

Public Sector Procurement



Turning Principles into Practice

probity

ethical behaviour

transparent

VICTORIA

Victorian
Auditor-General

Public Sector Procurement: Turning Principles into Practice

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Foreword

Every year, Victoria's public sector agencies spend billions of dollars on purchasing goods, services and assets. These purchases have an enormous impact on the delivery of programs and services. Given the importance of procurement, it is crucial that it is well conducted.

This guide, *Public Sector Procurement: Turning Principles into Practice*, is a practical resource to help agencies assess and improve their procurement activities. The guide provides an overview of the principles underpinning how procurement should be carried out, the phases of the procurement cycle, the aims of each phase and the key steps involved. It also identifies areas of good practice and the important documentation for each procurement phase.

The guide draws on the Victorian Auditor-General's Office's environmental scanning, audit planning and performance audit work, and emphasises areas for particular improvement that have been identified in previous audits. The guide should be read in conjunction with the guidance materials issued by the Department of Treasury and Finance, other Victorian Government departments and the Victorian Government Purchasing Board.

I trust that users of the guide will find it a useful resource that helps to further improve the standard of procurement in Victoria.

DDR PEARSON
Auditor-General

October 2007

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It is important that procurement by public sector agencies is well conducted, given the significant volume of the outlays involved, and the impact of purchasing on the delivery of government programs and services, and the achievement of government outcomes.

Poor procurement practices give rise to several types of risk. For example:

- the process may not be fair or transparent
- there may be inadequate competition, leading to less value-for-money for the Government and the community
- suppliers and agencies may face unnecessary costs from poorly managed processes
- the process, and the subsequent management of the purchase, may fail so thoroughly that the goods and services or projects are not provided at all.

To mitigate these risks, staff involved in public sector procurement need to be appropriately trained and supported to carry out their responsibilities effectively.

Purpose of the guide

Public Sector Procurement: Turning Principles into Practice (the good practice guide) has been developed to assist Victorian public sector agencies with their procurement activities. It is based on our past performance audit work, and in particular on the following recent audits:

- *Government Advertising*, September 2006
- *Contracting and Tendering Practices in Selected Agencies*, June 2007
- *New Ticketing System Tender*, October 2007.

In developing this guide, we also drew upon the Victorian Auditor-General's Office's (VAGO) environmental scanning and audit planning work and referred to good practice guides and audit reports from other jurisdictions, procurement policies of the Victorian Government Purchasing Board (VGPB), procurement guidance issued by the Department of Treasury and Finance (DTF), Partnerships Victoria guidance relating to public-private partnerships, and the Victorian Government's Gateway Review Process.

This good practice guide does not replace the VGPB procurement policies or DTF guidance statements which include the *Strategic Sourcing in the Victorian Government Better Planning Smarter Practices, Better Procurement Outcomes* package issued in June 2006, comprising:

- *VGPB Policy: State Purchase Contracts (SPCs)*
- *VGPB Policy: Strategic Sourcing (Strategic Contracting and Category Management)*
- *VGPB Policy: Conduct of Commercial Engagements in Government*
- *Good Practice Guidelines: Developing a State Purchase Contract Business Case*
- *Good Practice Guidelines (draft): Category Management*
- *Good Practice Guidelines: Conduct of Commercial Engagements in Government*
- *Information Paper: Practitioners' Guide to Strategic Procurement (non-SPCs)*

and a range of tools and templates, including standard form contracts and tender documentation.

Compliance with VGPB policies is mandatory for all government departments, Victoria Police, VAGO, the Office of Public Prosecutions, the Office of the Chief Commissioner of Police, the Office of the Ombudsman, the Office of Police Integrity, the Essential Services Commission, the Office of the Victorian Privacy Commissioner, the Office of the Commissioner for Environmental Sustainability, the Office of the Legal Services Commissioner, the State Services Authority, the Office of the Special Investigations Monitor and the Victorian Electoral Commission¹.

Similarly, this VAGO good practice guide does not replace procurement manuals or policies and guidance statements of other agencies; policy and guidance relating to specific procurement activities, e.g. tendering and contractual provisions for public construction (the *Project Development and Construction Management Act 1994* (PDCM Act), and Ministerial Directions Nos 1 and 2) and public-private partnerships (Partnerships Victoria); or the Gateway Review Process.

This guide does not attempt to cover every step required in every type of procurement activity. Rather, it seeks to articulate good practice in the major phases of procurement, and encourages those involved to consider the way in which procurement principles should influence practice.

The elements of good practice articulated in the guide and applied in recent performance audits will inform future audits conducted by VAGO.

Structure of the guide

This guide:

- provides an overview of the principles underpinning how procurement should be carried out in the Victorian public sector (Part 2)
- describes the phases of the procurement cycle, the aims of each phase and the key steps involved (Part 3)
- identifies good practices associated with each key step (Parts 4 and 5)
- suggests documentation necessary for each phase of the procurement process (Parts 4 and 5).

The guide distinguishes between large and complex procurement (Part 4) and routine procurement (Part 5), recognising that although the key steps are the same, there is variation in the formality and detail of the documentation, given the different level of risk and complexity that each involves.

2

Guiding principles for procurement

value
for money

accountability



A number of principles should guide how procurement is carried out in the Victorian public sector, regardless of what is being procured or the procurement approach being used. The principles outlined in this part of the guide apply to all procurement-related activities, i.e. through the whole procurement life cycle from planning to completion. These principles underpin the guidance provided throughout the guide.

Value-for-money

Achieving value-for-money is the principal objective of public sector procurement. Value-for-money represents the optimum combination of quality, quantity, risk, timeliness and cost, and should be determined on a whole-of-contract and whole-of-asset-life basis.

Open and fair competition

To ensure competition is open and fair, a range of suppliers should be encouraged to bid to provide goods and services to public sector agencies, or to deliver public construction projects. Consistent with the values expressed in the *Public Administration Act 2004*², potential bidders and tenders must be treated in a fair, consistent and even-handed way. The same information should be provided to all potential bidders, and security and confidentiality of competitive information and documentation must be respected. The market forces exerted where competition is open and fair are instrumental in achieving value-for-money.

Risk management

All procurement involves a degree of risk. The management of risk is relevant to all phases in the procurement cycle, and relates to both the procurement process, and to the nature of what is being procured. Effective risk management involves the identification of risks, their assessment (i.e. assessing the likelihood of occurrence and magnitude of risks), and mitigation. It also includes the allocation of responsibility for managing the risks, and for their ongoing monitoring and control.

Transparency

Appropriate record keeping is an important element in achieving transparency. Supporting documentation should be created, and maintained, to enable scrutiny of decisions taken and to demonstrate the application of the guiding procurement principles and compliance with established requirements.

Probity

Probity in procurement relates to the fairness, impartiality and integrity of the process. Consistency in the treatment of, and interaction with, potential suppliers is important in ensuring probity standards are met. Probity is also critical in achieving value-for-money. Potential suppliers may choose not to participate in tenders if they doubt the fairness or impartiality of the process. This diminishes the range of solutions available and the competitiveness of the bids.

Self-evidently, probity issues should be considered throughout all phases of the procurement cycle. As newer, more innovative approaches to procurement are adopted, public sector agencies need to ensure that the probity of their procurement processes is maintained.

Accountability

Public sector accountability requires those entrusted with public resources to work to clear objectives in a transparent manner, accept responsibility for their decisions and actions, seek to achieve the best use of resources and submit themselves to appropriate scrutiny. All personnel involved in procurement need to have a clear understanding of these aspects.

Ethical behaviour

The *Code of Conduct for Victorian Public Sector Employees* requires all public sector employees to model their behaviours based on the public sector values and at all times to act in an ethical manner. Ethical behaviour encompasses the concepts of honesty, integrity, probity, diligence, fairness, trust, respect and consistency. Ethical behaviour includes avoiding conflicts of interest and avoiding improper use of an individual's position, and is an important principle for public sector procurement.

² *Public Administration Act 2004*, section 7.

3 The procurement process

Introduction

The procurement process encompasses the point at which an agency identifies the need to purchase a product, service or asset; seeking and evaluating bids; awarding a contract; managing and monitoring the delivery of, and payment for, the thing being procured; and reviewing the procurement post-delivery.

