POLICY:	**PROBITY AUDIT**
STATUS:	**ADOPTED**
ADOPTED:	**27 January 2009**
MINUTE #:	**10**
ISSUED BY:	**Executive Services**
INQUIRIES:	**Internal Auditor**

OBJECTIVE

That the Council follows the probity fundamentals for Council's Capital Works Program (CWP) to remain within the Probity Guidelines developed by ICAC.

SCOPE

This policy applies to Council's significant Capital Works Program (CWP) that contains not only, the Annual CWP but individual projects that have significant Capital Works in their own right with both community and political sensitivities.

BACKGROUND

To remain within the Probity Guidelines developed by ICAC since the late 1990s the Council requires a position on Probity Audit. The Council has relied heavily on the ICAC publication *'Probity and probity advising'* 2005. Not only has this document informed the current position on Probity Audit but recent Audit industry publications, discussions with our current Probity Auditor and reference to the BMCC Code of Conduct has provided general information on trends in probity audit requirements. Other Councils were also approached in relation to their Audit position and documentation.

This document outlines the Council position on Probity Auditing for the Capital Works Program.

POLICY STATEMENT

What is a Probity Audit?

The term probity means integrity, uprightness and honesty. Although the term probity audit is normally used in the field, in actual fact the probity role is one of both advising and auditing.

For public officials and public sector agencies, creating and maintaining probity involves more than simply avoiding corrupt or dishonest conduct. It involves applying and complying with public sector values and duties such as impartiality, accountability and transparency.

Ensuring probity in public sector activities is part of every public official's duty to adopt processes, practices and behaviour that enhances and promotes public sector values and interests.

Effective probity management is concerned with the procedures, processes and systems used rather than the outcome of an activity, undertaking or project. It should also be recognised that – despite good management of probity risks – mistakes, delays and disputes can arise. Similarly, even the best probity processes do not guarantee that a project or activity will be immune from problems or criticism.

Considering and addressing probity issues should be a normal part of any significant project being undertaken by an agency, regardless of whether a probity adviser is appointed. Addressing probity issues does not necessarily incur delays or additional costs if this is incorporated into the project planning process from the outset.

Dealing with probity issues early in the planning process of a public sector project can:

- Improve the quantity and quality of private sector involvement by generating confidence in the process;
- Remove ambiguities in the evaluation of proposals;
- Assist in ensuring overall project objectives are met; and
- Minimise costly challenges in the future concerning the integrity or processes of the project.

Why Probity Audit?

Probity involves more than just avoiding corrupt or dishonest conduct: it involves ensuring that often-complex public sector processes – such as procurement, disposal of assets, sponsorship and administration of grants are conducted in a manner that is fair, impartial, accountable and transparent as well as always in the public interest.

Probity plans are now part of the planning and management of many large, complex and/or potentially controversial projects. In some jurisdictions, they are mandatory for very large projects – in New South Wales, for example, state agencies are required to submit a probity plan as part of their reporting to Treasury on projects that are valued at over $10 million and/or are classified as high risk. These major projects have probity audit as a budget item.

Probity Fundamentals

There are five inter-related fundamentals that all probity advisers, project teams and agencies should keep in mind. The fundamentals should also provide the foundation for any probity engagement. The five fundamentals are:

Best value for money

This is achieved by fostering an open competitive environment in which proponents can make attractive, innovative proposals with the confidence that they will be assessed on their merits. Lapses in probity often end with one or more parties obtaining unreasonable financial gains at the expense of the public interest.

Value for money does not necessarily mean lowest price. Agencies need to consider non-price elements of proposals (including risk) and devise criteria that allow them to be evaluated.

This fundamental should also be considered in light of Triple Bottom Line (TBL) reporting for sustainability. TBL is a consideration in all major Capital Works projects.

Impartiality

Individuals and organisations involved in preparing and submitting proposals for large public sector contracts often invest considerable time, effort and resources in doing so. In return, they are entitled to expect impartial treatment at every stage of the process. If they do not consider the process to be impartial and honest they may withhold valuable ideas or be deterred from bidding in the future. Any form of bias, whether driven by personal interests or not, could jeopardise the integrity of the project.

There is a further risk that proponents who believe the process is prejudiced will commence legal action. Regardless of the outcome, this can cause delays and result in financial costs not anticipated in the project budget.

Dealing with conflicts of interest

A large percentage of the matters reported to the ICAC involve an actual, potential or perceived conflict of interest. A conflict of interest is a conflict between the public duty and private interests of a public official where the public official has private interests which could improperly influence their official duties and responsibilities.

