

Government Information (Public Access) Act 2009

Explanatory Table - North West Rail Link

OTS Independent Certifier Deed

Capitalised terms in this table have the meaning given to them in the OTS Independent Certifier Deed unless the context indicates otherwise.

In this document a reference to the contractor is a reference to the OTS Independent Certifier.

In applying the public interest test below TfNSW has, in addition to identifying unique public interest considerations for disclosure where relevant throughout the Explanatory Table, identified the major relevant public interest considerations for disclosure using the following table as a key:

Identifier	Public interest considerations for disclosure
(a)	Promoting open discussion of public affairs, contributing to positive and informed debate on issues of public importance or otherwise encouraging public participation
(b)	Creating public awareness and understanding on issues of public importance
(c)	Enhancing government transparency and accountability
(d)	Informing the public about the operations of the agency
(e)	Ensuring effective oversight of the expenditure of public funds and the best use of public resources
(f)	Ensuring fair commercial competition within the economy

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1.	Table of Contents - redactions made to the table of contents are made for the reasons provided for the associated clause or schedule heading as set out in the table below		
2.	Definitions immediately after the definitions of 'Completion Phase Services', 'Construction Phase Services', 'Executive Negotiator', 'Final Completion Phase Services', 'Relevant Project Agreements' and 'Upper Limiting Fee' in Clause 1.1	<p>Section 32(1)(a) and definition (d) and (e) of "commercial-in-confidence provisions" (clause 1, Schedule 4) and section 32(1)(d)</p> <p>Item 4 (b), (c) and (d) of the Table to section 14</p> <p>The disclosure of this information (or the combination of this information with other information that is not included) would reveal the contractor's intellectual property and place the contractor at a substantial commercial disadvantage in relation to other contractors or potential contractors.</p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The information redacted is the entirety of the definitions, including the defined term itself.</p> <p>TfNSW considered identifiers (a), (b), (c), (e) and (f) above to be relevant public interest considerations in favour of disclosure.</p> <p>TfNSW weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <p>(a) of the reasons set out in Item 3; and</p> <p>(b) the redacted defined terms are descriptive of the redacted material. This information also carries sensitivity for the reasons described above.</p> <p>Review: This information would be reviewed for disclosure as events and circumstances change.</p>
3.	Clause 7	<p>Section 32(1)(a) and definition (d) and (e) of "commercial-in-confidence provisions" (clause 1, Schedule 4) and section 32(1)(d)</p> <p>Item 4 (b), (c) and (d) of the Table to</p>	<p>The information redacted is the entirety of the clause with the exception of the heading to that clause.</p> <p>TfNSW considered identifiers (a), (b), (c), (e) and (f) above to be relevant public interest considerations in favour of disclosure.</p> <p>TfNSW weighed the competing public interest considerations and determined</p>

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		<p>section 14</p> <p>The disclosure of this information (or the combination of this information with other information that is not included) would reveal the contractor's intellectual property and place the contractor at a substantial commercial disadvantage in relation to other contractors or potential contractors.</p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>that there was an overriding public interest against disclosure of this information because:</p> <p>(a) the redacted information, together with other information which has also been redacted, sets out a unique arrangement designed by the contractor to apportion and manage risks associated with liabilities, insurance and indemnity. The contractor invested significant time developing this arrangement and might be expected to benefit from using a similar arrangement in the future. Revealing this information is therefore expected to diminish the value of that information and prejudice the contractor's business, financial and commercial interests;</p> <p>(b) exposing the redacted material would provide insight into the apportionment of risks assumed by the contractor in relation to liabilities, insurance and indemnity and other obligations that the contractor was prepared to price and accept. Exposing this information may provide insight into the contractor's views on its potential capabilities and likelihood of certain risks arising;</p> <p>(c) revealing the contractor's appetite for risk and providing insight into its views on the likelihood of certain risks would place the contractor at a substantial commercial disadvantage in projects of a similar nature. This is expected to reduce the value of that information to the contractor and prejudice its business, commercial and financial interests; and</p> <p>(d) TfNSW considers that any public interest in favour of the disclosure of this information is not significantly advanced by the disclosure of this information and is outweighed by the public interests against disclosure identified above.</p> <p>Review: This information would be reviewed for disclosure as events and circumstances change.</p>
4.	Schedule 1, Clause 1	Section 32(1)(a) and definition (d) and (e) of "commercial-in-confidence provisions"	The redacted information is the second paragraph in clause 1 and includes paragraphs (a) and (b).

