



# CITY OF PORT PHILLIP

Probity Audit Report

Waste and Recycling Collection Services Contract Procurement

12 March 2024

---

## CONTENTS

1.	EXECUTIVE SUMMARY .....	2
1.1	Background and Introduction .....	2
1.2	Summary of Findings.....	2
2.	OUR TERMS OF REFERENCE.....	3
3.	REPORT SCOPE.....	3
3.1	Out of Scope .....	3
4.	RSM PROBITY AUDIT APPROACH.....	3
4.1	Responsibility for compliance with Probity Requirements .....	3
4.2	Probity Auditors responsibilities.....	3
4.3	Reliance on Probity Advisor’s Reports.....	4
4.4	Probity Audit Procedures .....	4
4.5	Materiality .....	4
4.6	Inherent Limitations .....	4
5.	PROBITY OVERVIEW .....	5
5.1	Probity Requirements .....	5
5.2	Probity Audit Activities .....	5
6.	DOCUMENTS REVIEWED BY PROBITY AUDITOR.....	5
7.	COMPLIANCE WITH PROBITY PRINCIPLES.....	6
7.1	Compliance with the legal and policy framework applying to procurement decisions.....	6
7.2	Effective Competition.....	8
7.3	Fairness and Impartiality.....	8
7.4	Consistent and Transparent processes.....	9
7.5	Identification and management of conflicts of interest.....	9
7.6	Appropriate security and confidentiality arrangements.....	11
8.	SUMMARY OF PROBITY PRINCIPLES FINDINGS .....	12
9.	QUALIFIED OPINION .....	12
10.	DISCLAIMER.....	12
11.	INDEPENDENCE.....	13
12.	GENERAL .....	13

# 1. EXECUTIVE SUMMARY

## 1.1 Background and Introduction

The City of Port Phillip ('Council') adopted a Council Plan in June 2021, which included a strategic direction to revitalise and restructure their waste management and recycling services and to contemporise the scope of their current contract. Council's Don't Waste it! Strategy was revised with updates made to waste reduction targets, landfill diversion targets, contamination targets, recycling targets and community satisfaction targets to align with Recycling Victoria's requirements and contribute to sustainability targets.

The Request for Tender ('RFT') to identify a supplier(s) for the procurement of a Waste and Recycling Collections (the 'Project'), was released to the open market on 30 April 2022. Respondents were invited to submit a response for one (1) of three (3) options, as follows:

- Option A – Kerbside services (waste and recycling); or
- Option B – Hard Waste services (hard waste and dumped rubbish); or
- Option C – Kerbside and Hard Waste (Option A and B combined).

RFT responses were received from the following four (4) Respondents, prior to the closing date and time on 14 June 2022. All responses were found to be complaint and progressed to detailed evaluation:

- 
- 
- 
- 

The RFT provided Council with the option to appoint one or two contractors (that is one contractor for each of Options A and B or one contractor for Option C) dependent upon the evaluation outcome. Following evaluation, the Tender Evaluation Panel ('TEP') recommended that Council split the collections service into two contracts, and award:

- Option A – Kerbside Services (incl. FOGO (communal and kerbside) and communal glass to Citywide; and
- Option B – Hard Waste Services (incl. hard waste bookings and dumped rubbish response) to FSW.

## 1.2 Summary of Findings

During our probity audit, we identified instances where the Project had adhered to the specified probity requirements. The below table outlines the key findings identified for each probity principle and a probity risk rating to indicate the materiality of the finding:

Probity Principle	Probity Findings
Compliance with the legal and policy framework applying to procurement decisions	<b>Finding #1 (Significant):</b> Lack of adequate documentation to confirm accountability in decision making
Use of an appropriately competitive process	None
Fairness and impartiality	None
Consistency and transparency of process	<b>Finding #2 (Significant):</b> Lack of adequate documentation to confirm consistency and transparency of process
Identification and management of conflicts of interest	<b>Finding #3 (Significant):</b> Lack of evidence to confirm conflicts of interest were formally declared, reviewed and assessed in line with Council requirements
Appropriate security and confidentiality arrangements	<b>Finding #4 (Significant):</b> Lack of evidence to validate the security arrangements

In considering the material nature of the findings identified, we are of the opinion that the Project has not met the expected probity standards in the areas outline above. Detailed observations and findings for each probity principle have been set out in **Section 7**.

