



Australian Government

Department of Education, Employment and Workplace Relations

Employment Services Purchasing Branch

Employment Services Tender 2009

PROBITY PLAN

Approval by	Date
Luke de Jong (Probity Advisor)	

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1. Employment Services Procurement Process 2009 - Background

The majority of the Department of Education, Employment and Workplace Relations' (DEEWR's) existing employment services arrangements, as set out in the *Employment Services Contract 2006-2009*, the *Employment Services Funding Deed 2006-2009* and the *Remote Services Funding Deed 2006-2009*, are scheduled to expire on 30 June 2009.

DEEWR is scheduled to release a Request for Tender (RFT) in mid 2008 for Employment and Related Services for the contract period commencing July 2009.

The exact composition of services to be tendered out in the RFT is subject to review and potential redesign, and an industry consultation process will occur prior to the release of the exposure draft of the RFT.

This exercise will be the largest procurement activity undertaken by DEEWR and will most likely be one of the largest tenders run in the southern hemisphere with a value of approximately \$3.7 billion. It is estimated that over 700 tenders will be submitted with approximately 8000 bids for business across the 137 employment service areas.

Due to the considerable scale of this project, DEEWR is introducing an electronic Tender Management System and will implement electronic submissions and assessment of tenders.

2. About this Plan

This Probity Plan applies to the conduct of the Employment Services Procurement Process (**ESP Process**) and particularly in relation to:

- (a) industry consultation process and release of the exposure draft of the RFT;
- (b) the RFT, including release of the RFT, tender clarifications etc;
- (c) Tender Assessment;
- (d) Business Allocation; and
- (e) contracting of successful tenderers.

References in this Probity Plan to "the **ESP Process**", are references to DEEWR's procurement of Employment Services encompassing, but not limited to, the above elements.

While this Probity Plan establishes broad parameters to help maintain the integrity and probity of the ESP Process, DEEWR may (and in some cases has already) develop more specific protocols or plans to deal with particular process or communication issues that arise (for example in relation to processes for assessing and clarifying tenders, for communication with tenderers and with particular bodies, or in relation to specific industry briefings or security requirements for the process). Such further plans or protocols support and supplement this Probity Plan.

The Protocols which have been developed so far, and which support, and should be read in conjunction with, this Probity Plan are:

- Employment Services Security Instructions;

- Confidentiality and Conflict of Interest Deed Poll;
- Communication and Contact Report ; and
- Communication Protocol.

It is also recognised that from time to time changes may be required to this Probity Plan. Any changes will require the approval of the ESP Project Manager.

Any changes to this Probity Plan or any further probity plans or protocols developed must generally be given the same circulation as is given to this Probity Plan and the Protocols. This will be the responsibility of the ESP Project Manager.

2.1 Probity Coordinator

Mr Brian MacMillan, Employment Services Purchasing Branch, is the probity coordinator for the ESP Process and will be responsible for, amongst other things, ensuring that relevant staff, contractors and consultants are informed of any amendments to all relevant DEEWR protocols.

3. Distribution

This Probity Plan is for:

- employees of DEEWR involved with the ESP Process;
- DEEWR's contractors and consultants engaged to advise on the ESP Process; and
- any other person who has a role in developing, handling, evaluating or negotiating RFT documents, or is otherwise involved in the conduct of the RFT,

and should be provided to those persons. The ESP Project Manager will be responsible for determining who will be provided a copy of this Probity Plan.

4. Objectives

The objectives of this Probity Plan are to:

- (a) promote industry and community confidence in the ESP Process;
- (b) effectively manage and reduce Commonwealth risk, including minimising the risk of inappropriate influence on the ESP Process;
- (c) assist DEEWR in identifying and appropriately managing any issues that arise in relation to the ESP Process;
- (d) ensure objective, fair and consistent treatment and assessment of tenders and tenderers, and the best value for money result for DEEWR;
- (e) assist DEEWR, where required, to demonstrate that it has conducted the ESP Process in a publicly defensible manner, and complied with its accountability requirements;
- (f) provide a basis to ensure that the way in which the ESP Process is conducted can withstand public and Parliamentary scrutiny; and

- (g) provide protocols that will apply throughout the entire ESP Process to all parties involved.

5. Accountability Overview

The principle of accountability in the Government procurement context is about ensuring integrity, uprightness and honesty in the conduct of procurement processes and the making of procurement decisions.

It also requires that Government agencies administering procurement processes deal fairly with prospective tenderers, develop and adhere to proper procedures, and evaluate tenders in accordance with clearly defined assessment criteria.

