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| **PROCUREMENT PROBITY PLAN** |

**Background**

1. Gold Coast Primary Health Network Limited (“GCPHN”) is committed to conducting business in an open and ethical manner, and conducts its business with integrity, honesty, transparency, fairness in all matters.

GCPHN will ensure that all procurement processes are consistent with best practice and the highest standards of ethical conduct.

2. GCPHN strives to establish appropriate internal control systems to ensure probity in its procurement processes.

3. Proper management of probity in procurement leads to greater bidder and public confidence in GCPHN procurement processes. Consequently, potential bidders are likely to be more willing to invest the time and resources and innovative processes associated with participating in GCPHN procurement processes, therefore resulting in better and more competitive bids.

 **Purpose**

4. The purpose of this Procurement Probity Plan is to provide a framework that ensures the highest standards of probity and transparency are maintained throughout GCPHN procurement processes. In particular, the plan will ensure:

• there is integrity in the negotiation process and that the process set out in the negotiating plan is followed;

• the process is conducted objectively and consistently;

• confidential information is secured and handled to the expectations of the parties;

• all actual, potential or perceived conflicts of interest are addressed and effectively managed;

• accountability is maintained;

• confidence is preserved in the chosen processes; and

• decisions and processes are defensible;

• identify the probity risks that arise and record the mitigation actions required to address these risks;

• GCPHN achieves value for money

• document processes that will support the meeting of high standards of probity.

**Probity Principles**

5. The application of probity principles to a procurement process should ensure that a fair and robust process is undertaken and as a consequence minimise potential liability if the process outcome is challenged.

6. Some key probity principles relevant to procurement for services are:

a. conducting a fair and equitable process

* + - * treating all bidders and conducting the process fairly and equitably, consistent with the rules of natural justice and procedural fairness, including ensuring that all bidders are provided with access to the same information in order to prepare their bids;
			* ensuring that the need to avoid inherent bias in the process is taken into account when making decisions which may impact on the process, including decisions as to how to advertise and market the process, and timeframes;
			* ensuring that the process is conducted in accordance with the process terms and conditions provided to bidders;
			* ensuring bidders do not engage in collusive or anti-competitive conduct when preparing bidder responses;
			* ensuring there is no improper use of an individual’s position

b. obtaining value for money

* + - * process to be used that aims to achieve best value for money and allows capable organisations to submit competitive proposals and for their proposals to be considered in an impartial manner;
			* obtaining value for money is enhanced when there is open competition and the market is fully tested, and competition is encouraged.

c. ensuring that the process is open and transparent

* + - * establishing, promulgating and monitoring compliance with all guidelines with respect to probity issues including conflicts of interest, confidentiality and fair dealing;
			* disclosing to bidders the methodology to be adopted for the evaluation of procurements, including all evaluation criteria;

d. taking action to minimise potential liability that might otherwise arise out of the conduct of the procurement process;

* + - * ensuring effective contract risk management arrangements are in place; and

e. maintaining a clear audit trail;

* + - * at the commencement of the process, clearly allocate responsibilities to parties engaged in the conduct of the process including reporting and recording obligations;
			* ensuring the process is fully documented;
			* ensuring all process and probity issues and actions taken to resolve such matters are fully documented.

**Key probity issues**

**Maintaining confidentiality and security**

7. GCPHN encourages bidders to be innovative in their programs and processes need to be put in place to ensure confidentiality with regard to the innovative processes and procedures of bidders.

8. A significant quantity of confidential information will be generated during the procurement process. The protection of Confidential Information is an important probity requirement - it helps to protect the competitive position of bidders and the commercial interests of the GCPHN. For the purpose of this Procurement Probity Plan, “Confidential Information” means:-

a. information marked as confidential ; or

b. information that is, by its nature, confidential (including but not limited to information relating to the business or internal policies or affairs of GCPHN, or the bidder)

except to the extent that such information:-

c. is in the public domain other than due to the breach of this Procurement Probity Plan by the disclosing party; or

d. is trivial or obvious.

