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Legal Process and Probity Framework
Navy Army Aviation Acquisition Project Office



Navy Army Aviation Acquisition Project Office

LEGAL PROCESS AND PROBITY FRAMEWORK

Version 1.1

s22 [redacted]

APPROVAL

Appointment	Rank and Name	Signature	Date
Director NA3PO	s47F [redacted]	s47F [redacted]	

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1. INTRODUCTION

1.1 Background

- 1.1.1 Navy Army Aviation Acquisition Project Office (NA3PO) managed Projects provide acquisition input to pre-approved projects, plan and stand up approved project teams and integrate Fundamental Inputs to Capability (FIC) across the Capability Life Cycle. In the coming decade, the Integrated Investment Program identifies billions of dollars to upgrade and replace Navy and Army's current aviation capabilities. Commensurate with this investment, and with the increasing emphasis on industry's role within the Capability Life Cycle, the associated procurements are expected to attract considerable domestic and international interest and intense competition.
- 1.1.2 The *Public Governance Performance and Accountability Act 2013* (Cth) (PGPA Act) and the *Commonwealth Procurement Rules* (CPRs) require the efficient, effective, economical and ethical use and management of public resources. Some key elements of these requirements include, but are not limited to:
- a. Recognising, identifying and declaring actual, potential and perceived conflicts of interest;
 - b. Dealing with potential suppliers (including incumbent providers) equitably;
 - c. Carefully considering the use of public resources;
 - d. Maintaining accountability and transparency during the conduct of procurement activities; and
 - e. Complying with all directions, including the Defence Procurement Policy Directives in the Defence Procurement Policy Manual (DPPM) and any Defence Accountable Authority Instructions (AAIs), in relation to gifts or hospitality.
- 1.1.3 Any failure to comply with these requirements and uphold the principles of probity presents a risk to Defence with potentially significant impacts on cost, schedule and reputation. Challenges to any procurement due to alleged breaches of probity have the potential to delay the associated Project/s, affect capability and the reputation of Defence and expose the Commonwealth to potential liability for alleged breaches of legislation, therefore costing the tax payer millions of dollars in damages, compensation and legal fees.

1.2 Aim

- 1.2.1 This Probity Framework:
- a. is the framework that establishes the legal process, probity principles and procedures that will apply to the Projects in 1.4.1 below;
 - b. provides the authority and structure for the way legal process and probity issues will be addressed during the establishment and approval of Navy and Army Aviation Projects, as well as during acquisition Activities undertaken;
 - c. establishes standards of practice and behaviour for personnel, as well assigning responsibilities to individuals with specific roles to ensure the established legal process and probity standards are met;
 - d. is intended to underpin and foster a culture of ethics and fair dealing in which documented processes are applied, a clear audit trail is established and decision making is fair, transparent and defensible;
 - e. provides information regarding the potential requirements for Supplementary Documents including the requirement for Specific Probity Plans (SPPs) in section 4;
 - f. establishes a template Specific Probity Plan;
 - g. establishes a template Industry Engagement Activity Plan for use when undertaking more complex or high probity risk Industry Engagement Activities.

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- 1.3.1 All APS employees are bound by the standard of conduct and the obligations as stated in the APS Values and the APS Code of Conduct (Public Service Act, 1999) during the procurement process. In addition, Australian Defence Force Personnel must comply with their duties and obligations under the Defence Force Discipline Act 1982.
- 1.3.2 External Service Providers engaged to work within NA3PO must comply with this Probity Framework and note that any obligations contained in this Probity Framework are in addition to and not in derogation of any of their contractual obligations (such as those relating to conflict of interest).

1.4 Scope

- 1.4.1 This Probity Framework applies to the following NA3PO managed projects and programs:

LAND4503PH1	LAND2097PH4	LAND129PH3	SEA129PH5
SEA5510PH1 CAP	JARS	AIR9000PH7	AIR9000PH8
AIR5428PH3	Army Minor Projects for UAS		

- 1.4.2 Whilst this Probity Framework is only directly applicable to those responsible for conducting procurement activities under the Projects listed in 1.4.1, it is also to be provided to those members of the APS, ADF or External Service Providers working external to those Activities (including advisers, stakeholders and delegates) who are privy to sensitive information. The provision of this Probity Framework to external personnel constitutes advice as to the behavioural standards and procedural requirements expected of personnel involved with Activities within NA3PO.

1.5 Structure

- 1.5.1 The structure of the Probity Roles and Documents under this Probity Framework is detailed in Section 3 and Section 4 and is illustrated in Figure 1.

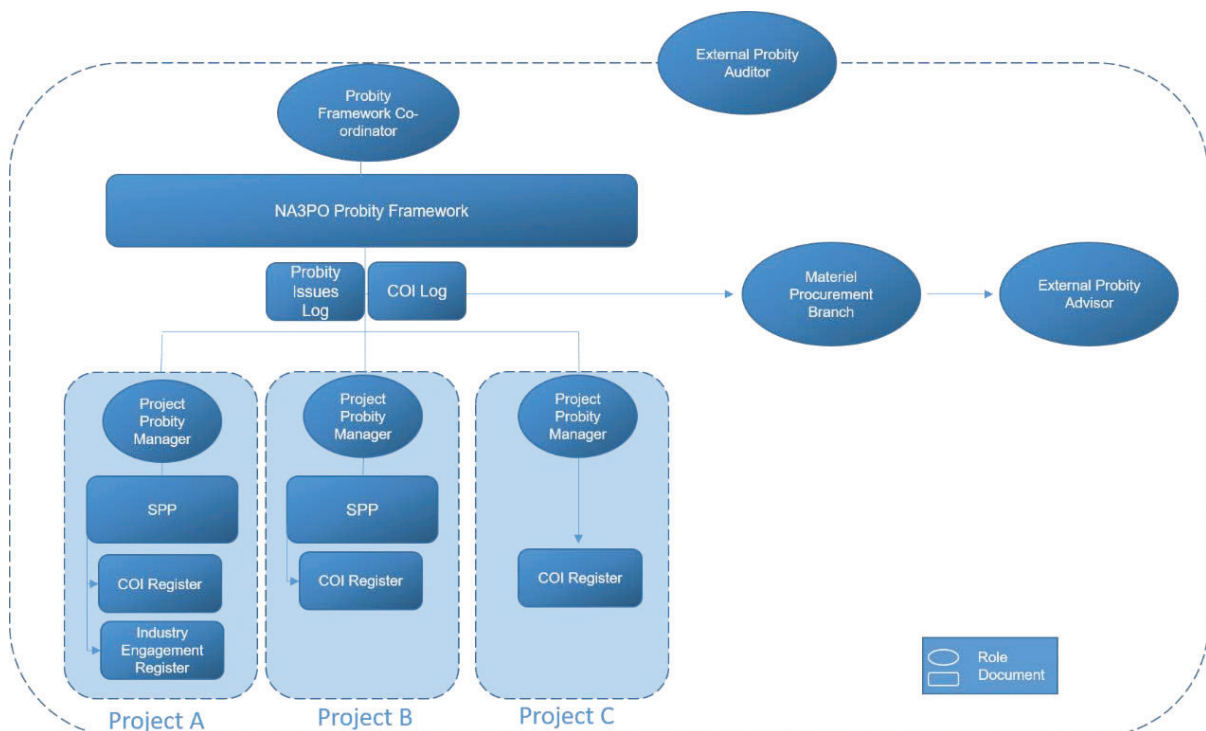


Figure 1: Structure of Probity Roles and Documents.

Note: Figure 1 is for illustrative purposes only and where there is an inconsistency, all other representations prevail.

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2. GUIDELINES

2.1 General Principles

- 2.1.1 All procurement activities are to be undertaken in a manner consistent with the legislative and regulatory requirements articulated in the *Public Governance, Performance and Accountability Act* (PGPA), the Commonwealth Procurement Rules (CPR), the Accountability Authority Instructions (AAIs) as well as the key overarching policy documents within the Procurement Policy Framework, which include but are not limited to the Defence Procurement Policy Manual (DPPM) and the Complex Procurement Guide.
- 2.1.2 Probity and ethical behaviour is one of the key principles outlined in the Commonwealth Procurement Rules. For the purposes of this plan, probity is defined as “integrity, uprightness and honesty as exemplified in the evidence of ethical behaviour in a particular process”. For more information on probity and ethics in procurement, refer to the [Department of Finance \(DoF\) website](#).

2.2 Process Guidelines

- 2.2.1 All personnel working within the NA3PO must read this Probity Framework and be aware of their obligations.
- 2.2.2 In adhering to this Probity Framework the following guidelines are to be adopted:
- a. procurement processes are to be clear, fair and conducted in accordance with applicable Commonwealth legislation and policy;
 - b. all tenderers or potential tenderers are to be treated fairly and equitably, consistent with the rules of natural justice and procedural fairness, and all interactions with tenderers or potential tenderers are to be conducted with honesty, fairness and in good faith;
 - c. tender evaluation is to be conducted in accordance with an approved Tender Evaluation Plan;
 - d. commercially sensitive information is to be protected at all times and all personnel are to comply with processes established to protect and secure commercially sensitive information;
 - e. there must be a clear audit trail; and
 - f. conflicts of interest must be identified and addressed.
- 2.2.3 A Legal Process and Probity Checklist is provided at Attachment A to help structure and assess adherence to these guidelines, with particular utility in preparing for individual project specific approaches to market which may require additional legal process and probity procedures beyond those detailed within this Probity Framework.

2.3 Industry Engagement Guiding Probity Principles

- 2.3.1 It is important that probity is observed during any Industry Engagement Activity. Relevant guidance is provided in the Early Industry Engagement Better Practice Guide Version 1.0, 16 May 2018 (BPG). Although the BPG relates to engagement between Gate 0 and Gate 2, the concepts are applicable to personnel engaging with industry during the early planning stages of other types of major Defence procurements/activities.
- 2.3.2 The probity principles for engagement with Industry are summarised from the BPG below:
- a. maintain accurate and timely records of engagement activities;
 - a. seek advice and input from a broad spectrum of sources;
 - b. ensure each interaction has a clear objective that is well understood;
 - c. base actions and decisions on reliable and defensible information;
 - d. keep dealings and interactions consistent, transparent and open;
 - e. keep communications honest, accurate and timely;

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- f. consider industry requests to protect intellectual property and commercially sensitive information on their merits and on a case by case basis;
- g. refrain from expressing personal view or opinions;
- h. take appropriate steps to safeguard and protect Defence information; and avoid accepting inappropriate gifts or hospitality.

3. RESPONSIBILITIES AND ROLES

3.1 Responsibilities of NA3PO personnel

- 3.1.1 All personnel involved in NA3PO Projects are responsible for providing Conflict of Interest Declarations and related Disclosures to the relevant Project Probity Manager for each NA3PO Project they are involved in. This includes a responsibility to provide updates in the event that circumstances change.
- 3.1.2 All personnel involved in NA3PO procurement activities must complete the Awareness of Probity in Defence Procurement (CAMPUS 00013712).

3.2 Responsibilities of the Probity Framework Coordinator

- 3.2.1 The Probity Framework Coordinator ('PFC') will be appointed by Director NA3PO.
- 3.2.2 The PFC will oversee this Probity Framework. The responsibilities of the PFC will be to:
 - a. ensure this Probity Framework is current and in line with any changes to policy or legislation;
 - b. retain oversight of the Conflict of Interest Registers created for each Project;
 - c. review and advise on declared conflicts of interests in the format of [AE916 Conflict of Interest Declaration](#); and
 - d. sign off [AE916 Conflict of Interest Declarations](#) as a 'Manager' and provide this along with a brief on the declared conflicts of interests to the SES Band 1 or One-Star for approval.

3.3 Responsibilities of Project Probity Manager

- 3.3.1 A Project Probity Manager ('PPM') will be appointed by Director NA3PO for each Project.
- 3.3.2 The PPM will administer this Probity Framework and any applicable Specific Probity Plan ('SPP') in relation to their assigned project in order to ensure the Commonwealth's legislative and policy obligations are met.
- 3.3.3 The responsibilities of the PPM will be to:
 - a. assess whether their respective Project requires a SPP in accordance with section 4 of this Probity Framework;
 - b. if applicable, administer the SPP in relation to their respective project;;
 - c. provide a copy of this Probity Framework and any applicable SPP to all personnel involved in their respective Project and those who are privy to sensitive information relating to the Project;
 - d. provide briefs to new personnel regarding the risks and context that will inform the management of probity in connection to the Project or procurement activity, and ensuring a record of personnel who have received probity briefings is maintained;
 - e. ensure that applicable rules and procedures are followed in relation to their respective project;
 - f. ensure that Procurements and Industry Engagement Activities are conducted fairly in relation to their respective project;
 - g. ensure that tenders received are assessed in accordance with the Tender Evaluation Plan and the stated evaluation criteria;

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- h. ensure that processes for communication with parties external to the Project, including tenderers and potential tenderers, are established and complied with;
- i. collect Conflict of Interest Declarations, Disclosures and updates in the format of Attachment B to this Probity Framework and if required, AE916 Conflict of Interest Declaration from all personnel involved in the Project and those who are privy to sensitive information in relation to the Project;
- j. seek advice from the PFC or MPB (ensure to cc the other) in regards to declared conflicts of interests.
- k. assess whether their respective Project requires separate Non-Disclosure and/or Confidentiality Agreements in accordance with section 7.3 of this Probity Framework
- l. receive all probity issues and concerns relating to the Project in the first instance and record these in the Probity Issues Log (includes complex and high-risk conflicts of interests);
- m. send any probity issues or concerns that have been identified or received from personnel in their respective Projects to Materiel Procurement Branch ('MPB') for advice or escalation to the External Probity Advisor;
- n. create, maintain and update the Probity Issues Log with details of what action, if any, has been taken in relation to any probity issue or concern, including instances where MPB have provided advice or where the issue or concern has been escalated to the External Probity Adviser; and
- o. review the Probity Issues Log and request alternative method of resolution, if necessary.

