



PROBITY REPORT

CLIENT

Woollahra Municipal Council

PROJECT

Cross Street Car Park - Request for Detailed Proposal

DATE

10 February 2022

REPORT STATUS

Final

PREPARED FOR

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Development Manager – Strategic Properties

PREPARED BY

APPROVED BY

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Statement of Responsibility

This probity report has been prepared for the purpose of assisting Woollahra Municipal Council in its decision making regarding the Cross Street Car Park - Request for Detailed Proposal Project. Procure has compiled the report on the basis of:

- a. information it has been given and which it has reviewed;
- b. the processes and procedures it has observed; and
- c. the issues raised with it.

The conclusion stated in section 2 of this report is based upon the work performed as documented in it. While Procure has identified probity risks and considered the controls, environment and action taken by Woollahra Municipal Council to address those risks, probity issues may nevertheless have arisen that have not been identified.

As the probity advisor, Procure has focussed solely on probity aspects of the process. Procure does not provide, nor does it purport to provide, nor can it be construed to have provided legal, commercial, procurement or technical advice. It is the Woollahra Municipal Council's responsibility to obtain appropriate advice and ensure compliance with relevant legislative and policy requirements.

While Procure may provide input into processes followed, Woollahra Municipal Council retains responsibility for the probity of its personnel and processes. The report cannot be relied upon by any other party or for any other purpose.

1 INTRODUCTION

1.1 Our Engagement

Procure Group Pty Ltd (**Procure**) has been engaged by Woollahra Municipal Council (**Council**) to provide independent probity advisory services in relation to the Cross Street Car Park - Request for Detailed Proposal (**RFDP**) process. Further detail regarding our scope of service is included in section 4.

This report sets out our work performed and observations from a probity perspective relating to the procurement process followed by Woollahra Municipal Council, within the context of the framework provided by the NSW Independent Commission Against Corruption's (**ICAC**) probity fundamentals.

Procure was also engaged for the earlier Expressions of Interest (**EOI**) phase of the Cross Street Car Park procurement. A probity report in relation to the EOI phase of the procurement was issued by Procure on 4 May 2021.

1.2 Project Summary

Council has undertaken a RFDP process to select a development partner to undertake a mixed-use redevelopment of the Cross Street Car Park located in Double Bay. The aim of the project is to introduce a cinema complex and complementary uses, including potentially retail, commercial and residential uses, which will stimulate commercial activity and enhance Double Bay as a shopping, living, arts and cultural destination. The redevelopment must include the replacement of the existing public car parking capacity.

The following 4 proponents were selected to participate in the RFDP process, following an earlier EOI process:



The RFDP was issued via the Council's Tender Portal on 24 June 2021 and closed on 3 September 2021. As of the closing date, proposals were received from all 4 proponents.

An Evaluation Team was established to review and evaluate proposals received in response to the RFDP.

The Evaluation Team has now completed its assessment and has prepared an RFDP Recommendation Report (**Recommendation Report**) which recommends a preferred proponent for selection as Council's development partner for the project. The Recommendation Report was finalised on 10 February 2022.

1.3 Summary of Key Activities and Dates

ACTIVITY	DATE
RFDP issue date	24 June 2021
Interactive Workshops	20, 21 and 22 July 2021 19 August 2021
RFDP Closing date	3 September 2021 (2:00pm)
Evaluation Team meetings	23 September 2021 12 October 2021 2 December 2021

	1 February 2022
	4 February 2022
Proponent presentations	28 October 2021
Proponent clarification meeting	15 December 2021
Recommendation Report finalised	10 February 2022

2 CONCLUSION

Based upon our work performed and detailed in this report, no issues of a probity nature have come to our attention that would lead us to conclude that the process followed by Woollahra Municipal Council for the Cross Street Car Park - Request for Detailed Proposal project has not been conducted in a fair and equitable manner with due regard to probity.

3 SCOPE AND METHODOLOGY

3.1 Probity Advisor's Role

3.1.1 Role of Probity Advisor

Attachment A provides a detailed description of the role of the probity advisor as well as a definition of probity, taken from relevant publications of the ICAC. In short, a probity advisor is engaged to observe, review and provide guidance on the integrity of procedures and processes, focusing on the means, rather than the ends, of the project in question.