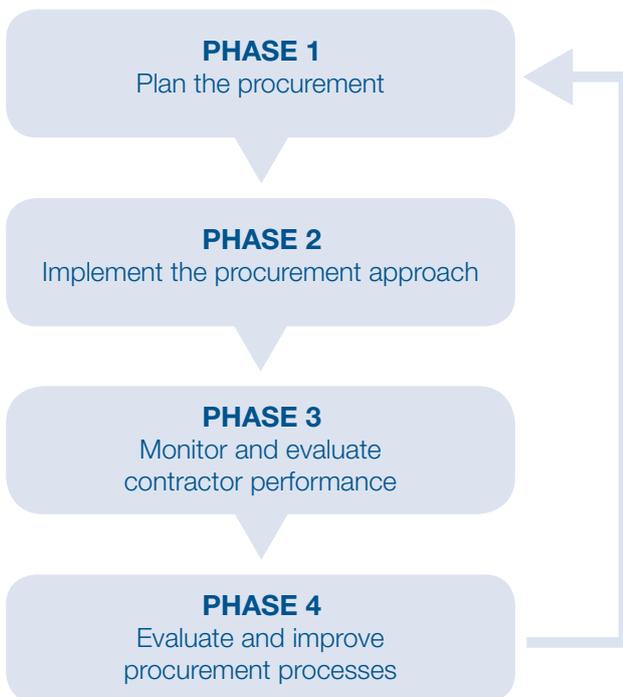
The procurement process can be broken down into the following phases:

- Phase 1 - Plan the procurement
- Phase 2 - Implement the procurement approach
- Phase 3 - Monitor and evaluate contractor performance
- Phase 4 - Evaluate and improve procurement processes.

Figure 3A provides an outline of the phases of the procurement process.

Figure 3A

PHASES OF THE PROCUREMENT PROCESS



Source: Victorian Auditor-General's Office.

Factors that influence the procurement approach

While all procurement should follow these four basic phases, the way each phase is conducted can vary for any particular procurement exercise, depending on a number of factors. The procurement approach adopted is usually guided by the value or the scale of the procurement. The Victorian Government Purchasing Board (VGPB) and the Department of Sustainability and Environment, respectively, have established thresholds for the procurement of goods and services, and for public construction projects.

Other factors that affect the procurement approach include:

- the nature of the item being procured, e.g. capital projects requiring a design response may include a protracted period during which potential suppliers are required to move through a staged procurement process
- the complexity of the procurement, e.g. where multiple parties are involved in negotiating aspects such as financing and risk-sharing arrangements
- whether the need for the item being procured is critical to service delivery by an agency, e.g. major information technology projects as well as infrastructure services which form part of the core business of the agency
- whether there are time constraints on the delivery of a product or service which mean the procurement needs to take place quickly
- the level of risk associated with the procurement, e.g. a project that presents a high-risk to the public requires more detailed documentation than procurement of general stationery items
- the cost of subsequent purchases that may rely on the successful outcome of the current procurement exercise, e.g. an agency may engage an architect to design a public facility and specify the functionality requirements. Tenders may later be called for construction of the facility
- the maturity or size of the market, e.g. the market for a particular expert service may be small and specialised, thereby limiting the number of potential suppliers.



Each procurement exercise should be conducted so that each supplier's need to minimise the cost of competing for the procurement opportunity, and ultimately providing the goods, service or asset is balanced against the public sector agency's need to ensure that probity standards are maintained, and that value-for-money is achieved. The need for predictable, streamlined procurement processes, and the need to provide conditions attractive to potential suppliers, place a responsibility on public sector agencies to review their practices and to remove unnecessary steps, while still protecting the integrity of the process.

Innovation in procurement

Procurement for large and complex projects has been an area of considerable innovation over the past decade. Public-private partnerships have emerged as a procurement option and traditional 'sealed bid' tendering has given way to more interactive and flexible approaches, designed to enhance value-for-money. Features of more innovative tendering include:

- the procurer retaining flexibility with respect to the number of tendering stages
- flexibility with respect to the timing for closing of bids and contractual close, including retaining the option to accept further 'best and final offers' after initial 'best and final offers' have been received, and after a previously announced closing date
- requiring multiple bidders to enter detailed contractual and legal discussions with the tendering agency, in parallel with each other
- partial acceptance of proposals, e.g. acceptance of design components of a tender.

These and other innovative approaches provide a more 'commercial' approach to public sector procurement. While they can be desirable in enhancing value-for-money, they require greater vigilance in respect of tender planning and governance, and to probity arrangements, so that the integrity of the procurement is maintained and optimal sharing of risk is achieved.

Good practice tips

Part 4 of this good practice guide describes the key steps and areas of good practice for large and complex procurement. Part 5 outlines the equivalent elements for routine procurement. Figure 3B shows some good practice tips to consider whatever type of procurement is involved and whichever approach is used.

Figure 3B

GOOD PRACTICE TIPS

- Achieving value-for-money while maintaining process integrity is the ultimate goal of procurement.
- The same basic principles apply to routine procurement and large or complex procurement.
- Personnel involved in procurement should familiarise themselves with the Victorian Government Purchasing Board requirements and other relevant procurement requirements.
- Agency-specific procurement guidance material should align with whole-of-government procurement rules.
- Take steps to understand the market, including the number of potential suppliers and the best way to present the procurement to the market.
- Procurement contracts should be actively managed throughout their life.
- Social, economic and environmental considerations (the 'triple bottom line') are relevant to procurement and can be reflected in the tender requirements and evaluation criteria.
- The management of risk should be an integral part of all aspects of procurement.
- Capturing performance data about the procurement process is important to support innovation.
- Good procurement practice should be a core part of every organisation's goals and priorities.

Source: Victorian Auditor-General's Office.

Maintaining the evidence trail

Parts 4 and 5 of the good practice guide discuss the types of documentation that need to be prepared and retained for procurement. Retaining sufficient and appropriate documentation facilitates independent scrutiny, and the capturing of lessons learnt. **This is a key area for improvement identified from past audits.**

4 Large and complex procurement

This Part of the guide is about good practice for large and complex procurement. This type of procurement may:

- involve multiple contracts for a wide variety of goods and services from numerous suppliers
- present considerable risk associated with the procurement process itself, as well as with the goods, services or assets being delivered
- be critical to the delivery of key programs, services or facilities.

While the value of the procurement may be relevant to the level of complexity, this is not always the case. It is possible, for example, for large-value purchases to be relatively routine, straight-forward, repeated regularly, and to have low levels of risk. Conversely, a relatively low-value purchase may form the foundation for delivery of critical high-risk services, or provide the basis for future, much larger purchases and, therefore, inherently attract more risk.

Good practice tips

The documentation discussed in this part of the good practice guide is extensive. This reflects the extra rigour expected for large and complex procurement, due to its relatively high level of risk. Nevertheless, not all of the documents need to be produced separately. In some circumstances, some of the documents may not be required at all. The overarching principles are that the procurement process is rigorous, that the matters identified in this part of the guide have been considered during the procurement exercise, and that agencies can demonstrate the basis of their decisions and provide evidence that the principles identified in Part 2 have been applied.

A number of good practice tips to consider when undertaking large and complex procurement are presented in Figure 4A. These are based on lessons from recent audits of major project procurement.



Figure 4A

GOOD PRACTICE TIPS FOR LARGE AND COMPLEX PROCUREMENT

- Understanding what an agency needs to procure is often neglected; it warrants a significant investment of time and resources.
- Pay close attention to the institutional forms of the procuring agency. Institutional structure, roles and governance can have a significant impact on the efficiency and effectiveness of the procurement.
- Agencies undertaking major tenders should consider including a procurement specialist or project management specialist on the agency's board.
- The commitment and involvement of senior management in procurement is critical in ensuring that it is afforded sufficient priority and recognised as an important business activity.
- Pay close attention to the applicable probity requirements. Seek advice, and consult the guides and codes prepared by the Department of Treasury and Finance and the State Services Authority.
- Agencies managing major tenders should make use of their audit committee in gaining assurance about the integrity of the tender process.
- The quality requirements should reflect minimum functional requirements and be clear.
- The procurement should be advertised widely to maximise the number of potential bidders.
- A reserve price, in the form of a public sector comparator or a benchmark price/quality/risk combination should be used in the tender as an active competitive tool, particularly when the number of potential tenderers is small.
- Interactive negotiations can improve tenders and value-for-money, as can taking more than one tender into detailed negotiations.
- Competitive tension should be maintained in the tender until the solution's key parameters (price, quality and risk allocation) are locked in.
- The procurer should consider publishing a value-for-money statement that sets out the aspects of the procurement approach that will drive the achievement of value-for-money.
- A key risk area in procurement is the failure to adequately monitor contractor performance. 'Taking your eye off the ball' once the contract is signed poses major risks for successful procurement. Procurement contracts should be actively managed throughout their life.

Source: Victorian Auditor-General's Office.

PHASE 1: Plan the procurement

The aims, key steps and suggested documentation for Phase 1 of the procurement process, *Plan the procurement*, are summarised in Figure 4B.