---

## 2. OUR TERMS OF REFERENCE

In accordance with our terms of reference, RSM Australia ('RSM') have been engaged to perform a probity audit report on the RFT process for the procurement of a Waste and Recycling Collections Supplier, as noted above. This has included performing a probity audit to confirm adherence and compliance with Council's Procurement Policy, the Probity / Tender Evaluation Plan ('TEPP') and other Project documents and processes, as listed in Section 7 of the report.

## 3. REPORT SCOPE

This report considers the general probity requirements for the Waste and Recycling Collection Services Contract procurement process, from the approval to release the RFT through to approval of the Tender Evaluation Report.

The scope of this report includes:

- Relevant Policies and Procedures;
- Documents reviewed by the Probity Advisor;
- Reports prepared by the Probity Advisor; and
- Assessment of compliance with the probity principles; and
- Compliance with the legal and policy framework, as it relates to probity.

### 3.1 Out of Scope

Our work was limited to the performance of a probity audit as defined by the above scope and explicitly excludes the validation of findings, recommendations and advice being made by any other source. RSM has not validated nor formed a view on the adequacy of the data within the specifications released to market, nor the technical and non-technical, commercial or financial conclusions arising from the evaluation process.

Our independent probity audit work has been performed on a sample basis and therefore our opinion is based on the results of that sample testing. Our opinions are based on, amongst other work performed, sample testing of the processes conducted by Council and its Consultants where appropriate and interviews with key stakeholders.

## 4. RSM PROBITY AUDIT APPROACH

### 4.1 Responsibility for compliance with Probity Requirements

Council is responsible for ensuring compliance with the Probity Principles to ensure the probity of the Project. This responsibility includes the implementation and maintenance of adequate probity controls to prevent and detect instances of non-compliance.

To this end, a Probity Advisor was appointed to the Project, engaged to provide independent advice as requested during the process to ensure the adopted processes are developed, managed and completed according to relevant policies and documented procedures, and that the adopted processes are consistent with Council probity requirements.

### 4.2 Probity Auditors responsibilities

This report has been prepared at the request of the Council. We disclaim any assumption of responsibility for any reliance on this report to any party other than Council or for any purpose other than which it was prepared.

Our responsibility is to express an opinion on whether Council has complied, in all material respects, with the Probity Principles, Procurement Policy and TEPP. Our probity audit has been conducted in accordance with applicable Standards on *Assurance Engagements ASAE 3100 Compliance Engagements*, issued by the Auditing and Assurance Standards Board.

ASAE 3100 requires that we plan and perform our procedures to obtain reasonable assurance about whether, Council has complied, in all material respects, with the Probity Principles and processes noted above in the Report Scope throughout the specified period (17 January 2022 - 19 October 2022).

---

An assurance engagement to report on Council's compliance with the Probity Principles and processes noted above in the Report Scope involves performing procedures to obtain evidence about the compliance activity and controls implemented to meet the Probity Principles and processes. The procedures selected depend on our judgement, including the identification and assessment of risks of material non-compliance with the Probity Principles and processes.

### 4.3 Reliance on Probity Advisor's Reports

In conducting the probity audit, we have taken into consideration the:

- Probity Advisor's Report dated 13 October 2022.

Reliance on the Probity Advisor's report is considered acceptable given the Probity Advisor's expertise and experience in delivering like engagements. The reliance taken is in accordance with the Australian Auditing Standard *ASA 500 Using the Work of a Management Expert*.

Whilst we are able to place reliance of the Probity Advisor's Report, with respect to the activities performed, our report is not confirmation that the Probity Advisor's conclusions are either appropriate or inappropriate / satisfactory or unsatisfactory, based on the processes we have audited, and the findings identified.

### 4.4 Probity Audit Procedures

A probity audit involves performing procedures to obtain audit evidence about compliance with the Probity Principles. The procedures selected depend on our judgement, including the evaluation of the risks of material non-compliance with the Probity Principles, whether due to fraud or error. In making these risk evaluations, we considered internal controls relevant to compliance with the Probity Principles, to design audit procedures that are appropriate in the circumstances. The audit included evaluating the appropriateness of any significant interpretations used.

Our probity audit has been conducted in accordance with the "RSM Probity Audit Approach". Our approach has been designed on the assumption that Council has applied its own probity control procedures contemplated in maintaining compliance with the Procurement Policy and TEPP in a true and accurate manner.

In reviewing the Project's systems, processes, and procedures, we have examined compliance against, or considered the adequacy of, probity controls to address the requirements of the Probity Principles.