3.1.2 Probity Fundamentals

In undertaking the probity advisory role, Procure has had regard to the “probity fundamentals” identified by the ICAC. These probity fundamentals are:

- + Maintaining accountability and transparency;
- + Maintaining impartiality;
- + Managing conflicts of interest;
- + Maintaining confidentiality; and
- + Obtaining value for money.

Further detail describing these probity fundamentals is included in Attachment A.

Section 4 of this report outlines our work performed to monitor the application of the probity fundamentals.

3.2 Scope of Work

Procure was engaged in June 2021 by Woollahra Municipal Council to act as probity advisor in regard to the Cross Street Car Park - Request for Detailed Proposal. In accordance with our proposal, our scope of work included the following:

- + Review tender documentation, procurement plan and evaluation plan including evaluation criteria;
- + Prepare probity plan for the RFDP;
- + Review management of declared conflicts of interest and confidentiality management;
- + Attendance at proposed individual workshops with shortlisted proponents;
- + Attend evaluation team meetings;
- + Provide ad-hoc probity advice throughout the RFDP phase;
- + Review communications with proponents including addenda and clarifications;
- + Attend evaluation period meetings with proponents (clarifications, presentations and negotiations);
- + Review tender evaluation findings and recommendations; and
- + Draft and finalise a probity report for the RFDP phase.

3.3 General Approach Taken

In providing the above services, Procure has employed a range of approaches, including:

- + Consideration of relevant local government procurement guidelines;
- + Review of and input into relevant project documentation to maintain accountability and transparency;
- + Observation of key meetings, activities and processes; and
- + Discussions with relevant representatives of the project team and provision of advice on issues arising.

4 WORK PERFORMED & OBSERVATIONS

4.1 Maintaining Accountability and Transparency

In advising and monitoring the process in relation to *Maintaining Accountability and Transparency*, Procure has undertaken the following tasks:

- + Reviewed the RFDP document and noted that the evaluation criteria and submission requirements were appropriately documented.
- + Noted that the RFDP document (Annexure 2) stated that a probity advisor would be appointed as an independent observer of the processes and procedures contemplated by the RFDP. Proponents were advised that, should they have any concerns in relation to the probity of the RFDP process, then the RFDP Contact Person will arrange referral of the matter to Council's probity advisor. Procure has not had any probity issues or concerns referred to it in relation to the RFDP process.
- + Noted that the RFDP document included the weighting that would be applied to each criterion. Disclosing this information increases the transparency of the decision-making process.
- + Confirmed that an Evaluation & Probity Plan was prepared to describe the evaluation methodology to be followed by the Evaluation Team and to address the probity related aspects of the procurement process. The Evaluation & Probity Plan was developed by the Chair of the Evaluation Team with the assistance of Procure and was approved by each member of the Evaluation Team on or before 1 September 2021. The Evaluation & Probity Plan included the following:
 - o Purpose and objective of the plan;
 - o Evaluation Team membership and responsibilities;
 - o Responsibilities of the financial advisor and probity advisor;
 - o ICAC probity fundamentals to be addressed;
 - o Evaluation Team conduct guidelines;
 - o Confidentiality management requirements;
 - o Conflict of interest management requirements;
 - o Record keeping requirements;
 - o Guidelines for communication with proponents; and
 - o Evaluation methodology and weightings to be applied to evaluation criteria.
- + Noted that evaluation scoresheets were prepared that aligned with the evaluation criteria and weightings outlined in the RFDP document. The scoresheets included a scoring scale of 0-4, with a description of each score provided (for example, a score of 2 was "Average" and a score of 4 was "Superior"). These scoresheets were used by the Evaluation Team in its assessment of each RFDP submission.
- + Noted from review of the Council's Tender Portal Activity Report that each RFDP was received prior to the closing time and date of 2:00pm on 3 September 2021.
- + Noted that membership of the Evaluation Team was in accord with the Evaluation & Probity Plan and comprised persons that appeared to have appropriate skill and experience to conduct the evaluation.
- + Observed that the evaluation criteria included in the scoring worksheets and used in the assessment of proposals was in accord with the Evaluation & Probity Plan and RFDP documentation.
- + Observed that, at the Evaluation Team meeting held on 23 September 2021, the financial advisor presented his initial draft report. At this meeting and the subsequent meeting held on 12 October 2021, the Evaluation Team agreed that certain clarifications questions would need to be asked of the proponents before scoring and ranking could be undertaken.