This is essentially an exercise in risk management. Risk can never be totally avoided. However, identification of risk factors which have the potential to compromise the defensibility of the conduct of the RFT, and implementation of appropriate risk management and/or mitigation procedures, will significantly reduce the likelihood of that risk. This is the essence of good accountability.

6. Requirement for Probity Plan

In conducting the ESP Process DEEWR needs to be able to demonstrate a high standard of ethical conduct which supports value for money decisions being made when procuring Employment and Related services. The adoption of an open and accountable procurement process which meets all relevant accountability requirements facilitates fair and valid decision making. This, in turn, will assist in obtaining favourable outcomes for DEEWR. Any perception by industry that the tendering processes are biased or unfair may cause adverse consequences for DEEWR and the ESP Process.

An important element for the defensibility and validity of procurement processes is the development and implementation of probity controls. This Probity Plan and Protocols for the RFT proposes the adoption of a series of actions and steps to support a procedurally sound and auditable process which will help ensure overall the actual and perceived integrity and fairness of DEEWR's conduct of the ESP Process.

7. Probity Advisor

Clayton Utz has been appointed as Probity Advisor for the ESP Process.

The role of the Probity Advisor includes:

- developing this Probity Plan and advising on and developing related documents, such as communication protocols;
- providing probity advice to DEEWR's Purchasing Subcommittee (**PSC**) and attending PSC meetings, and providing probity updates at those meetings as required;
- providing probity training, as requested by DEEWR, to DEEWR personnel, contractors or other personnel involved with the ESP Process;
- reviewing and advising on key process documents, such as the RFT, tender evaluation plan and related documents;
- performing a quality assurance role, including reviewing DEEWR physical and electronic security arrangements for the RFT; and

- providing a final report and sign off on the process (and as required interim reports).

The Probity Advisor can be contacted as follows:

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8. Key Principles and Protocols

In conducting the RFT, DEEWR will maintain accountability, integrity and professionalism by:

- conducting the ESP Process in a fair and impartial manner, promoting open and fair competition between tenderers so as to maximise value for money;
- conducting the ESP Process in a transparent and consistent fashion;
- where relevant, ensuring physical and technological security and confidentiality of RFT documentation and related information;
- recognising and dealing with any actual, perceived or potential conflicts of interest; and
- supporting the accountability and integrity of the ESP Process through creating an audit trail for the ESP Process and its decisions.

These principles are elaborated below and are supported through other specific plans and protocols which DEEWR has developed, and will develop, for the RFT (for example communication protocols, security instructions, tender evaluation plan etc).

Any breach of, or inability to implement, any of the principles or procedures set out in this Probity Plan and Protocols must be immediately reported to the ESP Project Manager

8.1 Fairness, Impartiality and Value for Money

In conducting the ESP Process, DEEWR will, so as to maintain a fair and impartial procurement process and thereby the promotion of best value for money outcomes for the ESP Process, ensure that:

- all relevant staff, contractors and consultants adhere to this Probity Plan and Protocols;
- tenders are considered in a fair and impartial manner, with due regard being had to conflict of interest issues (see discussion below);
- communication with stakeholders (including, as is relevant, industry and other Commonwealth agencies) is conducted in a consistent fashion and documented;
- tender documents inviting responses clearly detail the conditions of responding and, where relevant, include assessment criteria and are sufficiently comprehensive to permit tenderers to be able to make an

informed decision about whether to submit a response, and if so, to submit a response in accordance with RFT criteria;

- (e) publicly released documents and particularly assessment criteria and processes are sufficiently thought through to enable DEEWR to make procurement decisions that represent best value for money; and
- (f) generally, officials involved in evaluation should not be those who make the final decisions to approve the spending of public money.

8.2 Transparency and Consistency of Process

One of the key principles for the ESP Process is that tenderers participating in the RFT are treated fairly and consistently.

To help achieve this DEEWR will separately develop communication protocols for dealing with potential tenderers (and other external parties) during the RFT to help ensure that information will not be provided to a person which gives, has the potential to give, or could be perceived to give, an unfair advantage to that person when tendering.

If any changes are contemplated to the RFT that have the potential to impact on tenderer submissions, as a general rule those changes should be conveyed to industry in a timely and uniform fashion so as to minimise any potential detrimental outcomes for industry players. The ultimate strategy adopted depends on the degree of variation contemplated and should be assessed on a case by case basis.