We believe the audit evidence we have gathered is sufficient and appropriate to provide a basis for our conclusion.

### 4.5 Materiality

We considered materiality when determining the nature, timing and extent of our procedures and evaluating the effect of identified instances of non-compliance or control weaknesses on our conclusion. Materiality is addressed in the context of the Probity Principle relevant to the area of activity being examined and whether the internal controls will reduce risks that threaten compliance with the Probity Principles to an acceptably low level.

When assessing materiality, we considered qualitative factors as well as quantitative factors, for example:

- Purpose of the engagement and specific requirements of the terms of the engagement;
- Importance of an identified probity control weakness or probity risk regarding the Probity Principle;
- Stakeholders' perceptions and/or interest in the area of activity;
- Impact on the Probity Principles;
- Length of time an identified control weakness was in existence; and
- Frequency and severity of probity control weaknesses identified in previous or related probity audits.

### 4.6 Inherent Limitations

As part of our work, we were not required to search for irregularities, including fraud and other illegal acts and our probity audit should not be relied upon to disclose them. However, if we found any, we would report them to you. No such findings have been made during the probity audit.

---

Because of the inherent limitations of an assurance engagement, together with the internal control structure it is possible that fraud, error, or non-compliance with compliance requirements may occur and not be detected.

The audit is not totally exhaustive to detect all weaknesses in probity control procedures as it was not performed continuously throughout the period and the tests performed on the control procedures are on a sample basis. Any application of the evaluation of probity control procedures to future periods is subject to the risk that the procedures may become inadequate because of changes in conditions, or the degree of compliance with them may deteriorate.

Our opinion is based on the probity work performed, including testing on a sample basis of the Project files, relevant records of proceedings and interviews/meetings with key stakeholders.

## 5. PROBITY OVERVIEW

### 5.1 Probity Requirements

The Probity Principles, as defined in the Victorian Local Government Best Practice Procurement Guidelines 2013, are:

- Compliance with the legal and policy framework applying to procurement decisions;
- Use of an appropriately competitive process;
- Fairness and impartiality;
- Consistency and transparency of process;
- Identification and management of conflicts of interest; and
- Appropriate security and confidentiality arrangements.

### 5.2 Probity Audit Activities

The audit activities undertaken that are relevant to this report include, but are not limited to:

- Reviewing the Council Procurement Policy to confirm the defined processes / procedures to be complied with;
- Reviewing the process for approval of key project documents and decisions associated with the RFT process;
- Reviewing the process for release of the RFT documents and related materials, including responses to clarification questions, to ensure all Respondents received access to documentation at the same approximate time and using a consistent medium;
- Reviewing the communication process with Respondents, ensuring the procedures as defined in the RFT documents and other documents were followed;
- Reviewing protocols in relation to the security of Project materials ensure that they had been complied with;
- Reviewing the process for completing Conflict of Interest Declarations ('COI') Declarations and Confidentiality acknowledgements, confirming that all persons involved in the process have completed the necessary forms and that positive declarations have been reviewed and appropriate action taken;
- Reviewing the processes for ensuring Project team members understood their roles and responsibilities;
- Confirming that adequate records have been maintained to enable a probity audit to be conducted;
- Discussions with the Probity Advisor to confirm and understand their involvement in the process, meetings attended, processes carried out to review and consider positive conflict of interests and probity advice provided;
- Reviewing the conduct of the RFT evaluation to confirm it was conducted in accordance with the pre-approved evaluation processes, evaluation criteria and scoring approach defined in the RFT documents and the Tender Evaluation Plan, including review of the Evaluation Report and supporting materials; and
- Interviews/discussions with key Project stakeholders to understand the activities undertaken during the process.

## 6. DOCUMENTS REVIEWED BY PROBITY AUDITOR

The key documents we have reviewed from a probity perspective include, but are not limited to the:

- Project Idea Definition dated 17 January 2022;
- Council Procurement Policy dated 31 January 2022;

- 
- Project Business Case dated 21 February 2022;
  - Legal advice on authorisation (ACCC) dated 25 March 2022;
  - Procurement Plan dated 12 April 2022;
  - RFT000164 Tender Conditions Documentation and Addendums;
  - Probity and Tender Evaluation Plan (TEPP) dated 13 April 2022;
  - Tender Evaluation Report dated 19 October 2022 and supporting documents;
  - Probity Advisor's Report dated 13 October 2022;
  - Completed Conflict of Interest and Confidentiality Declarations;
  - TEP meeting agendas and minutes (1-8);
  - Council meeting agenda and minutes and papers dated 19 October 2022; and
  - Clarifications and correspondence issued during the tender process.