- [REDACTED]
- + Attended a clarification meeting held with one proponent on 15 December 2021. The meeting was held to clarify whether the proponent would be open to a restructuring of the financial offer to rebalance the payment stream between upfront payments to Council and ongoing annuity payments. At the commencement of this meeting, Procure advised the proponent that it was not an opportunity to improve its overall financial offer. The proponent advised that it would not consider a restructuring of its financial offer.

- [REDACTED]
- + Observed that, at the Evaluation Team meeting held on 1 February 2022, consensus scoring was undertaken by the Evaluation Team [REDACTED]. Each member had undertaken his or her own individual review and scoring before participating in the consensus scoring discussion. The Evaluation Team agreed preliminary consensus scores for each criterion, however identified further clarifications that would be required from 2 proponents before consensus scoring and ranking could be finalised.
 - + Attended the Evaluation Team meeting held on 4 February 2022 at which clarifications responses from 2 proponents were considered. Based on these responses, the Evaluation Team agreed some adjustments to the preliminary consensus scores for each criterion. The Evaluation Team agreed that it would request CBRE to undertake some further financial analysis in relation to the 2 top ranked proponents before scoring and ranking could be finalised.
 - + Noted from discussions with the Development Manager – Strategic Properties (the Chair of the Evaluation Team) that, following receipt of the additional financial analysis referred to in the paragraph above, the Evaluation Team held an additional meeting on 4 February 2022 to consider the impacts of this analysis on scoring. Procure was not in attendance at this meeting. Procure has been advised that the Evaluation Team agreed some further adjustments to scores which resulted in 2 proponents achieving the same overall weighted scores. Procure has further been advised that, at this second meeting held on 4 February 2022, the Evaluation Team agreed a preferred proponent for recommendation to Council based on the key objectives relating to project vision and concept plan. Noted that a detailed rationale for this recommendation is included in the Recommendation Report.
 - + Reviewed the Recommendation Report prepared by the Evaluation Team and confirmed that it accurately reflected the evaluation process followed and conclusions of the Evaluation Team. The Recommendation Report has been reviewed by each member of the Evaluation Team.
 - + Reviewed the detailed scoring spreadsheet maintained by the Evaluation Team. No errors were noted.
 - + Confirmed by observation of the Evaluation Team meetings, discussions with the Chair of the Evaluation Team and review of evaluation documentation, that the Evaluation & Probity Plan has been followed in all material respects.

4.2 Maintaining Impartiality

In advising and monitoring the process in relation to *Maintaining Impartiality*, Procure has undertaken the following tasks:

- + Noted that all proponents were offered the opportunity to attend 2 interactive workshops during the RFDP process. These workshops were intended to maximise alignment of proposals submitted with Council's project objectives.