Figure 4B

PHASE 1: PLAN THE PROCUREMENT

AIMS

- To ensure that the goods, services and assets being procured meet the business need.
- To ensure that procurement policies are followed and that a successful value-for-money outcome is achieved.
- To protect the integrity of the procurement process by articulating how the procurement will comply with government requirements.
- To manage the risks associated with the procurement.

KEY STEPS

- Identify what needs to be procured
- Specify the requirement
- Develop the procurement strategy

DOCUMENTATION

- Documentation identifying need (e.g. policy documents, business plan)
- Market analysis
- Business case
- Specification/requirements documentation
- Specification/requirements check
- Exemption from tendering documentation
- Procurement authorisation
- Procurement conduct plan
- Strategic procurement plan
- Probity advice
- Probity plan
- Contract management plan
- Risk management plan

Source: Victorian Auditor-General's Office.



Key step: Identify what needs to be procured

Good practice

- **Identifying the business need.** The business need may arise from a number of sources including:
 - a government policy decision
 - a management decision reflected in the business plan of an agency or business unit
 - the need to continue to provide a service
 - the approaching expiry of an existing contract. (*Documentation identifying need*)
- **Identifying the goods, services or assets to be procured** to meet the business need.
- **Analysing the supply market** to determine if the items to be procured are available, to gain a thorough understanding of the range and pricing of items that may meet the business need, and to identify a range of viable procurement options (i.e. in-house, fully/partially outsourced).

Develop an understanding of the range of suppliers in the market, and the factors driving conditions in the supply market and how they may affect the procurement. This is useful when developing specifications/requirements and in determining the tender strategy to encourage optimal participation and the achievement of value-for-money. (*Market analysis*)

- **Preparing an unambiguous, evidence-based assessment of the costs, benefits and risks** associated with each procurement option. The business case should clearly identify any assumptions made and provide clear evidence of the basis for those assumptions.

The Department of Treasury and Finance's (DTF's) *Good Practice Guidelines: Developing a State Purchase Contract Business Case* provides guidance for developing a business case for goods and services³.

The Partnerships Victoria *Practitioners' Guide*⁴ outlines the content of a business case for a public-private partnership. Development of a public sector comparator (PSC) is recommended to enable an agency to make an internal commitment to a major infrastructure project. According to the practitioners' guide '*the PSC estimates the hypothetical risk-adjusted cost if a project were to be financed, owned and implemented by government*', and '*a preliminary PSC should be used for a decision in principle by a department or agency to internally commit to a major infrastructure delivery*'. The Partnerships Victoria *Public Sector Comparator Technical Note* provides details about the role of the PSC in the procurement process⁵. (*Business case*)

- **Identifying whether the procurement process is subject to the Gateway Review Process and complying with the processes required**⁶. If subject to the Gateway Review, *Gateway Review 1 – Strategic Assessment* (of the service need) and *Gateway Review 2 – Business Case* will apply to this key step.

Key step: Specify the requirement

Good practice

- **Describing clearly what needs to be procured** is an essential part of effective procurement. To encourage innovative bids and better value-for-money, consideration should be given to specifying outputs, solutions or outcomes rather than detailed inputs. It may be useful to engage an external consultant to provide technical expertise to help define the requirements.

Further guidance about preparing a specification can be found in DTF's *Specification Writing Best Practice Advice*⁷. (*Specification/requirements documentation*)

- **Conducting an independent check of the specification/requirements documentation** to ensure that it reflects the needs identified in the business case, and is both affordable and technically feasible. (*Specification/requirements check*)

³ DTF's *Good Practice Guidelines: Developing a State Purchase Contract Business Case* can be found at <www.vgpb.vic.gov.au>.

⁴ Partnerships Victoria, *Practitioners' Guide*, DTF, Victoria, June 2001.

⁵ Partnerships Victoria, *Public Sector Comparator Technical Note, Guidance Material*, DTF, Victoria, June 2001.

⁶ Further information about the Gateway Review Process can be found at <www.gatewayreview.dtf.vic.gov.au>.

⁷ DTF's *Specification Writing Best Practice Advice* can be found at <www.vgpb.vic.gov.au>.

Key step: Develop the procurement strategy

Good practice

- **Identifying the relevant procurement rules and requirements**, e.g. the Victorian Government Purchasing Board (VGPB) requirements for goods and services, *Project Development and Construction Management Act 1994* (PDCM Act) for construction-related projects, Partnerships Victoria for public-private partnerships to deliver public infrastructure and related services, and agency-specific procurement policy and guidance material.
- **Determining how the desired procurement outcome can be best obtained**, e.g. through public tender. Several approaches to tendering exist. Examples include:
 - **Multi-stage tender:** A two-stage process involving an Expression of Interest (EOI) followed by a Request for Tender (RFT) can be used where an agency needs to learn more about the goods, services, asset, or the market before proceeding with the RFT.

In Stage 1, an EOI is issued to find out more about the item to be procured, the market and the capability of suppliers to satisfy the procurement need.

In Stage 2, an RFT is issued requesting potential suppliers to submit an offer for delivery of the goods, services or asset, or to propose a solution to meet the requirements.
 - **Interactive tender:** An interactive tender process enables active dialogue between the tendering agency and bidders. It gives bidders an opportunity to clarify and better understand the tender requirements and to propose innovations. Allowing bidders to submit revised tenders during the process can be effective in maintaining competition between bidders. This may reduce tender prices and improve tender quality. It is important to note, however, that any interactive tender process still needs to be conducted within a framework which ensures the principles of probity are adhered to.

Partnerships Victoria has developed an *Interactive Tender Process* advisory note. It is designed to assist agencies and bidders involved in interactive tendering⁸.

- **Selective tender:** A selective tender process may be used where only one or a few suppliers are active in the market, or where short time frames preclude a long tender process. A selective tender process may require an exemption from applicable rules. The basis for exemption should be documented and approved by the appropriate delegate, e.g. the Department's Accredited Purchasing Unit⁹. (*Exemption from tendering documentation*)
- **Pre-qualification:** In some instances, agencies may select a short-list of potential suppliers from a register of pre-qualified suppliers. For example, Ministerial Direction No. 1 under the PDCM Act provides for departments and public bodies to select a short-list from the Construction Supplier Register (CSR), a whole-of-government register established and maintained by the Department of Infrastructure. It lists building and construction contractors and consultants, pre-qualified as suitable for undertaking public construction and providing related consultancy services¹⁰.
- **Recommending the procurement method and process**, drawing on the market analysis, responses to the EOI, and relevant government requirements. Obtain the necessary authorisations to proceed to tender, including confirmation of the availability of funds. (*Procurement authorisation*)
- **Developing a procurement conduct plan (PCP)** to guide staff involved in the procurement process. The PCP outlines the minimum standard of conduct for the process. The VGPB policy on the *Conduct of Commercial Engagements* requires a PCP for purchases over \$10 million. DTF has developed a PCP template¹¹. (*Procurement conduct plan*)

⁸ Partnerships Victoria, *Interactive Tender Process* advisory note can be found at <www.partnerships.vic.gov.au>.

⁹ Under VGPB policy, all departments, and nominated agencies are required to establish an accredited purchasing unit (APU) to oversee tendering arrangements, and to ensure that procedures for the procurement of goods and services comply with guidelines established by the VGPB.

¹⁰ Further details on the CSR can be found at <www.doi.vic.gov.au>.

¹¹ DTF's PCP template can be found at <www.vgpb.vic.gov.au>.



• **Preparing a strategic procurement plan** that brings together the various aspects to be followed during the procurement exercise. A SPP would typically include:

- a business case
- the identification of procurement opportunities
- options for achieving outcomes
- potential partnerships and alliances
- market capability analysis
- details of stakeholders and internal organisational requirements
- preliminary costs
- risk management issues
- performance measures.

The VGPB policy on *Strategic Procurement Planning* requires that an SPP be prepared for procurement greater than \$10 million, and for high-risk, complex purchases. DTF has developed a SPP template to assist agencies¹². ([Strategic procurement plan](#))

• **Identifying the major probity issues likely to arise.**

Consider probity training for staff involved in tendering. Probity advisors could be appointed to advise on appropriate action to address probity issues arising from the tender process. The level of probity oversight should be commensurate with the scale and complexity of the procurement, and the degree of probity risk.

Under the Government's 2000 policy statement *Ensuring Openness and Probity in Victorian Government Contracts*, a government department letting a tender valued at over \$10 million is required to develop a probity plan before commencing the procurement. The probity plan is to document and explain the arrangements for ensuring that a proper process is followed throughout the procurement.

