

**SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES
COMMITTEE**

**INQUIRY INTO DEFENCE'S REQUEST FOR TENDER FOR AVIATION
CONTRACTS**

GOVERNMENT RESPONSE

November 2011

RESPONSES TO RECOMMENDATIONS

Recommendation 1

paragraph 9.28

The committee recommends that Defence:

- requires the documentation of a dedicated probity plan for all future procurements of air sustainment services to the MEAO;

Response - Agreed.

A probity plan specific to future procurements of air sustainment services to the MEAO has been developed and is attached. A specific instruction will be issued to mandate the development of a probity plan based on this template for all future procurements of air sustainment services to the MEAO. The template probity plan can also be tailored for other procurements undertaken by HQJOC, as required.

More generally, the necessary Defence procurement policy and operational guidance framework for the creation of a probity plan already exists (see Defence Procurement Policy Manual, 1 July 2011 edition (DPPM) at Chapter 5.4 *Request Documentation*, paragraphs 62, 63 and 65).

- ensures probity plans for all future procurements of air sustainment services to the MEAO identify expressly and address the risks associated with:
 - (i) proponent grievances and
 - (ii) the small and highly competitive nature of the commercial air charter market;

Response – Agreed

The attached probity plan specifically addresses the two risks listed above.

- implements its proposed policy of appointing probity advisors to all complex and strategic procurements and monitors closely the implementation progress and impact of this policy – in particular, ensures that a probity advisor is appointed to all future procurements of air sustainment services to the MEAO; and

Response – Agreed in principle

Probity advisers will be appointed where it is consistent with the existing Defence procurement policy and operational guidance. The DPPM, Chapter 3.13, paragraphs 14 to 29, provide for the appointment of probity advisers based upon the Department of Finance and Deregulation (Finance) policy that ‘the decision on whether to engage an external probity specialist should weigh the benefits of receiving advice

independent of the process against the additional cost involved and include consideration of whether or not skills exist within the agency to fulfil the role’.

Based on past experience it is reasonable to assume that the future procurement of air sustainment services to the MEAO would meet the Finance policy requiring the appointment of a probity adviser, and the template Probity Plan referred to above is drafted on this basis.

- amends chapter 3.2 of the Defence Procurement Policy Manual on risk management in procurement to include references to probity risks. In particular, Defence should consider cross-referencing chapter 3.13 on ethics and probity in procurement.

Response - Agreed.

In the planned 1 December 2011 update of the DPPM, Defence will update Chapter 3.2 to expand the references to probity risk, and cross reference this chapter with Chapter 3.13 on ethics and probity in procurement. In addition, Defence will also release an updated chapter 3.13 as part of the planned 1 December 2011 update.

Recommendation 2

paragraph 10.9

The committee recommends that Defence reviews all Defence Instructions and related documents in respect of Reservists, full or part time, to ensure that real and potential conflicts of interest that might arise as a result of past, current or post separation employment are identified, reported and managed appropriately. In particular:

- (a) Defence considers whether Defence Instructions DI(G) PERS 25-2 (Employment and voluntary activities of ADF members in off-duty hours) and DI(G) PERS 25-3 (Disclosure of interests of members of the ADF) should be extended to Reservists who are not engaged in continuous full-time service; or
- (b) if there is no intention to extend the application of DI(G) PERS 25-2 and DI(G) PERS 25-3 to Reservists who are not engaged in continuous full-time service, Defence develops specific policies covering the civilian employment of, and the disclosure of conflicts of interests by, those personnel.

Response – Agreed.

Defence has incorporated DI(G) PER 25-3 into a revised version of DI(G) PERS 25-6 (Conflict of Interest and Declaration of Interest) which came into effect on 29 March 2011. The revised DI(G) PERS 25-6 applies to a “Defence Member” as defined in section 3 of the Defence Act. This definition of “Defence Member” includes Permanent members of the Navy, Army and Air Force, and members of the Reserves who (a) are rendering continuous full-time service or (b) are on duty in uniform.

DI(G) PERS 25-2 is currently under review and will be revised to include the definition of ‘Defence Member’ to align with the definition in DI(G) PERS 25-6.

As Defence has agreed to Recommendation 2(a) there is no requirement to develop the specific policies requested in Recommendation 2(b).

Recommendation 3

paragraph 10.21

The committee recommends that, prior to the re-tendering of any future contracts for the provision of air sustainment services to the MEAO, Defence ensures that:

- (a) all Reserve personnel involved in the procurement complete a conflict of interest declaration; and

Response – Agreed.

This recommendation accords with usual Defence procurement practice as set out in the DPPM, Chapter 3.13. In addition, the attached Probity Plan contains a specific requirement in this regard.

- (b) commanding officers or supervisors in 1JMOVGP:
 - (i) make a risk-based assessment as to which other Reserve personnel must complete a conflict of interest declaration and which personnel do not;
 - (ii) in making a risk-based assessment, give consideration to identifying and obtaining conflict of interest declarations from Reservists who have associations with the commercial air charter industry. Such associations may include:
 - present or previous civilian employment with air transport providers;
 - financial interests in these companies or related companies; or
 - professional or social relationships with members or employees of these companies; and
 - (iii) document their decisions whether or not to require these Reservists to complete a conflict of interest declaration.

Response – Agreed in principle.

Standard Defence probity arrangements provide that only those personnel who have a genuine 'need to know' have access to confidential tender information (eg. draft requirements, tenders, and evaluation material). This ensures that personnel who are not involved in the procurement do not access confidential information relating to the process or have an ability to influence the conduct of the process.

Further, if someone in the project team is approached by someone outside the project, an obligation to report such contact has been included in the attached Probity Plan.

Accordingly, it will be the responsibility of the project manager for a future procurement of air sustainment services to ensure that all relevant personnel complete conflict of interest declarations.

Recommendation 4

paragraph 10.22

The committee recommends Defence ensures that, in all future procurements of air sustainment services to the MEAO:

- All members of tender evaluation boards and working groups, and all persons involved in the development of requests, sign conflict of interest declarations. Such declarations:
 - (a) should be signed prior to the commencement of the tender evaluation process or the development of the request (as applicable); and
 - (b) include declarations about possible conflicts of interest arising from their employment, prior employment, financial interests in potential suppliers or relationships with persons who have interests in potential suppliers.

Response – Agreed.

This recommendation accords with Defence procurement policy and operational guidance which provides for the identification and management of conflicts of interest (see DPPM, Chapter 3.13). The probity plan templates available from the Commercial Policy and Practice Branch (CPP Branch), DMO Commercial Group, intranet site already contain a conflict of interest declaration proforma.

The timing for the completion of the conflict of interest declarations in certain circumstances is covered by the DPPM, Chapter 5.4 *Request Documentation*, paragraph 63, which states that 'If a probity plan is required, it should be developed and approved before commencement of the tender evaluation' at which point the conflict of interest requirements in the plan would apply (including any requirements regarding the timing for personnel to provide declarations).

In order to address the specific concerns of the Senate committee, a supplementary direction will be issued within 1JMOVGP that all future MEAO air sustainment procurement activities must have a probity plan approved at the beginning of the procurement process (i.e. not just before the commencement of the tender evaluation).

1JMOVGP will also direct that conflict declarations are to be obtained at the beginning of the procurement process. This requirement will also apply to all persons involved in the development of request documentation.

- All members of tender evaluation boards and working groups receive specific briefings on conflicts of interest and other probity matters, prior to the commencement of tender evaluations.

Response – Agreed.

This recommendation accords with existing Defence procurement policy and practice (see DPPM, Chapter 3.13). The attached probity plan also expressly includes this requirement.

Recommendation 5

paragraph 11.20

The committee recommends that Defence:

- In line with the findings of the AFCD Review, considers strategies for the improved documentation of the business case for any future decisions to re-test the market for the provision of air sustainment services to the MEAO.

Response – Agreed.

The DMO Commercial Group or the Defence Support Group, Non-Equipment Procurement Centre of Excellence (NEP COE) will assist 1JMOVGP with the drafting of any future business case for future decisions to market test the provision of air sustainment services to the MEAO, including ensuring the business case is in accordance with existing policy.

- Reviews its procurement plan for the current MEAO contract, to ensure that sufficient lead time is provided for the making of any future decisions to re-test the market, and the planning and execution of a procurement process.

Response – Agreed.

This recommendation accords with usual Defence procurement practice. For example, DPPM, Chapter 5.0, provides guidance on the development of procurement plans. The DMO Commercial Group or the NEP COE will assist 1JMOVGP, where required.

- In all future procurements of air sustainment services to the MEAO:
 - (a) continues to include in procurement strategies a requirement that members of the Air Transport Standing Offer Panel are given advance notice of any decisions to re-tender the contract, prior to the release of the RFT; and
 - (b) ensures that such requirements are implemented.

Response –Agreed in principle.

Defence will ensure that notice is provided to all potential suppliers in accordance with Commonwealth procurement policy as set out in the Commonwealth Procurement Guidelines (CPGs). For instance, paragraph 5.2 of the CPGs requires that “All potential suppliers should have the same opportunities to compete for government business and must, subject to these CPGs, be treated equitably based on their legal, commercial, technical, and financial abilities.”

Advance notice of a future procurement of air sustainment services would be provided through Defence's Annual Procurement Plan (APP) (where the procurement is conducted as an open approach to the market).

1JMOVGP will ensure that, in any future re-tendering, the tender release and closing dates for the request for tender meet or exceed the minimum time limits set out in the CPGs (see paragraphs 8.56 - 8.62; see also DPPM, Chapter 5.5 *Tender Advertising, Submission and Receipt*, paragraphs 6 – 11).

The CPGs relevantly provide:

‘8.57 Agencies need to provide sufficient time for potential suppliers to prepare and lodge a submission in response to an approach to the market. Time Limits discussed in this section represent minimum periods and should not be treated as default time limits for potential suppliers to lodge submissions.’