9. The effective management and recording of Confidential Information is crucial to preserving confidentiality. It is important that procedures are adopted to oversee the protection of this information. In the procurement context, Confidential Information usually includes the bids, all evaluation information (including information obtained during discussions and negotiations with bidders) and recommendations. If bidders are not confident of GCPHN security processes they may be deterred from bidding or may reduce the information they provide in their bidder response.

Obligations of GCPHN procurement team

10. Members of GCPHN staff involved in the preparation of the procurement process and the receipt, evaluation and review of bids, including discussions and negotiations with bidders leading to contract signature with the preferred bidder, need to be aware of their obligations to maintain the confidentiality and security of Confidential Information. Such obligations can be addressed in probity briefings to the procurement team and bidder team members may be required to sign confidentiality undertakings specific to the procurement process.

11. Security arrangements should deal with both physical and electronic security of Confidential Information. Confidential Information should be used and stored in a physically secure environment. Confidential Information should be easily identifiable (for example, separated from other material and be appropriately marked) and access to it restricted to personnel who have given appropriate undertakings. Appropriate computer systems should be in place for the electronic storage and use of the electronic versions of Confidential Information. For each procurement process, GCPHN should consider implementing procedures such as:

a. adopting a desk security and clean desk policy regarding Confidential Information;

b. not emailing sensitive documents and instead using a secure document storage system or application;

c. ensuring that only one representative of GCPHN deals with enquiries from bidders or proposed bidders

d. locking Confidential Information away;

e. not removing Confidential Information from controlled areas;

f. storing Confidential Information in an electronic environment that is not accessible from others (including IT personnel with administration rights).

Release of Confidential Information to Advisers

12. These obligations need to extend not only to GCPHN staff, but contractors (such as advisers) engaged by GCPHN who will have access to Confidential Information in any given procurement process. Typically the terms of engagement of contractors oblige them and their employees and agents to maintain the confidentiality of Confidential Information obtained during the performance of their contractual obligations. The terms of such contracts should be reviewed to determine whether the confidentiality provisions are appropriate for the procurement process in which the contractor is to be employed by the GCPHN. Contractors should also be obliged to follow any GCPHN directions in respect of the handling of Confidential Information during a specific procurement process.

Release of Confidential Information to bidders

13. If there is a need for Confidential Information to be released to bidders, there should be procedures in place to manage the release. Bidders should be obliged to execute confidentiality undertakings which prohibit or limit disclosure of information, restrict copying, require that the information be used in a secure physical environment and govern the return or destruction of information once it is no longer needed. It may be necessary to for GCPHN to obtain third party consents for the release of Confidential Information to bidders.

Release of Confidential Information to the decision maker, and other stakeholders

14. There should also be procedures in place to manage the release of Confidential Information to the decision maker, or any government bodies or stakeholders, to whom GCPHN may need to release information. It may be useful to determine at the beginning of any specific procurement process which of these persons are likely to have a need to review the documentation.

Privacy

15. GCPHN Privacy Policy may have an impact on the way procurement documentation should be handled and GCPHN personnel involved in the procurement process should be familiar with the policy. In particular the Policy would apply if the procurement process preparation or the procurement involves members of the procurement team or bidders accessing personal information concerning GCPHN employees or students. For example, if bidders are invited to undertake due diligence on or otherwise inspect GCPHN records to assist with their procurement preparation.

Breaches of confidentiality and privacy

16. There should also be procedures about how to manage breaches of confidentiality and privacy

Access to Confidential Information

17. A record should be kept of those persons within the procurement team and any others who have access to Confidential Information.

**Conflicts of interest**

18. In the context of a procurement process, conflicts of interest arise when:

a. through any current or proposed future dealings or relationships (financial or non financial) with a procurement or any person or entity involved with a procurement, GCPHN personnel involved in the procurement process, members of the evaluation panel, their families or business associates stand to gain a benefit or advantage; or

b. there is any other reason why specific GCPHN personnel involved in the procurement process for GCPHN may be tempted not to deal with a procurement in an objective manner.

19. Conflicts of interest also exist if there is the potential for a conflict of interest to arise, or there is a perceived, actual or potential conflict of interest.

20. Some examples of conflicting interests include:

a. any personal financial interest in the project;

b. any immediate relatives, close friends or business associates with a financial interest in the project;

c. any personal bias or inclination which would in any way affect an individual’s decisions in relation to the project; and

d. any personal obligation, allegiance or loyalty which would in any way affect an individual’s decisions in relation to the project.