3.3.4 The PFC and PPM must not be involved in the evaluation, negotiation or selection of the tenders as this would conflict with their role to provide unbiased and impartial advice.

3.4 Responsibilities of Materiel Procurement Branch

3.4.1 Materiel Procurement Branch ('MPB') will receive all probity issues/concerns and declared conflicts of interests that are sent by PPMs.

3.4.2 MPB will provide probity advice for probity issues / concerns and conflicts of interest that are assessed by MPB as low-risk or low complexity.

3.4.3 Where probity issues and concerns are assessed by MPB as high risk or high complexity, MPB will refer the probity issue or concern to the External Probity Advisor or External Probity Auditor for advice. MPB must be contacted in regards to probity issues and concerns (including high risk and complex conflicts of interests) at first instance as they will be responsible for liaising with the External Probity Advisor or Auditor.

3.5 Responsibilities of External Probity Advisor

3.5.1 An External Probity Advisor will be appointed for NA3PO Projects under SPPs where required, to address high risk or high complexity probity issues / concerns and conflicts of interest that are referred to them by MPB.

3.5.2 The External Probity Advisor role will be performed by a qualified legal professional, enabling legal professional privilege to be maintained in relation to their probity advice.

3.6 Responsibilities of External Probity Auditor

3.6.1 If identified as appropriate in an SPP, an External Probity Auditor may be appointed to provide a further level of protection and review of internally managed procurement processes, especially around the time of tender evaluation activities or complex Industry Engagement Activities.

3.6.2 The External Probity Auditor role will be performed by a qualified legal professional, enabling legal professional privilege to be maintained in relation to their probity advice.

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4. SUPPLEMENTARY DOCUMENTS

4.1 When is a Specific Probity Plan (SPP) Required?

- 4.1.1 Where the nature of a Project is complex, the processes set out in this Probity Framework may not be sufficiently robust. In those cases, personnel will need to develop an SPP. Examples (non-exhaustive) of where an SPP may be required are where the Project, or a Project's procurement activity:
- p. is politically sensitive, with significant adverse media coverage requiring specific procedures to manage communication with Industry;
 - q. is commercially sensitive, requiring specific ground rules to protect pricing that may not necessarily be addressed by just using a confidentiality deed;
 - r. is operationally complex as it is applicable to more than one Project requiring redefined roles and responsibilities (such as the Deployable Information Facility and Deployable Duty Facility Procurement); and/or
 - s. requires a specific integrated project team to be established with more robust and unique probity processes to be implemented.
- 4.1.2 The Project should consider the need for an SPP at the Endorsement to Proceed (ETP) stage, however can be prepared by NA3PO as and when required.
- 4.1.3 The PPM will be responsible for managing compliance with SPPs in relation to their respective Project.

4.2 SPP Content

- 4.2.1 SPPs will become schedules to this Probity Framework and will be recorded in a spreadsheet at Objective ID: BM7423380. These documents are binding, but subordinate to this Probity Framework.
- 4.2.2 An SPP:
- a. should be based on the SPP template attached to this Probity Framework at Attachment C;
 - b. must cross-refer to this Probity Framework; and
 - c. should supplement this Probity Framework and not include any unnecessary duplication;
- 4.2.3 An SPP should be drafted by personnel with the assistance the PPM and approved by the PFC.

4.3 Conflict of Interest Register

- 4.3.1 Each Project will compile and maintain a Conflict of Interest register containing Conflict of Interest Declarations in the form of Attachment B and [AE916 Conflict of Interest Declaration](#) from all personnel and Conflict of Interest Disclosures, where required.
- 4.3.2 This file will be the responsibility of a Project's PPM and must be updated if project personnel have a change in circumstances.

4.4 Conflict of Interest Log

- 4.4.1 The Conflict of Interest Log will record whether personnel have completed a Conflict of Interest Declaration in the form of Attachment B and [AE916 Conflict of Interest Declaration](#) for the NA3PO Projects they are involved in.
- 4.4.2 The Conflict of Interest Log will not contain any details of the conflicts and the content of individuals' declarations, however, it will act as an accountability measure and allow for review of probity management at the NA3PO level.
- 4.4.3 This is intended to be high-level, and should be accessed as an Objective file by the PFC, all NA3PO PPMs, MPB and any External Probity Advisors.

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- 4.4.4 It should allow these parties to efficiently review whether declarations have been sought from all personnel involved in a particular NA3PO project and if the declarations reveal a Conflict of Interest, whether a disclosure has been sought, provided or requested from the individual concerned.

4.5 Probity Issues Log

- 4.5.1 The purpose of this document is to ensure all probity issues/concerns have been responded to, and dealt with efficiently and at the most appropriate level. It may be accessed by the relevant parties for review and used to request an alternative method of resolution if necessary.
- 4.5.2 The PPM must record any and all probity issues/ concerns (including high risk and complex conflicts of interests) in the Probity Issues Log. Entry into the Probity Issues Log will trigger the probity process. The process will involve MPB either responding to the issue/concern or referring the probity issue/concern to an External Probity Advisor or auditor for resolution.
- 4.5.3 The Probity Issues Log will be a controlled access Objective document.
- 4.5.4 This document will be created and maintained by the relevant PPMs, however will be available for review by the PFC and MPB, as required.
- 4.5.5 The Probity Issues Log will detail: the probity issue, assessed complexity and risk level, whether advice was provided by MPB or was referred externally and which outcome was achieved.

5. INTERACTION WITH INDUSTRY

5.1 Fair and Equitable Treatment of Industry

- 5.1.1 All interactions by personnel with industry, including Participants in proposed Procurements and Industry Engagement Activities, are to be conducted with honesty, fairness and in good faith.
- 5.1.2 Project personnel are to take appropriate steps to manage the risk that Industry Engagement Activities may affect (or at the very least be perceived to impact upon) the fairness and defensibility of other future Procurements or Industry Engagement Activities.

5.2 Communication with Industry, Tenderers or Potential Tenderers

- 5.2.1 To ensure fairness and impartiality, personnel in the Project should not disclose information, or communicate in a manner which:
- a. gives, or gives rise to the perception of, an unfair advantage;
 - b. reveals proprietary or confidential information; or
 - c. unfairly disadvantages, or gives rise to the perception that it unfairly disadvantages a tenderer or potential tenderer.
- 5.2.2 Where possible, a single point of contact should be specified for all correspondence with tenderers or potential tenderers for any particular Procurement or Industry Engagement Activity. Project personnel must maintain appropriate records of all formal and informal communications related to Procurements and Industry Engagement Activities.
- 5.2.3 During the conduct of the Project, if a tenderer or potential tenderer requires clarification on a matter relating to a Procurement or Industry Engagement Activity, Project personnel should take appropriate action to ensure all tenderers or potential tenderers receive equal

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access to that clarification information, subject to the protection of that tenderer or potential tenderers confidential information.

- 5.2.4 An applicable SPP may contain a requirement for personnel to record any interactions with tenderers or potential tenderers in a centralised register managed by the Project Probity Manager.

6. CONFLICTS OF INTEREST

6.1 Conflicts of Interest

- 6.1.1 A conflict of interest is where an incompatibility exists, or where it could be reasonably perceived that an incompatibility exists, between the public duty of a person and a current or prospective interest of that person or a member of that person's immediate family.
- 6.1.2 Instances where a conflicting interest may exist include:
- a. any personal financial interest in the procurement;
 - b. any immediate relatives or close friends with a financial interest in the procurement;
 - c. any personal bias or inclination which would in any way affect an individual's decisions in relation to the procurement; or
 - d. any personal obligation, allegiance or loyalties that would in any way affect an individual's decisions in relation to the procurement.
- 6.1.3 If there is any doubt as to whether a conflict of interest exists, the NA3PO member must consult with the PPM and/or MPB.
- 6.1.4 Personnel must ensure that their conduct does not give rise to perceptions, such as bias for or against a tender, that may lead to the erosion of industry and Government confidence in the way in which the NA3PO procurement activities are being conducted, or more generally damage the Department of Defence's and the Commonwealth's interests and reputation.
- 6.1.5 Personnel who are concerned that circumstances may give rise to a perceived or real bias or conflict must document all details immediately and promptly report the matter in writing to the Project Probity Manager.
- 6.1.6 Further information and examples of instances where an actual, perceived or potential conflict of interest might exist are detailed in the [Integrity Policy Manual](#).

6.2 Conflict of Interest Declarations

- 6.2.1 Personnel working within the NA3PO, whether or not their procurement activity is governed by an SPP, are required to sign the Conflict of Interest Acknowledgement contained at Attachment B. By doing so, they acknowledge that they have been briefed on **this Probity Framework**, provided with a copy of it and understand its contents and implications. Where an actual, potential or perceived Conflict of Interest exists, personnel are required to declare this through the completion of an [AE916 Conflict of Interest Declaration](#).
- 6.2.2 Should any actual, perceived or potential conflict of interest arise (at any stage in the procurement), the matter is to be disclosed by the provision of an updated Conflict of Interest Acknowledgement and completion of an [AE916 Conflict of Interest Declaration](#). This must be provided as soon as possible after the member becomes aware that the actual, perceived or potential conflict of interest has arisen.
- 6.2.3 Conflicts of Interest will be recorded by the PPM and overseen by the PFC, in order to maintain accountability and planning in regards to potential probity issues.

6.3 Management of Conflicts of Interest

- 6.3.1 Where a Conflict of Interest is declared, in the first instance, MPB and/or the PFC are to be informed. MPB/the PFC will, with the PPM, determine whether an actual, potential or

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perceived Conflict of Interest exists. This determination should be made as soon as practicable after being advised of the matter.

- 6.3.2 MPB/the PFC will provide advice and recommendations on the declared conflict of interest.
- 6.3.3 The PFC will sign off the [AE916 Conflict of Interest Declaration](#) as a 'Manager' and will compile the advice and recommendations into a brief to the SES Band 1 or One-Star as the decision maker on issues of Conflicts of Interest.
- 6.3.4 If a matter is determined to be a Conflict of Interest, the decision maker must consider all the circumstances to identify the best way to manage the situation.
- 6.3.5 If there is a Conflict of Interest, an appropriate strategy to address the Conflict should be developed in consultation with the affected person. There are a number of options available for managing Conflicts of Interest. These range from simply disclosing relevant details to relinquishing the private interest. The appropriate option or combination of options used in any situation will depend on the circumstances.
- 6.3.6 Appropriate records of the matter, including details of the circumstances, the nature of the conflict and the steps taken or strategies adopted to manage it, are to be recorded on the [AE916 Conflict of Interest Declaration](#) and stored in Objective for future reference, including recording where it is determined by the SES Band 1 or One-Star that no conflict exists.

6.4 Acceptance of Gifts and Hospitality

- 6.4.1 The solicitation or acceptance of gifts or hospitality from any party that has a likely or potential interest or association with NA3PO procurement activities, including prospective tenderers, is prohibited. Should personnel involved in the procurement consider that exceptional circumstances exist that warrant a variation to this blanket policy, they are to seek the written approval of FAS HSD who will consider the request in accordance with DI(G) PERS 25-7 – Gifts, Hospitality and Sponsorship.

6.5 Offers of Employment

- 6.5.1 Personnel involved in NA3PO procurements who receive an offer of employment from a tenderer, potential tenderer or contractor (whether or not the offer of employment is in writing), or are considering post separation employment in circumstances in which business is, or is likely to be, done with Defence, including self-employment, or any other circumstances where there is a possibility or any potential for a perception of a Conflict of Interest, must fully inform Defence of the situation before accepting the offer via an [AE918 Notification of Post Separation Employment](#); and should at the earliest opportunity notify their prospective employer of their Conflict of Interest disclosure obligations to Defence.

7. CONFIDENTIAL INFORMATION

7.1 Scope of Confidential Information

- 7.1.1 'Confidential Information' means information (whether or not provided by the Commonwealth) that meets all of the following criteria:
 - a. is specifically identified;
 - b. is commercially sensitive (i.e. the information should not generally be known or ascertainable);
 - c. disclosure would cause unreasonable detriment to the owner of the information or another party (e.g. disclosure of a contractor's profit margin); and
 - d. was provided with an expressed or implied understanding that it would remain confidential, but does not include information that is or becomes public knowledge by means other than a breach of contract or obligation of confidentiality; or is in the possession of a party without restriction in relation to disclosure before the date of receipt.

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7.2 Management of Confidential Information

- 7.2.1 Personnel involved in the procurement should only have access to Confidential Information on an appropriate 'need to know' basis. Confidential Information needs to be managed in accordance with the information's commercial sensitivity and/or classification level.
- 7.2.2 All personnel involved in the procurement who may be privy to Confidential Information are obliged to ensure that all such information remains confidential and is not disclosed to anyone other than other personnel who require such disclosure in order to perform their duties for the procurement.
- 7.2.3 Personnel having access to Confidential Information must ensure that documents and information, including electronically stored information, that is in their possession or control and which contains Confidential Information is:
- a. kept in locked offices or locked filing cabinets when not in use;
 - b. not left unattended for any period at a place that is accessible by a person not authorised;
 - c. not displayed at times or in places where they could be read by a person who is not authorised;
 - d. not made available to a person who is not authorised; password protected (in the case of electronically stored material);
 - e. and Any breach of confidentiality should be immediately reported to the Project Probity Manager.

7.3 Non-Disclosure Agreements

- 7.3.1 While the MSP ESSA clauses addressing confidential information are sufficient for general work with Commonwealth Data, there may be instances where persons external to Defence who are involved in NA3PO Activities may be required to sign separate Non-Disclosure and/or Confidentiality Agreements. Such situations may include but are not limited to those where information is particularly sensitive or where third party data (i.e. data not owned by the Commonwealth) will be accessed.
- 7.3.2 Where separate Non-Disclosure and/or Confidentiality Agreements are necessary, the PPM is to reflect this requirement in the relevant SPP and work with MPB and CASG Legal to develop and administer appropriate agreements.