Engagement of a probity auditor to independently scrutinise compliance with the established process and with relevant procurement requirements, and to provide assurance on the integrity of the tender process, is

recommended for large and complex procurement. The probity auditor and probity advisor functions should be provided by different parties.

The VGPB requires a probity auditor to be engaged for all procurements in excess of \$10 million. DTF has developed best practice advice to help establish and maintain high standards of probity in tendering activities¹³.

([Probity advice, probity plan](#))

• **Developing a contract management plan** for monitoring compliance with contract conditions. The plan should identify milestones and key deliverables/outcomes, the roles and responsibilities of the contractor and contract managers, and project performance reporting requirements.

The Partnerships Victoria *Contract Management Guide* outlines the critical elements for successful contract management and sets out tools for managing Partnership Victoria projects¹⁴.

The VGPB policy on *Contract Management* requires a contract management plan for high value complex procurement of goods or services. DTF has developed a *Contract Management Best Practice Advice* and template to assist agencies¹⁵. ([Contract management plan](#))

• **Identifying and assessing the potential risks** associated with the procurement, and develop risk mitigation strategies. Value-for-money is maximised by allocating risk optimally.

Assign responsibility for managing the risks, and for identifying new risks as they emerge. The assessment should be documented and should influence how the stages of the procurement are conducted.

([Risk management plan](#))

• **Gateway Review Process**¹⁶. If the procurement is subject to the Gateway Review Process, *Gateway Review 3 – Readiness for Market* will apply to this key step.

¹²DTF's SPP template can be found at <www.vgpb.vic.gov.au>.

¹³DTF's *Best Practice Advice on Probity* can be found at <www.vgpb.vic.gov.au>.

¹⁴Partnerships Victoria's *Contract Management Guide* can be found at <www.partnerships.vic.gov.au>.

¹⁵DTF's *Contract Management Best Practice Advice* can be found at <www.vgpb.vic.gov.au>.

¹⁶Further information about the Gateway Review Process can be found at <www.gatewayreview.dtf.vic.gov.au>.

PHASE 2: Implement the procurement approach

The aims, key steps and suggested documentation for Phase 2 of the procurement process, *Implement the procurement approach*, are summarised in Figure 4C.

Figure 4C

PHASE 2: IMPLEMENT THE PROCUREMENT APPROACH

AIMS

- To ensure that the successful provider delivers a value-for-money solution.
- To ensure that the successful provider is capable of providing the goods and services being acquired or delivering the facility specified.
- To ensure that the procurement process is transparent, fair and robust, and that decisions are justified and adequately documented.

KEY STEPS

- Call for tenders
- Evaluate the tenders
- Negotiate the contract
- Award the contract

DOCUMENTATION

- Expression of interest
- Request for tender (RFT)
- Approval of RFT
- Cost estimate
- Tender governance documentation
- Evaluation plan
- Tender advertisement
- Record of communication between potential bidders and the agency contact person
- Record of receipt and opening of tenders
- Registered mail receipt
- Panel documentation
- Conflict of interest declarations
- Evaluation report
- Record of negotiations
- Legal advice
- Contract
- Probity auditor's report
- Approval to award the contract
- Record of advice to unsuccessful bidders
- Handover plan
- Contracts publishing system
- Project summaries

Source: Victorian Auditor-General's Office.



Key step: Call for tenders

Good practice

• Developing the Expression of Interest (EOI) documents

if a two-stage process has been decided upon. The EOI document should include:

- an overview of the requirements
- details of the EOI process, including dates of briefings
- details of the agency contact person
- criteria and associated weightings for evaluating EOI responses. Examples of criteria include professional competence (e.g. capability, past performance and current work, quality system for deliverables), financial viability and insurance
- details of steps to follow the EOI process.
(Expression of Interest)

• Developing the Request for Tender (RFT).

The content may vary according to the procurement complexity, risk and value. The RFT should include the following information:

- details of what solution or outcomes are being sought
- details of the procurement method and process including dates of briefings and opportunities for questions and clarification
- for public-private partnerships, a clear statement of the applicable public sector comparator (PSC) disclosure policy (see *Partnership Victoria Public Sector Comparator Technical Note* for more detail¹⁷)
- details of the method for submitting tenders
- tender closing date and time. Allow bidders sufficient time to respond to the RFT. Times will vary depending on factors such as value and complexity
- details of the information to be submitted in the tender
- communication protocols, including details of the agency contact person responsible for dealing with issues arising from the tender

- criteria and associated weightings for evaluating tenders. The criteria should include demonstrated capability, value-for-money, and the ability to provide the goods and services or to deliver the project within the required timelines. Consideration should be given to including the financial viability of the bidder as an evaluation criterion
 - how answers to questions from bidders during the tender period will be communicated to potential bidders, e.g. an agency may determine that answers to questions will be distributed to registered bidders via email or on the agency's website
 - the performance standards and key deliverables to be met by the contractor
 - the intended form of contract. (Refer to the guidance material under the heading 'Negotiate the contract' later in this part of the guide for further information about the form of contract that should be used)
 - reference to government policies with which the bidder must indicate its compliance/non-compliance. The RFT should indicate whether compliance is mandatory or preferred, and how this information will be considered in the evaluation of bids
 - other legal and financial requirements, e.g. insurances required and specification of what constitutes a default
 - an indication of whether bid-cost compensation will be given for participating in the tender process
 - an indication of how non-compliant tenders will be dealt with, e.g. whether bidders who submit non-compliant tenders will be given the opportunity to resubmit, and whether alternative solutions will be acceptable. Alternative tenders can provide opportunities for innovation. *(Request For Tender)*
- **Reviewing the tender documents prior to issuing them.** Delaying calling for tenders is preferable to issuing documentation that has not been thoroughly checked and contains errors. Where significant issues arise that make it necessary to amend the tender documentation, the amendments should be issued to all registered bidders as an addendum. *(Approval of RFT)*

¹⁷ Partnerships Victoria's *Public Sector Comparator Technical Note* can be found at <www.partnerships.vic.gov.au>.

- **Developing a detailed cost estimate of the procurement** prior to the tender closing. (*Cost estimate*)

- **Establishing the tender governance arrangements**, including the allocation of roles in the tender process and identification of members of the tender evaluation panel:

- identify who will deal with inquiries from prospective bidders. The contact person needs to be fully familiar with all tender documentation. The person should be experienced in contractual and probity matters
- for large and complex tenders managed by public entities, a high degree of board oversight of the tender would be expected. Typically, the board would make key decisions about the tender process, or review and sign-off on key decisions made by management. Board members should be given sufficient time to assess board documents
- the agency's audit committee may be used to review an agency's compliance with regulatory requirements, and established policies and procedures, and to provide assurance on the integrity of the tender process. Audit committees should be appropriately resourced, with members who have the skills and time to undertake their function. Good practice would involve a 3 to 5 member audit committee, with at least one board member and one external member.

Once roles are allocated, they need to be clearly documented and communicated to those responsible for managing the tender. (*Tender governance documentation*)

- **Developing an evaluation plan** outlining how tenders will be evaluated. The plan should specify:

- the evaluation criteria (outlined in the RFT), and associated weightings
- the scoring regime to be applied for each criterion

- the skills required by the evaluation panel to evaluate the bids effectively, the make-up and responsibilities of the evaluation panel and steering committee (if applicable) and any procedures for site visits and testing of equipment. The tender evaluation panel should include members experienced in large and complex public sector procurement, and members with sufficient technical knowledge of the goods and services being purchased or facility being delivered, and knowledge of the supply market. The agency should consider engaging specialist advisors (i.e. financial, legal and technical) where necessary to assist the process. (*Evaluation plan*)

- **Advertising the tender** in a manner that complies with Victorian Government Purchasing Board (VGPB) requirements and other relevant policies. In addition to the mandatory advertising requirements, consideration should be given to placing a supplementary display advertisement where it is considered that the potential market has limited internet access or has a regional focus. Consideration could also be given to a display advertisement in a trade magazine or relevant section of a newspaper, if the project is of a specialised or technical nature. (*Tender advertisement*)

- **Communicating with potential bidders** through the channels indicated in the RFT documentation. Close attention should be paid to providing the same information to all potential bidders. Records of communication between potential bidders and the agency contact should be kept. All briefing meetings held with bidders should be minuted. In the case of large and complex tenders, the use of a tape recorder or video camera may be required. (*Record of communication between potential bidders and the agency contact person*)

- The agency contact should provide as much reasonable purchasing information to allow bidders to bid knowledgeably. This is particularly important when re-tendering a contract as an incumbent has a clear understanding of the purchaser's needs and the administrative processes and, therefore, may have an advantage over other potential bidders. To ensure that probity is maintained, the same information should be provided to all bidders. Consideration should be given to taking and responding to questions in writing, so that consistency in response is achieved. (*Record of communication between potential bidders and the agency contact person*)