‘8.61 Where an agency intends to specify conditions for participation that require potential suppliers to undertake a separate registration or pre-qualification procedure, the agency must state the time limit for responding to the registration or pre-qualification in the approach to the market. Any such conditions for participation must be published in sufficient time to enable all potential suppliers to complete the registration and qualification procedures within the time limit for the procurement.’

Any future procurement process for MEAO air sustainment services will comply with the CPGs, including ensuring that there is sufficient time to enable tenderers to get aircraft onto the AO certificate.

- Implements strategies to ensure that potential tenderers have a clear and accurate understanding of how Australian industry participation is taken into account in the evaluation of tender responses, as part of the overall value for money assessment.

Response – Agreed.

This recommendation accords with existing Defence procurement policy. Defence implements the requirements of the Australian Industry Participation (AIP) National Framework via its Australian Industry Capability (AIC) program. Defence procurement guidance on the AIC program is set out in DPPM, Chapter 3.12. Defence plans to update Chapter 3.12 in its 1 December update of the DPPM.

All relevant ASDEFCON templates include clauses that explain how AIC is taken into account in the evaluation of tender responses as part of the overall value for money assessment.

- On the release of future requests for air sustainment services to the MEAO, implements the following actions to minimise the risk for potential proponent grievances:
 - (a) provides potential tenderers with an explanation of the reasons for re-tendering the contract and any changes to tender requirements from the previous request;

Response – Agreed.

This recommendation accords with existing Defence procurement policy and practice. For instance, the covering letter that forms the first part of the relevant ASDEFCON tendering and contracting template prompts the user to provide tenderers with appropriate background information about the procurement. This could include the reasons for re-tendering the contract and any key changes to tender requirements from the previous request.

- (b) provides potential tenderers with an explanation of how the evaluation criteria in the request documentation will be assessed; and

Response – Agreed in part.

Standard Defence procurement practice is to advise tenderers about the evaluation criteria and the basic rules governing tendering evaluation. In strategic and more complex procurements, the relevant ASDEFCON templates provide greater levels of specificity about how evaluation criteria are assessed, (eg by advising tenderers about what information will be used to assess which criterion). Also, if evaluation criteria are specifically ranked in terms of their relative importance or otherwise weighted, Defence procurement practice would require this order of ranking/weighting to be provided to all tenderers.

However, the detailed evaluation methodology which is used by tender evaluation teams to evaluate tenders is set out in the tender evaluation plan (TEP). In accordance with standard Commonwealth practice, the TEP is an internal document and is not normally provided to tenderers.

- (c) includes in the request documentation, where applicable, an express statement of Defence's:
 - (i) preferred solution for meeting tender requirements, including technical specifications; and

Response – Agreed in part.

Defence procurements do not tend to mandate a preferred solution as this can be seen by potential tenderers as favouring a specific tenderer and may stifle innovation and

otherwise limit the field of potential tenderers. Instead, and consistent with paragraphs 8.46 to 8.51 of the CPGs, the Defence approach is to analyse its requirements, undertake market research, and use this information to develop requirements/specifications which focus on the expected outcome from the procurement rather than specifying a particular way of meeting the requirement.

If Defence has specific requirements or technical specifications that must be met by tenderers, then Defence policy requires that these requirements and specifications be advised to tenderers. These would normally be included in the draft Statement of Work that is included as part of the request for tender.

(ii) intention to consider alternative solutions.

Response – Agreed.

This recommendation accords with existing Defence procurement practice and is reflected in standard Defence Conditions of Tender (for example, see ASDEFCON Complex Materiel Vol. 2, conditions of tender, clause 4.10).

- As a matter of priority in future tender processes for the provision of air sustainment services to the MEAO, takes action on the tender evaluation issues identified by the Deloitte, AGS and AFCD Reviews, as documented at paragraph 11.15 of this report.

Response – Agreed.

The issues identified at paragraph 11.15 of the Senate inquiry report are either generally consistent with existing Defence procurement policy and practice, or are being addressed for inclusion within that framework. For example, DPPM, Chapter 5.4 *Request Documentation*, and our ASDEFCON tendering and contracting templates, provide the guidance and framework respectively for drafting request documentation. The guidance and templates cover all CPGs requirements, including minimum content and format requirements, conditions for participation, essential requirements, evaluation criteria and technical specifications.

Another example is the current work within Defence to develop Tender Evaluation Better Practice Guides for the assistance of personnel undertaking procurements. Defence recently released the *Better Practice Guide: Tender Evaluation in Simple Procurement*, and a better practice guide for tender evaluation in more complex procurements is currently under development.

The committee recommends that in all future procurements of air sustainment services to the MEAO, Defence develops and implements tender evaluation processes for assessing respondents' fitness and propriety to contract with the Commonwealth. Such evaluation processes should:

- (a) identify criteria setting out requirements or indicators for being 'fit and proper' to contract with the Commonwealth;
- (b) specify searches that may be conducted on tender respondents, their key personnel, proposed subcontractors and any associated companies (for example, parent or subsidiary companies)—including guidance on the scope of the searches;
- (c) identify the possible implications of the findings of each of the specified searches; and
- (d) enable the identification and assessment of potential risks arising from issues identified in these searches including:
 - (i) reputational damage to the Commonwealth, should it proceed to contract with the relevant tenderer; and
 - (ii) proponent grievances about the relevant tenderer's fitness and propriety to contract with the Commonwealth.

Response to (a) – (d) above – Agreed.

In the conditions of tender for all future MEAO air sustainment services procurements (and as reflected in the attached Probity Plan), Defence will reserve the right to undertake probity searches of tenderers and key personnel in order to assess the issues set out in the above recommendations.

This will require the tenderer, its proposed subcontractors, and their respective key personnel, to sign relevant consent forms – allowing the Commonwealth to seek such information.

The relevant clause for inclusion in the conditions of tender is as follows:

"The Commonwealth reserves the right to perform such security, probity or financial checks and procedures as it may consider necessary in relation to the tenderer and its subcontractors, their officers, employees, partners, associates or related entities (including consortium members and shareholders and their officers or employees if applicable). These checks may include (without limitation):

- security and probity checks including criminal history checks;
- corporate history checks;
- media checks;
- litigation searches (past, present or pending);
- reference checks; and

-any other checks which the Commonwealth considers relevant.

Each Tenderer agrees to provide, at its cost, all reasonable assistance to the Commonwealth to facilitate these checks being carried out (including executing all necessary consent forms)."

It should also be noted that all the current ASDEFCON templates already contain clauses that seek a significant amount of information of this kind, including :

- the tenderer's proposed key personnel. The tenderers' responses to these questions should provide the necessary information to determine if one of a tenderer's proposed key personnel fails to meet the requirements of DI(G) PERS 25-6 (Conflict of Interest and Declaration of Interest);
- the tenderer's financial position; and
- a declaration from the tenderer that the information they have provided is accurate and not misleading.

Defence is currently developing a Tender Evaluation Better Practice Guide for complex procurements. This document will include detailed guidance on searches that may be conducted on tender respondents, their key personnel, proposed subcontractors and any associated companies, and implications of the findings.

Recommendation 7

paragraph 12.16

The committee recommends that Defence includes in all future tender evaluation documentation for the procurement of air sustainment services to the MEAO:

- specific provisions on conducting financial risk assessments of tender responses involving charter broker arrangements; and
- essential requirement that proposals involving any form of broker-based solution – including sub-contracting arrangements – must include the complete financial statements of the proposed air charter operator and any other proposed sub-contractors.

Response – Agreed.

The necessary Defence procurement policy and operational guidance framework already exists to implement these recommendations (see DPPM, Chapter 3.3 *Financial Policy and Advice in the Procurement Process*). Defence's existing probity and tender evaluation plan templates, and the ASDEFCON conditions of tender, permit financial statements to be obtained from tenderers and financial risk assessments to be undertaken. The Financial Investigation Service (FIS), DMO Commercial Group, is able to undertake financial assessments for procurement related matters.

The attached Probity Plan also requires suggested financial risk assessment to be undertaken as part of a future procurement process for air sustainment services to the MEAO, and requires the probity adviser to ensure these matters are considered as part of the tender evaluation.

The committee requests that the Auditor-General:

- Conduct a performance audit of the tender process in respect of RFT AO/014/09, with a focus on probity risk management. In particular, the audit should evaluate the following matters, with a view to identifying any further areas for future improvement:
 - (a) Defence's governance arrangements for the identification and management of significant probity risks to the procurement process, including conflicts of interest, confidentiality and proponent grievances;
 - (b) Defence's program of procurement governance and process reforms, including those outlined in its evidence to the committee; and
 - (c) Any other matters considered relevant to probity risk management, or related governance matters, in respect of the procurement of air sustainment services to the MEAO.
- After sufficient time has elapsed, conduct a second review to examine Defence's implementation of its program of procurement governance and process reforms. In particular the review should:
 - (a) evaluate the implementation progress and impact of the reforms outlined in Defence's evidence to the committee; and
 - (b) recommend, as necessary, any further reforms to probity risk management and other governance arrangements in respect of the procurement of air sustainment services to the MEAO.

Response – Not applicable.

This recommendation relates to the Auditor-General. Defence will provide all necessary support to the Auditor-General, as required.

Recommendation 8

paragraph 12.23

The committee recommends that Defence report back to the committee by 1 May 2012 on progress being made to implement the reforms it has announced including:

- the ongoing performance of the 2010 contract, including the cost per mission, the realisation of projected savings, the continuing need for the increased cargo volumetric requirements and the contractor's compliance with the tender requirements;
- progress on the establishment of the Centre of Excellence that is intended 'to support a more robust and consistent commercial approach to non-equipment procurement';
- the work of the newly created Non-Equipment Chief Procurement Officer; and
- the strategies for the recruitment and retention of suitably skilled procurement professionals.

Response – Agreed

Defence will report back to the committee as requested.

Recommendation 9

paragraph 12.25

Although the majority of recommendations apply to the procurement of air sustainment services to the MEAO, the committee recommends that Defence consider incorporating the principles and practices underpinning them as part of Defence wide non-equipment procurement policy.

Response – Agreed.