7.4 Survivorship

- 7.4.1 Unless expressly withdrawn by Director NA3PO or by implication from its nature, the requirements of this Probity Framework shall remain in force for the duration of any market engagement or procurement activities undertaken by NA3PO.

Attachments:

- A. Legal Process and Probity Checklist
- B. Conflict of Interest Acknowledgement
- C. SPP Template
 - (i) SPP Annex A: Industry Engagement Activity Plan

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ATTACHMENT A: LEGAL PROCESS AND PROBITY CHECKLIST

PROBITY PLANNING	
Determine whether a Specific Probity Plan (SPP) is necessary for the project/procurement activity and if so, draft the SPP.	<input type="checkbox"/>
Obtain conflict of interest declarations from team members	<input type="checkbox"/>
Obtain confidentiality agreements from external participants	<input type="checkbox"/>
Choose applicable additional precautions in the attached SPP template	<input type="checkbox"/>
Set up a Probity Issues Log and mechanisms to refer for MPB advice.	
Consider confidentiality requirements	<input type="checkbox"/>
Set up physical security procedures, such as the document register or data room	<input type="checkbox"/>
Ensure team members are familiar with all relevant policies and documents	<input type="checkbox"/>
Set up procedures so all potential suppliers have access to the same information	<input type="checkbox"/>
PROCUREMENT PROCESS	
Review probity at the end of the request documentation preparation process	<input type="checkbox"/>
Document any changes that occur to the request documentation, and notify all potential tenderers	<input type="checkbox"/>
Establish procedure for opening of tenders (including use of local tender rooms)	<input type="checkbox"/>
Set up a process for receiving, recording and acknowledging or clarifying tenders	<input type="checkbox"/>
Ensure evaluation of submissions is fair and consistent with the evaluation plan	<input type="checkbox"/>
Review probity at the end of the evaluation process	<input type="checkbox"/>
Notify the successful tenderer as soon as possible	<input type="checkbox"/>
Notify the unsuccessful tenderers as soon as possible	<input type="checkbox"/>
Debrief unsuccessful tenderers	<input type="checkbox"/>
Ensure all actions are documented, and the documents are stored appropriately	<input type="checkbox"/>
Review probity at the end of the process	<input type="checkbox"/>

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ATTACHMENT B: DECLARATION PRO FORMA

CONFLICT OF INTEREST ACKNOWLEDGEMENT

**FOR STAFF PARTICIPATING IN NAVY ARMY AVIATION ACQUISITION PROJECT OFFICE
ACTIVITIES**

I have read and understood the Navy Army Aviation Acquisition Project Office Legal Process and Probity Plan and acknowledge that it is my responsibility to comply with this plan.

I advise that I have no actual, perceived or potential conflicts of interest, as defined in the Legal Process and Probity Plan.

Or (circle one)

I advise that I have the following actual/perceived/potential conflict of interest, as defined in the Legal Process and Probity Plan and I have completed an [AE916 Conflict of Interest Declaration](#):

Details of Signatory	
Signature:	
Printed Name:	
Rank/Level:	
Appointment/ Organisation:	
Date:	

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ATTACHMENT C: SPP TEMPLATE

SPECIFIC PROBITY PLAN- [INSERT PROJECT NAME HERE]

1 INTRODUCTION

1.1 Aim

1.1.1 This Specific Probity Plan (SPP) establishes the particular probity obligations that will apply to Activities within [INSERT PROJECT NAME HERE] ('the Project'). It supplements the Navy Army Aviation Acquisition Project Office (NA3PO) Probity Framework and addresses the particular probity risks that are unique to the Project.

1.1.2 This plan is subordinate to the NA3PO Probity Framework.

1.2 Background

1.2.1 [INSERT HIGH LEVEL PROJECT BACKGROUND AND ANY KNOWN DETAILS ABOUT PLANNED PROCUREMENT ACTIVITIES]

2 PROJECT SPECIFIC MEASURES

Note to drafters: insert any project specific probity obligations or information.

2.1 Rationale

Note to drafters: insert rationale for creating this SPP with additional probity protections below. For example: increased engagement with industry, high level of public scrutiny etc.

2.1.1 The additional measures in this clause 2 will be employed having regard to the particular risks of the project concerned and will operate in addition to those obligations expressed in the NA3PO Probity Framework.

2.2 External Probity Advisor

Note to drafters: specify if an External Probity Advisor will be appointed and detail any further roles or responsibilities, above those specified in the NA3PO Framework. If necessary.

2.3 External Probity Auditor

Note to drafters: specify if an External Probity Auditor will be appointed and detail any further roles or responsibilities, above those specified in the NA3PO Framework. If necessary.

3 INDUSTRY ENGAGEMENT

Note to drafters: This section should be included when Industry Engagement Activities will occur and where there is no formal documented process (such as a Request for Information or Invitation to Register). This section should only be included where more complex or high probity risk Industry Engagement Activities will occur. Sub-sections should be included where necessary to address specific probity activities or risks e.g. Capability Demonstrations.

3.1 Industry Engagement Activity Plan

3.1.2 An Industry Engagement Activity Plan should be completed prior to each Industry Engagement Activity by the personnel responsible for the Activity and updated where necessary.

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3.1.3 A template Industry Engagement Activity Plan is at Annex A of this Schedule.

3.2 When is an Industry Engagement Collaboration Plan required?

3.2.2 Unlike Procurements, Industry Engagement Activities may be less structured, can occur in the absence of established processes and may be heavily relationship based. Where there is no formal documented process (such as a Request for Information or Invitation to Register) for a more complex or high probity risk Industry Engagement Activity, the Industry Engagement Activity Plan (IEAP) should be developed.

3.2.3 The IEAP is an internal document that is to be completed and tailored as appropriate prior to each Industry Engagement Activity by the personnel responsible for the Activity. This should be completed, approved by the Director NA3PO, and provided to personnel ahead of the Industry Engagement Activity.

3.2.4 The IEAP does not intend to duplicate any guidance already provided in the NA3PO Probity Framework or contained in the BPG. Rather, the purpose of these documents is to establish some governance and control over how a more complex or high probity risk engagement with industry will be managed and also provide a form of recordkeeping.

3.3 Industry Engagement Register

3.3.1 Additional measures to account for increased risk will include a centralised register where meetings between Defence personnel and Industry, where the interaction occurs outside of approved industry engagement activities, are logged to increase transparency and accountability.

3.4 Briefings (Optional)

3.4.1 Additional briefings may be required for this Project. These will be conducted by the Probity Manager and will comprise of:

- (i) updates for personnel on increased risks and developments in probity considerations for Project procurement activities; and
- (ii) clarification regarding recording obligations.

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SPP Annex A: Industry Engagement Activity Plan

Industry Engagement Activity: [Insert Industry Engagement Activity Here]

Drafted by: [Name]	[insert digital signature in pdf version]
Approved by: [Name of Line Manager or Director Commercial]	[insert digital signature in pdf version]

Instructions: This document has been structured as a template. This document should be completed and tailored where indicated in the highlighted sections for each Industry Engagement Activity and elsewhere if appropriate.

1 OVERVIEW

1.1 Background

1.1.1 [insert].

1.2 Rationale, Purpose and Outcome Required of Industry Engagement Activity

1.2.1 [insert].

1.2.2 More detail on the rationale and purpose behind the Industry Engagement Activity can be found in the following extant documents:

a. [insert]

b. Commercial Approach or Endorsement to Proceed [insert Objective reference]

Instructions: Paragraph 1.2 can be deleted or tailored if it is not applicable or relevant.

1.3 Scope or Terms of Reference for Industry Engagement Activity

1.3.1 [insert].

1.3.2 The Industry Engagement Activity will involve [insert type of collaboration here eg face to face meetings, workshops at Defence, video conference, emails etc.]

1.3.3 The Industry Engagement Activity is not a procurement and may not necessarily lead to the awarding of an agreement or arrangement. Therefore no negotiation of any contractual terms and conditions is to take place.

Instructions: This paragraph 1.3 sets out the boundaries for discussions, comment and feedback during the Industry Engagement Activities.

1.4 Schedule

1.4.1 The Industry Engagement Activity will be conducted in accordance with the following indicative schedule in Table 1 below.

Table 1: Process Schedule

No.	Activity	Expected Date

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Instructions: If a Process Schedule is referred to in a separate document for example, a Letter of Exchange, then the above can be replaced with a reference to that separate document

- 1.4.2 Defence intends on releasing the [insert type of solicitation document eg RFT] on or around [DATE].

2 PARTICIPANTS IN INDUSTRY ENGAGEMENT ACTIVITY

2.1 Defence Participants

- 2.1.1 The Defence Participants are:
- a. [insert]
- 2.1.2 The lead representative from Defence (**Defence Lead**) is [insert] who will have the responsibilities set out in paragraph 2.3 below.
- 2.1.3 The Defence Participants may seek advice and guidance from various advisers within Defence to ensure that matters of concern are addressed quickly to allow Participants to discharge their responsibility in respect of the Industry Engagement Activity. Those advisers will be appointed by the Defence Lead in accordance with paragraph 2.3 below and will be documented in the in accordance with paragraph 3 below.
- 2.1.4 The number of Defence Participants is to be kept to a practical minimum.
- 2.1.5 The Defence Participants do not have authority to:
- a. deviate from normal Commonwealth policies;
 - b. agree to anything that would contravene paragraph 3.1.3; or
 - c. sign any document or give any verbal undertakings on behalf of Defence that Defence will sign or agree to anything in relation to the [insert], except as specifically provided for in this Plan.

2.2 Industry Participants

- 2.2.1 The following Industry organisations will be invited to participate in the Industry Engagement Activity:
- a. [insert]
- 2.2.2 The following individuals from the organisations referred to above will primarily participate in the Industry Engagement Activity:
- a. [insert]

2.3 Defence Lead

- 2.3.1 The Defence Lead is responsible for:
- a. leading the Industry Engagement Activity;
 - b. addressing any questions from Participants at the Industry Engagement Activity;
 - c. ensuring that the Participants limit their collaboration to within the scope set out in paragraph 1.3 above;
 - d. ensuring that any specialist advisers required are invited to participated during the Industry Engagement Activities;
 - e. managing comments and feedback from Participants in accordance with paragraph 3.3 below;
 - f. reporting on the progress and outcomes of collaboration with Industry to [insert], the **Line Manager**;

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- g. ensuring any probity issues are dealt with in accordance with the NA3PO Probity Framework; and

2.3.2 The Defence Lead will identify which specialist advisers are required to be present at relevant meetings during the Industry Engagement Activity. The Defence Lead will also ensure that at least two Defence Participants are present at each and every meeting for the Industry Engagement Activity.

2.4 Ethics, Probity and Fair Dealing

2.4.1 Prior to undertaking the Industry Engagement Activity, Participants must have read the Probity Industry Engagement Framework. Prior to and during the Industry Engagement Activity, Participants must comply with ethics, probity and fair dealing requirements as specified in the Probity and Industry Engagement Framework.

3 ENGAGEMENT, COMMUNICATION AND REPORTING

3.1 Engagement Process

3.1.1 The Industry Engagement Activity scope, type of activities and schedule are set out in paragraph 1 above.

3.1.2 At the start and end of each meeting for the Industry Engagement Activity, the Defence Lead must ensure that the Industry Participants are clearly informed that any positions reached during the meeting is for Defence's consideration only, and that it is ultimately Defence's decision about whether it:

- a. invites any or all Industry Participants to participate further in the Industry Engagement Activity; and
- b. decides to conduct a procurement process for [insert], the structure and detail of any such process, including whether to include Industry Participants' comments or feedback in the drafting of any requirements or statement of work as part of the approach to market.

3.1.3 Defence Participants must not give Industry Participants the impression that it will undertake any procurements or procurement related activities in the future. This includes ensuring careful drafting and inclusion of caveats in written aids for the Industry Engagement Activity (eg PowerPoint slides, handouts).

3.1.4 Providing Industry Participants with any such impression undermines Defence's independence to determine the approach that represents the best value for money in compliance with its legal and policy obligations, and potentially also undermines Defence's negotiating effectiveness if it chooses to conduct a procurement or alternatively may give rise to a claim of damages based on estoppel or misrepresentation if an Industry Participant is not approached to respond to the procurement or if any approach to market issued to Industry Participants does not reflect some or all of the Industry Participants' comments or feedback during the Industry Engagement Activity.

3.2 Communication

3.2.1 It is expected that Defence Participants will likely liaise with the Industry Participants during meetings set out in the Process Schedule or from time to time, as well as to receive Industry Participants' written feedback and comments.

3.2.2 Defence Participants are not permitted to provide any written correspondence to Industry Participants during the Industry Engagement Activity without prior approval from the Defence Lead.

3.2.3 Defence Participants' and any specialist advisers' comments are to be confirmed prior to attending meetings with Industry Participants so that one common Defence view is presented. Comments on other matters should be passed privately to and between

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Defence Participants and specialist advisers.

- 3.2.4 If the Industry Participants are also involved in other activities or procurements for Defence (**Other Activities**) and are likely to be present on Defence sites, the Industry Engagement Activity must not be discussed with the Industry Participants during those Other Activities, and those Other Activities must not be discussed during the Industry Engagement Activity. This will assist with maintaining control over communication during the Industry Engagement Activity and Other Activities.