- Confirm the need for any changes to the published tender process and/or requirements with users of the goods and services, or owner of the facility to be constructed, and with probity advisors prior to the changes being communicated to potential bidders. Probity requires that all potential bidders should be informed of the changes at the same time. The reasons for any change should be documented and approved. (*Record of communication between potential bidders and the agency contact person*)

- **Establishing arrangements for security of tenders and other information** e.g. tenders should be opened in the presence of two officers with the names of those officers and time of receipt of tenders recorded in a register. The register should also be signed by both officers, identifying the number of tenders received at the time tenders closed. Tenders received after the closing time and date should be deemed ineligible for consideration. Ineligible tenders should be registered as 'late' and stamped or marked as such. The intellectual property contained in the tender typically remains the property of the bidder and, accordingly, should be returned. Any late tender should only be opened to identify a business name and address for its return. (*Record of receipt and opening of tenders, registered mail receipt*)

Key step: Evaluate the tenders

Good practice

- **Establishing the evaluation panel**, incorporating staff with relevant skills and knowledge of the procurement. (*Panel documentation*)
- **Identifying, declaring and addressing all potential, perceived and actual conflicts of interest** by evaluation panel members and those included in the tender governance arrangements. Partnerships Victoria has developed a *Disclosure and Management of Conflict of Interest Advisory Note*¹⁸ that provides guiding principles and tools for practitioners to manage conflicts of interest that may emerge in engaging advisors for Partnership Victoria projects. (*Conflict of interest declarations*)
- **Assessing the tenders** using only the evaluation criteria and weightings specified in the RFT. Ensure evaluation criteria are applied in a consistent, systematic manner. The documentation should demonstrate the assessment of each tender against each evaluation criterion (for example, if a numerical scale is used, descriptors of ratings should be included and ratings justified in the evaluation report). (*Panel documentation*)
For public-private partnerships, the evaluation team may choose to test the robustness and quality of the bids by incorporating some of the bidder's key assumptions into the PSC model. Partnerships Victoria's *Public Sector Comparator Technical Note* provides further information about the use of the PSC in the evaluation phase. (*Panel documentation*)
- **Establishing clear rules for the progressive elimination of bidders**, where the tender process allows for this to occur. Before a decision to eliminate a tender is made, the tendering agency should clearly define the basis for doing so. The decision to eliminate a tender, along with the reasons and evidence to support the decision, should be documented. (*Evaluation report*)
- **Documenting the evaluation of tenders**, including the justification for short-listing bidders. (*Evaluation report*)
- **Assessing the bidder's capability** to provide the desired solution in the required time frame. In some circumstances, the tendering agency may choose a bidder based on potential, rather than proven, capability. Where it does so, it is important for the evaluation panel to identify the associated risks, to include these in the tender rating and to outline clearly how the increased risk to delivery will be managed. (*Evaluation report*)
- **Preparing the evaluation report** with details of tender evaluation panel membership, each bidder's score against the assessment criteria, the total scores for each bidder, results of reference and viability checks, and the panel's recommendation, including the rationale for selecting the preferred bidder. Each of the evaluation panel members should sign and date the evaluation report. If the tender evaluation panel decides not to accept any tender and to re-call tenders, the original bidders should be advised of the reasons for re-calling. (*Evaluation report*)

¹⁸Partnerships Victoria's *Disclosure and Management of Conflict of Interest Advisory Note* can be found at <www.partnerships.vic.gov.au>.

Key step: Negotiate the contract

Good practice

- **Conducting negotiations** in a consistent manner with all short-listed bidders. Care should be taken that the partial acceptance of a tender does not unfairly disadvantage previously eliminated bidders. Probity may be compromised if all bidders are not given an equal opportunity to address the same requirements. All negotiations must be documented and the record should be retained. Communications should be carefully controlled so that there is no unmanaged transfer of information between bidders. (*Record of negotiations*)
- **Using standard form government contracts** where practical to reduce delays and uncertainty for suppliers and public sector agencies:
 - For goods and services, the VGPB has developed a range of standard form contracts¹⁹. In deciding what contracts to use, consideration should be given to procurement complexity, risks and the circumstances of the procurement. Agencies should seek legal advice regarding the suitability of the standard form contracts (VGPB, department or industry-specific) for high-risk and/or complex projects where it may be more appropriate to develop a project-specific contract. A customised contract should be consistent with, and reflect the general principles and approach of, the commercial terms of the standard form contract. (*Legal advice*)
 - For construction projects, Ministerial Direction No. 2, *Contractual Provisions for Public Construction*, under the PDCM Act outlines the provisions with which Victorian Government agencies must comply when entering into contracts for building and construction works, or the supply of related consultancy services.
- **Establishing how risk will be shared between the contractor and the State.** Contracts should provide for appropriate protection of intellectual property rights of both parties, specification of licensing arrangements, trigger points for renegotiation, dispute resolution processes, termination clauses, provisions for audit by independent auditors (including the Victorian Auditor-General or his delegate), and arrangements that encourage a commercial result and value-for-money outcomes. Legal advice should be sought throughout the contract negotiation period to ensure that the public interest is protected.

For public-private partnership projects, the *Standard Commercial Principles Guide* details principles in relation to Partnerships Victoria risk allocation in contracts. (*Legal advice, contract*)
- **Gateway Review Process**²⁰. If the procurement is subject to the Gateway Review Process, *Gateway Review 4 – Tender Decision* will apply to this key step.

¹⁹Standard form VGPB contracts can be found at <www.vgpb.vic.gov.au>.

²⁰Further information about the Gateway Review Process can be found at <www.gatewayreview.dtf.vic.gov.au>.



Key step: Award the contract

Good practice

- **Obtaining approval to award the contract** from the delegated authority (the Department's Accredited Purchasing Unit or a person/body independent of the evaluation panel) prior to any work commencing, or goods or assets changing hands. This documentation should include a probity report from an independent probity auditor, or equivalent, on the integrity of the tendering process. (*Probity auditor's report, approval to award the contract*)
- **Finalising the contract**, including legal advice. Agencies should seek legal advice regarding the contract to ensure that it reflects the outcomes of contract negotiations. Once completed and agreed the contract should then be signed by both parties. (*Legal advice, contract*)
- **Structuring contract payments** to provide for the holding of final payment until satisfactory completion of project, or receipt of goods or services. (*Contract*)
- **Advising unsuccessful bidders** in writing, and provide them with an opportunity for a debrief as soon as practicable. This debrief should be limited to how the unsuccessful bidders did not meet the requirements. Record details of these communications. (*Record of advice to unsuccessful bidders*)
- **Planning the hand-over** from the procurement team to contract management staff to ensure that key dates, risks and continuity issues are addressed. (*Handover plan*)
- **Disclosing summary information** for department contracts greater than \$100 000 on the VGPB's contracts publishing system within 60 days after the contract is awarded. For contracts greater than \$10 million, both departments and agencies are required to disclose the text of contracts²¹. (*Contracts publishing system*)

In the case of public-private partnership, under the *Public Disclosure Policy for Partnerships Victoria*²², all contracts need to be accompanied by project summaries containing information regarding value-for-money and public interest considerations, within three months of the finalisation of contractual and financial arrangements. (*Project summaries*)