The community and potential proponents have a right to expect that public officials will make decisions that are not influenced by private interests. Similarly, when the private sector is engaged to perform public sector duties, there is an obligation to ensure that conflicts of interest are disclosed and effectively managed.

Agencies should also be aware that perceived or potential conflicts of interest can be as damaging as actual conflicts.

Accountability and transparency

Accountability and transparency are related concepts. Accountability involves agencies being able to demonstrate and justify the use of public resources to an appropriate authority. This involves allocating and taking responsibility for past and expected performance. This necessarily involves keeping good records that leave an audit trail.

Transparency refers to the preparedness to open a project and its processes to scrutiny and possible criticism. This also involves providing reasons for all decisions that are taken and the provision of appropriate information to relevant stakeholders.

Demonstrating accountability and transparency gives proponents and taxpayers additional confidence in the decisions being made. It also reduces the opportunities for corrupt conduct and fraud.

Confidentiality

Information can only be released, consistent with the fundamental principles of public accountability and transparency, which are fundamental to the work of public sector organisations and public officials. However, there is some information that needs to be kept confidential, at least for a specified period of time, in order to protect the integrity of the process and give proponents the confidence to do business with government. This information can include the content of proposals, intellectual property and proponents' pricing and profit structures. Importantly, much of the information relating to the project needs to be kept confidential up to the point where a contract is signed with the successful proponent. However, once this has happened, government guidelines require that certain sector accountability and transparency.

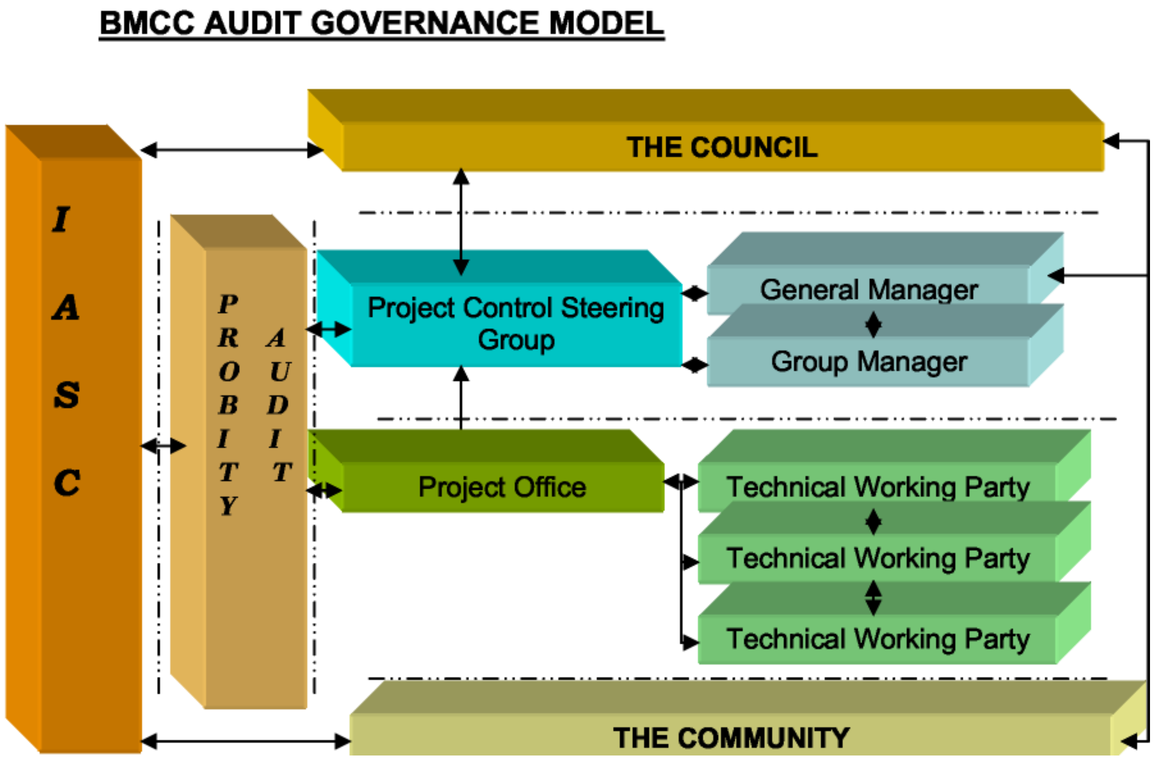
Other Considerations

The Council should also consider the following issues when deciding on the need and the approach to engaging a Probity Auditor on a particular Capital Works Project:

- Dollar value of the project and potentially set a dollar value;
- The Council role in the Project;
- The Governance structure of the Project; and
- The length of term of the Project.