The majority of the principles and practices discussed in the recommendations are either consistent with existing Defence procurement policy, practice or templates (such as the DPPM or the ASDEFCON templates) or will soon be incorporated as a result of the DPPM 1 December 2011 update and the Tender Evaluation Better Practice Guides. These principles and practices apply to all Defence procurement as described in the DPPM.

In relation to training staff in the practical application of these principles and practices, for a number of years DMO, on behalf of Defence, has been working to improve the content of Defence procurement training courses. In June 2011, CPP Branch, DMO Commercial Group, finalised the design and content of the Simple Procurement Refresher course in consultation with representatives from Defence Education and Training Development (DETD). Delivery of this training course is expected to commence in October 2011. CPP Branch and DETD are also finalising the design of the Complex Procurement Refresher course. Improving Defence procurement training courses will lead to more highly skilled procurement professionals.

Corrections to Senate Report

1. Paragraph 3.7 of the Senate inquiry report states:

‘Preparation for re-tender

3.7 Defence commenced preparation for the re-tendering process in late 2009. Two key stages—which are discussed below—were the establishment of the Air Transport Standing Offer Panel in November 2009, and the preparation and approval of the procurement strategy. Headquarters, 1st Joint Movement Group (HQ1JMOVGP), within the Joint Operations Command, was the area within Defence responsible for conducting the procurement. The Commanding Officer of 1JMOVGP was Group Captain Robert Barnes. His superior officer was the Deputy Chief of the Joint Operations Command, Rear Admiral Ray Griggs.’

This is not factually correct. The command relationship is between CO 1 HQJMOVGP (ie Group Captain Barnes) and CJOPS. In practical terms, DCJOPS deals with day to day issues. While DCJOPS is a superior officer from a rank perspective, this is not in a direct line accountability sense. In addition, the paragraph implies that then RADM Griggs was GPCPT Barnes’ superior officer throughout the whole process. This is not the case as then RADM Griggs did not arrive in headquarters until May 2010. RADM Griggs did not take over as DCJOPS until July 2010 having spent the first 5 weeks as acting CJOPS. DCJOPS during November 2009 was AVM Greg Evans (although between November 2009 and July 2010 there were several DCJOPS primarily due to a run of ill health).

2. The Senate inquiry report refers in a number of places to ‘Dr Raymond Bromwich’. Mr Bromwich does not hold a doctorate, and accordingly the report should be corrected so that he is referred to as ‘Mr Raymond Bromwich’. The relevant references are as follows:

page 23, footnote 104
page 26, footnotes 119 & 120
page 27, footnote 126
page 57, paragraph 4.2 and footnotes 1,2 & 4
page 58, footnotes 9 & 10
page 59, footnotes 11 and 12 (twice)
page 60, footnotes 17,18, 19, 20, 21 and 23
page 71, footnotes 42 & 43
page 75, paragraph 5.32 and footnotes 68 & 69
page 115, footnote 16
Appendix 4
Appendix 5 (14 July)

COPY NUMBER:

Note to Drafters: This template probity plan is to be used for all future procurements of air sustainment services to the Middle East Area of Operations (MEAO).

Projects using this draft Probitiy Plan must review and tailor it as required. Please provide [insert details of person/position responsible for maintaining this template] a copy of any material changes which are proposed to this document so they can be considered and incorporated for the benefit of future users.



PROBITY PLAN

PROJECT (Insert Project Number)

(Insert Project Name)

Version **1.0**

(Insert Date)

Project X Probitiy Plan is hereby approved for action as required. I am satisfied that the arrangements detailed in this document meet the Department of Defence's requirements.

Issued by:

Approved by:

Insert Project Manager details

Insert Director details

Date

Date

DOCUMENT CONTROL SHEET

Amendment Record

Revision Date	Description	Changes Marked
	First Issue Version 1 (original issue)	

Distribution List

Organisation	Position	Copies
TEB	TEB Members	1 each
TEWG	TEWG Members	1 each
Probity Adviser	Probity Adviser	1
LSP	Legal Adviser	1
LPS	Principal Legal Officer X	1

Queries

If you have any questions regarding this document or any suggestions for improving this document, please contact:

Project Manager: **Insert Name**

Contact Details: **Insert Contact Details**

TABLE OF CONTENTS

DOCUMENT CONTROL SHEET	2
Amendment Record	2
Distribution List	2
Queries	2
TABLE OF CONTENTS	3
PROBITY PLAN FOR - PROJECT NUMBER MIDDLE EAST AREA OF OPERATIONS AIR SUSTAINMENT CONTRACT	5
Background	5
Introduction.....	5
Probity Plan.....	6
Role of the Commercial Manager	6
Definitions.....	7
Ethics and Probity Principles	8
Probity Principles.....	10
Specific Probity Outcomes	10
Obligations of Key Individuals.....	11
PROBITY PRINCIPLES	12
Probity Risk Management.....	12
Probity Control.....	12
Key Individuals	12
Project Manager.....	12
Probity briefings	12
Information and Document Management	13
Access to Controlled Information.....	13
Disposal of Controlled Information	13
Confidentiality of Controlled Information.....	13
Published Information	14
Conflicts of Interest.....	14
Solicitation and Conflict of Interest.....	14
Conflict of Interest Declarations and Management	15
Evaluation and Decision Making.....	15
Operative Decisions.....	15
Audit, Recommendations and Complaint Investigation	16
Review and Reporting	16
Complaints.....	16
Probity Audits.....	16
Communications	16
Meetings and Discussions	17
Correspondence with Tenderers	17
Conferences/Seminars	17
Socialisation with Tenderers	17
Site visits and demonstrations	18
Probity checks	18
Financial assessment.....	18
Communication with the Probity Adviser	18
POST CONTRACT	19
ANNEX A: ROLE OF PROBITY ADVISER	1

KEY EVENTS AND REQUIRED ACTIONS TABLE.....	1
ANNEX B: GUIDELINES FOR CLARIFICATION QUESTIONS.....	1
CLARIFICATION FORM.....	3
ANNEX C: PROTOCOLS FOR SITE VISITS AND DEMONSTRATIONS.....	1
ANNEX D: TENDERER PROBITY CHECKS	1
SCHEDULE 1: DEFENCE PERSONNEL ACKNOWLEDGEMENT	1
SCHEDULE 2: CONFLICT OF INTEREST DECLARATION.....	1
SCHEDULE 3: LIST OF PROJECT RELATED COMPANIES THAT KEY INDIVIDUALS MAY IDENTIFY A CONFLICT OF INTEREST WITH.....	1

PROBITY PLAN FOR -PROJECT NUMBER MIDDLE EAST AREA OF OPERATIONS AIR SUSTAINMENT CONTRACT

Background

1. **Insert Project Number** ('the Project') seeks to **(insert project objectives)**.
2. All future procurements in relation to this Project will be undertaken in accordance with the principles and practices that apply to all Defence procurement as described in the DPPM.

Introduction

3. The purpose of this Probity Plan ('the Plan') is to establish the Probity Principles which will apply to this Project and provide necessary probity guidance and practical procedures to all Key Individuals involved in the Project.
4. The probity objectives for the Project are to ensure:
 - a. the accountability of staff making Operative Decisions and having sufficient objective evidence for an accountability trail;
 - b. the integrity and defensibility of decisions made throughout the Project specifically and other related project activities generally;
 - c. that commercial competition from the outset of the Project, and any other Defence procurement processes, is encouraged and fostered;
 - d. that confidentiality of information is maintained;
 - e. that potential conflicts of interest are identified and addressed; and
 - f. that all Tenderers achieve equal and fair treatment.
5. All Key Individuals involved in **Project Number**, on a full-time or part-time/advisory basis (notably all Tender Evaluation Board (TEB) and Tender Evaluation Working Group (TEWG) Members, any external advisers to the Project and any persons involved in preparing the approach to the market documentation), are:
 - expected to inform themselves to the extent necessary to understand the relevant procedural requirements of the Project; and
 - to ensure that they understand their probity and other compliance requirements, including those set out in this Plan.
6. Defence's probity and ethical principles, as set out in this Plan, provide the standards of behaviour that must be adhered to by all those involved in the Project and during any other related activities. Compliance with this Plan will help to establish and maintain confidence that ethical business practices are being conducted by the Commonwealth. Adoption of the principles associated with this Plan will maximise the likelihood that all Tenderers are treated equally in an open and transparent process.

Probity Plan

7. This Plan has been approved by the **Project Manager and/or Project Director** and may not be amended without their approval. It must also be read in conjunction with related Project documentation such as the AS, TEP and any Negotiation Directive.
8. This Plan is drafted on the basis that it is to be applied from the point at which a decision is made to approach the market for the relevant services. In particular this means that the conflict of interest, security and confidentiality requirements apply from the point at which the development of tender documentation commences (including the AS, draft TEP, draft RFT and contracts, and any other related documentation).
9. The Project Manager must maintain a secure file that includes the original issue of this Plan and the original approved versions of any amendments to this Plan.
10. If this Plan or any other core decision-making document is substantively amended, each person who was provided with a controlled copy of the relevant original document before it was amended must be provided with an amended copy of the document and be briefed on the effect of the amendment as appropriate.
11. Whilst this Plan is the authoritative document for managing the probity aspects of the Project, where deemed necessary, specific key action plans or additional probity protocols may be prepared for each significant procurement process.
12. All Key Individuals involved with this Project must comply with this Plan, including completing *Schedule 1 Defence Personnel Acknowledgement* and *Schedule 2 Conflict of Interest Declaration*. The Project Manager must maintain a secure file that includes the signed Schedule 1 and 2 forms from each Key Individual.
13. The Probity Adviser will independently monitor the procurement process and report in writing the circumstances of any failure to comply with this Plan to the Project Manager (also see Annex A).
14. The appointed Probity Adviser will brief all Key Individuals on this Plan and general probity requirements. It is expected that all Key Individuals will acknowledge their understanding of this Plan and the relevant general probity requirements as set out in *Schedule 1 Defence Personnel Acknowledgment*.