3.3 Record Keeping

- 3.3.1 A Minute Taker will be appointed at the start of each meeting for the Industry Engagement Activity to maintain a detailed record of the meeting, where possible. The meeting minutes should include the following:
- a. list of advisers consulted;
 - b. summary of discussions;
 - c. summary of information exchanged;
 - d. key outcomes achieved;
 - e. follow on actions to be taken; and
 - f. any genuine live issues experienced (eg protection of intellectual property or commercially sensitive information during the Industry Engagement Activity).
- 3.3.2 Records of communication will be maintained during the Industry Engagement Activity as per the Probity and Industry Engagement Framework.
- 3.3.3 Any confidential information must be treated in accordance with the Probity and Industry Engagement Framework.
- 3.3.4 If requirements or statements of work related to the Industry Engagement Activity are sufficiently different from the originals that were previously endorsed (for example in an Endorsement to Proceed), the updated requirements or statements of work will be included in an updated endorsement (or updated Endorsement to Proceed) prior to any procurement (if being conducted).

4 ADDITIONAL REQUIREMENTS

[INSERT ADDITIONAL REQUIREMENTS]

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AIR05428 Phase 3 Air Mission Training System

Industry Engagement Plan and Specific Probity Plan (ITR Phase) Version 2.0

s22

ENDORSEMENT

Appointment	Rank and Name	Signature	Date
PMO Probity Advisor	s47F	s47F	28/02/2022
DAMATS	s47F	s47F	

APPROVAL

Appointment	Rank and Name	Signature	Date
DNA3PO	s47F		

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1 OVERVIEW

1.1 Aim of the Industry Engagement Plan & Specific Probity Plan (ITR Phase)

1.1.1 This Industry Engagement Plan (IEP) establishes the framework under which Defence Industry will be engaged as part of the Invitation to Register (ITR) Phase of Project AIR05428 Phase 3 ('the Project'); and the manner and form of any Industry Engagement Activities that may occur during the ITR Phase (ITR Phase).

1.1.2 The Specific Probity Plan (SPP) included as Enclosure 1 to this IEP establishes the particular probity obligations that will apply to Industry Engagement Activities during the ITR Phase. It supplements the Navy Army Aviation Acquisition Program Office (NA3PO) Legal Process and Probity Framework and addresses the particular probity risks that are unique to the ITR Phase of the Project.

1.1.3 The SPP at Enclosure 1 is subordinate to, and must be read in conjunction with, the NA3PO Legal Process and Probity Framework.

1.1.4 This IEP and the attached SPP is limited to the ITR Phase. Following the completion of the ITR Phase, a separate IEP and SPP will be developed for the subsequent phases associated with the Industry Engagement Activities for this Project.

1.2 Background

1.2.1 The Project was previously known as AIR5232 Phase 1, and underwent a Gate Review in 2011 before being re-phased due to budgetary constraints. The Project was subsequently reinstituted as AIR05428 Phase 3 in Nov 2018, and the Project Business Case was approved by the Investment Committee (IC) at Gate 0 in Dec 2018. The Project received Government First Pass approval in Nov 2021. See references to the Industry Engagement Activities schedule for the ITR Phase in Table 1.

1.2.2 The Project will acquire, deliver and sustain a Future Air Mission Training System (F-AMTS) for the provision of fifth generation training to all non-pilot aviation specialists within the Air Academy.

1.2.3 The Project has been established in response to the legacy nature of training methodologies currently employed, as well as constraints associated with the existing airborne platforms, ground-based simulators and equipment. These factors necessitate the evolution to a fifth generation solution.

1.2.4 Future training will utilise contemporary training methodologies in the ground and airborne environments. The F-AMTS will be transformative, evolvable and enduring. It will utilise the most appropriate and up to date training methods and tools to produce candidates to meet future ADF needs until at least 2047.

1.2.5 The F-AMTS materiel system comprises five integrated functional elements. While the Commonwealth will provide the Learning Facilities, the Commonwealth requires Industry to provide products relating to each of the remaining four functional elements of the F-AMTS as follows:

- a. Ground Training Element (GTE)
- b. Airborne Training Element (ATE)
- c. Integrated Learning Environment (ILE)
- d. Learning Materials.

1.2.6 Defence is considering various delivery methods including the selection of a prime system integrator to acquire, integrate and support products relating to each of the functional elements into the F-AMTS, or, to deliver, integrate and support their own value for money solution that includes incorporating each of the functional elements into the F-AMTS.

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1.2.7 AIR05428 Phase 3 is using a multi-stage approach to the market (timings are estimated) involving a:

- a. Stage 1: Request for Information (RFI)- Q3 2020 (completed).
- b. Stage 2: Invitation to Register (ITR)- Q1 2022.
- c. Stage 3: Request for Tender (RFT)- Q3 2022.

1.3 Purpose of this document

1.3.1 An ITR will be conducted to identify the preferred delivery method of the F-AMTS, and shortlist potential suppliers capable of fulfilling Defence's requirements.

1.3.2 The purpose of this IEP is to outline Defence's approach to the conduct of Industry Engagement Activities during the ITR Phase, and a separate IEP will be developed following this activity for the next phase of the Project and associated Defence Industry engagement activities. Consequently, this IEP focuses on the period up to the conclusion of the ITR evaluation (end of June 2022), but does not include the Request for Tender (RFT) that is expected to follow in a subsequent phase of the Project. While the intended RFT approach is briefly outlined for completeness, this IEP relates only to the ITR.

1.3.3 This IEP is subordinate to, and supports, the Project Execution Strategy (PES) and Integrated Project Management Plan (IPMP) and will be reviewed and amended as the PES and IPMP evolve. The IEP developed post- ITR evaluation will either be incorporated into the PES/IPMP or will be a separate standalone document that will be subordinate to the PES and IPMP.

1.3.4 The target audience for this IEP is the CASG Executive, AFHQ, and all other Commonwealth personnel (including Major Service Providers) who will be engaging with Defence Industry during the ITR Phase in relation to the acquisition, delivery and sustainment of the F-AMTS.

1.4 Rationale, Purpose and Outcome Required of Industry Engagement Activities

1.4.1 An ITR will be required to identify the preferred method for delivery of the F-AMTS and potential suppliers capable of fulfilling Defence's requirements.

1.4.2 The outcomes from the ITR will include:

- a. increased (or decreased) certainty that the requirements as reflected in the ITR can be addressed
- b. a deeper understanding of the extent to which Australian Defence Industry Capability can be leveraged as part of the acquisition and support of the Project, and the economic benefit respondents' proposed solutions bring to Australia
- c. awareness within Defence Industry that AIR05428 Phase 3 is progressing through the Capability Life Cycle, thereby enabling Defence Industry to prepare for a possible future solicitation
- d. an ITR Response Evaluation Report that provides an analysis of Defence Industry responses to the ITR and identifies whether a prime contractor led end-to-end delivery approach or a prime system integrator 'best of breed' delivery approach to the F-AMTS is preferred, and a shortlist of companies capable of delivering value for money solutions to the Commonwealth to participate in the subsequent RFT phase of the Project.

1.4.3 Outputs from the ITR will also inform the PES, IPMP and project risk management processes (as applicable).

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1.4.4 The approach to market will take the form of an ITR based on the ASDEFCON ITR template. The ITR template has been chosen based on the following factors:

- a. template structure allowing for responses that address all or part of Defence's requirements. This approach allows for responses from members of Defence Industry who may not be able to provide the entirety of the solution but possess a specialty or expertise enabling them to respond to a particular 'functional element' that forms part of the F-AMTS materiel system (referred to in paragraph 1.2.5) that Defence requires Industry to provide
- b. template simplicity lowering the cost to Defence Industry of providing responses, relative to higher-complexity templates that mandate a response structure
- c. template allows Defence to shortlist suppliers that meet Defence's requirements to participate in subsequent procurement activities, thereby reducing the time spent by Defence in evaluating a large number of very complex and detailed RFT responses.

1.4.5 The purpose of Defence approaching the market using the ITR is to invite potential suppliers to register their interest in meeting the Project's requirements. Responses to the ITR will be competitively assessed and comparatively evaluated, and used by Defence to:

- a. determine the preferred method for delivery of the F-AMTS
- b. to establish a shortlist of suppliers capable of providing value for money solutions to the Commonwealth that will be invited to participate in any future procurement process.

1.4.6 The ITR Phase will include the conduct of an Industry Briefing (see paragraph 1.5.3) as well as the option for Defence Industry to participate in ad-hoc meetings with Defence (see paragraph 1.5.2b).

1.5 Scope or Terms of Reference for Industry Engagement Activity

1.5.1 It is anticipated that during the ITR Phase Defence Industry will seek ad-hoc meetings and discussions with Defence in order to understand the current status of the Project; Project timeline; and (where applicable) Defence's requirements. Defence will only meet with members of Industry if Industry members are able to provide a demonstration of capability/ products that may be relevant to Defence's requirements.

1.5.2 The scope of Industry Engagement Activities that will occur under this IEP and SPP are as follows:

- a. the conduct of the ITR Phase
- b. ad-hoc meetings requested by Defence Industry during the ITR Phase
- c. any Defence Industry Briefings conducted during the ITR Phase (see 1.5.3 below) and
- d. any written correspondence between Defence and Defence Industry that occur during the ITR Phase.

1.5.3 An Industry Briefing will be provided as part of the ITR Phase to provide Defence Industry with the opportunity to ask relevant questions and identify any additional matters that may not have been previously considered by the Project. The Industry Briefing will be provided in Q1 2022 following the release of the ITR to Defence Industry.

1.5.4 The ad-hoc meetings with representatives of Defence Industry will not disclose the following:

- a. information or discussion points from other companies
- b. any Defence sensitive or classified information
- c. any other information deemed not relevant or appropriate at this stage of the Project by the Defence Lead and/or the Project Probity Manager (PPM).

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1.5.5 The Industry Engagement Activities described in this IEP are not a procurement and may not necessarily lead to the awarding of an agreement or arrangement. Therefore no negotiation of any contractual terms and conditions is to take place.

1.6 Schedule

1.6.1 The nominal schedule for the Industry Engagement Activities is in Table 1 below:

Table 1: ITR Phase Schedule

No.	Activity	Date
1	ITR Release	31 Jan 22
2	Industry Brief	21 Feb 22
2	ITR Response Period Closes	11 April 22
3	ITR Draft Evaluation Report Complete	17 June 22
4	ITR Evaluation Debriefs to Industry	Q3 22

1.6.2 Defence intends to notify respondents to the ITR whether they have been successful or unsuccessful. Respondents may request a debriefing against the evaluation criteria.

2 PARTICIPANTS IN DEFENCE INDUSTRY ENGAGEMENT ACTIVITY

2.1 Defence Participants

2.1.1 The Defence Participants are:

- a. Project Sponsor – Air Force Headquarters
- b. **Project Team**
 - i) Project Manager - CASG (Defence Lead for ITR Phase)
 - ii) Project Operations Manager - CASG
 - iii) Project Commercial Manager – CASG
 - iv) Project Engineering Manager- CASG
 - v) Project ICT Enterprise Architect- CIOG
 - vi) ILS Lead- CASG PMO
- c. **Project Support**
 - i) Senior Contracting Officer (SCO) Materiel Procurement Branch (MPB) – CASG
 - ii) Contracting Officer (CO) MPB - CASG

2.1.2 The lead representative from Defence (Defence Lead) is the AIR05428 Phase 3 Project Manager, who will have the responsibilities set out in paragraph 2.3 below.

2.1.3 The Defence Participants may seek advice and guidance from various advisers within Defence to ensure that matters of concern are addressed quickly to allow Defence Participants to discharge their responsibility in respect of the Industry Engagement Activity. Those advisers will be appointed by the Defence Lead in accordance with paragraph 2.3 below and will be documented in accordance with paragraph 3 below.

2.1.4 The number of Defence Participants is to be kept to a practical minimum.

2.1.5 The Defence Participants do not have authority to:

- a. deviate from normal Commonwealth policies

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- b. agree to anything that would contravene section 1.5 or
- c. sign any document or give any verbal undertakings on behalf of Defence that Defence will sign or agree to anything in relation to the ITR, except as specifically provided for in this Plan.

2.2 Defence Industry Participants

2.2.1 The Project team will release the ITR to all Defence Industry via AusTender to ensure the highest level of industry participation.

2.2.2 All members of Defence Industry will be treated fairly, equally and in accordance with the requirements of this IEP and the SPP.

2.2.3 All requests for ad-hoc Defence Industry meetings clarification and requests for additional information will be recorded in the Industry Engagement Register and be managed in accordance with the SPP.

2.2.4 All communication to and from Defence Industry are to be processed via the Project inbox at: casg-air5428.ph3@defence.gov.au

2.3 Defence Lead

2.3.1 The Defence Lead is responsible for:

- a. managing and facilitating any Defence Industry Briefings
 - b. leading the one-on-one meetings
 - c. addressing any questions from Defence Industry Participants at the Defence Industry Briefing and one-on-one meetings
 - d. ensuring that the Defence Participants limit their collaboration to within the scope set out in paragraph 1.5
 - e. ensuring that any specialist advisers required are invited to participate in the Defence Industry Briefing and one-on-one meetings
 - f. managing comments and feedback from Defence Industry Participants in accordance with paragraph 3.3 below
 - g. reporting on the progress and outcomes of collaboration with Defence Industry to Director NA3PO
 - h. ensuring any probity issues are dealt with in accordance with the SPP and the NA3PO Legal Process and Probity Framework.
- 2.3.2 The Defence Lead will ensure that at least two Defence Participants are present at each and every one-on-one meeting.

2.4 Ethics, Probity and Fair Dealing

2.4.1 Prior to undertaking any activities in relation to the ITR Phase, Defence Participants must have read the IEP, SPP, and the NA3PO Legal Process and Probity Framework, and they must comply with the ethics, probity and fair dealing requirements as specified in those documents.

3 ENGAGEMENT, COMMUNICATION AND REPORTING

3.1 Engagement Process

3.1.1 The engagement process, communication and record keeping requirements for the ITR Phase of the Defence Industry engagement are set out in the following paragraphs of this IEP.