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		<p>(clause 1, Schedule 4) and section 32(1)(d)</p> <p>Item 4 (b), (c) and (d) of the Table to section 14</p> <p>The disclosure of this information (or the combination of this information with other information that is not included) would reveal the contractor's intellectual property and place the contractor at a substantial commercial disadvantage in relation to other contractors or potential contractors.</p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>TfNSW considered identifiers (a), (b), (c), (e) and (f) above to be relevant public interest considerations in favour of disclosure.</p> <p>TfNSW weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <p>(a) the masked information incorporates references to a novel arrangement concerning the methods by which Services can be provided. Significant investment was made in the development and refinement of this arrangement. The mechanism therefore contains the contractor's intellectual property. The contractor may benefit from using their intellectual property in future bids to obtain a commercial advantage. As a result, exposing the redacted information is reasonably expected to prevent the contractor from using its competitive advantage, diminish the competitive commercial value of the information to the contractor and prejudice the contractor's legitimate business, commercial or financial interests; and</p> <p>(b) while there is a public interest in revealing the arrangements implemented in relation to the Services, this consideration is outweighed by the concerns above.</p> <p>Review: This information will be reviewed for disclosure as events and circumstances change.</p>
5.	Schedule 2	<p>Section 32(1)(a) and definition (b), (d) and (e) of "commercial-in-confidence provisions" (clause 1, Schedule 4) and section 32(1)(d)</p> <p>Items 1(f) and 4 (b) (c) and (d) of the Table to section 14</p> <p>The disclosure of this information would disclose intellectual property in which the</p>	<p>The redacted information is the entirety of the Schedule excluding its heading.</p> <p>TfNSW considered identifiers (a), (b), (c), (e) and (f) above to be relevant public interest considerations in favour of disclosure.</p> <p>TfNSW has weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <p>(a) the redacted information sets out the amount payable to the contractor for the performance of the Services, together with</p>

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		<p>contractor has an interest and place the contractor at a substantial commercial disadvantage in relation to potential contractors and provide visibility on the contractor's profit margins.</p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, prejudice the effective exercise by an agency of the agency's functions, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p> <p>The disclosure of this information would reveal an individual's personal information.</p>	<p>personal information regarding the names of Independent Certifier Personnel;</p> <p>(b) revealing the redacted information would provide insight into the Fee to be received by the contractor and will also reveal the mechanism for determining the Upper Limiting Fee, breakdown of the Fee and adjustments that may be made to the Fee. Revealing this information is expected to provide insight into the contractor's profit margins;</p> <p>(c) the OTS independent certifier has developed its team so as to discharge its obligations under the contract effectively and disclosure of this information would result in the disclosure of the contractor's intellectual property;</p> <p>(d) exposing the redacted information is expected to place the state, including TfNSW, at a commercial disadvantage when negotiating payment schedules for future contracts of a similar nature, thereby prejudicing the state. This is reasonably expected to have flow on effects to future contractors that may be expected to share the costs of independent certification works. The information is therefore expected to place the state and third parties at a commercial disadvantage and prejudice the business and commercial interests of relevant third parties; and</p> <p>(e) TfNSW considers that any public interest in favour of the disclosure of this information is not significantly advanced by the disclosure of this information and is outweighed by the public interests against disclosure identified above.</p> <p>Review: This information would be reviewed for disclosure as events and circumstances change.</p>
6.	Schedule 3 - Clauses 1.1, 1.2, 1.3, 1.5	Section 32(1)(a) and definition (d) and (e) of "commercial-in-confidence provisions" (clause 1, Schedule 4) and section 32(1)(d)	<p>The masked information is the names of the contractor's personnel.</p> <p>TfNSW considered identifiers (c) and (f) above to be relevant public interest considerations in favour of disclosure.</p>