Role of the Commercial Manager

15. The Commercial Manager provides contracting and procurement support to the Project. Separate to the role of the Probity Adviser, they will assist with:
 - a. ensuring that the Probity Plan is up-to-date and that any necessary amendments are recommended; and
 - b. seeking advice from the Probity Adviser as required.
16. The Commercial Manager, in consultation with the Project Manager, may request probity advice from the Probity Adviser for any significant solicitation process, or any other matter impacting on the objectives of this Plan, which warrants a probity report.

17. For the purposes of this Project, the Commercial Manager is:

[insert details]

Definitions

18. In this Plan:

AS means the Acquisition Strategy;

Conflict of Interest refers to situations where an official or advisor has an affiliation or interest that might prejudice or be seen to prejudice their impartiality. This means an incompatibility or the possibility that there might be a reasonable perception of an incompatibility between the public duty of a person and a current or prospective personal interest of that person or that person's immediate family. (Note: conflicts of interest can be actual, potential or perceived);

Controlled Information means security classified information, commercial-in-confidence (CIC) information, confidential information, solicitation responses or any other Key Information that is not Published Information;

Defence means the Commonwealth of Australia Department of Defence;

Delegate means the person authorised under the Defence Chief Executive's Instructions (CEIs) to approve a proposal resulting from the Project;

Document includes a graph, chart, diagram, accounting record, electronic mail message and anything that is a 'document' or a 'record' for the purposes of the *Acts Interpretation Act (Cth) 1901*;

External Service Provider (ESP) refers to a contractor, consultant or a professional service provider utilised from time to time by Defence to provide goods or services;

Key Individuals means any Defence 'Staff' (including members of the ADF who are Reservists) or 'ESPs' who have, or have had, legitimate access to any Controlled Information. (Note: All TEB and TEWG members are included within the term Key Individuals);

Key Information means any document or other information in hard copy or electronic form relating to Defence that is, or that could reasonably be thought to be, relevant to:

- a. a Tenderer deciding whether or not to submit a response, or to it preparing and submitting a response, in response to any solicitation documentation released as part of the Project; or
- b. the preparation of a response at any time during the solicitation process.

Operative Decision means any recommendation made or decision taken as part of the Project;

Plan means this Probity Plan;

Probity Adviser means [insert name of Probity Adviser, ie LSP or company name] engaged by the Project to provide probity advice;

Probity Principles means the process or procedures applying specifically to the Project and any activity related to the Project;

Project means [insert Project Name];

Project Manager or 'PM' means the person appointed by Defence to lead the Project team for the Project: (Insert name here);

Published Information means any document or other information, in hard copy or electronic form, about Defence or the Project made available to the public, the media, academia, unions, Defence staff, ESPs, Tenderers, which may include Restricted RFTs, which is not Controlled Information;

RFT means Request for Tender;

RFT Contact Officer means the single point of contact detailed in the solicitation material. Note: the Project Manager is most likely to be the RFT Contact Officer;

Shortlisted Tenderer(s) means the Tenderer(s) whose Tender(s) is selected to proceed to a particular solicitation phase, such as further clarification or negotiation, by Defence;

Sign-Off refers, when signing a document, that an assessment has been made of the content or document and that it meets the specified requirements;

Staff means a person who is a permanent or temporary member of the staff of the Department of Defence (Defence) including a member of the Australian Defence Force (ADF) (this includes members of the ADF who are Reservists, whether or not they are engaged in continuous full-time service);

TEB Chair means the person from time to time performing the duties of chair of the TEB for the Project, as described in the TEP;

TEB Member means a member of the TEB as described in the TEP;

Tender means a submission by a Tenderer lodged in accordance with the RFT or other solicitation process;

Tenderer means an organisation or entity that has indicated to Defence an intention to respond, or which might reasonably be expected to respond (prospective respondent), or has responded, to any solicitation documentation released for any part of the Project (this definition includes any party that might reasonably be expected to be nominated as, or has been nominated as, a subcontractor of a Tenderer);

Tender Evaluation Board (TEB) means those persons appointed by Defence to oversee the solicitation process and to evaluate the Tenders, as described in the TEP;

Tender Evaluation Plan (TEP) means the solicitation evaluation plan devised and approved by the relevant Delegate;

Tender Evaluation Working Group (TEWG) means one of the teams described in the TEP appointed by Defence to evaluate, and to report to (through the relevant TEWG hierarchy), the TEB on specified aspects of Tenders;

TEWG Member means a member of a TEWG as described in the TEP; and

Writing means any mode of representing or reproducing words, figures, drawings or symbols in a visible form delivered, posted or transmitted as electronic mail messages or attachments.

Ethics and Probity Principles

19. The Department of Finance and Deregulation's Buying for the Australian Government website provides high level guidance on probity principles, practice, tips and traps (refer

<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/index.html>).

20. The broad ethics and probity principles which underpin this Plan include:

a. fairness and impartiality;

eg. Tenders must be evaluated in a manner that ensures that the evaluation is free from bias and that all tenderers are accorded equal treatment.
Separation of Duties: officials involved in evaluation should not be those who are approving the spending of public money;

b. consistency and transparency of process;

eg. Tenders must be evaluated in a consistent manner. An appropriate audit trail must be maintained for the evaluation process (including ensuring that the evaluation of tenders is clearly and defensibly set out in the tender evaluation report). Public reporting of opportunities and agreements. Also, an agency must offer unsuccessful tenderers a debriefing;

c. use of an appropriately competitive process to ensure Value for Money;

eg. An open approach to the market is intended to be conducted for all MEAO air sustainment procurements to ensure that an appropriately competitive process is conducted (so that the Commonwealth is in a better position to assess whether a value for money tender has been selected). Make sure the cost does not deter competent suppliers and that reasonable time frames are set to enable bidders to allocate their resources to their bid;

d. appropriate security and confidentiality arrangements;

eg. Physical and electronic security measures used by agencies can include keeping a document register, numbering all the documents, and having a central secure storage area for all RFT material under development, tender documents and other evaluation material. This should be commensurate with the size, complexity and risk of the tender. Confidential submission information (Controlled Information) is particularly important prior to the signing of the contract and should only be shared on a 'need to know' basis. Tenders are required to be kept in confidence by the Commonwealth during the evaluation. In respect of the successful Tenderer, its Tender must be handled in accordance with the confidentiality provisions of its contract, and in respect of all unsuccessful Tenderers, their Tenders must be treated as confidential indefinitely;

e. identification and management of actual and potential conflicts of interest;

eg. The APS Code of Conduct requires APS employees to disclose, and take steps to avoid, any conflict of interest (actual, perceived or potential) in connection with APS' employment. Adviser contracts will include provisions relating to the management of conflicts of interest; and

f. compliance with legislative obligations and government policies;

eg. Regulation 9 of the *Financial Management and Accountability Regulations* 1997 requires that an approver must be satisfied that a spending proposal represents a 'proper use' of Commonwealth resources, which in accordance with section 44 of the *Financial Management and Accountability Act* 1997 (Cth), requires that among other things the 'spending proposal' is not inconsistent with the policies of the Commonwealth.

Probity Principles

21. These high level principles in turn translate into the following probity requirements, that:

- a. any solicitation processes must be conducted with honesty, fairness and in good faith;
- b. participants must not engage in any practice, including an improper inducement, which gives any Tenderer an improper advantage over another;
- c. a Tenderer must be subject to the same terms and conditions of solicitation as every other Tenderer with respect to any particular request;
- d. any actual, perceived or potential conflicts of interest will be managed as soon as possible after they have been identified or declared;
- e. Tenderers must be prepared to attest to their probity, and must not engage in any form of collusive practice. (Note: co-operative arrangements between Tenderers facilitated by Defence, such as the Capability Development Group is not considered a collusive practice);
- f. all requirements must be clearly specified in the solicitation documents and the criteria for evaluation of responses must be clearly indicated. (Note: evaluation criteria in the RFT must be identical to that in the TEP);
- g. evaluation of responses must be based on the conditions of solicitations (in particular, the RFT and evaluation criteria) and evaluation plans (TEP). (Note: it is worth reviewing whether there is any weighted criteria and projects should be clearly aware of the legal and probity implications of such an approach. General advice is to not include weighted criteria unless there is a clear justification for doing so);
- h. to protect the integrity of the Project, appropriate standards of confidentiality must be maintained by all Key Individuals; and
- i. all participants must meet their legal obligations.

Specific Probity Outcomes

22. The outcomes of conducting the procurement processes in accordance with this Plan will be as follows:

- a. the TEP will be consistent with the solicitation material and any associated documentation;

- b. no tender evaluation activities will take place outside the agreed framework of the AS, TEP, Probity Plan or the solicitation material (in particular the RFT);
- c. no Tenderer will have an unfair advantage;
- d. the processes adopted in the course of the Project will be publicly defensible;
- e. any irregularities, or alleged or perceived irregularities, in processes adopted in relation to the Project will be investigated;
- f. all conflicts of interest that relate to the Project or an Operative Decision formally notified will be appropriately addressed;
- g. the Project will be conducted in a manner that is consistent with the law, the Commonwealth Procurement Guidelines, the Defence Procurement Policy Manual, and any relevant Commonwealth procurement policies or instructions; and
- h. Controlled Information will be appropriately controlled.

Obligations of Key Individuals

23. The probity and ethical principles outlined above will be distributed to all Key Individuals and are to be strictly adhered to. They do not replace, but are in addition to, any other obligations applying to Defence staff and ESPs, including, but not confined to, those under:

- a. *The Public Service Act 1999*, including the Australian Public Service (APS) Values and Code of Conduct as set out in Section 10(1) of that Act;
- b. *The Defence Act 1903*;
- c. *The Crimes Act 1914* and the *Criminal Code Act 1995*;
- d. *The Privacy Act 1988*;
- e. *The Archives Act 1983*;
- f. *The Financial Management and Accountability Act 1997*, the *Financial Management and Accountability Regulations 1997*, and the *Commonwealth Procurement Guidelines 1 December 2008*;
- g. Official Secrecy Acknowledgement Declaration;
- h. The Commonwealth Fraud Control Guidelines 2011;
- i. ESPs: confidentiality conditions of relevant contracts or statutory obligations, including under the *Crimes Act 1914*;
- j. Relevant Chief Executive Instructions;
- k. The current version of the *Defence Security Manual*;
- l. The current version of the *Defence Procurement Policy Manual*; and
- m. Any other guidelines on official conduct of Commonwealth public servants.