3.1.2 Defence Participants should ensure that, in conducting any meeting as part of Industry Engagement Activity, they:

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- a. treat each Defence Industry Participant fairly and equitably
- b. contain the discussions to the formal meeting forum for each Industry Engagement Activity so that any questions asked and answers provided can be recorded
- c. do not discuss with one Defence Industry Participant any aspects of another industry participant's approach or solution or otherwise reveal confidential or commercially sensitive information that should not be disclosed in the meetings, unless they have the prior approval of the owner of the confidential or commercially sensitive information
- d. provide facts but avoid expressing opinions or preferences or making statements as to future matters
- e. as far as practicable, ensure that all Defence Industry Participants have equivalent access to relevant information and equivalent opportunity in relation to the meetings (like requests for information or meetings should be treated alike – declined or accepted on a consistent basis)
- f. take on notice any issues or questions that cannot be addressed during a meeting.

3.1.3 At the start and end of each meeting for any Industry Engagement Activity, the Defence Lead must ensure that the Defence Industry Participants are clearly informed that any positions reached during the meeting is for Defence's consideration only, and that it is ultimately Defence's decision about whether it:

- a. conducts a follow on procurement process for the Project or
- b. invites any or all Defence Industry Participants to participate further in the Industry Engagement Activity.

3.1.4 Defence Participants must not give Defence Industry Participants the impression that Defence will undertake any procurements or procurement related activities in the future. This includes ensuring careful drafting and inclusion of caveats in written aids for the Industry Engagement Activity (eg PowerPoint slides, handouts).

3.1.5 Providing Defence Industry Participants with any such impression that Defence will undertake any procurements or procurement related activities in the future undermines Defence's independence to determine the approach that represents the best value for money in compliance with its legal and policy obligations. Additionally it may also undermine Defence's negotiating effectiveness if it chooses to conduct a procurement, or alternatively may give rise to a claim for damages based on estoppel or misrepresentation if a Defence Industry Participant is not approached to respond to the procurement, or if any approach to market issued to Defence Industry Participants does not reflect some or all of the Defence Industry Participants' comments or feedback during an Industry Engagement Activity.

3.2 Communication

3.2.1 It is expected that Defence Participants will likely liaise with the Defence Industry Participants during meetings that form part of the Industry Engagement Activities from time to time, as well as to receive Defence Industry Participants' written feedback and comments.

3.2.2 Defence Participants are not permitted to provide any written correspondence to Defence Industry Participants during the Industry Engagement Activity without prior approval from the Defence Lead.

3.2.3 Defence Participants' and any specialist advisers' comments are to be confirmed by the Defence Lead prior to attending meetings with Defence Industry Participants so that one common Defence view is presented. Comments on other matters should be passed privately to and between Defence Participants and specialist advisers.

3.2.4 If the Defence Industry Participants are also involved in other activities or procurements for Defence (Other Activities) and are likely to be present on Defence sites, the Industry Engagement Activity must not be discussed with the Defence Industry Participants during those

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Other Activities, and those Other Activities must not be discussed during the Industry Engagement Activity. This will assist with maintaining control over communication during the Industry Engagement Activity and Other Activities.

3.3 Record Keeping

3.3.1 A Minute Taker will be appointed at the start of any meeting for the Industry Engagement Activity to maintain a detailed record of the meeting, where possible. The meeting minutes should include the following:

- a. name and positions of attendees
- b. summary of discussions
- c. summary of information exchanged
- d. key outcomes achieved
- e. follow on actions to be taken
- f. any genuine live issues experienced (e.g. protection of intellectual property or commercially sensitive information during the Industry Engagement Activity).

3.3.2 Records of communication will be maintained during the Industry Engagement Activity and included in the Industry Engagement Register.

3.3.3 Any confidential information must be treated in accordance with the NA3PO Legal Process and Probity Framework.

3.3.4 Questions asked by Defence Industry in the form of correspondence will be recorded in the Correspondence Register, and will be communicated to all participants. If the question contains confidential information, then the question and subsequent response must be re-phrased to avoid disclosing the confidential information prior to it being communicated to all participants.

3.3.5 A list of companies that have expressed an interest in attending the ITR's industry briefing is set out in column A of sheet 1 of the excel spreadsheet entitled 'Industry Day- Industry Attendees' at s22. This list will be socialised amongst project team members to ensure awareness of companies that have expressed an interest in attending the ITR briefing and possibly providing a response to the ITR.

Enclosure:

1. Specific Probity Plan – AIR05428 Phase 3 (ITR Phase)

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ENCLOSURE 1

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FEB 22

SPECIFIC PROBITY PLAN – AIR05428 PHASE 3 (ITR PHASE)

1 INTRODUCTION

1.1 Aim of the Specific Probity Plan

1.1.1 This Specific Probity Plan (SPP) establishes the particular probity obligations that will apply to certain activities within AIR05428 Phase 3 ('the Project'). It supplements the Navy Army Aviation Acquisition Program Office (NA3PO) Legal Process and Probity Framework and addresses the particular probity risks that are unique to the Project.

1.1.2 This plan is subordinate to, and must be read in conjunction with, the NA3PO Legal Process and Probity Framework. Consistent with that Framework, this SPP applies to those responsible for conducting the ITR Phase as well as those members of the APS, ADF or External Service Providers who are privy to sensitive information about the ITR Phase.

2 PROJECT SPECIFIC MEASURES

2.1 Rationale

2.2.1 The measures set out in section 2 of this SPP will be employed having regard to the particular risks of the Project and will operate in addition to those obligations expressed in the NA3PO Legal Process and Probity Framework.

2.2 Project Probity Manager

2.2.1 The Project Probity Manager (PPM) – s47F The PPM will administer this SPP and undertake the tasks and responsibilities detailed in paragraph 3.3.3 of the NA3PO Legal Process and Probity Framework. The PPM is responsible for day to day management of project probity and legal process matters. If any probity risks are observed, the PPM will seek guidance (as required) from the Probity Framework Coordinator (PFC), or the Materiel Procurement Branch (MPB) representatives listed in paragraph 2.1.1 of the Industry Engagement Plan, to advise on the most appropriate way to respond to and / or manage any specific probity questions or risks raised or identified during any of the Industry Engagement Activities. The PFC or the MPB representatives may seek the assistance of an external probity adviser if the PFC or MPB consider it necessary to address a particular risk or issue,

2.3 External Probity Advisor

2.3.1 Following first pass approval from Government in November 21, an external probity advisor will be required during the ITR Phase to provide probity support to the Project. s47G has been appointed as the External Probity Advisor to address high risk or high complexity probity issues/concerns and conflicts of interest that are referred to them by the PFC or MPB.

2.4 External Probity Auditor

2.4.1 An external probity auditor is currently not required for the ITR Phase of the Industry Engagement Activities for the Project.

2.5 Industry Engagement Register

2.5.1 There will be a centralised register where meetings between Defence personnel and Defence Industry are logged to increase transparency and accountability.

2.5.2 The Industry Engagement Register is necessary:

- a. due to the Project's size and complexity
- b. to effectively manage specific probity risks that might arise during an Industry Engagement Activity.

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ENCLOSURE 1

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- 2.5.3 A Correspondence Register has also been established to ensure accurate record keeping of approaches by Defence Industry and the nature and content of the correspondence.

2.6 Briefings

2.6.1 Probity specific briefings will be required during the ITR Phase and provided to members of the Project team and Capability Manager's team and other personnel as required, including prior to the release of the ITR to market. These probity specific briefings will be conducted by the external probity advisor referred to in paragraph 2.3 and will comprise of updates for personnel on increased legal process and probity risks and developments in probity considerations during the ITR Phase relating to Industry Engagement Activities.

2.7 Conflict of Interest Register and Probity Log

2.7.1 A register of Conflict of Interest declarations for all military, APS and contacted staff working on the Project is maintained by the PPM at s22

2.7.2 A Probity Log documenting any observations/incidents/information that warrant specific recording and/or active monitoring is to be maintained by the PPM at s22

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Australian Government

Department of Defence

Legal Process and Probity Plan -

For

AIR05428 Phase 3

Air Mission Training System (AMTS)

Request for Tender

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ENDORSEMENT

Appointment	Rank and Name	Signature
Project Probity Manager	s47F [REDACTED]	s47F [REDACTED]
PM AIR05428PH3	s47F [REDACTED]	s47F [REDACTED]

APPROVAL

Appointment	Rank and Name	Signature
DNA3PO	s47F [REDACTED]	s47F [REDACTED]

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1 INTRODUCTION

1.1 Aim

- 1.1.1 This plan establishes the legal process and probity principles and procedures that will apply to AIR05428 Phase 3 Air Mission Training System (AMTS). This plan must be consistent with procurement documentation specific to key stages of the procurement lifecycle, such as the Tender Evaluation Plan.
- 1.1.2 This plan provides the authority and structure for the way legal process and probity issues will be addressed in relation to this procurement. It establishes standards of practice and behaviour for personnel as well as assigning responsibilities to individuals with specific roles in ensuring the established legal process and probity standards are met. This plan will underpin and foster a culture of ethics and fair dealing in which documented processes are applied, a clear audit trail is established and decision making is fair, transparent and defensible.

1.2 Background

- 1.2.1 The Project has been established in response to the legacy nature of training methodologies currently employed, as well as constraints associated with the existing airborne platforms, ground-based simulators and equipment. These factors necessitate the evolution to a fifth generation training solution for all non-pilot aviation specialists within the Air Academy.
- 1.2.2 Future training will utilise contemporary training methodologies in the ground and airborne environments. The Future Air Mission Training System (F-AMTS) will be transformative, evolvable and enduring. It will utilise the most appropriate and up to date training methods and tools to produce candidates to meet future ADF needs until at least 2047.
- 1.2.3 The F-AMTS materiel system comprises five integrated functional elements. While the Commonwealth will provide the Learning Facilities, the Commonwealth requires Industry to provide products relating to each of the remaining four functional elements of the F-AMTS as follows:
- a. Ground Training Element (GTE);
 - b. Airborne Training Element (ATE);
 - c. Integrated Learning Environment (ILE); and
 - d. Learning Materials.
- 1.2.4 AIR05428 Phase 3 is using a multi-stage approach to the market to facilitate this procurement process. A Request for Information (RFI) and an Invitation to Register (ITR) were both completed in 2020 and 2022 respectively, and the remaining stage of this procurement activity, a Request for Tender (RFT), is estimated to be released during Q1 2023.

1.2.5 s47G

1.2.6

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- 1.2.7 Prior to release of the RFT a series of Commonwealth facilitated workshops were conducted during the month of Oct 2022 (with all shortlisted respondents invited), in order for the Commonwealth to provide further detail on the F-AMTS requirement. A set of protocols to manage this industry engagement activity were released via a separate notice prior to the workshops occurring.
- 1.2.8 The nominal schedule for the RFT Phase is below in Table 1:

Table 1: RFT Phase Schedule

No.	Activity	Date ¹
1	Industry Engagement Workshops	Q4 2022 (Oct)
2	RFT Release	Q1 2023
2	RFT Industry Briefing	Q2 2023
3	RFT Responses due	Q2/3 2023
4	RFT Evaluation	Q3 2023
5	Offer Definition and Improvement Activities	Q4 2023

2 AUTHORITY AND SCOPE

2.1 Authority

- 2.1.1 All APS employees are bound by the standard of conduct and the obligations as stated in the APS Values and the APS Code of Conduct (*Public Service Act, 1999*) during the procurement process. In addition, Australian Defence Force Personnel must comply with their duties and obligations under the *Defence Force Discipline Act 1982*.
- 2.1.2 External Service Providers engaged to work on the procurement must comply with this Plan and note that any obligations contained in this Plan are in addition to and not in derogation of any of their contractual obligations (such as those relating to conflict of interest).

2.2 Scope

- 2.2.1 This plan is subordinate to, and is to be read in conjunction with the NA3PO Probity Framework, where there is inconsistency, the provisions of the NA3PO Probity Framework prevail.
- 2.2.2 Whilst the Plan is only directly applicable to those responsible for conducting the procurement, the Plan is to be provided to those members of the APS, ADF or External Service Providers working external to the procurement (including advisers, stakeholders and delegates) who are privy to sensitive information. The provision of the Plan to external personnel constitutes advice as to the behavioural standards and procedural requirements expected of personnel involved with the procurement.
- 2.2.3 Where appropriate, persons external to Defence who are involved in the procurement may be required to sign separate Non-Disclosure and/or Confidentiality Agreements where they become involved in procurement activities requiring them to have access to sensitive information.

3 GUIDELINES AND RESPONSIBILITIES

3.1 General Principles

- 3.1.1 All procurement activities are to be undertaken in a manner consistent with the legislative and regulatory requirements articulated in the *Public Governance, Performance and Accountability Act* (PGPA Act), the Commonwealth Procurement Rules (CPR), the

¹ Based on calendar year, not financial year.

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Accountability Authority Instructions (AAIs) as well as key overarching policy documents, including the Defence Procurement Manual (DPM), the Defence Commercial Framework, and the Integrity Policy Manual.

- 3.1.2 Probity and ethical behaviour is one of the key principles outlined in the Commonwealth Procurement Rules. For the purposes of this plan, probity is defined as “integrity, uprightness and honesty as exemplified in the evidence of ethical behaviour in a particular process”. For more information on probity and ethics in procurement, refer to the [Department of Finance \(DoF\) website](#) and the [Integrity Policy Manual](#).