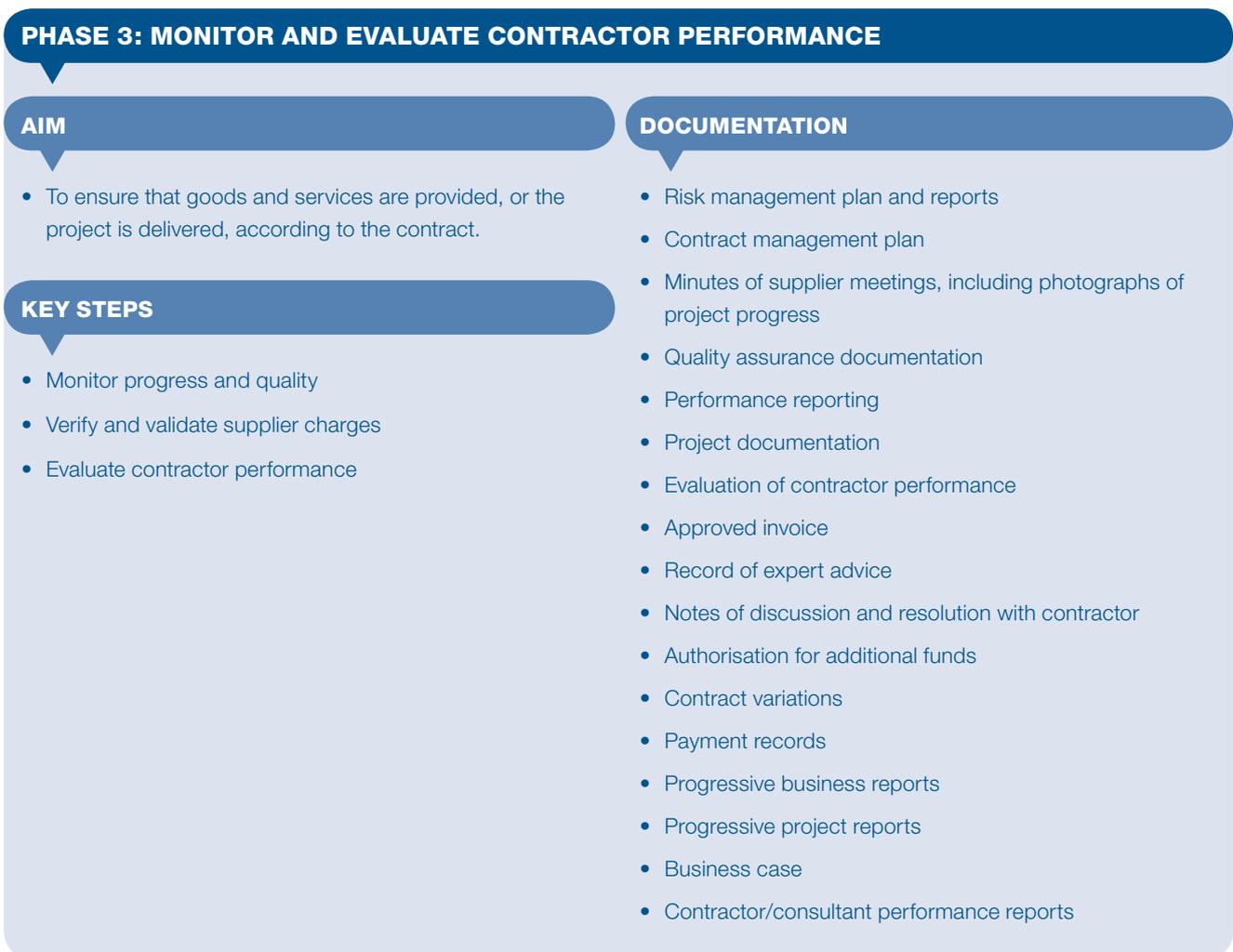
²¹ The VGPB's Contracts Publishing System can be found at <www.tenders.vic.gov.au>.

²² Partnerships Victoria's *Public Disclosure Policy for Partnerships Victoria* can be found at <www.partnerships.vic.gov.au>.

PHASE 3: Monitor and evaluate contractor performance

The aims, key steps and suggested documentation for Phase 3 of the procurement process, *Monitor and evaluate contractor performance*, are summarised in Figure 4D.

Figure 4D



Source: Victorian Auditor-General's Office.



Key step: Monitor progress and quality

Good practice

- **Appointing a contract manager** with appropriate contract experience and training.
- **Establishing a contract management team** to support the contract manager. The manager and team should be responsible for:
 - managing the relationship between the agency and the contractor
 - managing risks. This should involve regular reporting of risk management activities, including evaluation of the effectiveness of risk mitigation activities and regular updating of the risk management plan (*Risk management plan and reports*)
 - the financial and operational performance of the contract
 - acting in accordance with the contract management plan and reviewing it on a regular basis
 - understanding, and being familiar with, all contract obligations
 - updating the contract management plan to reflect final contract conditions (*Contract management plan*)
 - maintaining records in sufficient detail to provide an audit trail of contract management and contractor performance.

The roles and responsibilities of each team member should be clearly documented.

- **Maintaining minutes of all meetings with suppliers** and include progress photographs where helpful, e.g. for construction projects. (*Minutes of supplier meetings, photographs of project progress*)

- **Obtaining and recording quality assurance sign-offs** at key stages of the project. (*Quality assurance documentation*)
- **Assessing the extent of the contractor's compliance** with key contractual requirements and achievements against contract milestones and deliverables. This may involve inspection and testing, regular scheduled meetings to review and discuss performance, and spot checks of sites. Report progress to the project steering committee/board regularly. (*Performance reporting*)
- **Authorising subsequent stages of work** to commence after earlier work is satisfactorily completed, particularly where subsequent work builds upon the earlier work. (*Project documentation*)

Key step: Verify and validate supplier charges

Good practice

- **Evaluating and documenting contractor performance** against the standards specified in the tender documentation prior to making payments. (*Evaluation of contractor performance*)
- **Regularly monitoring the contractor** to ensure that the deliverable invoiced has been supplied and meets the quality requirements. Check that invoiced amounts are correct and accord with the contract, and that the necessary sign-offs have been given. Where necessary, expert advice (e.g. from a quantity surveyor or an independent quality reviewer) should be obtained. (*Approved invoices, record of expert advice*)

If the deliverables have not met quality requirements, contact the contractor and resolve the matter. If the matter cannot be resolved within a reasonable period, implement the contract dispute resolution clause. (*Notes of discussion and resolution with contractor*)

- **Approving variations** to contracts prior to work being performed, or goods or services being provided. Key issues to consider in managing and documenting contract variations include:

- compliance with the procedures established under the contract
- determining the reasons for the proposed variation, and establishing whether they indicate an emerging or actual performance problem
- assessing the impact of the proposed variation on the deliverables
- determining the effect of the variation on contract price
- considering the authority for making the variation. Where the size of the variation exceeds that contract management team's authority, approval from the appropriate delegate will be required. (*Authorisation for additional funds*)

Where a variation is approved, ensure that reporting requirements (including updating details on the VGPB's Contract Publishing System) are met. (*Contract variations*)

- **Reporting payments on a cumulative basis** to ensure compliance with budgeted amounts, and early identification of potential over-runs of approval limits. (*Payment records, progressive business reports, progressive project reports*).

Key step: Evaluate contractor performance

Good practice

- **Reviewing the contractor's performance** and the quality of the deliverables before making the final contract payment. When evaluating performance, the contract manager should determine the extent to which the requirements were met, whether any problems arose, the level of satisfaction with the procurement outcome, and whether the performance standards were met. (*Evaluation of contractor performance*)

When making decisions about extensions or variations to contracts or prior to re-engaging a contractor, a business case (or similar) should be developed. It should contain consideration of the ongoing business need, the rationale for re-engaging the contractor, including consideration of alternative options (e.g. re-tender), and consideration of contractor performance. (*Business case*)

- **Providing a performance report to the agency responsible for managing the register** where the contractor or consultant was engaged from a pre-qualified register e.g. the CSR. (*Contractor/consultant performance report*)
- **Gateway Review Process**²³. If the procurement is subject to the Gateway Review Process, *Gateway Review 5 – Readiness for Service* and *Gateway Review 6 – Benefits Evaluation* will apply to this key step.



PHASE 4: Evaluate and improve procurement processes

The aims, key steps and suggested documentation for Phase 4 of the procurement process, *Evaluate and improve procurement processes*, are summarised in Figure 4E.

Figure 4E

PHASE 4: EVALUATE AND IMPROVE PROCUREMENT PROCESSES

AIM

- To continuously improve procurement outcomes through refinement of processes.

KEY STEPS

- Review adherence with established processes
- Evaluate opportunities to improve processes
- Incorporate process improvements

DOCUMENTATION

- End-of-procurement review
- Contract management review
- Quality assurance sign-offs
- Review of contracts
- Stakeholder feedback
- Benchmarking review
- Expert advice on procurement improvements
- Updated procurement manual, plans and policies
- Staff training records
- Process improvement implementation plan

Key step: Review adherence with established processes

Good practice

- **Performing an end-of-procurement review and contract management review** to determine if established processes were followed, recording reasons for non-compliance with processes to determine the need to revise practice opportunities for staff training. (*End-of-procurement review, contract management review*)
- **Reviewing documents relating to the procurement** to ensure sufficiency of audit trail and the presence of required sign-offs by internal and/or independent quality assessors. (*Quality assurance sign-offs*)
- **Reviewing currency of contracts** to ensure that any problems that have occurred with aspects of the contractual arrangements are identified and, where appropriate, improvements are made in future contractual arrangements. (*Review of contracts*)

Source: Victorian Auditor-General's Office.