Governance Model for Probity Audit

The BMCC Governance Model for Probity Audit has been adapted from the ICAC 2005 model and complies with that model. The customizations on the BMCC Governance Model are for Reporting through the Internal Audit Steering Committee (IASC) to the Council. The model is outlined in the following schematic:



This model has the Strategic Management of the Probity Audit undertaken within the IASC. The IASC Strategic Management includes such key functions as:

- Appointment of the Probity Auditor;
- Sign-off of the Probity Plan from the Project Control Steering Group or equivalent;
- Sign-off of variations to the Probity Plan that occur throughout the lifecycle of a Project;
- Sign-off of Probity Clearance Reports at the relevant stages of a Project; and
- Presentation of any relevant Audit Reports to the Council; and
- Authorisation of payments to the Probity Auditor.

The Operational Management of the Probity Audit, as outlined in the ICAC documentation, resides with the Project Control Steering Group or Project Office once the Probity Audit Plan is signed-off. The high level activities of the Probity Audit with their associated timelines should be included in the Project Plan. Payments documentation should be aligned within the plan to sign-off of Probity Clearance Reports and documentation presented to the Internal Auditor for relevant authorisation.

Engaging a Probity Advisor/Auditor

There are two methods for achieving probity audit on a project:

1. Engaging an external Probity Auditor; or
2. Self Assessment Probity Audit.

The use of either type is individually discussed in the section below.

External Probity Auditor

A number of organisations and individuals now provide advice on probity issues to public sector organisations on a commercial basis.

In NSW, the Department of Commerce maintains a panel of standing offer contractors for the provision of “audit and audit-related services”. Agencies can obtain quotations from a number of the contracted firms for probity advising services. Local councils may also access this panel. The Department itself also employs officers with expertise in dealing with probity issues and complex tendering and procurement processes. The Department also has RFT (Request for Tender) process review committees with a mandate to examine the probity and procedural aspects of tenders.

Criteria for use in assessing the need for a probity adviser includes:

1. The expected cost of the project is high relative to the types of project normally undertaken by the agency.
2. The project itself is inherently complex or risky.
3. There has been a relevant history of controversy or litigation in relation to the agency, the project or one of the potential proponents.
4. The project is politically sensitive (for example, a major privatisation or a project with a significant environmental impact).
5. It is anticipated that there will be an in-house or public sector bid and independent scrutiny is needed to avoid actual or perceived bias. Additionally, if there is an incumbent contractor with a strong relationship with the agency other competitors may require additional assurance that the process is genuine.
6. The costs of bidding are expected to be high relative to the size of the contract.
7. The project involves significant intellectual property, an unsolicited proposal for a major project or highly subjective selection criteria.
8. The agency wishes to make substantial changes to the scope of the project or the bidding process after it has already commenced.
9. The evaluation process requires lengthy and detailed face-to-face meetings with individual proponents and/or site visits.
10. The project is expected to be privately financed; or uses a complicated contract structure such as a build-own-operate-transfer contract or alliance contract; or where a very long term public–private partnership is to be established.
11. Guidelines issued pursuant to section 400C of the Local Government Act 1993 (or any other guidance from the Department of Local Government) either recommend or require the appointment of a probity adviser for a public– private partnership.
12. The market is highly concentrated or there are very few players and information sharing, collusion or other forms of anti-competitive behaviour are a possibility.
13. A proponent has already been involved in the feasibility study or pre-tender stages of the project, having thereby potentially obtained an unfair advantage.
14. The agency is expecting to make a sizeable profit or generate a considerable income stream from the project.
15. The agency is not an informed buyer, or lacks experience in the nature or magnitude of the project being undertaken.

Once the need for an external probity auditor is identified, the Council Officer should approach Executive Services for the allocation of a Probity Auditor from the Panel of Probity Audit Service Providers.

Probity advisers should not be engaged on a ‘set and forget’ basis. The presence of a probity adviser should not give the project manager or the project team a reason for ignoring or side-stepping probity issues. The probity adviser should certainly be relied upon to identify problems and recommend solutions, but it is not necessarily his or her job to implement those solutions.