- + Attended the interactive workshops with all proponents and observed that each proponent was treated in a like manner and provided with the same amount of time and opportunity to interact with the project team (noting that 2 proponents decided not to accept the offer of a second interactive workshop). Noted that the interactive workshops were run in accordance with the '*Interactive Workshop Probity Protocol*' document that was provided to each proponent prior to the commencement of the workshops. The '*Interactive Workshop Probity Protocol*' applied the following principles to the interactive process:
 - o Equal opportunity for the proponents to interact with, and have access to, Council representatives and advisors;
 - o Similar access to information in relation to the project and Council's preferences;
 - o Commercial in confidence information shared by proponents not to be shared with other proponents; and
 - o Each proponent reminded that it must form its own view on how to incorporate any feedback provided by Council.
- + Assisted Council by preparing detailed minutes of each interactive workshop.
- + Attended Evaluation Team meetings held on 23 September 2021, 12 October 2021, 2 December 2021, 1 February 2022 and 4 February 2022. Noted that all members of the Evaluation Team were in attendance at each meeting. At each meeting, Procure observed robust and appropriate discussion and consideration of relevant issues and noted that the process afforded fair and equitable treatment to all proponents.
- +  Attended the proponent presentations and observed that all proponents were treated in a like manner and were provided with the same time and opportunity to present.
- + Confirmed that each proponent was assessed against the same evaluation criteria. These criteria were those included in the RFDP documentation issued to proponents. Observed that each member of the Evaluation Team was present when scoring of proposals was discussed and agreed and the recommendation was confirmed (with the Chair of the Evaluation Team confirming that all members of the Evaluation Team were present at the final meeting held on 4 February 2022, at which Procure was not present).
- + Observed the evaluation process and confirmed that the process afforded fair and equitable treatment of proponents, in accordance with the Evaluation & Probity Plan.
- + Noted that, at the conclusion of the evaluation process, each Evaluation Team member has confirmed that:
 - o They have had sufficient time and information to complete the assessment;
 - o They have followed the methodology in the Evaluation & Probity Plan in all material respects; and
 - o They are not aware of any unresolved probity issues.

4.3 Managing Conflicts of Interest

In advising and monitoring the process in relation to *Managing Conflicts of Interest*, Procure undertook the following tasks:

- + Noted that the Evaluation & Probity Plan included the requirement for all members of the Evaluation Team to disclose in writing any interest that they, or any member of their family, or any close friends and relationships, hold or are offered, which may be perceived to conflict with their obligations of confidentiality and probity.
- + Confirmed by review of documentation that each Evaluation Team member (including the financial advisor) has signed a project specific conflict of interest declaration. No conflicts were declared.
- + Confirmed at each Evaluation Team meeting that no member had any associations or interest that could be considered to represent a conflict of interest.
- + Noted that, at the conclusion of the evaluation process, each Evaluation Team member has confirmed in writing that they are not aware of any conflicts of interest.

4.4 Maintaining Confidentiality

In advising and monitoring the process in relation to *Maintaining Confidentiality*, Procure has undertaken the following tasks:

- + Noted that the Evaluation & Probity Plan included the requirement for all members of the Evaluation Team to maintain the confidentiality of all project related information including the contents of proposals and evaluation scoresheets and records. Furthermore, the '*Interactive Workshop Probity Protocol*' advised the proponents that the idea of one proponent would not be disclosed to other proponents. Observed at the interactive workshops that this confidentiality requirement commitment was adhered to by the Evaluation Team members.
- + Confirmed with the Development Manager – Strategic Properties that, in order to maintain confidentiality, all project related documentation was stored in a restricted access folder within HPE Content Manager (Council's document management system).
- + Noted that information relating to one proponent's previously submitted scheme (which was the chosen scheme from a prior process that was ultimately terminated) was removed from Council's website to ensure that the relevant proponent's ideas and solutions would not be visible to other proponents. Noted that this step was undertaken in response to a query raised at an interactive workshop by the relevant proponent in relation to the way Council was managing confidential project information.
- + Noted that, at the conclusion of the evaluation process, each Evaluation Team member has confirmed in writing that they are not aware of any breach of confidentiality.
- + Noted that no breach of confidentiality has been brought to the attention of the probity advisor.

4.5 Obtaining Value for Money

In advising and monitoring the process in relation to *Obtaining Value for Money*, Procure has undertaken the following tasks:

- + Noted that one of the key objectives of Council for redevelopment of the Cross Street Car Park was to achieve value for money and a long-term financial return to Council. This objective was advised to proponents in section 3.1 of the RFDP document.
- + Noted that the RFDP evaluation criteria, including commercial and non-commercial elements, were devised to identify the proponent most likely to provide optimal value for money, with the non-price criteria weighted at 60% of the overall score and the '*Commercial Offer*' criteria weighted at 40% of the overall score.
- + Noted that a detailed financial report was prepared by Council's financial advisor to the process, CBRE, setting out the key strengths and weaknesses of the proponents' financial offers. Noted that CBRE attended each Evaluation Team meeting and provided clear, useful and considered advice to the Evaluation Team in relation to various aspects of the financial offers.
- + Noted that 2 proponents received the same overall weighted score following consensus scoring of all criteria. As described in the Recommendation Report, the Evaluation Team selected a preferred proponent with the greatest number of strengths in relation to overall concept plan and Council's objectives. Noted that the price offered by the recommended preferred proponent was marginally lower than the price offered by the 2nd ranked proponent. The Evaluation Team concluded that the superiority of the non-price offer resulted in this proposal offering best value for money given the strength of its project vision and concept plan.