PROBITY PRINCIPLES

Probity Risk Management

24. The Project Manager, Commercial Manager and the nominated DMO Legal representative, in consultation with the Probity Adviser will conduct a legal process and probity risk assessment as part of the development of the Acquisition Strategy for the Project. This risk assessment will specifically consider risks associated with proponent grievances and the small and highly competitive nature of the commercial air charter market.

Probity Control

Key Individuals

25. All Key Individuals must be provided with copies of this Plan, or any future amendments to this Plan, and sign an acknowledgement form stating that they have read and understood the Plan and any amendments to it (see *Schedule 1 Defence Personnel Acknowledgment*). Acknowledgement forms signed by Key Individuals are to be filed with the original Plan.

26. Operative Decisions may only be made by persons authorised to do so.

27. Key Individuals who propose to make recommendations in relation to, participate in the making of, or make an Operative Decision, must do so in accordance with the objectives of this Plan (as set out in paragraph 23 above).

28. Key Individuals must ensure that all aspects of the Project are conducted consistently with this Plan and with any Defence related core decision-making documents.

29. Non-compliance with any Probity Principles by any of those involved in the Project, or encouragement by a Tenderer to breach these Probity Principles, must be reported immediately to the Project Manager.

Project Manager

30. The Project Manager must ensure that Key Individuals who participate in making recommendations in relation to, participate in the making of, or make an Operative Decision, are appropriately qualified and experienced.

31. The Project Manager should conduct periodic meetings/discussions with the Commercial Manager and the Probity Adviser to consider any probity issues that may have arisen in the conduct of the Project.

Probity briefings

32. The Probity Adviser shall provide a briefing to Key Individuals on their responsibilities in relation to their obligations under the Plan and other legal requirements prior to those individuals commencing their involvement in the Project (including involvement in any evaluation activities). Any new or additional Key Individuals shall be

provided with a briefing prior to commencing their involvement in the Project. The Probity Adviser will not only brief Key Individuals on the requirements of this Plan, but will also brief them on the risks associated with proponent grievances and the small and highly competitive nature of the commercial air charter market.

Information and Document Management

Access to Controlled Information

33. Key Individuals should not have access to Controlled Information unless they have a 'need to know' and have been authorised by the Project Manager. Controlled Information needs to be managed in accordance with the information's commercial sensitivity and/or classification level.

34. All Key Individuals involved in the procurement who may be privy to Controlled Information are obliged to ensure that all such information remains confidential and is not disclosed to anyone other than other Key Individuals who require such disclosure in order to perform their duties for the procurement. Any Key Individuals who receive requests for Controlled Information from Staff or any third parties external to the Project must report such requests immediately to the Project Manager and advise the party making the request that they are to contact the Project Manager for such information.

35. Key Individuals having access to Controlled Information must ensure that documents and information, including electronically stored information, that is in their possession or control and which contains Controlled Information is:

- a. kept in locked offices or locked filing cabinets when not in use;
- b. not left unattended for any period at a place that is accessible by a person not authorised;
- c. not displayed at times or in places where they could be read by a person who is not authorised;
- d. not made available to a person who is not authorised; and
- e. password protected (in the case of electronically stored material).

Disposal of Controlled Information

36. Controlled Information may be disposed of according to the document's classification level and after agreement with the Project Manager.

Confidentiality of Controlled Information

37. All APS Staff are bound by the APS Code of Conduct under the *Australian Public Service Act 1999* and all ADF members are bound by the *Defence Act 1903*. (Note: also see paragraphs 20 and 23).

38. All ESPs having access to Controlled Information must sign a confidentiality deed prior to their engagement (as per *ASDEFCON (Strategic Materiel)* Volume Two Annex M to Attachment I: Draft Deed of Confidentiality and Fidelity or an equivalent form). The Project Manager must maintain a file that includes the original of each signed confidentiality deed.

39. Key Individuals must not communicate with a member of the public or Tenderers regarding any aspect of Controlled Information relating to the Project except through the RFT Contact Officer.
40. Key Individuals who have made or participated in any material way in making Operative Decisions, and are no longer employed by the Commonwealth, must not advise on, or assist with, the preparation of a response to any solicitation request.

Published Information

41. The Project Manager must ensure that documents drafted for the purpose of becoming Published Information are consistent with the objectives of this Plan and any other core decision-making documents.

Conflicts of Interest

Solicitation and Conflict of Interest

42. During the Project, a Key Individual must not solicit or accept any gift or hospitality from a Tenderer, or any other person who is associated with a Tenderer, without the approval of the Project Manager. Any such approval must be recorded in writing and notified to the Commercial Manager and the Probity Adviser. The Project Manager must maintain a copy of all approvals given on file. Gifts that are accepted must be recorded on the Gift Register maintained by the Project Manager.
43. Any ESP who provides advice to Defence in relation to the Project shall not be permitted to advise a Tenderer in relation to the Project and must prior to their engagement declare whether they have advised any Tenderer in the previous twelve months. In addition, any ESP personnel who are providing advice to Defence in relation to the Project must not undertake any work for Tenderers irrespective of whether or not that work is related to or unrelated to the Project.
44. A Key Individual who has been employed or engaged by a Tenderer within the previous three years must inform the Project Manager in writing prior to being engaged on the Project.
45. A Key Individual who, during the period of the Project, receives an offer of employment from a Tenderer (whether or not the offer of employment is in writing):
- a. is taken to have an actual conflict of interest; and
 - b. shall immediately advise the Project Manager in writing (see *Schedule 2 Conflict of Interest Declaration*).
46. The Project Manager will notify the Probity Adviser of the conflict of interest and consult with the Probity Adviser on the appropriate steps to minimise the impact of, and deal with, the conflict of interest resulting from such an offer to ensure the integrity of the Project.

Conflict of Interest Declarations and Management

47. Key Individuals involved in the procurement are required to sign a Conflict of Interest Declaration (contained at *Schedule 2 Conflict of Interest Declaration*) prior to commencing work on the Project.

48. Key Individuals must inform the Project Manager in writing) as soon as they become aware that they may have an actual, potential or perceived conflict of interest. Key Individuals must submit an updated *Schedule 2 Conflict of Interest Declaration* detailing the conflict of interest and take any steps required by the Project Manager to manage or otherwise deal with the conflict.

49. The Project Manager must maintain, for the duration of the Project, a log of occurrences concerned with the management of conflicts of interest identified or declared by Key Individuals.

50. If any Key Individual discloses, or subsequently notifies, an actual, potential or perceived conflict of interest, the Project Manager will notify in writing, and consult on the appropriate action to manage the conflict, with the Commercial Manager and the Probity Adviser. The appropriate action may include removing the person from the Project team and/or preventing any further access to Controlled Information.

51. A Key Individual who has an actual, potential or perceived conflict of interest in relation to a particular Operative Decision must not provide any advice in relation to, participate in the making of, or make that Operative Decision.

52. If the Project Manager becomes aware that he or she has an actual, potential or perceived conflict of interest, he or she must immediately notify in writing the Probity Adviser, the Commercial Manager and the TEB Chair. The TEB Chair will seek advice as required from the Probity Adviser and the Commercial Manager and any other party as appropriate. The Project Manager will comply with any directions from the TEB Chair as to how the Project Manager's conflict of interest is to be managed.

Evaluation and Decision Making

Operative Decisions

53. All Key Individuals participating in the making of, or making an Operative Decision, must act strictly in accordance with this Plan.

54. All Key Individuals who make an Operative Decision must record their decision in writing and the basis on which they made that decision. Where an Operative Decision is made collectively by a group of persons, the decision must be recorded in writing by one designated person for, and on behalf of, the group.

55. Tender evaluation plans (TEPs) and source evaluation reports (SERs) are to be prepared for all procurement activities undertaken by Key Individuals. Relevant probity issues should be considered for plans and reports prior to submission by the Project Manager to the TEB Chair for approval.

Audit, Recommendations and Complaint Investigation

Review and Reporting

56. The Probity Adviser may, within the level of security clearance held, be requested by the Project Manager to:

- a. review any file required to be maintained, or document required to be produced, under this Plan, or any file maintained by Defence in relation to the Project;
- b. interview any Key Individuals regarding probity issues;
- c. inspect Defence's physical or IT security systems;
- d. attend any briefing provided to either Key Individuals or Tenderers;
- e. observe the making of any Operative Decision; and
- f. review any documents taken into account by a person making an Operative Decision

57. The Probity Adviser shall provide such advice as considered appropriate to ensure the Project is conducted fairly and in accordance with this Plan.

58. The Probity Adviser must provide written notification to the Project Manager immediately if they become aware of circumstances that suggest that the Project has or is being conducted unfairly or otherwise may be compromised.

59. The Probity Adviser must, when requested, report in writing to the Project Manager on whether, in the Probity Adviser's opinion, the Project has been conducted fairly and in accordance with this Plan.

Complaints

60. All complaints received by Defence from Tenderers will comply with Chapter 5.7B of the Defence Procurement Policy Manual (DPPM).

Probity Audits

61. In addition to the oversight provided by the Probity Adviser as set out in this Plan, a probity auditor may also be engaged to audit any solicitation process and provide an audit report.

Communications

62. Key Individuals must not communicate Controlled Information outside the Project.

63. Key Individuals must not communicate with a member of the public, other Staff not involved in the Project, or a Tenderer regarding any aspect of the Project except through the RFT Contact Officer. In this regard, Key Individuals should be wary of requests for information from Staff (and recently separated APS employees or ADF members) requesting background information relating to the Project.

64. Where a Key Individual is contacted by a Tenderer, they must be instructed to submit their enquiry in writing to the RFT Contact Officer and report the contact to the Project Manager.

