

## Disclosure of Information

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### Disclosure of information concerning tenderers and outcome of the tender process

1. In accordance with the Premier's Memorandum 2007-01, the following **tender information** is required to be disclosed -

Tender Type	Level of disclosure	Basis of disclosure
For all public calls for tender, expressions of interest or other such public calls which may result in a contract with the private sector.	<p>As a minimum:</p> <ul style="list-style-type: none"> <li>• a concise description of the proposed works, goods or services the subject of the tender call;</li> <li>• the date responses to the tender call close and where responses are lodged; and</li> <li>• location of the tender call documents.</li> </ul> <p>The names and addresses of all entities which submit responses.</p>	<p>Routine public disclosure at the time tender calls are advertised.</p> <p>Routine public disclosure within 7 days of the date tender calls closed.</p>
In a multi-stage tender process.	The names and addresses of the shortlisted entities, except where such disclosure is likely to compromise the competitiveness of the subsequent tender process.	Routine public disclosure within 7 days of these entities being advised of their shortlisting.

2. In accordance with Part 3, Division 5 of the *Government Information (Public Access) Act* (NSW) (GIPA Act), the following **contract** information is required to be disclosed in the agency's government contracts register -

Contract size and type	Level of disclosure	Basis of disclosure
<p><b>Class 1 contracts</b> All government contracts with estimated value \$150,000 or above.</p>	<ol style="list-style-type: none"> <li>a) The name and business address of the contractor;</li> <li>b) Particulars of any related body corporate (within the meaning of the <i>Corporations Act 2001</i> of the Commonwealth) in respect of the contractor, or any other private sector entity in which the contractor has an interest, that will be involved in carrying out any of the contractor's obligations under the contract or will receive a benefit under the contract;</li> <li>c) The date on which the contract became effective and the duration of the contract;</li> <li>d) Particulars of the project to be undertaken, the goods or services to be provided or the real property to be leased or transferred under the contract;</li> <li>e) The estimated amount payable to the contractor under the contract;</li> </ol>	Routine public disclosure within 60 days after the contract becomes effective.

	<ul style="list-style-type: none"> <li>f) A description of any provisions under which the amount payable to the contractor may be varied;</li> <li>g) A description of any provisions with respect to the renegotiation of the contract;</li> <li>h) In the case of a contract arising from a tendering process, the method of tendering and a summary of the criteria against which the various tenders were assessed; and</li> <li>i) A description of any provisions under which it is agreed that the contractor is to receive payment for providing operational or maintenance services.</li> </ul>	
<p><b>Class 2 contracts</b> Class 1 contracts (i.e. government contracts with estimated value \$150,000 or above) which also:</p> <ul style="list-style-type: none"> <li>- have not been the subject of a tender process, the proposed contract has not been made publicly available and the terms and conditions of the contract have been negotiated directly with the contractor; or</li> <li>- have been the subject of a tender process and where the final contract terms and conditions are substantially negotiated with the successful tenderer (this includes alliance type contracts); or</li> <li>- involve operation or maintenance obligations for 10 years or longer; or</li> <li>- involve a privately financed project as defined by relevant Treasury guidelines; or</li> <li>- involve a transfer of land or other asset to a party in exchange for the transfer of land or other asset to an agency.</li> </ul>	<p>The information required for class 1 contracts and:</p> <ul style="list-style-type: none"> <li>a) Particulars of future transfers of significant assets to the State at zero, or nominal cost to the State, including the date of their proposed transfer;</li> <li>b) Particulars of future transfers of significant assets to the contractor, including the date of their proposed transfer;</li> <li>c) The results of any cost-benefit analysis of the contract conducted by the agency;</li> <li>d) The components and quantum of the public sector comparator if used;</li> <li>e) Where relevant, a summary of information used in the contractor's full base case financial model (for example, the pricing formula for tolls or usage charges);</li> <li>f) Where relevant, particulars of how risk, during the construction and operational phases of a contract to undertake a specific project (such as construction, infrastructure or property development), is to be apportioned between the parties, quantified (where practicable) in net present-value terms and specifying the major assumptions involved;</li> <li>g) Particulars as to any significant guarantees or undertakings between the parties, including any guarantees or undertakings with respect to loan agreements entered into or proposed to be entered into; and</li> <li>h) Particulars of any other key elements of the contract.</li> </ul>	<p>Routine public disclosure within 60 days after the contract becomes effective.</p>

<p><b>Class 3 contracts</b> Class 2 contracts where the estimated value of the government contract is \$5 million or more.</p>	<p>A copy of the class 3 contract.</p> <p>Note: if some or all of a class 3 contract is not disclosed for reasons of confidentiality (refer section 32 of the GIPA Act) , the agency is to disclose:</p> <ul style="list-style-type: none"> <li>• the reasons for not publishing the contract or provisions;</li> <li>• a statement as to whether the contract or provisions will be published and, if so, when; and</li> <li>• where some but not all of the provisions of the contract have been disclosed, a general description of the types of provisions that have not been published.</li> </ul>	<p>Routine public disclosure within 60 days after the contract becomes effective.</p>
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### 3. Access Applications

Tenderers must acknowledge that any person may make an application to the State Contracts Control Board for any item of contract information which is not required to be routinely disclosed in the government contracts register under Part 3, Division 5 of the GIPA Act. A person who makes an access application for government information has a legally enforceable right to be provided with access to the information unless there is an overriding public interest against disclosure of the information.

#### **Commercial-in-confidence is a public interest consideration against disclosure**

Commercial-in-confidence information means any information that discloses:

- the contractor's financing arrangements, or
- the contractor's cost structure or profit margins, or
- the contractor's full base case financial model, or
- any intellectual property in which the contractor has an interest, or
- any matter the disclosure of which would place the contractor at a substantial commercial disadvantage in relation to other contractors or potential contractors, whether at present or in the future.

Under section 14 of the GIPA Act there is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects:

- undermine competitive neutrality in connection with any functions of an agency in respect of which it competes with any person or otherwise place an agency at a competitive advantage or disadvantage in any market,
- reveal commercial-in-confidence provisions of a government contract,
- diminish the competitive commercial value of any information to any person,
- prejudice any person's legitimate business, commercial, professional or financial interests,
- prejudice the conduct, effectiveness or integrity of any research by revealing its purpose, conduct or results (whether or not commenced and whether or not completed).