21. Where competing interests and priorities exist (as they may in any procurement process), appropriate procedures should be adopted to minimise or avoid situations where conflicts could arise. Conflicts of interest should generally be a standing agenda item at the beginning of all procurement team meetings held throughout the procurement process.

Conflict of interest declarations and undertakings

22. All GCPHN personnel (including advisers and contract staff) and Procurement Evaluation Panel members should be required to give conflict of interest declarations and undertakings in respect of any procurement process with which they are involved, should a conflict be identified. Even if general conflict of interest undertakings have been given at the commencement of employment or engagement at the GCPHN, personnel should give additional undertakings in respect of specific procurement processes, should a conflict be identified. They should also be under a continuing obligation to declare any conflict of interest (actual, perceived or potential) that arises during the procurement process and give updated undertakings at key procurement process milestones if needed.

Conflict of interest guidelines and protocols

23. Adoption and distribution of protocols that address the various conflict of interest situations which may arise during the conduct of the procurement process and which set out an appropriate mechanism for dealing with each situation may be a useful conflicts management tool.

Supplementary training or briefing of GCPHN personnel (including advisers and contractors) may be required to ensure that conflict of interest scenarios are understood as well as the procedure to be followed once a conflict has been identified.

24. Interaction with bidders should be limited and should be through one point of contact. It assists with ensuring that bidders receive the same or similar information (which relates also to fairness and equity) but it also reduces the risk for there to be a perceived conflict of interest.

25. GCPHN personnel should not seek or accept gifts or benefits that could be reasonably perceived as influencing them. Offers of gifts during the assessment of procurements or other commercial decision-making must be refused, noted and reported to the Chair of the procurement team.

Adviser contracts

26. GCPHN advisers and contractors may be under additional contractual obligations with respect to conflicts of interest. All advisers and contractors should be required to immediately notify GCPHN in writing of any conflict or potential conflict.

Conflicts register

27. As part of maintaining a clear audit trail and the proper management of conflicts, GCPHN should maintain a conflicts register for each procurement process which records, amongst other things, all conflicts (actual, perceived or potential) identified in the course of the procurement process, together with all steps taken to resolve the conflicts of interest.

**Request for Tender, Proposal, Quotes, Expressions of Interest (Invitation)**

28. It is important that the Invitation provides enough information and information of a type that will permit a meaningful assessment and comparison of the bids. It may also be necessary (particularly where the bidders may not be well known or the services may be of a type that is new) to request information that will enable GCPHN to assess the financial viability and general standing of the bidder organisation by various probity and financial checks.

29. An important part of meeting probity requirements is to follow the ‘advertised’ process (i.e. the process outlined to bidders whether in the initial advertisements, invitations to register interest, or any other correspondence or documentation). However, the procurement process should also be flexible enough to ensure GCPHN achieves the best possible outcome.

30. The underlying principle is that bidders should understand the basis upon which decisions will be made.

31. The Invitation should set out all of the criteria against which procurements are to be evaluated and the information (to be provided by bidders with their procurement or sourced by the GCPHN procurement team from third parties, such as commercial credit checks) which is to be considered by procurement team in evaluating against each criteria. If bidders are obliged to satisfy any mandatory criteria, such requirement should also be clearly set out in the Invitation. For example, a criteria that requires the procurement to have a specific technical qualification or approval, such as a quality assurance rating. The Invitation should explain the approach that will be taken if a procurement fails to satisfy the mandatory criteria. For example, bidders may be excluded on the basis that their procurement does not meet certain mandatory criteria; or bidders may be permitted to submit alternative non-compliant procurements if they also submit compliant procurements.

32. The evaluation methodology as detailed in internal documentation (such as evaluation plans) should be consistent with the Invitation.

33. There should be internal consistency between the Invitation and the procurement process documentation (including evaluation plans, recommendation reports and similar) followed by GCPHN personnel, and the audit trail should evidence this.

Receipt and opening of procurements

34. The receipt and opening of bids is an important part of the procurement process at which probity needs to be considered. The Invitation should be released to bidders on the same day and it should require all bidders to submit their procurements by a specified date and time at a specified address. All bidders should be treated equally and given equal time to respond to the procurement.