Meetings and Discussions

65. An agenda should be developed and minutes prepared for all significant meetings, both within Defence and with Tenderers, and retained in accordance with Controlled Information in the Project's records.

66. Details of discussions, meetings and enquiries with and by Tenderers, whether face-to-face or by telephone, shall be logged and a record retained to be made available if a dispute or query is raised in relation to same.

67. The Probity Adviser may be requested to attend meetings with Tenderers and will develop protocols for the conduct of those meetings to ensure that probity requirements are satisfied.

Correspondence with Tenderers

68. The Project contact officer for communications with Tenderers is the RFT Contact Officer.

69. All correspondence with Tenderers shall be reviewed by the Commercial Manager and the Probity Adviser prior to signature by the RFT Contact Officer, to ensure consistency and appropriateness of such correspondence (also see Annex B).

70. Copies of all correspondence, discussions and file notes with Tenderers shall be filed and retained in Project records.

71. Should a Tenderer require clarification on any matter of the response (including formal responses to questions), the RFT Contact Officer will take the appropriate action to ensure all Tenderers receive identical clarification information.

Conferences/Seminars

72. Key Individuals must not attend a conference or seminar that is primarily sponsored or organised by a Tenderer without the prior written permission of the Project Manager. Key Individuals receiving such an invitation must notify the Project Manager in writing.

73. Key Individuals may attend other conferences or seminars where Tenderers are providing presentations or demonstrations of products that are not directly related to the Project, and shall inform the Project Manager who shall advise the Probity Adviser. Key Individuals are not permitted to inform Tenderers (and non tenderers who are involved in similar industry activities) they are involved in the Project and shall avoid situations where an actual, potential or perceived conflict of interest may arise.

Socialisation with Tenderers

74. Key Individuals must not attend or participate in any social function sponsored, organised or paid for by a Tenderer. Key Individuals who receive an invitation to a

Tenderer's social function shall notify the Project Manager in writing. The Project Manager shall also inform the Probity Adviser.

75. Key Individuals that regularly socialise with a person who is connected with a Tenderer shall notify the Project Manager in writing of the standing relationship.

Site visits and demonstrations

76. Defence personnel on site visits and demonstrations should not accept:

- a. any gifts during the site visits;
- b. any free travel or accommodation; or
- c. any hospitality other than light refreshments (also see Annex C).

77. If requested by the Project Manager, the Probity Adviser will attend and monitor any site visits or demonstrations conducted.

Probity checks

78. The solicitation documentation will contain a reserved right for the Commonwealth to conduct a wide range of security, probity, reference and financial checks. If requested by the Project Manager, the Probity Adviser will conduct probity checks into Tenderers, their key personnel, proposed subcontractors and any associated companies (for example, parent or subsidiary companies). The details of the probity checks that may be undertaken are set out at Annex E.

Financial assessment

79. The solicitation documentation includes an ability to conduct financial risk assessments (including an ability for the Commonwealth to obtain financial statements). In reviewing any relevant SER, the Probity Adviser will provide specific comment on whether these matters have been appropriately considered from a legal process and probity perspective as part of the tender evaluation process.

Communication with the Probity Adviser

80. All requests for advice to the Probity Adviser shall be in writing. The Probity Adviser shall respond to all requests in writing ensuring the creation of an audit trail. All requests for advice to the Probity Adviser from Project staff or ESPs shall come through the Project Manager's office. The Commercial Manager may forward to the Project Manager requests for advice from Project Staff or ESPs, however, the Project Manager is responsible for making these available to the Probity Adviser.

81. Communications with the Probity Adviser shall be in writing to the following address

Insert Probity Adviser contact details

POST CONTRACT

82. At the completion of the RFT process, all Key Individuals must continue to maintain the confidentiality of all Controlled Information arising from the RFT process. For example, they are not to discuss information from the tender evaluation and negotiation phases with anyone who is not a Key Individual.

83. All confidential tender documents must be returned to the Project Office in accordance with Defence procedures.

ANNEX A: ROLE OF PROBITY ADVISER

1. An independent and suitably qualified Probity Adviser has been appointed by the Project Manager.
2. The Probity Adviser is responsible for providing advice as required, and for conducting reviews as required, to ensure compliance with this Plan and for reporting as necessary to the Project. Such reports shall include, as appropriate, recommended courses of action to respond to any non-compliance or potential non-compliance with the Plan.
3. The Probity Adviser has the right and duty at all times to exercise independent judgment to report directly to the Project Manager, the TEB Chair, the Principal Legal Officer or a more senior staff member, if necessary, to advise in respect of protecting the integrity of the Project.
4. The Probity Adviser does not have the function of approving or withholding approval in respect of any stage, document or process in relation to the Project. The Probity Adviser may be required to advise, recommend compliance or provide reasons for refusing to recommend compliance with this Plan on each discrete stage and task within the Project. In the event that the Probity Adviser is not prepared to make a recommendation in relation to a process, the Probity Adviser will consult with the Project Manager, the Commercial Manager and the nominated DMO Legal representative to seek resolution of the issue(s).
5. The Probity Adviser will, in consultation with the Project Manager, conduct probity briefings when required, either personally or in writing, for all Key Individuals. Note: these briefings may be supplemented by the Commercial Manager.
6. Non-compliance with any Probity Plan requirement or Probity Principles by any person involved in the Project, or encouragement by a Tenderer to breach these Probity Principles, must be reported immediately to the Project Manager and such reports shall be in writing. The Project Manager must ensure that all such reports are forwarded to the Probity Adviser.
7. The Probity Adviser is responsible for recommending sign-off for compliance with this Plan to the Project Manager (where requested) in relation to discrete phases and tasks within the Project, including those identified specifically in this Plan, namely that:
 - a. all stages of any industry solicitation process must be conducted in an auditable and defensible manner, thus minimising the chances of successful challenge by potentially aggrieved Tenderers;
 - b. procedures to maximise confidentiality must be strictly followed;
 - c. procedures must be put in place for communicating with and advising Tenderers. These will include records of contacts with Tenderers; clarification of solicitation provisions and a single contact person in Defence (being the RFT Contact Officer);
 - d. access to Published Information is equally granted to all Tenderers;

- e. a clear evaluation methodology is adopted and the file records show that it was followed;
 - f. procedures for checking and ensuring data quality must be put in place. Appropriate security arrangements must be implemented including file security and computer security (passwords); and
 - g. procedures for the dissemination of electronic information are put into place and these procedures are documented and communicated to Key Individuals.
8. Recommendations by the Probity Adviser will normally be to the Project Manager. If requested by the Project Manager, the Probity Adviser will also provide a report on each significant solicitation process. The Probity Adviser will report against the key events and required actions table set out below.
 9. The Probity Adviser may refer matters to the Project Manager for general guidance.
 10. If, at any time it becomes apparent to the Probity Adviser that any provisions of this Plan are inadequate, the Probity Adviser will advise the Project Manager in writing. The Project Manager must, after consultation with the Probity Adviser, have the Plan amended so as to ensure that all such inadequacies are dealt with properly. Where agreement to amend the Plan is not reached, the issue must be raised with the Probity Adviser for resolution.

KEY EVENTS AND REQUIRED ACTIONS TABLE

Event	Probity objectives	Action	Status
Establish Probity Plan and monitor compliance	Finalise Probity Plan for the RFT process Ensure Probity Plan is adhered to during the RFT process	Probity Adviser to develop Probity Plan for consideration and approval by the Project Manager. Probity Adviser to monitor compliance with Probity Plan throughout the RFT Process and to report any variation from Plan to the Project Manager.	Ongoing
Provide Sign-offs	Provide confirmation to the TEB Chair and the Project Manager regarding the conduct of the RFT process	Probity Adviser to provide Project Manager with sign offs at the following milestones: <ul style="list-style-type: none"> - finalisation of the RFT and release of RFT to the market; - finalisation of evaluation report; and - final contract signing. Probity Adviser sign offs to cover the following: <ul style="list-style-type: none"> - consistency of Plans with RFT documentation and soundness of methodologies and procedures; - adherence by TEB and TEWG members with the TEP; and - confirmation that any probity issues dealt with appropriately. 	
Confidentiality	Ensure the protection of confidential information	Project Manager to establish secure areas and security cabinets/containers and other facilities. Probity Adviser to inspect secure areas and facilities. Project Manager and Commercial Manager to confirm terms of engagement of advisers and obtain deeds of confidentiality as appropriate and seek advice of the Probity Adviser as necessary.	Ongoing

Event	Probity objectives	Action	Status
Conflict of interest	Ensure all Key Individuals briefed on conflict of interest Ensure Conflict of Interest Declarations provided by all personnel involved in the RFT process	<p>Probity Adviser to confirm declarations completed by all personnel Project Manager to ensure that conflicts of interest should be a standing agenda item at beginning of all applicable meetings.</p> <p>Probity Adviser to develop conflict guidelines to apply to all Commonwealth advisers and officers for endorsement by the Project Manager.</p> <p>Probity Adviser to inspect conflicts register to record all identified conflicts and their treatment.</p> <p>Probity Adviser to monitor and report on compliance with conflict guidelines.</p>	Ongoing
Preparation of RFT documents	Ensure that the development RFT documentation is conducted appropriately	<p>ESPs and Defence personnel involved in the Project to provide confirmation regarding conflict of interest and contact with potential Tenderers as appropriate.</p> <p>Probity Adviser to monitor the preparation of RFT conditions of tender and draft contract.</p> <p>Probity Adviser to review draft TEP and evaluation criteria and ensure consistent with the RFT conditions of tender and statement of requirement.</p>	Prior to issue of RFT
TEP	Establish TEB and TEWGs	<p>Probity Adviser together with Project Manager to review membership of TEB and TEWGs.</p> <p>TEP finalised by Project Manager and approved by Delegate. Probity Adviser to review prior to approval by Delegate.</p>	Prior to Closing Date
Receipt of Tenders	Ensure document management systems are implemented for the handling of Tender documents	<p>Project Manager to ensure an appropriate document management procedure is adopted for receipt of Tenders. Probity Adviser to review procedures prior to receipt of Tenders.</p>	Closing Date