3.2 Process Guidelines

- 3.2.1 All personnel involved in the procurement must read this plan and be aware of their obligations.
- 3.2.2 In adhering to this plan the following guidelines are to be adopted:
- a. there is to be a clear and fair procurement process that is conducted in accordance with applicable Commonwealth legislation and policy;
 - b. all tenderers or potential tenderers are to be treated fairly and equitably, consistent with the rules of natural justice and procedural fairness, and all interactions with tenderers or potential tenderers are to be conducted with honesty, fairness and in good faith;
 - c. tender evaluation is to be conducted in accordance with the approved Tender Evaluation Plan;
 - d. commercially sensitive information is to be protected at all times and all personnel are to comply with processes established to protect and secure commercially sensitive information;
 - e. there must be a clear audit trail; and
 - f. conflicts of interest must be identified and addressed.
- 3.2.3 A Legal Process and Probity Checklist is provided at Annex A to help to structure and assess adherence to these guidelines.

3.3 Responsibilities of Project Probity Manager

- 3.3.1 A Project Probity Manager (PPM) is to be appointed by Director NA3PO.
- 3.3.2 The PPM is s47F [REDACTED] will administer this Legal Process and Probity Plan and any applicable probity documents relevant to AIR05428 Phase 3 in order to ensure the Commonwealth’s legislative and policy obligations are met.
- 3.3.3 The responsibilities of the PPM will be to:
- a. Ensure applicable rules and procedures are followed;
 - b. Ensure that the procurement is conducted fairly;
 - c. provide a copy of this Legal Process and Probity Plan and any applicable supporting document to all appropriate personnel involved in this Project;
 - d. provide a briefing to all personnel on their responsibilities in relation to their obligations under the Plan and other legal requirements where necessary. Any new or additional personnel shall be provided with an additional briefing where necessary. Ensure a record of personnel who have received probity briefings is maintained;
 - e. ensure that processes for communication with parties external to this Project, including tenderers or any other potential industry participants, are established and complied with;
 - f. assess whether separate Non-Disclosure and/or Confidentiality Agreements in are required;
 - g. collect Conflict of Interest Declarations, Disclosures and updates in the format of

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Annex C to this Legal Process and Probity Plan, and if required, Conflict of Interest Declarations (web form AE916) from all personnel involved in the Project and/or those who are privy to sensitive information in relation to the Project;

- h. create, maintain, and review as required the Project Probity Issues Log in the Defence Records Management System (Objective);
- i. seek advice from the Project Management Office (PMO) Probity Advisor, if different to the Project Probity Manager and Materiel Procurement Branch (MPB) in regards to declared conflicts of interests;
- j. send any probity issues or concerns that have been identified or declared to MPB for advice or escalation to the External Probity Advisor where necessary. The External Probity Advisor is the s47G [REDACTED];
- k. record all probity issues and concerns relating to the Project in the Probity Issues Log (including complex and high-risk conflicts of interests). As required, include details of resulting action(s) has been taken in relation to any actual, perceived or potential probity issue or concern, including instances where MPB have provided advice or where the issue or concern has been escalated to the External Probity Adviser; and
- l. Where appropriate and necessary, seek alternative methods of resolution for respective probity issues.

4 CONFLICTS OF INTEREST

4.1 Conflicts of Interest

- 4.1.1 A conflict of interest is where an incompatibility exists, or where it could be reasonably perceived that an incompatibility exists, between the public duty of a person and a current or prospective interest of that person or a member of that person's immediate family.
- 4.1.2 Instances where a conflicting interest may exist include:
 - a. any personal financial interest in the procurement;
 - b. any immediate relatives or close friends with a financial interest in the procurement;
 - c. any personal bias or inclination which would in any way affect an individual's decisions in relation to the procurement; or
 - d. any personal obligation, allegiance or loyalties that would in any way affect an individual's decisions in relation to the procurement.

4.2 Conflict of Interest Declarations

- 4.2.1 Defence personnel and a person/s engaged under a contract² involved in the procurement are required to sign either: a Declaration of No Conflict of Interest (Annex C), which includes a declaration where no conflict of interest exists; or web form AE916 to report an actual, perceived or potential conflict of interest. Once completed, the applicable form should be submitted to the Project Probity Manager (PPM). By doing so, personnel also acknowledge that they have been briefed on this Plan, provided with a copy of it and understand its contents and implications.
- 4.2.2 Should any actual, perceived or potential conflict of interest arise (at any stage in the procurement), Defence personnel and a person/s engaged under contract must disclose the matter through the provision of an updated Conflict of Interest Declaration using web form AE916, which is to be submitted to the PPM. For clarity, this may be in instances where a new actual, perceived or potential conflict of interest arises or where there is a material change to the personnel's previously declared actual, perceived or potential conflict of interest. This declaration must be provided as soon as possible after the member becomes aware that the actual, perceived or potential conflict of interest has

² A person/s engaged under a contract is a contractor, consultant or outsourced service provider as defined in the [Financial Delegations Glossary of Terms](#)

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- 4.2.3 When completing the web form AE916, personnel are to:
- note the Project that the web form AE916 is being completed for;
 - note the list of companies of interest to the Project which will be circulated to personnel whenever this Plan is distributed (or as provided by the Project Manager). The companies of interest list must be included alongside web form AE916 when it is submitted to the PPM;
 - acknowledge that they have been briefed on this Plan, provided with a copy of it and understand its contents and implications; and
 - declare their actual, potential or perceived conflicts of interest in the companies of interest to the Project.
- 4.2.4 If at any time personnel are unsure whether they have an actual, potential or perceived conflicts of interest, personnel are to seek guidance from the Probity Advisor prior to making a Conflict of Interest declaration.

4.3 Management of Conflicts of Interest

- 4.3.1 In dealing with an actual, perceived or potential conflict of interest Director General Navy Aviation, Aircrew Training and Commons (DGNATC) is to act promptly and give such directions as they see fit to address, manage or remove the conflict where it exists. Key principles for the decision maker to take into account are:
- efforts should be made to minimise the impact on the affected person, but in all instances the interests of the Commonwealth will take precedence and may potentially lead to the restriction of access to some or all procurement related information, or the removal of the individual from the procurement.
 - during the consideration of whether a conflict of interest exists, the affected individual may be excluded from involvement in the procurement, decision or matter potentially giving rise to the conflict.
 - where an actual or potential conflict of interest is deemed by the decision maker to exist, the decision maker is to exclude the effected individual from involvement in the procurement, decision or matter.
 - Individuals affected by any determination are not to provide advice, inform the decision making process, make decisions or exercise any concurrence or delegation in relation to the procurement, decision or matter in question.
 - where, after consideration, the decision maker determines that no actual or potential conflict exists, the details of the matter and the findings of the decision maker are to be recorded. Generally no further action need be taken.
 - for the purposes of deciding on the existence of a conflict of interest, the issue is not whether the person has actually been influenced, but whether a reasonable person would perceive that the decision making process of an individual could have been influenced. Consequently, where a perceived conflict of interest exists, the decision maker is to make such determinations that place the probity of the procurement, including the way the procurement is perceived, as paramount.

4.4 Acceptance of Gifts and Hospitality

- 4.4.1 The solicitation or acceptance of gifts or hospitality from any party that has a likely or potential interest or association with the procurement, including prospective tenderers, is prohibited. Should personnel involved in the procurement consider that exceptional circumstances exist that warrant a variation to this blanket policy, they are to seek the written approval of DNA3PO who will consider the request in accordance with the [Integrity Policy Manual](#) and [Financial Policy Gifts and Benefits](#), and any other relevant Defence policy as follows:
- Defence Procurement Manual (DPM),
 - Defence Accountable Authority Instructions (AAIs),

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- c. Australian Privacy Principles, and
- d. Crimes Act 1914 (Cth).

4.5 Offers of Employment

- 4.5.1 In accordance with the Defence Instruction Administrative Policy Annex C – AG5 – Conflicts of Interest and Declarations of Interest, the Integrity Policy Manual and Defence Commercial Framework, personnel involved in the procurement who receive an offer of post separation employment from a potential tenderer, tenderer, or contractor (whether or not the offer of employment is in writing), and is considering that offer of employment, must immediately advise the Project Probity Manager in writing.

4.6 Communication with Tenderers or Potential Tenderers

- 4.6.1 As part of treating all tenderers and potential tenderers fairly and equitably and consistently with the rules of procedural fairness and natural justice, personnel involved in the procurement must not communicate with the tenderers or potential tenderers in a manner which:
- a. gives, or gives rise to the perception of, an unfair advantage to that tenderer or potential tenderer;
 - b. reveals proprietary or confidential information of another tenderer or potential tenderer; or
 - c. unfairly disadvantages a tenderer or potential tenderer.

5 CONFIDENTIAL INFORMATION

5.1 Scope of Confidential Information

- 5.1.1 'Confidential Information' means information (whether or not provided by the Commonwealth) that meets all of the following criteria:
- a. is specifically identified;
 - b. is commercially sensitive (i.e. the information should not generally be known or ascertainable);
 - c. disclosure would cause unreasonable detriment to the owner of the information or another party (e.g. disclosure of a contractor's profit margin); and
 - d. was provided with an expressed or implied understanding that it would remain confidential,
- but does not include information that:
- e. is or becomes public knowledge other than by breach of contract or obligation of confidentiality; or
 - f. is in the possession of a party without restriction in relation to disclosure before the date of receipt.

5.2 Management of Confidential Information

- 5.2.1 Personnel involved in the procurement should only have access to Confidential Information on an appropriate 'need to know' basis. Confidential Information needs to be managed in accordance with the information's commercial sensitivity and/or classification level.
- 5.2.2 All personnel involved in the procurement who may be privy to Confidential Information are obliged to ensure that all such information remains confidential and is not disclosed to anyone other than other personnel who require such disclosure in order to perform their duties for the procurement.
- 5.2.3 Personnel having access to Confidential Information must ensure that documents and information, including electronically stored information, that is in their possession or control and which contains Confidential Information is:

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- a. kept in locked offices or locked filing cabinets when not in use;
- b. not left unattended for any period at a place that is accessible by a person not authorised;
- c. not displayed at times or in places where they could be read by a person who is not authorised;
- d. no made available to a person who is not authorised;
- e. password protected (in the case of electronically stored material).

6 EXPIRY

6.1 Survivorship

- 6.1.1 Unless expressly, or by implication from its nature, intended to survive the expiry of the Plan, the requirements of this Plan shall expire at the conclusion of the procurement activity or as otherwise determined by the DGNATC.

Annexes:

- A. Legal Process and Probity Checklist
- B. AIR05428 Phase 3 RFT Probity Briefing s22
- C. Declaration of No Conflict of Interest
- D. Non-Disclosure Agreement

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Annex A: Legal Process and Probity Checklist

PROBITY PLANNING	
Determine whether a probity auditor and/or adviser is needed	<input type="checkbox"/>
Obtain Declaration of No Conflicts of Interest and confirm with team members have completed Conflict of Interest Declaration AE916 for any actual, potential or perceived conflict of interest that exists.	<input type="checkbox"/>
Obtain confidentiality agreements from external participants	<input type="checkbox"/>
Finalise the Legal Process and Probity Plan, if one is being used	<input type="checkbox"/>
Consider confidentiality requirements	<input type="checkbox"/>
Set up physical security procedures, such as the document register or data room	<input type="checkbox"/>
Ensure team members are familiar with all relevant policies and documents	<input type="checkbox"/>
Set up procedures so all potential suppliers have access to the same information	<input type="checkbox"/>
PROCUREMENT PROCESS	
Review probity at the end of the request documentation preparation process	<input type="checkbox"/>
Document any changes that occur to the request documentation, and notify all potential tenderers	<input type="checkbox"/>
Establish procedure for opening of tenders (including use of local tender rooms)	<input type="checkbox"/>
Set up a process for receiving, recording and acknowledging or clarifying tenders	<input type="checkbox"/>
Ensure evaluation of submissions is fair and consistent with the evaluation plan	<input type="checkbox"/>
Review probity at the end of the evaluation process	<input type="checkbox"/>
Notify the successful tenderer as soon as possible	<input type="checkbox"/>
Notify the unsuccessful tenderers as soon as possible	<input type="checkbox"/>
Debrief unsuccessful tenderers	<input type="checkbox"/>
Ensure all actions are documented, and the documents are stored appropriately	<input type="checkbox"/>
Review probity at the end of the process	<input type="checkbox"/>

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Annex B: Probity Briefing

Refer to [AIR05428 Phase 3 Probity Briefing](#)

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Annex C: Declaration of No Conflict of Interest
For AIR05428 Phase 3 (the Project)

I declare that:

- a) I have read and understood the Legal Process and Probity Plan (Plan) for the Project, and acknowledge that it is my responsibility to comply with the Plan;
- b) I have no actual, perceived or potential conflicts of interest, as defined in the Plan, which would conflict with my role in the Project; and
- c) if an actual, perceived or potential conflict of interest arises, I will immediately provide an updated declaration (via web form [Conflict of Interest Declaration AE916](#)) to the **Probity Manager** in accordance with the requirements of the Plan.

Details of Signatory	
Signature:	
Printed Name:	
Rank/Level/Title:	
Appointment/Organisation:	
Phone/email Contact:	
Date:	

Return to the Probity Manager

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Annex D: Non-Disclosure Agreement - Individual

This Deed Poll is made on [...INSERT DATE...] by:

[...INSERT NAME OF CONFIDANT...] ('the Confidant') in favour of the Commonwealth of Australia as represented by the Department of Defence ABN 68 706 814 312 ('the Commonwealth'); and the Relevant Third Party.

RECITALS:

- A. The Commonwealth is currently undertaking procurement activities in support of AIR05428 Phase 3, which will involve a Request for Tender process (RFT) to be conducted during 2023.
- B. The Commonwealth has engaged the Confidant to provide services in support of the AIR05428 Phase 3 project.
- C. During the conduct of the AIR05428 Phase 3 project, the Confidant may become aware of, or have access to, Confidential Information belonging to the Commonwealth or Relevant Third Party.
- D. The Confidant will receive or have access to Confidential Information belonging to the Commonwealth or the Relevant Third Party.
- E. The Commonwealth requires and the Confidant agrees that it is necessary to take all necessary steps (including the execution of this Deed for the benefit of the Commonwealth and the Relevant Third Party) to ensure that the Confidential Information is kept confidential, is not disclosed to any party that is not authorised to receive it and is only used for the Permitted Purposes.