Key step: Evaluate opportunities to improve processes

Good practice

- **Seeking feedback from suppliers, users, contractors and consultants** to determine their satisfaction with the procurement/contract management processes, and seek suggestions for improvement. *(Stakeholder feedback)*
- **Benchmarking the procurement and contract management processes** with those of other sectors and jurisdictions. *(Benchmarking review)*
- **Consulting procurement specialists** to ensure that suggested improvements comply with policies and rules. *(Expert advice on procurement improvements)*

Key step: Incorporate process improvements

Good practice

- **Reviewing and updating manuals, plans and policies** as necessary. *(Updated procurement manuals, plans and policies)*
- **Training staff** in revised processes. *(Staff training records)*
- **Using change-management strategies** to implement processes. *(Process improvement implementation plan)*

5 Routine procurement

value
for money

accountability



This Part of the guide identifies key steps, good practices and suggested documentation for routine procurement exercises. Routine procurement is usually undertaken via State Purchase Contracts, agency panel contracts, or through verbal or written quotations.

The characteristics of routine procurement are typically that:

- the details of the goods or services being procured are known
- the goods or services are readily available
- the goods or services have been procured previously
- there is a competitive market
- the primary selection criteria are price and availability (quality is readily apparent and the risk component is minimal).

The key steps for routine procurement are the same as those described in Part 4, but because of the lower level of risk, the approach within each of the key steps is more straightforward.

This Part does not cover procurement of construction services, or procurement conducted through a public tender process as such procurement is generally considered complex. For these procurement types, Part 4 of this good practice guide applies.

Good practice tips

While certain practices identified in this part of the guide also relate to large and complex procurement, e.g. risk analysis, it is reasonable that the rigour of the overall process, and the level of detail contained in the documentation for routine procurement, would be less than for large and complex procurement. Nevertheless, all key decisions for routine procurements should be documented and justified. Records should be kept in a manner that protects the confidentiality of supplier information and establishes a clear audit trail.

Nothing in this part of the guide is intended to diminish the aim of encouraging open and fair competition and delivering value-for-money, or the need to retain a clear auditable record of the procurement process.

A number of good practice tips to consider when undertaking routine procurement are presented in Figure 5A. These are based on lessons from recent procurement exercises that have been the subject of audit.

Figure 5A

GOOD PRACTICE TIPS FOR ROUTINE PROCUREMENT

- Understanding what an agency needs to procure is often neglected; it warrants a significant investment of time and resources.
- Pay close attention to the institutional forms of the procuring agency. Institutional structure, roles and governance can have a significant impact on the efficiency and effectiveness of the procurement.
- The commitment and involvement of senior management in procurement is critical in ensuring that it is afforded sufficient priority and recognised as an important business activity.
- Successful procurement is about getting what you want. Make sure the performance arrangements are capable of telling you whether or not the procurement was successful in meeting the original need.
- Pay close attention to the applicable probity requirements. Seek advice and consult the guides and codes prepared by the Department of Treasury and Finance and the State Services Authority.
- A key risk area in procurement is the failure to adequately monitor contractor performance. 'Taking your eye off the ball' once the contract is signed poses major risks for successful procurement.

Source: Victorian Auditor-General's Office.

PHASE 1: Plan the procurement

The aims, key steps and suggested documentation for Phase 1 of the procurement process, *Plan the procurement*, are summarised in Figure 5B.

Figure 5B

PHASE 1: PLAN THE PROCUREMENT

AIMS

- To ensure the goods and services meet the business need.
- To ensure that procurement policies are followed and a successful value-for-money outcome is achieved.
- To protect the integrity of the procurement process by articulating how the procurement will comply with government requirements.
- To manage the risks associated with the procurement.

KEY STEPS

- Identify what needs to be procured
- Specify the requirement
- Develop the procurement strategy

DOCUMENTATION

- Documentation identifying need (e.g. policy document, business plan)
- Market analysis
- Specification/requirements documentation
- Procurement authorisation
- File note on probity arrangements
- Conflict of interest declarations
- Risk management plan

Source: Victorian Auditor-General's Office.



Key step: Identify what needs to be procured

Good practice

- **Identifying the business need.** The business need may arise from a number of sources, including:
 - a government policy announcement or decision
 - a management decision reflected in the business plan of an agency or business unit
 - the need to continue to provide a service
 - the approaching expiry of an existing contract. *(Documentation identifying need)*
- **Identifying the goods or services to be procured** to meet the business need.
- **Identifying suitable suppliers** to meet the business need. *(Market analysis)*

Key step: Specify the requirement

Good practice

- **Describing clearly what needs to be procured** is an essential part of effective procurement. The degree of detail of the specification/requirements should be commensurate with the degree of complexity, risk and value of procurement.

Further guidance about preparing a specification can be found in the Department of Treasury and Finance's (DTF's) *Specification Writing Best Practice Advice*²⁴. *(Specification/requirements documentation)*

Key step: Develop the procurement strategy

Good practice

- **Identifying the relevant procurement rules and requirements**, e.g. Victorian Government Purchasing Broad (VGPB) for goods and services, or agency-specific policy and guidance material.
- **Determining how the desired procurement outcome can be best obtained**, e.g. by quotations or existing departmental standing offers, and whole-of-government contracts²⁵.
- **Recommending the procurement method and process**, drawing on the relevant procurement requirements. Obtain the necessary authorisations from the appropriate delegate to proceed with the procurement, including confirmation of the availability of funds. *(Procurement authorisation)*
- **Identifying the major probity issues** likely to arise, particularly any conflicts of interest. Ensure that all staff involved in the purchase declares any actual, perceived or potential conflicts of interest. *(File note on probity arrangements, conflict of interest declarations)*
- **Conducting a desktop risk analysis to identify and assess the potential risks** associated with the procurement, and develop risk mitigation strategies. Assign responsibility for managing risks, and identifying new risks as they emerge. *(Risk management plan)*

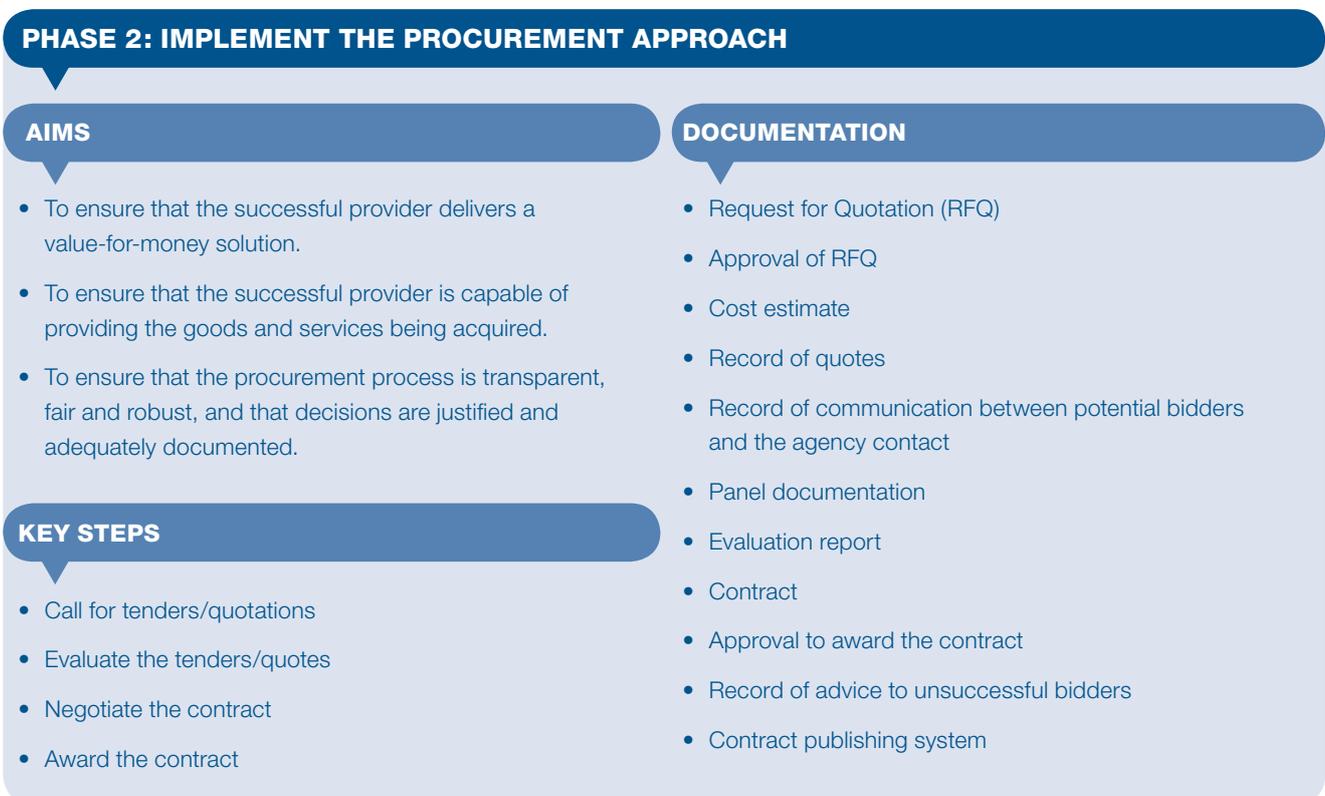
²⁴This guidance can be found at <www.vgpb.vic.gov.au>.