It should be noted that we reviewed various other project documents during our testing, however, as they were not deemed material to the scope of our audit, we have not identified them individually.

## 7. COMPLIANCE WITH PROBITY PRINCIPLES

Compliance with the Procurement Plan, RFT documents and TEPP as addressed against each Probity Principle is reported below.

To ascertain compliance with these documents, we performed the work set out below:

- Reviewed key Project documentation and processes;
- Reviewed and considered key Project activities – performing testing on the requirements of the Council Procurement Policy, TEPP, RFT Document and Tender Evaluation Report to confirm application of the probity protocols derived from the Probity Principles; and
- Held discussions with project members and stakeholders, including the Probity Advisor.

### 7.1 Compliance with the legal and policy framework applying to procurement decisions

The Victorian Local Government Best Practice Procurement Guidelines 2013, states that compliance with the framework set out in *Section 186 of the Local Government Act 1989 - Legal framework* and the policy framework, as set out in Section 3.11 Procurement Policy is central to the probity of the procurement process.

*The Local Government Act 2020 (Vic) ('2020 Act')* progressively repealed over 400 provisions in the Local Government Act 1989 (Vic) ('1989 Act'). Section 186 of the 1989 Act required councils to seek public tenders or expressions of interest (EOIs) where the estimated value of works and services exceeded certain financial thresholds was repealed on 1 July 2021.

Sections 108 and 109 of the 2020 Act established a new framework for councils procuring works and services:

- Section 108 requires councils to prepare and adopt a procurement policy. These policies must specify the principles and processes applying for the purchase of goods and services. Amongst other things, procurement policies must promote open and fair competition and provide value for money.
- Section 109 requires each council to comply with its procurement policy and for Chief Executive Officers to ensure that any report to council recommending entering into a procurement agreement also considers opportunities for collaboration with other councils or public bodies.

We noted that:

- Council has developed a Procurement Policy, which identifies the guiding principles and processes for purchase of goods and services;
- Council sought collaborative procurement opportunities with the M9 group of Councils. The collaborative procurement was abandoned due to ACCC authorisation requirements and associated timeframes under the Competition and Consumer Act 2010, which would have delayed in commencing the new contract by the required time;

- In accordance with Council's Procurement Policy:
  - A public tender process was conducted;
  - A TEPP was developed, as required for all high value and/or high risk procurements;
  - The contract manager was not a scoring member of the TEP;
  - The evaluation criteria were established prior to the request of tenders, with the evaluation criteria listed in order of importance in the RFT documentation;
  - Corporate Social Responsibility, Environmental Management and Occupational Health and Safety formed part of the criteria; and
  - Financial delegation limits were complied with, with the recommendation going to Council for approval.

### 7.1.1 Accountability

Accountability involves aligning decision-making processes with the appropriate delegated authority, whilst maintaining appropriate records to enable an audit of the Project. Council staff are responsible for the actions and decisions they take in relation to procurement and for the resulting outcomes. Staff are answerable for such activities through established lines of accountability and delegation, and ultimately to the Chief Executive Officer (CEO).

We noted that:

- A Project Idea Definition was developed and approved, prior to commencement of the tender;
- A Project Business Case was developed and approved, prior to commencement of the tender;
- A Project Control Group ('PCG') was established to provide governance over the procurement and establishment of kerbside contracts at Council. A Terms of Reference was developed that detailed the scope of the PCG, which included providing feedback on and approving project documentation. The Project Sponsor was a member of the PCG, with the Project Sponsor accountable for the project/s within the PCG project group;
- The Procurement Plan was signed by all members of the TEP and approved by the Executive Manager Construction Contracts and Operations, Acting Head of Operations and Head of Procurement, Contracts & Fleet on 12 April 2022;
- The TEPP was approved by all TEP members on 13 April 2022, prior to commencement of evaluation activities;
- The Project Sponsor reviewed the Approach to Market materials, with CEO approval received on 21 April 2022;
- All members of the TEP endorsed the Tender Evaluation Report, dated 19 October 2022; and
- The Tender Evaluation Report was presented to and approved by Council on 19 October 2022.

