

# NATIONAL PARK TOURISM EXPERIENCES DEVELOPMENT PROGRAM

## COMPETITIVE PROCESS PROBITY GUIDELINES



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This document outlines the principles of probity that apply to the National Park Tourism Experiences Development (NPTED) Program and its related guidelines for competitive processes coordinated through the program.

The NPTED Process, including these probity guidelines are subject to the *NPTED Terms and Conditions for Accommodation Proposals (NPTED T&Cs)*. Any rights of the State outlined in the *NPTED T&Cs* are not limited by these probity guidelines. These probity guidelines may be amended by the State at any time.

## The Probity Auditor

A Probity Auditor may be appointed to determine whether the process is conducted according to the relevant NPTED Guidelines. The auditor provides independent assurance that the process has been undertaken with due regard to the obligations of relevant legislation, codes of ethics and conduct. The auditor addresses accepted principles of probity relating to:

- confidentiality and conflict of interest;
- transparency of the process;
- accountability;
- value for money; and
- impartiality.

If engaged by Tourism WA, the Probity Auditor will oversee and report on competitive processes to provide reasonable assurance that the five principles of probity are upheld.

The role of probity auditor is that of an independent observer and whilst the probity auditor provides assurance that the process was conducted in line with the relevant Guidelines or otherwise, the probity auditor is not part of the accountability framework.

Proponents have the opportunity to contact the Probity Auditor to discuss the process if they have concerns.

Reference to actions with or by the Probity Auditor in these guidelines are only applicable where the Probity Auditor has been engaged by Tourism WA.

In the instance a Probity Auditor is not engaged by Tourism WA, Tourism WA is responsible to ensure the accepted principles of probity are upheld, that the process is conducted according to the relevant Guidelines and to undertake any applicable Probity Auditor actions stipulated in these guidelines.

## Principles of probity

### PRINCIPLE 1 | CONFIDENTIALITY AND CONFLICT OF INTEREST

The community and potential bidders have a right to expect that public sector staff and elected officials will perform their duties in a fair and unbiased way and that the decisions they make are not affected by self-interest or personal gain. Conflicts of interest arise when public officials are influenced, or appear to be influenced, by personal interests when doing their job (Independent Commission Against Corruption (ICAC), December 1995).

#### Confidentiality and conflict of interest agreements

Each person having access to confidential evaluation information shall sign a confidentiality agreement before being granted access to the information. All members of the panel, and any other persons having authorised access to confidential information, are to provide Tourism WA with a signed confidentiality statement and a declaration that they do not have any conflicts of interest which may, or may be seen to, affect the impartiality of the selection process. The signed statement also carries the obligation to report any subsequent changes to that person's circumstances to Tourism WA throughout the process.

#### Process for dealing with conflict issues

Upon becoming aware of conflictual matters whether declared or otherwise, Tourism WA will consult with the Probity Auditor and record the circumstances in the project risk register, together with the mitigation measures and status of action taken to address the circumstances.

Any conflict that appears to directly threaten the integrity and probity of the process will be referred to the relevant authority at Tourism WA and the Probity Auditor for guidance on resolution.

## **Security**

### **General Security**

Security of all information that becomes available from and pertaining to any competitive process is the responsibility of all members of the evaluation panel.

All persons must take reasonable precautions to prevent the unauthorised disclosure of confidential information.

All office files will be established and stored in accordance with Tourism WA's requirements.

### **Physical Security**

It is the personal responsibility of all persons privileged to confidential documents to ensure that they are securely stored and unobtainable to others not authorised by Tourism WA.

### **Computer Security**

The computer environments containing confidential procurement information at Tourism WA shall be secured and accessed only by authorised individuals with their own passwords. The system administrator(s) shall ensure individuals only have access to areas of information that are appropriate to the roles assigned to them by Tourism WA.