OPERATIVE PROVISIONS

1. ACKNOWLEDGEMENT

- 1.1 The Confidant acknowledges the truth and accuracy of the statements in the Recitals in every particular.

2. DEFINITIONS

- 2.1 In this deed, unless the contrary intention appears:

'Permitted Purposes' means:

- a. the purposes described in Attachment A to this Deed; and
- b. any other purpose that may be approved in writing by the Commonwealth from time to time.

'Confidential Information' means information (whether or not owned by the Commonwealth or a Relevant Third Party) that:

- c. is described in Attachment A to this Deed;
- d. is by its nature confidential; and
- e. the Confidant knows or ought to know is confidential,
- f. but does not include information which:
- g. is or becomes public knowledge other than by breach of this Deed;
- h. is in the lawful possession of the Confidant without restriction in relation to disclosure before the date of receipt from the disclosing party; or
- i. has been independently developed or acquired by the Confidant.

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- j. **'Relevant Third Party'** means each entity, if any, described in Attachment A to this Deed, or as notified to the Confidant by the Commonwealth from time to time.

'Working Day' in relation to the doing of an action in a place means any day other than a Saturday, Sunday or public holiday in that place.

3. INTERPRETATION

3.1 In this Deed, unless the contrary intention appears:

- a. headings are for the purpose of convenient reference only and do not form part of this Deed;
- b. the singular includes the plural and vice versa;
- c. a reference to a person includes a body politic, body corporate or a partnership;
- d. if the last day of any period prescribed for the doing of an action falls on a day which is not a Working Day, the action shall be done no later than the next Working Day;
- e. a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- f. a reference to a clause includes a reference to a subclause of that clause;
- g. the word 'includes' in any form is not a word of limitation; and
- h. a reference to a party includes that party's administrators, successors, and permitted assigns, including any person to whom that party novates any part of this Deed.

4. UNDERTAKINGS OF NON DISCLOSURE

4.1 The Confidant

- a. acknowledges and agrees that this Deed is for the benefit of the Commonwealth and any Relevant Third Party and is directly enforceable by the Commonwealth and any Relevant Third Party, even though they are not parties to this Deed;
- b. shall only use the Confidential Information for the Permitted Purposes;
- c. shall not without the prior written consent of the Commonwealth, disclose or permit any person to disclose the Confidential Information; and
- d. shall promptly notify the Commonwealth of any unauthorised possession, disclosure or use of the Confidential Information contrary to this Deed and take all steps necessary to prevent the recurrence of such possession, disclosure or use.

4.2 The restrictions described in this document in relation to Confidential Information will not apply to the disclosure by the Confidant of Confidential Information to the extent it is required to be disclosed by law or court order.

4.3 The Confidant acknowledges that it may be provided with the ability to access Commonwealth-held information (in addition to the Confidential Information) in connection with its performance of the Permitted Purposes, including through access to Commonwealth information technology systems. Without limiting the Confidant's other obligations under this Deed or otherwise at law, the Confidant shall not seek to access or use Commonwealth-held information except to the extent strictly required to undertake the Permitted Purposes.

5. RETURN OF CONFIDENTIAL INFORMATION

5.1 Without limiting Confidant's obligations at law, the Confidant shall deliver to the Commonwealth, or destroy or erase, as required by the Commonwealth, all documents

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and any other material (including electronically stored or otherwise) in its possession, power or control which contain or relate to the Confidential Information.

- 5.2 Return or destruction of any Confidential Information does not release the Confidant from its obligations under this Deed.

6. CONSEQUENCES OF BREACH

- 6.1 Without limiting the Commonwealth's rights under this Deed or otherwise at law, the Confidant agrees that if it fails to comply with its obligations under this Deed (including, without limitation, clause 4.3) the Commonwealth may, in its discretion, do any one or more of the following:

- a. immediately revoke the Confidant's ability to access information held by the Commonwealth, including information which is accessible using the Commonwealth's information technology systems;
- b. terminate for default, or otherwise, any contract or other arrangement with the Confidant in connection with the Permitted Purposes; and
- c. require the Confidant to take such further steps (including the provision of further undertakings) as the Commonwealth reasonably considers necessary to seek to avoid, or minimise, the impacts on the Commonwealth of the Confidant's breach of this Deed.

- 6.2 The Confidant releases the Commonwealth from all claims arising out of or in connection with any action taken by the Commonwealth pursuant to this clause **Error! Reference source not found.**

7. INJUNCTIVE RELIEF

- 7.1 The Confidant acknowledges that damages may not be a sufficient remedy for the Commonwealth or a Relevant Third Party for a breach of this Deed and that the Commonwealth and each Relevant Third Party is entitled to injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Confidant, in addition to any other remedies available at law or in equity.

8. WAIVER

- 8.1 Failure by the Commonwealth or a Relevant Third Party to enforce a provision of this Deed shall not be construed as in any way affecting the enforceability of that provision or this Deed as a whole.

9. REMEDIES CUMULATIVE

- 9.1 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy provided under any other deed or agreement.

10. APPLICABLE LAW

- 10.1 The laws of the Australian Capital Territory shall apply to this Deed. The courts of that Territory shall have non-exclusive jurisdiction to decide any matter arising out of this Deed.

- 10.2 The Confidant agrees that this deed constitutes a duty of non-disclosure for the purposes of Section 122.4 of the Criminal Code (Schedule to the *Criminal Code Act 1995* (Cth)). The Confidant hereby acknowledges that it has read, understood and agreed to fulfil the obligations set out above, and is aware that disclosure of Confidential Information provided in the course of the agreement may render it liable to prosecution and imprisonment under the *Criminal Code Act 1995* (Cth).

11. NOTICES

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11.1 Unless the contrary intention appears any notice or communication under this Deed shall be effective if it is in writing, signed and delivered as the case may be, at the following address:

a. [...INSERT CONFIDANT'S REPRESENTATIVE POSTAL ADDRESS AND EMAIL ADDRESS...]

11.2 A notice or other communication shall be deemed to have been delivered:

- a. by prepaid post, in three Working Days if sent within Australia and in eight Working Days if sent by air mail from one country to another;
- b. by facsimile at the time recorded by the transmitting machine, unless within one Working Day the sender is informed that the transmission was received in incomplete or garbled form; or
- c. by an email, when the email enters the addressee's information system, unless the sender's information system receives a message within one Working Day that the email has not been delivered to the addressee.

12. TERMINATION AND AMENDMENT

12.1 This Deed Poll shall not be unilaterally terminated or amended unless such termination or amendment is reduced to writing and agreed in writing by the Commonwealth.

EXECUTED AS A DEED POLL

Signed and Sealed by:

.....
(signature of Confidant) (print name of Confidant) (date)

In the presence of:

.....
(signature of witness) (print name of witness) (date)

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Australian Government
Defence

Legal Process and Probity Plan

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~~OFFICIAL SENSITIVE~~**Scope**

This publication should be considered best practice guidance for Defence staff undertaking procurement activities.

Note to External Agencies

External agencies intending to use this template will need to tailor it in order to meet their specific procurement requirements (including relevant internal guidance) and should seek appropriate professional guidance as required.

Disclaimer

The information in this publication is provided by Defence for the purpose of disseminating procurement guidance to its staff. While every effort has been made to ensure the guidance in this publication is accurate and up-to-date, any user should exercise independent skill and judgment before relying on it. Further, this publication is not a substitute for independent professional advice and users external to Defence should obtain appropriate advice relevant to their particular circumstances.

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This publication should be attributed as Department of Defence Source Legal Process and Probity Plan V1.6.

Use of the Coat of Arms

The terms under which the Coat of Arms can be used are detailed on the [Coat of Arms](#) website.

Feedback

All feedback on this publication and suggestions for improvement should be sent to:
Procurement.Instructions@defence.gov.au.

Amendment Record

Version	Release Date	Closure Date	Description of Amendments
1.1	1 July 2012		Delegations
1.2	8 October 2014		Updates to reflect PGPA Act
1.3	August 2015		Updates to CASG
1.4	16 February 2016		Updates to links
1.5	October 2020		Integrity Policy Framework
1.6	April 2022		Update for Conflict of Interest IAW ADMINPOL and INTEGRITYPOLMAN

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1.7	March 2024		Updates to Conflict of Interest Form
1.8	September 2024		Removal of Integrity Policy Framework

Prepared By

Appointment	Rank and Name	Signature	Date
Probity Manager	s47F	s47F	3/25/25

Endorsement and Approval

Appointment	Rank and Name	Signature	Date
Project Manager AIR52428 Phase 3	s47F	s47F	3/25/25

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Legal Process and Probity Plan -

AIR5428 Phase 3 Air Mission Training System

Request for Proposal- Contract for Risk Reduction Activity Services

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1 INTRODUCTION

1.1 Aim

- 1.1.1 This plan establishes the legal process and probity principles and procedures that will apply to a proposed limited tender procurement from s47G relating to a contract for risk reduction activities to alleviate risk to the achievement of Project AIR5428 Phase 3 Air Mission Training System capability milestones. This plan must be consistent with procurement documentation specific to key stages of the procurement lifecycle, such as the Proposal r Evaluation Plan.
- 1.1.2 This plan provides the authority and structure for the way legal process and probity issues will be addressed in relation to this procurement. It establishes standards of practice and behaviour for personnel as well assigning responsibilities to individuals with specific roles in ensuring the established legal process and probity standards are met. This plan will underpin and foster a culture of ethics and fair dealing in which documented processes are applied, a clear audit trail is established and decision making is fair, transparent and defensible.

1.2 Background

- 1.2.1 The Air Mission Training System (AMTS) is a core element of the Aircrew Training System (ATS) within the Combat Air Support Program. The ATS delivers a wide array of courses to a broad selection of aviation specialists within the Air Academy (AirA).
- 1.2.2 Project AIR5428 Phase 3 will deliver a replacement AMTS to be referred to hereafter as the Future AMTS (F-AMTS), to provide Initial Employment Training (IET) and Initial Specialisation Employment Training (ISET) for candidates in preparation for further employment category training and/or operational duties. The F-AMTS will also provide postgraduate training for Air Traffic Control (ATC) officers and aviation instructors.
- 1.2.3 The F-AMTS will replace the extant training capability within the existing AirA currently delivered through the Air Mission Training School and the School of Air Traffic Control (SATC).
- 1.2.4 Current and future training will remain modern via contemporary training methodologies in the ground and airborne environments. It will utilise the most appropriate and up to date training methods and tools to produce candidates to meet future ADF needs until at least 2047.
- 1.2.5 The F-AMTS Materiel System will be comprised of five functional elements. Industry will be required to provide products and services relating to each of the functional elements to be incorporated into the F-AMTS and associated facilities as follows:
- a. Ground Training Element (GTE);
 - b. Airborne Training Element (ATE);
 - c. Integrated Learning Environment (ILE);
 - d. Learning Element; and
 - e. Support System.

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2 AUTHORITY AND SCOPE

2.1 Authority

- 2.1.1 All APS employees are bound by the standard of conduct and the obligations as stated in the APS Values and the APS Code of Conduct (*Public Service Act, 1999*) during the procurement process. In addition, Australian Defence Force Personnel must comply with their duties and obligations under the *Defence Force Discipline Act 1982*.
- 2.1.2 External Service Providers engaged to work on the procurement must comply with this Plan and note that any obligations contained in this Plan are in addition to and not in derogation of any of their contractual obligations (such as those relating to conflict of interest).

2.2 Scope

- 2.2.1 This Plan applies to all personnel and entities responsible for conducting the procurement, including:
- a. APS employees and ADF members engaged in the conduct of the procurement; and
 - b. external entities contracted to Defence (i.e. consultants, MSP/DSS contractors to Defence including their principals, employees, agents and subcontractors to the extent that they are involved in the conduct of the Procurement Activities)¹,
(Procurement Members).
- 2.2.2 This Plan will inform and guide all Procurement Members involved in/ acting for and on behalf of Defence with respect to the procurement.
- 2.2.3 Whilst the Plan is only directly applicable to those responsible for conducting the procurement, the Plan is to be provided to those members of the APS, ADF or External Service Providers working external to the procurement (including advisers, stakeholders and delegates) who are privy to sensitive information. The provision of the Plan to external personnel constitutes advice as to the behavioural standards and procedural requirements expected of personnel involved with the procurement.
- 2.2.4 Where appropriate, persons external to Defence who are involved in the procurement may be required to sign separate Non-Disclosure and/or Confidentiality Agreements where they become involved in procurement activities requiring them to have access to sensitive information.

3 GUIDELINES AND RESPONSIBILITIES

3.1 General Principles

- 3.1.1 All procurement activities are to be undertaken in a manner consistent with the legislative and regulatory requirements articulated in the *Public Governance, Performance and Accountability Act* (PGPA Act), the Commonwealth Procurement Rules (CPR), the Accountability Authority Instructions (AAs) as well as key overarching policy documents, including the Defence Procurement Manual (DPM), Defence Commercial Framework and the Integrity Policy Manual.
- 3.1.2 Probity and ethical behaviour is one of the key principles outlined in the Commonwealth Procurement Rules. For the purposes of this plan, probity is defined as “integrity, uprightness and honesty as exemplified in the evidence of ethical behaviour in a particular process”. For more information on probity and ethics in procurement, refer to the [Department of Finance \(DoF\) website and the Integrity Policy Manual](#).
- 3.1.3 Defence officials should promote industry engagement activities that:
- a. ensure that probity practices operate as enablers, and not barriers, to collaborative, innovative and commercial procurement processes;

¹ A person engaged under a contract is a contractor, consultant or outsourced service provider as defined in the [Financial Delegations Glossary of Terms](#)

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- b. encourage industry participation and competition in procurement processes; and
- c. assist in ensuring that the procurement process and decisions are efficient, effective, economical, ethical, transparent and defensible - but do not operate so as to prevent Defence from being a smart buyer which achieves value for money.