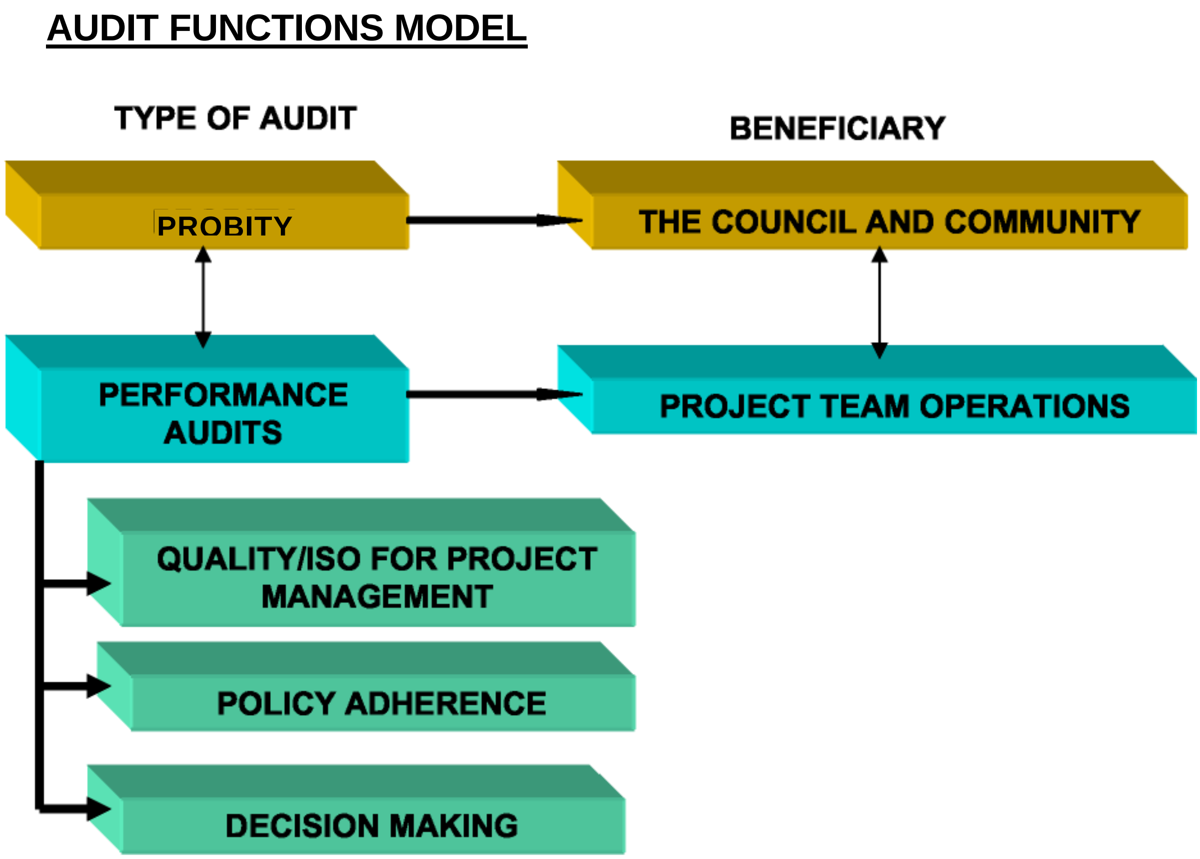
Self-Assessment Probity Audit Procedures

The Self-Assessment Probity Audit Procedures, an internal protocol, are an alternative procedure for a project when it does not meet the criteria for an External Probity Auditor. But there is a concern regarding the public perception of a project; and the type of circumstances where public perceptions may be applied will usually be in Capital Works and Tender Processes that fall outside of the previous section guidelines. In these circumstances the Project Team must assign a person external to the Team who has the skills and capacity to apply the Self-Assessment Probity Audit Procedures to the project and maybe:

- A Manager from a different branch to the one who owns the project;
- The Internal Auditor; or
- Team Leader – Compliance.

Inclusion of Associated Audit Activities

The Probity Audit plan should also take into account the other elements of auditing that need to occur on Capital Works Projects as outlined in the following schematic:



The Audit Functions will vary relevant to the type of project but could include at a minimum:

- Quality Management Audits against relevant ISO standards eg Performance of Project Management;
- Internal Audit of the Community Consultation Process;
- Internal Audit of the Council decision processes (if these are not included in the Probity Audit plan); and
- Management processes of external funding.

Related Documents:

Internal Audit Policy
Internal Audit Plan
External Audit Program