#### **Significant Finding #1: Lack of adequate documentation to confirm accountability in decision making**

Section 2 of the Victorian Local Government Best Practice Procurement Guidelines 2013, states that:

*"The test of accountability is that an independent third party must be able to see clearly that a process has been followed and that the process is fair and reasonable. Every step of the process must be properly documented. Record keeping is also paramount. There must be a sufficient audit trail to account for all procurement decisions."*

The City of Port Phillip Procurement Policy, further requirements that:

*"An audit trail must be kept for all procurement activities that shows clearly that a process has been undertaken and that the process is fair, transparent and reasonable."*

and

*"The results of the Tender Evaluation and demonstration of the robustness of the process must be documented in a Tender Evaluation Report..."*

#### **Probity Finding**

During the conduct of our probity audit, we identified that:

- The Tender Evaluation Report provided to the Councillors, in the meeting held on 19 October 2022, was not the final signed version and did not include all relevant attachments including the reference checks for Citywide and FSW, or the Probity Advisor Report which included the disclosure of a conflict of interest;
- The signed Tender Evaluation Report dated 19 October 2023:
  - Included generalised statements regarding the recommended tenderers (collectively), for example:

*"...the recommended tenderers' ratings and evaluations are underpinned by the following observations:  
a) provided details of their previous experience and track record of delivery of similar services, including information regarding their ability to meet client expectations;*



*b) provided details of their understanding of regulative and legislative compliance”*

- Does not detail the extent to which each Tenderer has addressed the Evaluation Criteria and the identified strengths, weaknesses or risks of each Tender response;
- Does not detail the agreed scores that each Tenderer received against each Evaluation Criteria, only the overall weighted score for each Tender;
- Included a summary of the reference checked performed of FSW. However, does not detail the findings from the reference check performed of Citywide on 14 October 2023, which was included as an attachment; and
- It is unclear who was responsible for approving responses to questions raised by potential Respondents, for example the decision not to grant a 2-week extension to Respondents.

Noting the significance of the finding identified, we believe there has been a material compromise to the probity principle regarding compliance with the legal and policy framework applying to procurement decisions.

## 7.2 Effective Competition

The objective of the competitive process principle is to maximise the participation of suitably qualified and legitimate Respondents, to maximise the opportunity to obtain value for money. Councils should be careful not to erect barriers to competitive processes. A competitive process must be accompanied with safeguards as to supplier conduct, including a clear set of supplier behaviour expectations and the associated consequences for non-compliance.

We noted that:

- The opportunity was publicly advertised in The Age on 30 April 2022 and on Council’s website;
- The RFT Document terms and conditions issued were made known to all Respondents, detailing:
  - The requirements of the process;
  - The expectations for tenderer behaviour;
  - The protocol for raising clarification questions;
  - The process for participating the pre-tender briefing;
  - Important dates and closing deadlines for the tender;
  - The process for lodgement of tenders and treatment of late tenders;
  - The assessment of mandatory (pass/fail) and weighted evaluation criteria; and
- Four (4) conforming responses were received from the market, prior to the closing time on 14 June 2022.

No probity findings were identified during our engagement, and we are satisfied with compliance with the principle of effective competition.

## 7.3 Fairness and Impartiality

The principle of fairness and impartiality requires that all potential or actual Respondents are treated in a fair and equitable manner, being provided the same opportunity to access information and avoiding preferential treatment. Procedures for controlling and monitoring the flow of information should be established before a tender process commences. Procedures should be put in place to ensure that each tender is given fair and equal consideration.

We noted that:

- Processes for distributing information to Respondents were established;
- All RFT documents were made available for download electronically via TenderLink. This platform was used to communicate with Respondents, including receiving and responding to clarification questions, issuing of addendums and receiving of the tender responses. It is an inherent feature within this platform that users are notified at the same time, when materials are uploaded;
- All Respondents were provided the opportunity to attend a non-mandatory pre-tender briefing with Council, held on 11 May 2022. A copy of the tender briefing was made available to Respondents unable to attend;
- All Respondents were provided the opportunity to raise clarification questions prior to submission of their RFT response, with questions and answers deemed non-commercial in confidence provided to all Respondents; and
- All Respondents adhered to the closing time on 14 June 2022.

---

No probity findings were identified during our engagement, and we are satisfied with compliance with the principle of fairness and impartiality.

#### 7.4 Consistent and Transparent processes

The principles of consistency and transparency require the evaluation to be conducted in a transparent and substantially consistent manner, with a documented process made available to all Respondents and responses assessed in a systematic and comprehensive way against pre-determined evaluation criteria.