35. When using Illion Tenderlink , bids will be submitted through the secure Tenderlink portal by the closing date and closing time. Tenderlink has an automatic registration process of bids received. If Tenderlink has not been used in the process then the bids will be sent to commissioning@gcphn.com.au, opened and receipt acknowledged by the Procurement Team, The and registered at that time to ensure that:

— there can be no issue as to when each bid was received and what was provided by each bid which comprised its bid; and

— the bids are secured to avoid them being lost or misplaced.

36. The Invitation should also address whether bids can be submitted by facsimile, e-mail or other electronic means eg Tenderlink.

37. Bidders should be encouraged to use clear language and avoid using industry-specific terminology.

Late procurements

38. GCPHN policy is that late bids will not be accepted unless GCPHN resolves, in its absolute discretion, that to accept the late bid would not compromise the integrity of the procurement process or give any bidder an unfair advantage. Late bids not accepted are to be returned to the bidder.

39. In making its decision, GCPHN may consider the reasons for late lodgement, how late the bid was submitted, whether there had been any other late bids or requests from other bidders for late submission that had been rejected.

40. GCPHN should consider each late bid on the basis of each specific circumstance and consider whether accepting late bids into the evaluation process is likely to provide the late bidder with an unfair advantage over other bidders who submitted their bids on time. For example, in many procurement processes it would be unlikely that a bidder who submitted its bid ten minutes after the closing time would have gained an unfair advantage over those bidders who lodged their bids prior to the closing time. It would however be necessary to consider each late bid on a case by case basis.

**Planning and executing the evaluation**

Evaluation plans

41. The procurement plan should include an evaluation strategy to help ensure that there is a ‘level playing field’ for bidders, in that all bids should be assessed against the same criteria, by persons qualified to make that assessment.

42. The evaluation methodologies adopted for the procurement process should not result in an inherent bias toward the selection of one or more bidders (for example, this may be an issue if the procurement process invited bidders to consider a range of proposals or options). The evaluation of procurements should be defensible from a probity perspective and undertaken consistently with the process outlined in the Invitation documentation. There should be sufficient flexibility within the evaluation process to allow the evaluators to deal with issues which may arise during evaluation without the risk of offending due process.

43. The internal evaluation process to be adopted in respect of the receipt of bids, providing clearly defined methodologies for the evaluation of bids should be included in the procurement plan and finalised prior to receipt of bids. the plan should be consistent with the evaluation criteria as outlined in the Invitation. The evaluation criteria should be carefully structured to ensure that the bidders have the capacity to meet GCPHN requirements. The evaluation process should then be followed once bids are received.

44. Consideration should be given to ensure that the proposed timetable for the evaluation process is not inherently unfair to bidders, especially if bidders are requested to respond to clarifications and requests for additional information.

45. The proposed decision making process including the ultimate decision maker and their role in evaluation should be identified and consideration given to their ability to reject/ignore findings of the evaluation team or to seek to amend the evaluation report.

46. If it becomes apparent during the conduct of a procurement process that the evaluation criteria needs to be amended, and the Invitation conditions of procurement permits such amendment, all bidders should be given an equal opportunity to respond against the revised evaluation criteria.

Evaluation panel

47. The evaluation panel must have the requisite skills to properly assess bids, including from a financial, technical and commercial perspective. Evaluation panel members should be expected to:

a. be open minded;

b. act with integrity and honesty;

c. be impartial and objective;

d. act consistently and fairly to all bidders;

e. be fully familiar with and apply the methods, protocols and criteria set for the procurement process in accordance with plans; and

f. make recommendations which reflect the outcome of the evaluation process.

Carrying out the evaluation

48. Appropriate reporting processes should be established to confirm that compliance with the agreed evaluation methodology and procurement conditions has been achieved and that the appropriate sign offs have been obtained in relation to compliance with these agreed processes.

49. The evaluation should be documented at the same time as the evaluation. The evaluation panel should ultimately produce an evaluation report and should be required to provide a ‘sign-off’ addressing their participation in the evaluation process and in particular that the evaluation methodology has been complied with and that their reports have identified all relevant matters arising from the evaluation.