Event	Probity objectives	Action	Status
<p>Evaluation of Tenders</p>	<p>Ensure security of documentation and protection of Controlled Information</p> <p>Ensure clearly defined evaluation methodology is adopted</p> <p>Ensure evaluation process is properly documented and that it establishes a clear and defensible basis for the evaluation of Tenders</p>	<p>Probity Adviser to:</p> <ul style="list-style-type: none"> - brief members of TEB and TEWGs. - review document management systems to be implemented to record, store, handle and distribute Tenders. - Attend and monitor TEB meetings, and other tender evaluation organisation meetings as required. - Monitor whether evaluation is undertaken in accordance with the TEP. - Provide advice on clarification questions and ad hoc advice on any other issues during the evaluation. - Review draft Source Evaluation Report and provide comments to the TEB Chair and Project Manager. - Assist with development of any additional rules or processes, in the event more than one preferred Tenderer is selected. 	<p>Ongoing during evaluation</p>
<p>Contract negotiations</p>	<p>Ensure the contract negotiations are conducted appropriately</p>	<p>Project Manager to ensure confidentiality of unsuccessful Tenderers' information is maintained and seek advice of the Probity Adviser as appropriate in the event of a breach.</p> <p>Probity Adviser to:</p> <ul style="list-style-type: none"> - review Negotiation Directive - monitor proposed amendments or variations to the draft contract, with reference to the preferred Tenderer's statement of compliance - Provide ad hoc advice when requested by the negotiation team 	<p>Prior to contract signature</p>

Event	Probity objectives	Action	Status
Debriefing process	<p>Ensure that unsuccessful Tenderers are notified of outcome and offered debriefs</p> <p>Ensure debriefs are conducted properly and that confidentiality and probity is maintained</p>	<p>Project Manager to ensure unsuccessful Tenderers are provided with an opportunity to be debriefed.</p> <p>Probity Adviser to:</p> <ul style="list-style-type: none"> - Review notification to unsuccessful Tenderers. - Brief personnel to be involved in debriefing regarding purpose and content of debriefing (in particular, the importance of keeping other Tenderers' information confidential, including the preferred Tenderer). - Assist the Project Manager in preparation of discussion points for each debriefing session prior to the session. <p>Project Manager to ensure minutes of each debriefing session are kept and Probity Adviser to review minutes.</p>	After contract signature

ANNEX B: GUIDELINES FOR CLARIFICATION QUESTIONS

1. Tenderers are not permitted to improve their offers during the clarification and evaluation phase. An ‘improvement’ can be defined as a variation to a tender, which cannot reasonably be categorised as being an elaboration of, or contemplated by, the original bid. Tenderers may be provided with the opportunity to correct unintentional errors or omissions (for example, the signing of their Declaration). Tenderers will usually not be permitted to amend their prices.
2. The TEWG will need to balance the flexibility required to obtain an outcome against the need to ensure that the process is transparent and tenderers are treated equitably.
3. The following guidelines apply to the clarification and evaluation phase and are intended to assist each TEWG in evaluating tenders. Subject to any minimum requirements set out in the RFT:
 - a. if information was requested in the RFT but not supplied, or was not supplied in the required format, and the TEWG determines that this was an unintentional error or omission, the tenderer may be provided with the opportunity to correct that error. It is important not to reword the RFT clause or ask for different information;
 - b. where a tenderer has provided information in a format that does not facilitate the evaluation, tenderers may be requested to provide a breakdown of their information;
 - c. if insufficient information is supplied by a tenderer then further detail may be requested (assuming that it seems likely that it will be available) but the TEWG must ensure that this does not provide an opportunity for tenderers to offer alternatives to their original bid. In other words, it is reasonable to ‘drill down’ into the detail but not to allow opportunities for tenderers to propose alternatives to their original solution. If through this process tenderer’s solutions are demonstrated to be inadequate, then this is relevant to the TEWG's assessment; the TEWG is not there to assist the tenderer to develop an adequate solution. In seeking information that has not been provided it is important to ensure that this does not give the tenderer an unfair opportunity to change their tender;
 - d. tenderers may be asked if particular components have been costed;
 - e. questions should be worded carefully to ensure that they are neutral and where possible simply repeat the words used in the RFT. For example, “In order to allow us to complete the evaluation, please provide the information requested at clause in the RFT” or “At clause in your Performance Management Plan you said; can you explain your proposal in respect of in more detail”. Unless it is absolutely necessary in order to obtain an answer, a question should not analyse/discuss the proposed solution; in particular questions must NOT make suggestions, and/or introduce new material by saying things like “have you considered” or “the Commonwealth usually prefers to how do you envisage that this could be accomplished in your solution” or “can your..... structurethe material provided in response to clause as follows”;

- f. if a question is misunderstood, or the answer is unclear, then it is reasonable to reword and repeat the question; it may be necessary to provide further clarification and/or explanation in the reworded question but this needs to be handled carefully. There is no limit on the number of questions that may be asked on a particular topic, but questioning should cease once the TEWG considers that it has sufficient information to form an assessment. Tenderers are not permitted to provide draft answers because prima facie it involves the TEWG in a dialogue with the tenderer in which it may prove to be very difficult to subsequently demonstrate that tenderers are not being permitted to improve their bids; if a question does not elicit the required information then it should be handled as set out above.
- g. TEWG members should give tenderers no indication of their reaction to any particular piece of information; all dialogue should be conducted in a neutral and professional manner. While tenderers will ask, it is important not to indicate agreement/disagreement with, and/or approval/disapproval of, the tenderer's views / proposals. It is also important not to give any indication as to the relative importance of items. Any of these actions may give one tenderer an advantage over the other; and
- h. information from one tenderer's submission is not to be supplied to any other Tenderer, even where the information is not identified as information from that submission.
4. In summary, the purpose of clarification is to understand the tender in such detail as is reasonably necessary to support a fair assessment of its merits, demerits, strengths, weaknesses and risks so that advice can be provided to the TEWG. It is not to allow the tenderer to improve its bid.
5. All clarification questions must be issued through the RFT Contact Officer and must be reviewed by the Probity Adviser prior to release. The Probity Adviser will review all responses to clarification questions to ensure that responses fall within these guidelines.
6. These guidelines apply to all forms of dialogue with the tenderers during the evaluation of tenders.

CLARIFICATION FORM

QUESTION NUMBER:	[Allocate Question No. All questions will have unique numbers in the form of an abbreviation of the tenderer's name, TEWG function followed by a sequence number. Question numbers are assigned by TEWG Leader when the question is approved within the Evaluation Team. For example "ABC/Corp/001".]
TENDERER:	[Insert Tenderer's Name]
DATE ISSUED:	[Insert date – DD/MM/YYYY]
DATE DUE:	[Insert date - DD/MM/YYYY – The time tenderers are allowed to respond depends on the priority of the Question. As a general rule allow 2 working days for High Priority, 3 working days for Medium Priority and 4 working days for Low Priority. However the time allowance should reflect the evaluation timeline.]
PRIORITY:	[Insert High / Medium / Low]
QUESTION:	[Insert the text of the question]
ANSWER:	[Tenderer will insert the text of its answer to the question. Tenderers may attach additional information.]
TENDERER CONTACT:	[Tenderer will insert contact details for any follow up or clarification of the answer. This will usually be the Tenderer's Bid Manager.]
COMMONWEALTH CONTACT:	[Insert Commonwealth contact details for any clarification of the question. This will usually be the RFT Contact Officer.]

ANNEX C: PROTOCOLS FOR SITE VISITS AND DEMONSTRATIONS

1. These protocols are for members of the TEWGs and advisers who are intending to undertake visits to Tenderer sites for the purposes of evaluation. These protocols should be read in conjunction with, and not in substitution for, the Probity Plan, the Tender Evaluation Plan and any internal Defence protocols, guidelines and instructions concerning the required standards of conduct for procurement processes.
2. These protocols are based on principles including:
 - a. fairness and impartiality;
 - b. consistency and transparency of process;
 - c. security and confidentiality;
 - d. identification and resolution of conflicts of interest;
 - e. compliance with legislative obligations and government policies as they apply to competitive Tendering and contracting; and
 - f. a clear audit trail.
3. The protocols help to ensure you are not improperly influenced, or appear to be improperly influenced in your deliberations. These general protocols include:
 - a. Site visits to be undertaken by at least 2 members of a particular TEWG. It is recommended that the Probity Adviser attend all site visits;
 - b. A record must be kept of all site visits, including details of meetings with Tenderers; who was in attendance, significant matters/issues raised and responses. This record is to be prepared as contemporaneously as possible. Care must be taken to ensure that no Tenderer is allowed an opportunity to improve or alter its tender;
 - c. TEWG members and advisers should avoid individual discussions with Tenderer personnel. If a TEWG member or adviser is approached by Tenderer personnel who seek to raise issues in respect of current or future aspects of the procurement process, you should indicate that it is not appropriate to discuss such matters and report the discussion to the TEWG Chair or Project Manager. In the interests of avoiding any inappropriate perceptions, this extends to refrain from discussing matters that you believe may even be publicly known;
 - d. Site visits should adhere to a strict timeframe, which is to be applied equally, as far as practicable, to all Tenderers; eg. "each site visit will be limited to a maximum of three hours";
 - e. Tenderers should be notified of the protocols that will apply to a site visit prior to the site visit taking place; eg no marketing information to be provided, limits on hospitality, time period for site visit etc. This will help to avoid any

misunderstandings on the day;

- f. Hospitality from Tenderers (eg lunch/dinner/refreshments) should be avoided. Light refreshments (tea/coffee) may be accepted, but care should be taken to avoid discussions in relation to the RFT process or the Tenderer's proposed solution (see item (c) above);
- g. Gifts and any offers of travel or accommodation must not be accepted under any circumstances; and
- h. The record of the site visit must be made available to all TEWG members who could not attend. The record must be kept securely on file together with all other evaluation documentation.