## **PRINCIPLE 2 | IMPARTIALITY**

Individuals and organisations involved in preparing and submitting proposals often invest considerable time, effort and resources and in return, they are entitled to expect impartial treatment at every step of the selection process.

In probity terms, procedural fairness implies a duty to act fairly and adopt fair procedures that are appropriate to the circumstances of a particular procurement/ selection process. Good administration and proper process are to be followed.

Failing to follow an open and fair selection process may lead to a loss of public confidence and the competitive process being subject to judicial review – this is inevitably costly in terms of image, time, and resources.

The Public Sector Management Act 1994 requires that all employees act impartially and with integrity including avoiding real or perceived conflicts of interest.

### **Procedural Fairness**

The following principles of procedural fairness must be adhered to in the selection process.

#### **Knowledge**

Before commencing the selection process, the Tourism WA must be satisfied that all nominated evaluation panel members have been provided with adequate material and/or instructions before participating in the evaluation to ensure that they have an understanding of:

- the contents of each proposal;
- the criteria against proposals will be rated; and
- the process by which each proposal will be rated.

#### **Relevant circumstances**

Evaluation panel members must consider all relevant considerations related to each proposal. This includes proponent responses to the selection criteria, and all other information they were required to supply (see also section 'Taking other information into account').

#### **Irrelevant considerations**

Generally, the selection process must not be based on irrelevant considerations, that is, anything

outside the evaluation criteria or information requested and subsequently provided through the procurement process (see also section 'Taking other information into account').

### **Bias**

The selection process must be free of bias or conflict of interest, and any perception of bias or interest. Any connections between an evaluation panel member or adviser and an proponent must be disclosed to Tourism WA. Only in exceptional circumstances and approved by Tourism WA, will an evaluation panel member continue to be included in the selection process if there is a perceived association.

Evaluation panel members must not have contact with proponents during the selection process, other than seeking clarifications according to the stated rules. Any possible issue of bias should be discussed with Tourism WA as soon as it arises.

### **Probative evidence**

Ratings and selections must be made on the basis of the material being presented and included in proposals rather than mere speculation or suspicion.

### **Confidentiality**

The contents of proposals should not be disclosed to any outside party. Each proposal should be viewed as commercially confidential information.

## **PRINCIPLE 3 | TRANSPARENCY**

By having transparent, open processes, organisations can help to minimise opportunities for fraud and corruption. This also gives bidders and the public confidence in the outcome. Potential bidders often invest considerable time, effort and resources when preparing and submitting bids. In return, they are entitled to expect impartial treatment at every stage of the process (ICAC, December 1996).

### **Evaluation methodology**

The evaluation process and methodology shall be made available to all proponents in the form of a Guidelines document.

### **Invitation documents**

The Guidelines document shall provide sufficient information to proponents to enable the preparation of relevant and considered proposals. As a minimum, it will contain:

- the contact details of the relevant Project Manager;
- details of the opportunity and any support available;
- evaluation process and criteria; and
- NPTED T&Cs.

### **Records of meetings**

All agreed items and actions discussed will be recorded in the form of written minutes, including:

- meeting details;
- attendance;
- decisions and recommendations made;
- actions agreed; and
- responsibility and timeframe.

### **Media and public relations**

Media releases, public presentations, and attendance at functions sponsored by proponents and similar, are occasions that have the potential to jeopardise the probity of the process. The evaluation panel, advisers, and government agencies associated with the project must be mindful of this issue and to reduce risks, only Tourism WA may speak to a proposal or process unless approved by Tourism WA.

## **Taking other information into account**

As a general rule, the evaluation panel should only consider information presented by the proponents in accordance with the approved selection/evaluation approach.

Should the evaluation panel become aware of other information about a proponent's capability that may be relevant to the evaluation, or the outcome being sought, Tourism WA must bring this to the attention of the Probity Auditor. The information must be documented and referenced to the source. The evaluation panel must do all that is necessary to confirm the accuracy of information with the proponent, although the source may remain anonymous if deemed necessary. Such communication may be in written form or by a meeting. The proponent must be given reasonable time to prepare a response and the Probity Auditor is to be involved in all communication with the proponent.