50. The documentation should be complete and sign-off should preferably occur prior to the shortlisting or selection of a preferred bidder.

Contact with bidders

51. To achieve fair and equitable treatment of bidders during the conduct of the procurement process it is necessary to establish protocols for communicating with bidders to ensure that information will not be provided to any bidder which:

a. gives, or has the potential to give, an unfair advantage to that bidder

b. reveals proprietary or confidential information of another bidder or

c. unfairly disadvantages another bidder.

52. Contact with bidders may be required to request clarification or seek additional information from bidders, or during contract negotiations.

53. No discussion should be held with any known bidder about a procurement process, in relation to any aspect of a proposal, or the selection process, without prior approval – or at the direction of the chair of the procurement panel.

54. Personnel must provide consistent information if making presentations to bidders. This information must be supplied uniformly to ensure that no bidder receives any advantage over another. The information presented must be based upon information approved for distribution in advance, by members of the procurement panel.

55. No bidder should receive, or be perceived to have received, additional information to that which is publicly available in respect of the proposed procurement, unless this information is expressly released by an appropriate authority as nominated by the procurement team.

56. Bidders are to deal direct with the personnel nominated in the procurement documents in all matters in relation to any proposed procurement, their proposal or its current status.

57. Details of discussions with those who are actual or potential bidders should be minuted, and copies of all correspondence should be copied to the Chair of the procurement team – even when meetings and correspondence relating to a procurement are of a non specific nature.

58. Should any personnel be asked a specific question during a presentation or interview they should provide only a factual answer. They should not under any circumstances provide a personal opinion. Should they believe that the information provided in the answer is relevant to all bidders and could be perceived as providing an unfair advantage to that bidder they should advise the Chair of the procurement team immediately. The Chair is then to draft a generic Question and Answer to be posted on GCPHN’s website/or through Tenderlink if using the portal for tender management. Prior to posting, the Chair will forward a draft of the generic Question and Answer to the party who raised the question, together with a notice that the Chair will be posting the generic Question and Answer on GCPHN’s website/or on Tenderlink if using the portal for tender management the following business day. GCPHN will act reasonably in considering any requests for changes to the generic Question and Answer if the other party considers it does not properly reflect the discussions between the parties, but in the absence of agreement by GCPHN otherwise, the generic Question and Answer as prepared by the Chair will be published on GCPHN’s website/or Tenderlink portal the next business day.

59. Where inappropriate persistent inquiries or comments are made, the meeting should be terminated. A file note should be prepared detailing the conversation. A copy of this file note should be forwarded immediately to the Chair of the procurement team.

60. Should any bidder request a copy of any document, approval must be obtained from the Chair of the procurement team prior to delivery. To ensure that no bidder receives an advantage, all other bidders should be advised of the availability of this document.

61. Routine business meetings and social activities continue as usual, but the procurement team must exercise caution, and must not discuss the evaluation, selection procedures or contents of any procurement.

Where any party in an unrelated business meeting or social situation seeks to raise issues in respect of the evaluation and selection procedures or contents of any procurement, the member of the procurement team, advisor or employee, should indicate that it is not appropriate to discuss such matter. Such incidents should be reported to the Chair of the procurement team.

If a bidder requests a meeting with the procurement team, or its advisor’s during the bidder selection process, the matters addressed in the meeting must be clearly identified and submitted in writing to the Chair of the procurement team at least five working days prior to the meeting.

62. Contact with bidders should only occur through a nominated contact point. Having established this nominated contact point, consideration should be given as to what restrictions need to be placed on information given in response to bidders’ enquiries. Any communication with bidders should be documented with appropriate document management systems implemented. A contact log should be established by GCPHN or its advisers containing a formal record of all communications with bidders and their representatives and advisers.

63. Protocols or procedures should also be adopted in contemplation of more formal communications with bidders, for example, any meetings, interviews, site visits and presentations. These protocols and procedures should outline at what stage of the procurement process these meetings will occur and what constraints should be placed on the information provided at those meetings. These protocols and procedures should also document the procedures governing issue of clarifications by bidders to ensure that these do not amount to variations of their procurements.