Where information has the potential to assist tenderers to formulate bids, as a general principle such information should be provided to all potential tenderers uniformly. In exceptional cases this may not occur, however, the reason for the decision not to distribute that information more generally should be defensible and documented. If there is any doubt about the appropriateness of such a course, the advice of the ESP Project Manager should be first sought.

In addition to the requirements set out in the communications protocols for the RFT, DEEWR may also adopt specific protocols in contemplation of particular types of communications with industry, for example consultation sessions, site visits, interviews to discuss tenders, question and answer (Q&A) processes, or in relation to the debriefing of unsuccessful tenderers.

Such protocols may outline at what stage of the RFT process relevant communications can occur, and if so, what constraints exist on the information provided as part of such communications. Any protocols settled on will supplement this Probity Plan and the other protocols and plans developed for the RFT.

8.3 Security and Confidentiality

The protection of confidential and commercially sensitive information is an important requirement for the ESP Process. The effective storage and handling of confidential information is crucial to preserve confidentiality. DEEWR will develop specific ESP Security Instructions for the protection of confidential information to the process.

DEEWR may also establish more specific protocols or plans for the conduct of various stages of the RFT, for example in relation to the receipt and storage of tenders. The key is to ensure that consistent and defensible arrangements are adopted so as to minimise any security/confidentiality breach.

The subsequent tracking of confidential documents must be carefully monitored to ensure these protections are not compromised.

With the exception of published documents (for example the RFT following its release), the entire suite of internal ESP Process documentation and their contents are confidential. DEEWR will, as part of the ESP Process, adopt procedures (supported by documented protocols) to ensure that access to that information is restricted to DEEWR officers and to consultants and contractors who (if not already subject to appropriate confidentiality or professional standards) have executed a confidentiality deed poll. All officers and employees not directly involved with the ESP Process should not be exposed to confidential information arising from it, and where appropriate, should be made aware of the need to keep information confidential, so that they do not seek to obtain such information and can report any potential or unauthorised disclosure, should this occur.

Publicly released documents, and particularly the RFT should require that, when submitting information including any formal tender, tenderers are required to identify to DEEWR any information provided by the tenderer that it considers confidential. Such documentation should also make it clear that DEEWR has certain accountability and disclosure obligations (for example, within the Commonwealth and to Parliament, in relation to such information).

If a tenderer indicates that certain information may not be disclosed to third persons, then it is important that such information is not disclosed, other than as allowed for in published RFT documentation, and that relevant procedure set out in the RFT documentation and in applicable Protocols is complied with strictly.

Any breaches or suspected breaches of confidentiality should be reported to the ESP Project Manager immediately. If for any reason, the policy or the procedure for protection of confidential information requires review, the Employment Services Project Manager should be contacted for advice.

8.4 Confidentiality and Conflict of Interest

It is important to ensure that at all times during the conduct of the ESP Process appropriate mechanisms exist for dealing with any conflict of interest that arises or has the potential to arise.

The Probity Coordinator should ensure that DEEWR staff, contractors and consultants engaged as part of the ESP Process are briefed on their requirements to disclose conflicts of interest and to avoid placing themselves in positions where a conflict of interest may arise.

The Probity Coordinator will also ensure that all persons involved in the ESP Process have executed a Confidentiality and Conflict of Interest Deed Poll and have received probity training in relation to conflict of interest issues.

8.5 Communication and Contact Report

The Communication and Contact Report will developed to assist DEEWR contract managers and any relevant DEEWR officers or individuals to log communications involving current service providers or potential tenderers where purchasing issues are raised. As with the Incident Report form, this form must also be brought to the attention of the ESP Project Manager, who will decide if any action must be taken to ensure the fairness of the tender process has not been or perceived to have been jeopardised.

8.6 Communications Protocol

The purpose of the Communications Protocol for dealing with existing and potential tenderers is to establish procedures to minimise the risk of any improper practice occurring that could influence the fair operation of the market or the probity of the purchasing process. The protocol outlines the correct procedure and the proper channels for dealing with all information relating to communication between DEEWR and potential and existing tenderers

8.7 Audit Trail

Procurement decisions need to be made in a visible manner and appropriately documented to allow them to be understood or justified upon review. Any communication with external parties concerning the RFT and particularly with potential tenderers should also be documented with appropriate record management systems implemented.

All assessment processes and decisions must be fully documented, cost effective and publicly defensible to ensure that they support a fair and equitable process, and provide a full explanation for, and reasons why, tenderers were unsuccessful or successful. This includes obtaining all relevant signoffs for the process.

All industry consultation sessions (whether public or private sessions) and clarification sessions should also be fully documented.