²⁵Whole-of-government contracts are mandatory for all departments and Victoria Police.

PHASE 2: Implement the procurement approach

The aims, key steps and suggested documentation for Phase 2 of the procurement process, *Implementing the procurement approach*, are summarised in Figure 5C.

Figure 5C



Source: Victorian Auditor-General's Office.



Key step: Call for tenders/quotations

Good practice

- **Developing the request for quotation.** The content may vary according to the procurement complexity, risk and value. The following information should be included in the Request for Quote (RFQ):
 - details of the good or services to be procured
 - deliverables
 - time frame for delivery
 - criteria for evaluating quotes
 - quality standards (where appropriate)
 - reporting requirements (where appropriate)
 - process for managing and containing costs where services are required.

DTF has developed an RFQ template²⁶.
(Request for Quote)
- **Reviewing the quotation documents** prior to issuing them. *(Approval of RFQ)*
- **Conducting a desktop analysis of the expected cost** of the goods or services. *(Cost estimate)*
- **Reviewing previous evaluations of suppliers** of similar goods or services to consider which supplier to invite to participate in the quotation/tendering process.
- **Inviting quotes directly from suppliers** depending on the expected cost of the goods or services. These can be obtained verbally or by mail, fax or email. All verbal quotes should be recorded on file and certified by the receiving officer. *(Record of quotes)*
- **Identifying the contact person** who will deal with inquiries from prospective bidders. Record all inquiries from potential bidders. Where bidders seek clarification of the requirements or other matters, this process should be managed in such a way as not to give one bidder an unfair advantage over others. *(Record of communication between potential bidders and the agency contact)*

Key step: Evaluate the tenders/quotes

Good practice

- **Establishing the evaluation panel**, where necessary. The panel should incorporate staff with relevant skills and knowledge of the procurement. Use only the evaluation criteria and weightings specified in the RFQ. Ensure that evaluation criteria are applied in a consistent, systematic manner (for example, if a numerical scale is used, descriptors of ratings should be included and ratings justified in the evaluation report). *(Panel documentation)*
- **Preparing an evaluation report** with details of tender evaluation panel membership, each bidder's score against the assessment criteria, the total scores for each bidder, results of reference and viability checks, and the panel's recommendation, including the rationale for selecting the preferred bidder. Each of the evaluation panel members should sign and date the evaluation report. *(Evaluation report)*

Key step: Negotiate the contract

Good practice

- **Using standard form government contracts** where practical to reduce uncertainty for both suppliers and for public sector agencies, and to reduce delays in finalising the tender. *(Contract)*
- For goods and services, the VGPB has developed a range of standard form contracts²⁷.

²⁶The RFQ template can be found at <www.vgpb.vic.gov.au>.

²⁷Standard form VGPB contracts can be found at www.vgpb.vic.gov.au>.

Key step: Award the contract

Good practice

- **Attaining approval to award the contract** from the appropriate delegated authority (the Department's Accredited Purchasing Unit or person/body independent of the evaluation panel) prior to work commencing or goods changing hands. *(Approval to award the contract)*
- **Finalising the contract.** The contract should reflect the outcomes of contract negotiations. Once completed and agreed, the formal agreement should then signed by both parties. *(Contract)*
- **Structuring contract payments** to provide for the holding of final payment until satisfactory completion of project, or receipt of goods or services. *(Contract)*
- **Advising unsuccessful bidders** in writing and provide them with an opportunity for a debrief as soon as practicable. This debrief should be limited to how the unsuccessful bidder did not meet the requirements. Record details of these communications. *(Record of advice to unsuccessful bidders)*
- **Disclosing summary information** for department contracts greater than \$100 000 on the VGPB's contracts publishing system within 60 days after the contract is awarded²⁸. *(Contracts publishing system)*

PHASE 3: Monitor and evaluate contractor performance

The aims, key steps and suggested documentation for Phase 3 of the procurement process, *Monitor and evaluate contractor performance*, are summarised in Figure 5D.

Figure 5D

PHASE 3: MONITOR AND EVALUATE CONTRACTOR PERFORMANCE

AIM

- To ensure that goods and services are provided according to the contract.

KEY STEPS

- Monitor progress and quality
- Verify and validate supplier charges
- Evaluate contractor performance

DOCUMENTATION

- Minutes of supplier meetings
- Performance reporting
- Evaluation of contractor performance
- Approved invoices
- Notes of discussion and resolution with contractor
- Contract variations
- Payment records
- Progressive business reporting
- Business case

Source: Victorian Auditor-General's Office.

²⁸Contracts publishing system can be found at <www.tenders.vic.gov.au>.



Key step: Monitor progress and quality

Good practice

- **Appointing a contract manager** with appropriate contract experience and training.
- **Maintaining minutes of all meetings with suppliers.** (*Minutes of supplier meetings*)
- **Assessing the extent of supplier's compliance** with key contractual requirements, and achievements against contract milestones and deliverables. (*Performance reporting*)

Key step: Verify and validate supplier charges

Good practice

- **Evaluating and documenting contractor performance** against performance standards specified in tender documentation prior to making payment. (*Evaluation of contractor performance*)
- **Regularly monitoring the contract** to ensure that the deliverable invoiced has been supplied and meets the quality requirements. Check that invoiced amounts are correct and accord with the contract, and that the necessary sign-offs have been given. (*Approved invoices*)

If the deliverables have not met quality requirements, contact the contractor and resolve the matter. If the matter cannot be resolved within a reasonable period, implement the contract dispute resolution clause.

(*Notes of discussion and resolution with contractor*)

- **Approving variations** to contracts prior to goods or services being provided. (*Contract variations*)
- **Reporting payments on a cumulative basis** to ensure compliance with budgeted amounts, and early identification of potential over-runs of approval limits. (*Payment records, progressive business reporting*)

Key step: Evaluate contractor performance

Good practice

- **Reviewing the contractor's performance** and the quality of the deliverables, before making the final contract payment. When evaluating performance, the contract manager should determine the extent to which the requirements were met, whether any problems arose, the level of satisfaction with the procurement outcome, and whether the performance standards were met. (*Evaluation of contractor performance*)

When making decisions about extensions or variations to contracts or prior to re-engaging a contractor, a business case (or similar) should be developed. It should contain consideration of the ongoing business need, the rationale for re-engaging the contractor, including consideration of alternative options (e.g. re-tender), and consideration of contractor performance. (*Business case*)

PHASE 4: Evaluate and improve procurement processes

The aim, key steps and suggested documentation for Phase 4 of the procurement process, *Evaluate and improve procurement processes*, are summarised in Figure 5E.

Figure 5E

PHASE 4: EVALUATE AND IMPROVE PROCUREMENT PROCESSES

AIM

- To continuously improve procurement outcomes through refinement of processes.

KEY STEPS

- Review adherence with established processes
- Evaluate opportunities to improve processes
- Incorporate process improvements

DOCUMENTATION

- Periodic procurement review
- Contract management review
- Quality assurance sign-offs
- Stakeholder feedback
- Updated procurement manuals, plans and policies
- Staff training records
- Process improvement implementation plan

Source: Victorian Auditor-General's Office.

Key step: Review adherence with established processes

Good practice

- **Performing a periodic procurement review and contract management review** to determine if established processes were followed, recording reasons for any non-compliance with processes to determine the need to revise practice opportunities for staff training. (*Periodic procurement review, contract management review*)
- **Reviewing documents relating to the procurement** to ensure sufficiency of audit trail and the presence of required sign-offs by internal and/or independent quality assessors. (*Quality assurance sign-offs*)

Key step: Evaluate opportunities to improve processes

Good practice

- **Seeking feedback from suppliers, users, contractors and consultants** to determine their satisfaction with the procurement/contract management processes, and seek suggestions for improvement. (*Stakeholder feedback*)

Key step: Incorporate process improvements

Good practice

- **Reviewing and updating manuals, plans and policies as necessary.** (*Updated procurement manuals, plans and policies*)
- **Training staff in revised processes.** (*Staff training records*)
- **Using change-management strategies** to implement revised processes. (*Process improvement implementation plan*)

value
for money

accountability



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