64. All meetings should be conducted in accordance with the format, procedures and protocols established and agreed prior to the meeting and these should be consistent for all bidders.

65. If it becomes necessary to change the procurement process or any of the procurement process procedures, these changes should be communicated to all bidders promptly so as to minimise any potential detrimental outcomes for them. The ultimate strategy adopted depends on the degree of variation contemplated and should be assessed on a case by case basis.

Negotiations

66. Negotiations with one or more bidders may only be conducted if the procurement conditions consider that GCPHN may undertake such negotiations.

67. In order to avoid any misunderstanding as to the nature and extent of any negotiations, the terms and conditions of the negotiations (including the proposed timeframe) should be provided, in writing, to the bidders invited to negotiate. Bidders who agree to participate in the negotiations should confirm their acceptance in writing.

68. An invitation to negotiate with the one or more bidders should not necessarily preclude negotiations with other bidders.

69. The aim of the negotiations is to achieve the best possible result for the GCPHN, taking into account the needs of stakeholders and recognising that the successful bidder should be satisfied with the result as well. A successful bidder who feels put upon, taken advantage of or indirectly intimidated during the negotiations may be less likely to enter into a mutually satisfactory working relationship in undertaking its responsibilities under the resulting contract.

70. A competitive situation should, however, be maintained throughout negotiations. For example, the preferred bidder should not be given the impression that it is certain to proceed to contract as such an impression may undermine GCPHN negotiating effectiveness. It may also give rise to a claim for damages based on estoppel or misrepresentation if the preferred bidder ultimately does not get the contract.

71. Of primary concern in relation to any negotiations is whether the negotiations give rise to an alteration of the basis on which bidders were required to submit their procurements (for example a change to the procurement specifications).

72. If the negotiations result in a material change either to the bidders’s bid or to the procurement specifications or other requirements, GCPHN should consider whether it should give other bidders the opportunity to revise their bids. Probity and legal advice should be sought if there is any doubt as to whether bidders should have the opportunity to revise their procurements in accordance with the revised specifications.

73. A record of negotiations should be kept. In summary, the records should clearly show:

a. the aim of the negotiations

b. the plans followed

c. a record of exchanges; and

d. an evaluation and summary of the effectiveness and outcomes of the negotiations.

Audit trails

74. The entire procurement process should be documented to:

a. demonstrate the process that was followed and the objectivity and impartiality of the process;

b. demonstrate how value for money was considered and achieved;

c. substantiate the recommendations of the evaluation panel; and

d. to meet any of GCPHN’s own record keeping requirements.

75. The comprehensive documentation of the procurement process will assist GCPHN in justifying the procurement process in the event of audit, or challenge to the process. It also helps the procurement evaluation team members in understanding their responsibilities and understanding the procurement process generally. It helps to ensure that the process set out in the procurement documentation is properly followed.

76. The following procedures should be adopted:

a. all meetings should be minuted;

b. all decisions recorded;

c. all contact with bidders noted and registered;

d. all copies of correspondence regarding the procurement process should be maintained; and

e. a probity issues register and a conflicts register should be maintained.

77. The maintenance of such records should assist in identifying any deficiencies in the procurement process which may be addressed prior to the procurement process being completed and the recommendations being made. Consideration should also be given to documents that may be held by advisers and which may need to be collected prior to the disengagement of such advisers from the project.

Bidder debriefing

Debriefs

78. Procedures should be adopted in respect of the debriefing of unsuccessful bidders. Any information provided to bidders should be consistent with the procurement evaluation outcome.

79. It is important that a standard approach be taken in respect of debriefing. Bidders should generally be verbally debriefed against the criteria against which they were assessed, although the briefing should be scripted and processes developed for dealing with bidder questions. Generally bidders should not be provided with information concerning other bidders, except for publicly available information and except in so far as comparative statements can be made without breaching confidentiality. It is recommended that debriefings only be conducted at the conclusion of the procurement process after the contract has been signed with the successful bidder. Debriefings should be attended by more than one member of the project team.

**DOCUMENT CONTROL**

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**REVISION RECORD**

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| **Date**  | **Version**  | **Revision description**  |
|  |  | Inclusion of Tenderlink portal reference throughout plan |
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