We noted that:

- The terms and conditions of the RFT process were made known the RFT Document;
- A TEPP was established with evaluation criteria consistent with that identified in the RFT Document;
- A TEP was established and were responsible for evaluating responses in accordance with the approved TEPP;
- Members of a Technical Reference Group members were available to support the TEP, who could be called upon, as required, to provide specific advice or assessment;
- The Tender Evaluation Report and supporting documents demonstrate that the evaluation criteria applied throughout the evaluation process was consistent with what was communicated to the market; and
- The Probity Advisor attended most key meetings of the TEP and has not raised any concerns in their Report dated 13 October 2022.

##### **Observation #1: Consideration of Tenderer risks**

RSM is of the view that, whilst the scoring of evaluation criteria should be based on the RFT responses and information contained therein, where a RFT response is inconsistent with the TEP members knowledge and/or experience, this should be noted as a risk and validated further, through clarifications or reference checks. This is consistent with the evaluation processes outlined in the RFT Document which states that *“The Council will have regard to the report prepared by the TEP and any other factors which it considers relevant”*. This is further supported in the TEPP, which indicates *“The TEP will review all risks associated with the preferred tenderers before proceeding with their final recommendation”*.

We note that:

- No performance or delivery risks/concerns were raised in the Tender Evaluation Report; and
- There do not appear to have been any clarifications raised regarding performance or delivery risks/concerns that were captured in the reference checks.

##### **Significant Finding #2: Lack of adequate documentation to confirm consistency and transparency of process**

Further to the finding noted above in Section 7.1.1, which we consider has a direct impact on this probity principle, RSM has been unable to validate the Evaluation Criteria scoring was applied in a consistent and transparent manner, due to inadequate supporting data and a lack of detailed information/commentary specific to each Respondent on how the scores were arrived at.

Noting the significance of the finding, we believe there has been a material compromise to the probity principle regarding consistent and transparent process.

#### 7.5 Identification and management of conflicts of interest

Identification and management of conflicts of interest requires that processes are adopted to identify, declare and address any actual, potential or perceived conflict of interest throughout the Project. Management of conflicts of interest requires that all actual and perceived conflicts of interest are declared and assessed for impact on the Project, and that actions are taken in relation to such conflicts to secure the integrity of the Project.

We noted that:

- The TEPP established the process for identification and management of conflicts of interests;
- All TEP members completed a Probity and Confidentiality Declaration identifying any actual, potential, or perceived conflicts of interest;

- The Probity Advisor has identified in their Report, dated 13 October 2022, the process performed to manage identified conflicts of interest and indicated that “they did not observe any impact to the probity of the process in relation to [the Panel member’s] participation” and “there were no conflicts of interest declared that impacted the ability of project team members to act without conflict”; and
- Where a Councillor identified a conflict of interest with respect to the RFT, they removed themselves from the Council meeting at the point the item was discussed, with this action captured in the Council meeting minutes dated 19 October 2022 and the City of Port Phillip Conflict of Interest Register.

### **Significant Finding #3: Identification, Management and Disclosure of Conflicts of Interest**

Section 6.2 of the TEPP requires:

*“Those involved in the evaluation process declare any actual, potential or perceived conflicts of interest and these are considered and managed as appropriate.”*

Section 5.8.3 of the Victorian Local Government Best Practice Procurement Guidelines 2013, states that:

*“Where a staff member provides advice or service to the council or a special committee (or provides advice to a meeting of council or a special committee) and has a conflict of interest in the matter, they must disclose that conflict. This could include any member of a tender/ quotation evaluation panel. It would also include preparing a report on a procurement matter (for example, recommending acceptance of a tender).”*

and

*“If a tender evaluation report (or any other advice) is to be considered by the council (or a special committee) and the staff member in the circumstance identified above has a personal or private interest of the type specified in the legislation, then that staff member has a conflict of interest which must be disclosed to the CEO as required by the Act.”*

Section 5.8.5 of the Victorian Local Government Best Practice Procurement Guidelines 2013, states that:

*“Contractors, including consultants, engaged under a contract to provide advice or service to a council or special committee (or to a meeting of the council or a special committee) – for example, as part of the procurement process – are subject to the same rules as staff and must disclose any direct or indirect interest they have in a matter.”*

The City of Port Phillip’s Governance Rules, which have made in accordance with Section 60 of the Local Government Act 2020, provide further direction around the process for Disclosure of Conflicts of Interest, with Chapter 5 requiring that:

*“6. Disclosure by Members of Council Staff Preparing Reports for Meetings*

*6.1 A member of Council staff who, in their capacity as a member of Council staff, has a conflict of interest in a matter in respect of which they are preparing or contributing to the preparation of a Report for the consideration of a:*

*6.1.1 Council meeting;*

*6.1.2 Delegated Committee meeting;*

*6.1.3 Community Asset Committee meeting*

*must, immediately upon becoming aware of the conflict of interest, provide a written notice to the Chief Executive Officer disclosing the conflict of interest and explaining the nature of the conflict of interest and indicating whether it is a general conflict of interest or a material conflict of interest.*

*6.2 The Chief Executive Officer must ensure that the Report referred to in sub-Rule 6.1 records the fact that a member of Council staff disclosed a conflict of interest in the subject-matter of the Report.*

### **Probity Finding**

During the conduct of the probity audit we identified that:

- An employee of the City of Melbourne was a voting member of the TEP;
- The TEP member was a former employee of Council, previously working within the waste and recycling team;
- The TEP member was involved in contract management activities with Citywide (at the City of Melbourne);
- Citywide is the wholly owned subsidiary of the City of Melbourne;
- The relationship City of Melbourne has with Citywide and the presence of a representative from the City of Melbourne on the TEP, was identified in the Project Business Case, approved in February 2022 (at the time Council was considering approaching the market collaboratively);
- An initial declaration was completed by the TEP member, dated 17 May 2022, where the relationship was disclosed;

- The Probity Advisor subsequently sought confirmations from the TEP member to further assess the nature of the conflict, with the TEP member responding to a number of queries, providing clarification on their role and agreeing to adhere to business-as-usual protocols as noted in the Probity Advisor's Report dated 13 October 2022; and
- The TEP member completed an External Tender Evaluation Panel Member Declaration form following receipt of tender responses, dated 17 June 2022 where the conflict was not declared. We have been advised by Council that no conflict was declared, on the basis of the discussions and arrangements put in place to manage the business-as-usual activities, as the TEP member was not considered to have a conflict of interest.

As per Section 128 of the Local Government Act 2020, the conflict of interest does not meet the definition of 'material' conflict of interest. However, RSM is of the view that a conflict of interest still existed and that, in considering the materiality of the conflict, the TEP member should not have been permitted to participate as a voting member in the TEP. If Council required expertise and input from the TEP member, then an alternative role should have been considered, for example as a member of the Technical Reference Group.

Further, in considering Council's Governance Rules, we have been unable to confirm that the conflict of interest was formally declared in writing, reviewed or assessed in line with Council's requirements, noting that:

- The Report tabled with the Councillors, at its meeting on 19 October 2022, did not disclose the above conflict; and
- The conflict was not recorded in the City of Port Phillip Conflict of Interest Register; and
- The conflict was not treated in accordance with the City of Port Phillip's required guidelines.

Noting the significance of the finding, we believe there has been a material compromise to the probity principle regarding identification and management of conflicts of interest.

## 7.6 Appropriate security and confidentiality arrangements

The principle of security and confidentiality requires processes to be adopted for receiving and managing tender and supplier information to ensure the security and confidentiality of all information including intellectual property and proprietary information of the tenderers as well as the integrity of the procurement process.

We noted that:

- Security procedures for handling RFT materials were established in the TEPP;
- RFT responses were received via Council's electronic tender system (Tenderlink);
- Members of the TEP and supporting Technical Reference Group confirmed their acceptance of the confidentiality obligations in signing of a Conflict of Interest and Confidentiality Declaration; and
- Protocols for communication with Respondents were established in the RFT Document and Evaluation Plan and adhered to, including the process surrounding Requests for Clarifications.

### **Significant Probity Finding #4: Confirmation of Security and Confidentiality Arrangements**

Section 5.9 of the Victorian Local Government Best Practice Procurement Guidelines 2013, states that:

*"Appropriate security and confidentiality measures commence with preparation of the tender documentation. The documentation should remain confidential until released to the marketplace in order to maintain fair competition.*

*From that point forward in the procurement process discussions and documentation should remain secure and confidential, particularly through the council/committee agenda preparation phase, at least until a decision on a tender is made public"*

Section 6.2 of the approved Evaluation Plan required:

*"the confidentiality of information of both Port Phillip, Melbourne and tenderers is appropriately managed, with access limited to personnel with designated roles within the evaluation process or at the direction of the TEP Chair."*

#### **Probity Finding**

Due to a lack of available data, we have been unable to confirm the security restrictions applied during the tender process.