Attachment A – Key Terms & Definitions

Key Terms	Definition
Probity Advisor	<p>In its publication <i>Probity and Probity Advising</i> (November 2005) the ICAC describes a probity advisor as:</p> <p><i>“an individual or organisation engaged to observe, review and provide guidance on the probity framework and/or processes of a project. Agencies use internal or external probity advisors to verify that the processes followed are consistent with government regulations, policies, guidelines and best practice principles. A probity advisor provides opinions and guidance on probity risks and issues that may arise during the process and confirms, in writing, whether the concluded process is consistent with the requirements outlined in a probity plan as well as general probity fundamentals. If probity requirements are not being or have not been met, the advisor identifies the non-conformities and any reasons for these in a written report, and if necessary, suggests solutions and monitors their implementation.”</i></p>
Probity	<p>Probity may be defined as: “<i>integrity, uprightness, honesty</i>” (Macquarie Dictionary). Within the public sector, the word “probity” is often used in a general sense to refer to an “appropriate process”. Government seeks to conduct its commercial dealings with integrity. Public officials (and their advisors) must be able to demonstrate high standards of probity while pursuing the stated project objectives.</p>
Maintaining Accountability & Transparency	<p>Public sector accountability requirements are intended to save money, resources and time in the long term and prevent corruption, maladministration and substantial waste of public resources. All persons with responsibilities in relation to a project should be accountable for their actions associated with the project. All key activities and decision-making associated with the project should be recorded.</p> <p>Transparency helps ensure that a process is conducted with integrity, thus enhancing competition and the delivery of value for money, as well as reducing opportunities for corruption, maladministration and substantial waste of public money. An evaluation process should be applied consistently and conducted in accordance with an appropriate methodology. Processes should be well documented and reviewable.</p>
Maintaining Impartiality	<p>Individuals and organisations involved in preparing and submitting proposals for large public sector contracts often invest considerable time, effort and resources in doing so. In return, they are entitled to expect impartial treatment at every stage of the process. If they do not consider the process to be impartial and honest, they may withhold valuable ideas or be deterred from bidding in the future. Any form of bias, whether driven by personal interests or not, could jeopardise the integrity of the project.</p>
Managing Conflicts of Interest	<p>Conflicts of interest arise when there is a conflict between a public official’s public duty and private interests, where those private interests could improperly influence the performance of their official duties and responsibilities. Advisors and other consultants working on the project must comply with public sector conflict of interest requirements. Failure to declare and/or effectively manage conflicts of interest can damage the integrity of the project, therefore eroding public or market confidence in the outcomes. Inadequate systems for identifying and dealing with conflicts of interest provide opportunities for corruption, maladministration and serious waste of public resources.</p>
Maintaining Confidentiality	<p>Accountability and transparency are fundamental to the work of public sector organisations and public officials. However, there is some information that needs to be kept confidential, at least for a specified period of time, in order to protect the integrity of a process and give private sector participants the confidence to do business with</p>

	government. This information can include the content of proposals, intellectual property and pricing and profit structures. Importantly, much of the information relating to a project needs to be kept confidential up to the point where a contract is signed.
Obtaining Value for Money	<p>Value for money is achieved by fostering an open competitive environment in which private sector participants can make attractive, innovative proposals with the confidence that they will be assessed on their merits. Lapses in probity often end with one or more parties obtaining unreasonable financial gains at the expense of the public interest.</p> <p>Value for money does not necessarily mean lowest price. Agencies need to consider non-price elements of proposals (including risk) and devise criteria that allow them to be evaluated.</p>