which has been developed in collaboration with the Crown Solicitor's Office provides guidance when undertaking procurement processes.

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### Attachment 2 - Advisor independence

Ensuring the independence of the advisor will help ensure they provide objective and impartial advice. Advisors should be free from bias and not influenced by interests that compromise their professional judgment. The possible threats include:

- Self-interest - occurs where the advisor stands to benefit from a financial or significant non-financial interest in the procurement. When evaluating the self-interest threat, consider the type of interest (direct/indirect) and its materiality.
- Self-review - occurs where an advisor reviews their own advice. For example, an advisor provides advice regarding probity within a procurement process and then conducts a probity audit over the procurement.
- Advocacy - occurs where the advisor or related entity promotes, or may be perceived to promote, an agency's position to the point that objectivity may, or may be perceived to be, compromised. For example, when an advisor promotes or endorses a procurement strategy which is not reviewed by a third or independent party.
- Familiarity - occurs where a close relationship between the advisor and the public authority causes the advisor to become biased toward the authority.
- Intimidation - occurs where the advisor is deterred from acting objectively, by threats (actual or perceived) from the public authority. e.g., being threatened with replacement over a probity issue or have their credibility threatened.<sup>10</sup>

### Safeguards for independence

Where there is a threat to the independence of the advisor, the public authority should identify safeguards that could eliminate or reduce threats to independence.

Safeguards could include:

- a governance structure that provides oversight and supports procurement probity. For example, the advisor could report to an independent project steering committee, rather than to the public authority's project manager.
- implementing policies and procedures that support procurement probity.
- training employees so that they are well informed about probity requirements in procurement and engaging external advisors.
- following a structured and objective process when appointing advisors to ensure independence e.g. a steering committee manages the appointment.
- ensuring different staff or external experts conduct the probity audit in the case where probity advice has also been provided on the procurement. This applies where a single entity provides both probity advice and probity audit.

Where internal expertise is used to provide probity services, the person/s should be able to clearly demonstrate their impartiality and objectivity in relation to the

<sup>10</sup> [https://www.hpw.qld.gov.au/\\_\\_data/assets/pdf\\_file/0014/3353/procurementguideprobityauditorsadvisors.pdf](https://www.hpw.qld.gov.au/__data/assets/pdf_file/0014/3353/procurementguideprobityauditorsadvisors.pdf)

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procurement at hand and address the requirements relating to independence.

This is important where the role is that of probity audit in which impartiality is fundamental to the engagement. A conflict of interest and independence declaration should be required from the internal resource or personnel involved.<sup>11</sup>

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<sup>11</sup> [https://www.hpw.qld.gov.au/\\_\\_data/assets/pdf\\_file/0014/3353/procurementguideprobityauditorsadvisors.pdf](https://www.hpw.qld.gov.au/__data/assets/pdf_file/0014/3353/procurementguideprobityauditorsadvisors.pdf)