3.2 Process Guidelines

- 3.2.1 All personnel involved in the procurement must read this plan and be aware of their obligations.
- 3.2.2 In adhering to this plan the following guidelines are to be adopted:
 - a. there is to be a clear and fair procurement process that is conducted in accordance with applicable Commonwealth legislation and policy;
 - b. all respondents or potential respondents are to be treated fairly and equitably, consistent with the rules of natural justice and procedural fairness, and all interactions with respondents or potential respondents are to be conducted with honesty, fairness and in good faith;
 - c. response evaluation is to be conducted in accordance with the approved Response Evaluation Plan;
 - d. commercially sensitive information is to be protected at all times and all personnel are to comply with processes established to protect and secure commercially sensitive information;
 - e. there must be a clear audit trail; and
 - f. conflicts of interest must be identified and addressed.
- 3.2.3 A Legal Process and Probity Checklist is provided at Annex A to help to structure and assess adherence to these guidelines.

3.3 Responsibilities of the Probity Manager

- 3.3.1 The Probity Manager is s47F
- 3.3.2 The Probity Manager is to be the first point of contact for all personnel with regard to probity issues. The Probity Manager will determine on a case-by-case basis whether probity advice is required and whether probity advice is required through the Probity Adviser (Materiel Procurement Branch).
- 3.3.3 The Probity Manager or a nominated representative will be responsible for the administration of the Plan. The responsibilities of the Probity Manager will be to advise on the conduct of the procurement, including involvement in the development and review of any procurement documentation to ensure that:
 - a. applicable rules and procedures are followed;
 - b. any evaluations are undertaken fairly in relation to stated evaluation criteria; and
 - c. processes for managing communication with parties external to the procurement are established and complied with.
- 3.3.4 The Probity Manager, or a nominated representative, shall provide a briefing to all personnel on their responsibilities in relation to their obligations under this Plan and other legal requirements where necessary. Any new or additional personnel shall be provided with an additional briefing where necessary.
- 3.3.5 The Probity Manager will elevate to the Probity Adviser all issues or complaints requiring probity advice where unbiased and impartial advice or advice on more complex and/or significant probity issues is required.

3.4 Responsibilities of the Probity Adviser

- 3.4.1 The Probity Adviser for the procurement is:

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- 3.4.2 The Probity Adviser will administer the Legal Process and Probity Plan. The responsibilities of the probity adviser will be to advise on the conduct of the procurement, including involvement in the development and review of procurement documentation to ensure that:
- applicable rules and procedures are followed;
 - the procurement is conducted fairly;
 - responses received are assessed in accordance with the Response Evaluation Plan and the stated evaluation criteria; and
 - processes for managing communication with parties external to the procurement, including respondents and potential respondents, are established and complied with.
- 3.4.3 The Probity Adviser shall provide a briefing to all personnel on their responsibilities in relation to their obligations under the Plan and other legal requirements where necessary. Any new or additional personnel shall be provided with an additional briefing where necessary.
- 3.4.4 The Probity Adviser must not be involved in the evaluation, negotiation or selection of the responses as this would conflict with their role to provide unbiased and impartial advice.

4 CONFLICTS OF INTEREST

4.1 Conflicts of Interest

- 4.1.1 A conflict of interest is where an incompatibility exists, or where it could be reasonably perceived that an incompatibility exists, between the public duty of a person and a current or prospective interest of that person or a member of that person's immediate family.
- 4.1.2 Instances where a conflicting interest may exist include:
- any personal financial interest in the procurement;
 - any immediate relatives or close friends with a financial interest in the procurement;
 - any personal bias or inclination which would in any way affect an individual's decisions in relation to the procurement; or
 - any personal obligation, allegiance or loyalties that would in any way affect an individual's decisions in relation to the procurement.
- 4.1.3 Procurement Members must ensure that their conduct does not give rise to perceptions, such as bias for or against a respondent, that may lead to the erosion of industry and Government confidence in the way in which the procurement is conducted, or more generally damage the Department of Defence's and the Commonwealth's interests and reputation.
- 4.1.4 Procurement Members who are concerned that circumstances may give rise to a perceived or real bias or conflict must document all details immediately and promptly report the matter in writing to the Probity Manager.
- 4.1.5 Further information and examples of instances where an actual, perceived or potential conflict of interest might exist are detailed in the Integrity Policy Manual and Defence Instruction Administrative Policy Annex C – AG5 –Conflicts of Interest and Declarations of Interests.

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4.2 Conflict of Interest Declarations

- 4.2.1 Procurement Members involved in the procurement are required to sign either: a Declaration of No Conflict of Interest (Annex C), which includes a declaration where no conflict of interest exists; or AF220 form to report an actual, perceived or potential conflict of interest. Once completed, the applicable form should be submitted to the Probity Manager. By doing so, personnel also acknowledge that they have been briefed on this Plan, provided with a copy of it and understand its contents and implications.
- 4.2.2 Should any actual, perceived or potential conflict of interest arise (at any stage in the procurement), Procurement Members must disclose the matter through the provision of an updated Conflict of Interest Declaration using web AF220 form, which is to be submitted to the Probity Manager. For clarity, this may be in instances where a new actual, perceived or potential conflict of interest arises or where there is a material change to the personnel's previously declared actual, perceived or potential conflict of interest. This declaration must be provided as soon as possible after the member becomes aware that the actual, perceived or potential conflict of interest has arisen.
- 4.2.3 When completing the AF220 form, personnel are to:
- a. note the Project that the AF220 form is being completed for;
 - b. note the list of companies of interest to the Project which will be circulated to personnel whenever this Plan is distributed (or as provided by the Probity Manager). The companies of interest list must be included alongside AF220 form when it is submitted to the Probity Manager;
 - c. acknowledge that they have been briefed on this Plan, provided with a copy of it and understand its contents and implications; and
 - d. declare their actual, potential or perceived conflicts of interest in the companies of interest to the Project.
- 4.2.4 If at any time personnel are unsure whether they have an actual, potential or perceived conflicts of interest, personnel are to seek guidance from the Probity Manager, and if necessary the Probity Adviser, prior to making a Conflict of Interest declaration.

4.3 Management of Conflicts of Interest

- 4.3.1 In dealing with an actual, perceived or potential conflict of interest, Director General, Navy Aviation, Aircrew Training and Commons Branch is to act promptly as the 'decision maker' and give such directions as they see fit to address, manage or remove the conflict where it exists. Key principles for the decision maker to take into account are:
- a. efforts should be made to minimise the impact on the affected person, but in all instances the interests of the Commonwealth will take precedence and may potentially lead to the restriction of access to some or all procurement related information, or the removal of the individual from the procurement.
 - b. during the consideration of whether a conflict of interest exists, the affected individual may be excluded from involvement in the procurement, decision or matter potentially giving rise to the conflict.
 - c. where an actual, potential or perceived conflict of interest is deemed by the decision maker to exist, the decision maker may exclude the effected individual from involvement in the procurement, decision or matter.
 - d. individuals affected by any such determination are not to provide advice, inform the decision making process, make decisions or exercise any concurrence or delegation in relation to the procurement, decision or matter in question.
 - e. where, after consideration, the decision maker determines that no actual or potential conflict exists, the details of the matter and the findings of the decision-maker are to be recorded. Generally no further action need be taken.
 - f. for the purposes of deciding on the existence of a conflict of interest, the issue is not whether the person has actually been influenced, but whether a reasonable person would perceive that the decision making process of an individual could

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have been influenced. Consequently, where a perceived conflict of interest exists, the decision maker is to make such determinations that place the probity of the procurement, including the way the procurement is perceived, as paramount.

4.4 Acceptance of Gifts and Hospitality

- 4.4.1 The solicitation or acceptance of gifts or hospitality from any party that has a likely or potential interest or association with the procurement, including prospective respondents, is prohibited. Should Procurement Members involved in the procurement consider that exceptional circumstances exist that warrant a variation to this blanket policy, they are to seek the written approval of Director General Navy Aviation, Aircrew Training and Commons who will consider the request in accordance with the Integrity Policy Manual and [Financial Policy Gifts and Benefits](#), and any other relevant Defence policy.

4.5 Offers of Employment

- 4.5.1 In accordance with the Defence Instruction Administrative Policy Annex C – AG5 – Conflicts of Interest and Declarations of Interest, the Integrity Policy Manual and Defence Commercial Framework, Procurement Members who receive an offer of post separation employment from a potential respondent, respondent, or contractor (whether or not the offer of employment is in writing), and is considering that offer of employment, must immediately advise Director General Navy Aviation, Aircrew Training and Commons in writing.

4.6 Communication with Respondents or Potential Respondents

- 4.6.1 As part of treating all respondents and potential respondents fairly and equitably and consistently with the rules of procedural fairness and natural justice, Procurement Members involved in the procurement must not communicate with the respondents or potential respondents in a manner which:
- gives, or gives rise to the perception of, an unfair advantage to that respondent or potential respondent;
 - reveals proprietary or confidential information of another respondent or potential respondent; or
 - unfairly disadvantages a respondent or potential respondent.

5 CONFIDENTIAL INFORMATION

5.1 Scope of Confidential Information

- 5.1.1 'Confidential Information' means information (whether or not provided by the Commonwealth) that meets all of the following criteria:
- is specifically identified;
 - is commercially sensitive (i.e. the information should not generally be known or ascertainable);
 - disclosure would cause unreasonable detriment to the owner of the information or another party (e.g. disclosure of a contractor's profit margin); and
 - was provided with an expressed or implied understanding that it would remain confidential,
- but does not include information that:
- is or becomes public knowledge other than by breach of contract or obligation of confidentiality; or
 - is in the possession of a party without restriction in relation to disclosure before the date of receipt.

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5.2 Management of Confidential Information

- 5.2.1 Procurement Members should only have access to Confidential Information on an appropriate 'need to know' basis. Confidential Information needs to be managed in accordance with the information's commercial sensitivity and/or classification level.
- 5.2.2 Procurement Members who may be privy to Confidential Information are obliged to ensure that all such information remains confidential and is not disclosed to anyone other than other personnel who require such disclosure in order to perform their duties for the procurement.
- 5.2.3 Procurement Members having access to Confidential Information must ensure that documents and information, including electronically stored information, that is in their possession or control and which contains Confidential Information is:
- a. kept in locked offices or locked filing cabinets when not in use;
 - b. not left unattended for any period at a place that is accessible by a person not authorised;
 - c. not displayed at times or in places where they could be read by a person who is not authorised;
 - d. not made available to a person who is not authorised;
 - e. password protected (in the case of electronically stored material).

6 EXPIRY

6.1 Survivorship

- 6.1.1 Unless expressly, or by implication from its nature, intended to survive the expiry of the Plan, the requirements of this Plan shall expire at the conclusion of the procurement activity or as otherwise determined by the Probity Manager.

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Project Manager AIR5428 Phase 3

25 March 2025

Annexes:

- A. Legal Process and Probity Checklist
- B. Probity Briefing Template
- C. Declaration of No Conflict of Interest

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Annex A: Legal Process and Probity Checklist

PROBITY PLANNING	
Determine whether a probity auditor and/or adviser is needed	<input type="checkbox"/>
Obtain Declaration of No Conflicts of Interest and confirm with team members have completed Conflict of Interest Declaration AF220 for any actual, potential or perceived conflict of interest that exists.	<input type="checkbox"/>
Obtain confidentiality agreements from external participants	<input type="checkbox"/>
Finalise the Legal Process and Probity Plan, if one is being used	<input type="checkbox"/>
Consider confidentiality requirements	<input type="checkbox"/>
Set up physical security procedures, such as the document register or data room	<input type="checkbox"/>
Ensure team members are familiar with all relevant policies and documents	<input type="checkbox"/>
Set up procedures so all potential suppliers have access to the same information	<input type="checkbox"/>
PROCUREMENT PROCESS	
Review probity at the end of the request documentation preparation process	<input type="checkbox"/>
Document any changes that occur to the request documentation, and notify all potential respondents	<input type="checkbox"/>
Establish procedure for opening of responses (including use of local tender rooms)	<input type="checkbox"/>
Set up a process for receiving, recording and acknowledging or clarifying responses	<input type="checkbox"/>
Ensure evaluation of submissions is fair and consistent with the evaluation plan	<input type="checkbox"/>
Review probity at the end of the evaluation process	<input type="checkbox"/>
Notify the successful respondent as soon as possible	<input type="checkbox"/>
Notify the unsuccessful respondents as soon as possible	<input type="checkbox"/>
Debrief unsuccessful respondents	<input type="checkbox"/>
Ensure all actions are documented, and the documents are stored appropriately	<input type="checkbox"/>
Review probity at the end of the process	<input type="checkbox"/>

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Annex B: Draft Probity Briefing

Refer to [Probity Briefing Template](#)

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Annex C: Declaration of No Conflict of Interest

For AIR5428 Phase 3 Request for Proposal- Risk Reduction Activity Contract (the Project)

I declare that:

- a) I have read and understood the Legal Process and Probity Plan (Plan) for the Project, and acknowledge that it is my responsibility to comply with the Plan;
- b) I have no actual, perceived or potential conflicts of interest, as defined in the Plan, which would conflict with my role in the Project; and
- c) if an actual, perceived or potential conflict of interest arises, I will immediately provide an updated declaration (via [AF220 Conflict of Interest Declaration](#)) to the Probity Manager in accordance with the requirements of the Plan.

Details of Signatory	
Signature:	
Printed Name:	
Rank/Level/Title:	
Appointment/Organisation:	
Phone/email Contact:	
Date:	

Return to Probity Manager.

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