Noting the limitation in scope identified above, we believe this to be a material compromise to the probity principle regarding appropriate security and confidentiality arrangements.

## 8. SUMMARY OF PROBITY PRINCIPLES FINDINGS

A summary of the reported probity findings against the respective Probity Principle is tabulated below.

Probity Principle	Probity Findings	Principle Met
Compliance with the legal and policy framework applying to procurement decisions	<b>Finding #1 (Significant):</b> Lack of adequate documentation to confirm accountability in decision making	No
Use of an appropriately competitive process	None	Yes
Fairness and impartiality	None	Yes
Consistency and transparency of process	<b>Finding #2 (Significant):</b> Lack of adequate documentation to confirm consistency and transparency of process	No
Identification and management of conflicts of interest	<b>Finding #3 (Significant):</b> Lack of evidence to confirm conflicts of interest were formally declared, reviewed and assessed in line with Council requirements	No
Appropriate security and confidentiality arrangements	<b>Finding #4 (Significant):</b> Lack of evidence to validate the security arrangements	No

While these are material findings, we do not consider that they compromise, in a material manner, the tender outcome. We have audited the process and documentation provided and whilst there are material absences of substantive commentary regarding the basis for the qualitative assessments, the conducted tender process and resulting evaluation recommendation appear reasonable. Note: RSM is not validating the tender decision.

### LEGEND:

	No observations noted
	Minor observations noted, no impact on the probity of the Project
	Significant findings noted that may or have impacted the probity of Project

## 9. QUALIFIED OPINION

In our opinion, except for findings and limitations in scope outlined above and reported in Sections 7 and 8, the City of Port Phillip has otherwise complied, in all material respects, with the probity principles, as set out in the Victorian Local Government Best Practice Procurement Guidelines 2013, during the period (17 January 2022 - 19 October 2022).

## 10. DISCLAIMER

Council can rely on the opinions set out in our report in accordance with the Report Scope. However, you agree to hold our Firm, its partners, and employees harmless from any liabilities, costs and expenses relating to, or arising from, this engagement (including, without limitation, legal fees and the time of our personnel involved) incurred by reason of any action we take in good faith (unless we are negligent) including but not limited to losses which are due to the provision of false, misleading or incomplete information or documentation or due to the acts or omissions of any person other than RSM.

The contents of this report are confidential. This report has been prepared solely for Council and we do not accept responsibility or liability for its use outside those terms. We understand this report may be provide to The Commercial Advisory Partnership and Salt3 and we consent to this. In accordance with our normal practice, we hereby expressly disclaim liability to any persons other than the Council.

---

Our probity audit has been conducted on Council's process and its compliance with Local Government procurement guidelines and information we have requested and relied upon, as provided by Council. This probity audit is not intended to validate or otherwise the tender outcome.

The information contained in this report may not be used or relied upon by anyone other than the Council, in any manner whatsoever, without the prior written consent of RSM.

In our capacity as probity auditor, it is not within our scope to detect fraud or carry out a fraud risk assessment. However, we have not been made aware of, noted, or discussed any such risks or matters with the Project.

The terms of this letter shall be governed by and construed in accordance with Victorian law.

## 11. INDEPENDENCE

RSM has not provided any other services, including probity advisory services to the Waste Management Recycling Collection Services Contract Procurement.

## 12. GENERAL

We would like to thank Council for their cooperation during the performance of our work.

Yours sincerely

Yours sincerely

**JAYESH KAPITAN**  
Director

**TRANQUILITY CLINTON**  
Associate Director

RSM Australia Pty Ltd is a member of the RSM network and trades as RSM.  
RSM is the trading name used by the members of the RSM network.

Each member of the RSM network is an independent accounting and consulting firm each of which practices in its own right. The RSM network is not itself a separate legal entity of any description in any jurisdiction.

The RSM network is administered by RSM International Limited, a company registered in England and Wales (company number 4040598) whose registered office is at 50 Cannon Street, 2nd Floor, London EC4N 6JJ.

The brand and trademark RSM and other intellectual property rights used by members of the network are owned by RSM International Association, an association governed by article 60 et seq of the Civil Code of Switzerland whose seat is in Zug.

© RSM International Association

**rsm.com.au**

Liability limited by a scheme approved under professional standards legislation

**THE POWER OF BEING UNDERSTOOD**  
AUDIT | TAX | CONSULTING