The evaluation panel must not take that information into account until Tourism WA is satisfied that the facts have been fully understood and the proponent has been extended procedural fairness. On that basis, Tourism WA may then provide the evaluation panel with a written summary of the information that can be taken into account for the purpose of evaluation.

## **Meetings with Proponents and their Advisers**

### **Meetings with proponents**

All meetings with proponents are to have a representative from Tourism WA and at least one other person. The meetings are to be based on the principle that they are for discussion purposes only and any request for information or clarification from proponents is to be addressed through written form with only written responses being binding.

A file note is to be maintained of all meetings held. All meetings are to be held at Tourism WA's offices, unless otherwise agreed by Tourism WA.

### **Dealings with proponents - enquiries**

All enquiries from proponents should be submitted in writing. All written enquiries will comply with the procedure outlined below. Tourism WA will accept verbal enquiries, but may use discretion by requesting an enquiry to be made in writing and will record a file note outlining the details for all verbal enquiries, refer clause 8.1(c) of the *NPTED T&Cs*.

Tourism WA's enquiry protocol requires that all enquiries by proponents be submitted in writing.

The original of the proponent's enquiry will be placed in the relevant file by Tourism WA after updating the enquiries register.

All responses to the registered proponents will be in writing, approved by Tourism WA.

Tourism WA will update the enquiries register with the response action.

Tourism WA may produce a written report, as appropriate, detailing the enquiries received and action taken. Where the enquiry is deemed to be confidential in nature, the enquiry shall be referred to the relevant authority at Tourism WA for direction.

### **Dealings with proponents – general advice to all registered proponents**

In accordance with the enquiry protocol, each enquiry received from registered proponents will be reviewed by Tourism WA to determine whether the enquiry is of a confidential or general nature, refer clause 7.3(c) of the *NPTED T&Cs*.

Where an enquiry results in information to a proponent that Tourism WA determines is appropriate for all proponents to be advised of, Tourism WA will issue a notice of 'General Advice to all Registered Proponents'.

All 'General Advice to Registered Proponents' will be issued in numeric sequence and approved by Tourism WA. A register, summarising the details of material issued, will be maintained.

### **Attendance at functions sponsored by proponents by evaluation panel members**

As a general rule, Tourism WA representatives or evaluation panel members should not attend functions sponsored by proponents during a competitive process. The relevant authority at Tourism WA may approve such attendance, if it is considered that this will not unfairly influence the process. In

such cases, the details are to be recorded on the project file.

## **PRINCIPLE 4 | ACCOUNTABILITY**

Public sector agencies should have appropriate mechanisms in place to show that they are accountable for their practices and the decisions that are made. Accountability requirements can reduce opportunities for corruption and save time, money, resources and problems in the long term. Mechanisms can include the agency keeping detailed records throughout the process such as minutes of meetings, the reasoning behind any decisions made, who made those decisions and any departure from established procedures being approved by senior staff not directly involved in the process. Maintaining detailed records can be a way of proving that the process followed was legitimate if any questions or complaints are raised later (ICAC, December 1996).

### **Records Maintenance**

#### **Dealing with proponents – correspondence (General)**

Copies of all incoming and outgoing material will be held in the nominated file.

#### **Incoming material**

- Original incoming material will be placed on the file.

#### **Outgoing material**

- A copy of outgoing material will be retained on the file.
- The copy in the file will indicate the method of dispatch (i.e. posted, couriered, etc.).

### **Roles and Responsibilities**

#### **Lead agency – Tourism WA**

Tourism WA is coordinating the National Park Tourism Experiences Development (NPTED) Program on behalf of the Western Australian Government. Tourism WA has the overall responsibility for the delivery of the competitive process.