ANNEX D: TENDERER PROBITY CHECKS

1. The RFT conditions of tender will include the following clauses and the form attached to this Annex E to enable the Commonwealth to undertake security, probity and financial checks:

X.X.1 The Commonwealth reserves the right to perform such security, probity or financial checks and procedures as it may consider necessary in relation to the tenderer and its subcontractors, their officers, employees, partners, associates or related entities (including consortium members and shareholders and their officers or employees if applicable). These checks may include (without limitation):

- (a) security and probity checks including criminal history checks;
- (b) corporate history checks;
- (c) media checks;
- (d) litigation searches (past, present or pending); and
- (e) any other checks which Defence considers relevant.

X.X.2 Each Tenderer agrees to provide, at its cost, all reasonable assistance to the Commonwealth to facilitate these checks being carried out (including executing all necessary consent forms)

2. The Probity Adviser may be requested to undertake the following probity checks in relation to tenderers.

Non Invasive Searches

3. The Probity Adviser may conduct the following non-invasive searches:

- *ASIC database for the current and/or historical company extract of each company:* This search provides relevant information on a company including the following: Australian Company Number, current status (e.g. registered or deregistered) and details of officeholders and shareholders.
- *ASIC Disqualified Directors database:* This report also lists an individual's current and historical involvement with any Australian company. It shows the status of the company on which they are, or were, a director (for example, whether it is registered, deregistered etc). Alternatively, the ASIC's Register of Banned & Disqualified Persons can be searched directly on the ASIC website, however it does not come with a register extract setting out the result or the information about current and previous directorships.
- *ASIC Personal Names Index Search:* This report lists results from the ASIC Personal Names Index, which provides past and current details of the roles held by people within companies such as shareholder, director, secretary, disqualified director etc.

- *Federal Government's National Personal Insolvency Index*: the Federal Government's National Personal Insolvency Index (NPII) contains information about proceedings and administrations against individuals under the *Bankruptcy Act 1966*.

Additional searches available

4. Below is a summary of some other Non Invasive Searches that are available, including court judgements and summons checks of individuals and media searches (which can be done for individuals and companies). Note due to privacy and consumer credit laws, credit check reports are only available to organisations that are providing credit (for example, banks).
 - *Court judgements and summons checks*: searches can be undertaken to ascertain if a company or individual is a party named in proceedings issued in various courts. Unless it is known or suspected that a company or an individual is engaged in specific litigation (and hence targeted investigations can be undertaken), searches would usually only be undertaken in the jurisdiction where the company or individual trades or is located. Note that it is often difficult to access details about the nature and progress of the proceedings identified in these searches, and a decision may need to be made about whether to seek details from the party in question. In relation to searches of state court registries (and the High Court registry) it is possible to physically search court registries. In relation to matters before the Federal Court and Federal Magistrates Court, searches can be conducted on the Federal Court website using 'eSearch'. The database is updated in real time and includes all cases that have commenced since 1 January 1984.
 - *Media Searches*: media searches often reveal useful information about individuals and companies. A wide range of media searches can be conducted for Australian and international newspapers, magazines, journals, newsletters, radio and television transcripts, and wires. Coverage varies by publication (mostly beginning in 2000 or shortly after for Australian publications). Unless a company does work internationally, these searches would usually be limited to Australian sources.
5. In addition to the searches referred to above, the Commonwealth may contact foreign governments (i.e. Defence Departments for whom tenderers may have previously undertaken work) to obtain information regarding the tenderer and its subcontractors, their officers, employees, partners, associates or related entities (including consortium members and shareholders and their officers or employees if applicable) in the event that any specific concerns are identified.

Invasive Searches

6. Individuals are required to provide their consent for Invasive Searches. If the optional clause referred to above is included in the RFT conditions of tender then the Commonwealth will be able to undertake a range of checks, however, it will be necessary for the Tenderer to procure additional consents (this could include, for example, Tenderer's employees, officers, partners, associates, subcontractors or related entities) to the Commonwealth.

7. The following is a summary of some Invasive Searches that are available:

- *Australian Criminal Record*: The AFP is able to provide the results of criminal history checks across Australia.
- *International Character Check*: The AFP can organise international character checks through Interpol. These require a signed authority from the individual (in a form provided by the AFP). A number of countries will not do these searches unless it is a criminal matter, for example, Germany, the United States of America, Switzerland and the United Kingdom . These searches would be usually undertaken where the organisation they are considering dealing with has overseas operations and the country in which the operations occur will do the search (for example, The United Arab Emirates), however, it should be noted that results can take several months to receive.
- *ASIC confidential database*: A search of ASIC's confidential database for companies or individual company directors can be conducted by ASIC. ASIC state that the searches of their confidential database should not be characterised as 'probity checks' and that they are 'at best an inclusive review of information that may identify concerns warranting further attention'.

Tenderer Probity Check Consent Forms

Note: For the invasive checks referred to above, four template forms are likely to be necessary - two AFP consents (one for national checks and one for international checks) and two ASIC confidential database standard form letters (a corporate form and one for each individual). Prior to finalisation of this Plan, the Project Manager or the Probity Adviser should approach the AFP and ASIC directly to obtain these forms so they can be attached to this Plan.

SCHEDULE 1: DEFENCE PERSONNEL ACKNOWLEDGEMENT

Note: An amended version of this form should be developed for ESPs such as LSPs.

To: The Project Manager

1. I am an employee of the Commonwealth of Australia (the Commonwealth).
2. I will be involved in (insert Project Name) (the "Project") as a Key Individual.
3. I acknowledge that as an employee of the Commonwealth I have various obligations to act in the Commonwealth's best interest, as detailed in the Project's Probity Plan (notably 'Obligations of Key Individuals').
4. For Project (insert Project Name), I acknowledge that I have received, read a copy of, and understood:
 - a. the Tender Evaluation Plan (TEP);
 - b. the Request for Tender (RFT); and
 - c. the Probity Plan.
5. In the course of performing my duties in relation to the Project, I may have access to commercial-in-confidence or other Controlled Information. I acknowledge that I have obligations to maintain the confidentiality of information in the Commonwealth's processes.
6. In accordance with clause 12 of the Probity Plan, I acknowledge and agree that I understand the relevant general probity requirements relating to the Plan and I am able to comply with the Plan and the relevant general probity requirements.

Signed:

Name:

Title:

Date:

SCHEDULE 2: CONFLICT OF INTEREST DECLARATION

I _____
insert name

of _____
insert name of employer

have been asked to disclose any interest that may conflict, or be perceived to conflict, with my role as:

insert role, eg., a member of the TEB, TEWG, adviser

in the RFT process being undertaken by the Commonwealth of **^insert RFT name and number^** for the procurement of **^describe the Services^**.

I now declare that:

1. To the best of my knowledge and belief, neither myself nor members of my immediate family have, or have had, any relationship or interest, whether personal, financial or professional, with or in any potential tenderer, or employee or adviser of any potential tenderer, including the parties listed in Schedule 3, except for the relationships or interests disclosed below:

Note: Immediate family include grandparent, parent, spouse or partner, sibling, child, grandchild and include any step or ex relationships. Examples of relationships or interests include shareholdings, directorships, employment, client/customer, previous business dealings, close friendships, membership of clubs

2. I am aware of the Commonwealth's requirement for strict probity in the RFT process and if I subsequently discover that there is a relationship or interest of the kind described in paragraph 1 of this declaration with any potential tenderer, or employee or adviser of any potential tenderer, I will immediately report it to the Project Manager.
3. I will also immediately report to the Project Manager any direct or indirect contact that I have with any potential tenderer, or any employee or adviser of any potential tenderer, which is not officially authorised, including any approach made to me in the way of a direct or implied offer of future employment or other benefit.

Dated the day of 20

Signed:

Name:

Address:

.....

in the RFP process being undertaken by the Commonwealth of Western Australia for the procurement of [redacted]

I now declare that:

To the best of my knowledge and belief, neither myself nor members of my immediate family have or have had, any relationship or interest, whether personal, financial or professional, with or in any potential tenderer, or employee or agent of any potential tenderer, including the parties listed in Schedule 1, except for the relationship or interests disclosed below:

[Empty rectangular box for disclosure]

I am aware of the Commonwealth's requirement for third parties in the RFP process and I have independently checked that there are no relationships or interests of the kind described in paragraph 1 of this declaration with any potential tenderer or employee or agent of any potential tenderer. I will immediately report to the Project Manager:

I will also immediately report to the Project Manager whenever any direct or indirect contact that I have with any potential tenderer, or any employee or agent of any potential tenderer, which is not officially authorised, is being or is proposed to be in the way of a direct or indirect offer of future employment or other benefit.

I have with any potential tenderer, or any employee or agent of any potential tenderer, which is not officially authorised, is being or is proposed to be in the way of a direct or indirect offer of future employment or other benefit.

Dated this day of

SCHEDULE 3: LIST OF PROJECT RELATED COMPANIES THAT KEY INDIVIDUALS MAY IDENTIFY A CONFLICT OF INTEREST WITH

Note: Key Individuals should complete *Schedules 1 and 2* as early as possible in the process. Once tenders have closed and a clear list of tenderers and their major subcontractors/suppliers are known, *Schedule 3* should be updated and all Key Individuals required to review/resubmit their *Schedule 1* acknowledgements.

1. Key Individuals should review *Schedule 3* before signing *Schedule 2 Conflict of Interest Declaration*.
2. *Schedule 3* contains a list of Project related companies that Key Individuals may identify a conflict of interest with. The list in *Schedule 3* is indicative only and does not in any way reduce the obligation on a Key Individual of identifying a conflict of interest with other related Companies that are not included in *Schedule 3*.
3. (Insert Project Name) Related Companies include:
 - Insert Related Companies (including LSPs, Probity Advisers, ESPs, prospective respondents, tenderers and their subcontractors/suppliers, etc).
4. Any Key Individual that becomes aware of an additional company that should be included in *Schedule 3* should contact the Project Manager. The Project Manager will forward an updated copy of *Schedule 3* to all Key Individuals for their review.