#### **Support agency – DBCA**

The Department of Biodiversity, Conservation and Attractions will provide support to Tourism WA where a competitive process and proposals relate to DBCA managed lands.

#### **Aboriginal Corporation / Native Title Group**

Where a competitive process relates to an opportunity made available by an Aboriginal Corporation or Native Title Group, a representative(s) from the relevant group will form part of the evaluation panel.

#### **Evaluation panel**

An evaluation panel is to be established comprising of representatives from organisations who will provide advice to the lead agency. The members of the evaluation panel will be outlined in the relevant Guidelines document.

#### **Project Director and Project Manager**

Tourism WA will appoint an internal Project Director and Project Manager, whose responsibilities include:

- providing administrative support;
- overseeing the preparation of the evaluation process;
- ensuring the competitive process meets the probity guidelines, and that Government rules and regulations are adhered to;
- managing and contributing to the preparation of documents;
- record keeping and handling and recording queries;

- managing the required level of security for all proceedings and documents liaising with proponents prior to, and subsequent to, submission of proposal to provide information and clarify proposal;
- ensuring probity guidelines and principles are observed;
- managing the engagement of additional consultants and services as required;
- providing advice on the resources required to complete the process;
- assisting with negotiations and discussions with other government agencies;
- managing the project budget;
- managing the evaluation panel; and
- preparing the summary report from the competitive process.

### **Probity auditor**

The Project Director and Project Manager may at their discretion elect to appoint a Probity Auditor to oversee this process. The Probity Auditor will provide independent probity advisory services to the evaluation process. The auditor may attend relevant meetings and will also be present at meetings/presentations with/from proponents. They will provide periodic probity reports on the process.

Compliance audits will also be performed to confirm that agreed processes are followed.

Essential tasks for the Probity Auditor include:

- reasonable assurance that the procedures adopted in the submission of proposals and evaluation processes are fair and equitable and that probity of the process is independently validated;
- monitoring and reporting to Tourism WA as lead agency through the Project Director and Project Manager that the evaluation process and procedures have been followed, and the outcome is capable of being independently validated;
- providing assurance to all interested proponents that appropriate processes were adhered to and no proponent was given an unfair advantage or was unfairly discriminated against;
- providing guidance to the Project Director and Project Manager, and Tourism WA as lead agency as to how unforeseen issues could be resolved;
- attending evaluation panel meetings where relevant;
- attending proponent meetings and presentations (if required);
- monitoring communication during the period between submission of proposals and final decision;
- attending unsuccessful proponent debriefing meetings where applicable; and
- identifying areas where efficiencies may be adopted in the process.

It is important to note that the Probity Auditor is not part of the evaluation panel but an independent observer of the process and therefore will not be involved in the detailed evaluation of any proposals.

### **Appointment of advisers**

Tourism WA, as lead agency, will appoint advisers as required to inform the evaluation process. The following advisers may be required:

- legal;
- technical;
- financial; and
- others (to be determined).

The appointment of these advisers will be overseen by the Project Director and Project Manager and will follow the State government procurement guidelines.

### **Late proposals**

Tourism WA may at their discretion elect to accept a late proposal or proposals delivered contrary to proposal requirements where it considers it appropriate in the circumstances and is satisfied that no proponent has not been materially advantaged or disadvantaged.

## PRINCIPLE 5 | VALUE FOR MONEY

Obtaining value for money is enhanced when there is open competition and the market is tested regularly. Processes that are designed to attract responses from the market place (for example, Expressions of Interest, calls for proposals) may lead to poor outcomes for a project if not conducted appropriately. Impartial, open and competitive processes are an important stepping stone in achieving value for money (ICAC, December 1996).

Obtaining optimal value for money is a fundamental principle of government. This is achieved by fostering an environment in which proponents can make attractive, innovative proposals with confidence that they will be evaluated on their merits. The evaluation panel will choose a successful proponent where the proposal represents the best business and management outcome for the people of Western Australia.

**Tourism Western Australia**

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