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		<p>Item 3(a) of the Table to section 14</p> <p>The disclosure of this information (or the combination of this information with other information that is not included) would disclose intellectual property in which the contractor has an interest and place the contractor at a substantial disadvantage.</p> <p>The disclosure of this information would reveal an individual's personal information.</p>	<p>TfNSW has weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <p>(a) the contractor has developed its team for the project so as to discharge its obligations under the contract effectively and disclosure of this information would result in the disclosure of the contractor's intellectual property; and</p> <p>(b) TfNSW considers that any public interest in favour of the disclosure of this information is not significantly advanced by the disclosure of this information and is outweighed by the public interests against disclosure identified above.</p> <p>Review: This information would be reviewed for disclosure as events and circumstances change.</p>
7.	Schedule 6	<p>Section 32(1)(d)</p> <p>Items 1(f) and 4 (a), (b) and (d) of the Table to section 14</p> <p>The disclosure of this information would prejudice the effective exercise by an agency of the agency's functions and place an agency at a commercial disadvantage in a market.</p> <p>The disclosure of this information could diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The information redacted is the entirety of the Schedule.</p> <p>TfNSW considered identifiers (a), (b), (c), (e) and (f) above to be relevant public interest considerations in favour of disclosure.</p> <p>TfNSW weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <p>(a) the masked information sets out TfNSW's insurance; and</p> <p>(b) Revealing the redacted information is reasonably expected to prejudice TfNSW in future negotiations, particularly negotiations relating to insurance, and therefore place TfNSW at a commercial disadvantage and diminish the competitive commercial value of information to TfNSW;</p> <p>(c) Section 3E and Schedule 1 of the Transport Administration Act 1988 sets out TfNSW's functions which relevantly include delivery of transport infrastructure in accordance with integrated transport and land use strategies and available financial resources, including</p>

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			<p>prioritising of expenditure and projects across the transport system. In placing TfNSW at a disadvantage, revealing the redacted information is expected to prejudice the effective exercise by TfNSW of this functions, together with other functions set out in Schedule 1 of the Transport Administration Act 1988; and</p> <p>(d) while there is a public interest in revealing the redacted information, this consideration is outweighed by the concerns above.</p> <p>Review: This information would be reviewed for disclosure as events and circumstances change.</p>
8.	Exhibit A	<p>Section 32(1)(a) and definition (d) and (e) of "commercial-in-confidence provisions" (clause 1, Schedule 4) and section 32(1)(d)</p> <p>Item 4 (b), (c) and (d) of the Table to section 14</p> <p>The disclosure of this information (or the combination of this information with other information that is not included) would reveal the contractor's intellectual property and place the contractor at a substantial commercial disadvantage in relation to other contractors or potential contractors.</p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p>	<p>The information redacted is the entirety of the Exhibit with the exception of its cover page.</p> <p>TfNSW considered identifiers (a), (b), (c), (e) and (f) above to be relevant public interest considerations in favour of disclosure.</p> <p>TfNSW weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <p>(a) the redacted information sets out in detail the contractor's Initial Certification and Monitoring Plan. That document was prepared by the contractor and submitted to TfNSW as part of the contractor's successful bid;</p> <p>(b) the masked information contains novel information aimed at ensuring the effective certification and monitoring of the North West Rail Link Project. Significant investment by the contractor was made in the development and refinement of the arrangement set out in the redacted Exhibit. The mechanism developed therefore contains the contractor's intellectual property and provides visibility on the contractor's bidding strategy. The contractor may benefit from using their intellectual property in future bids to obtain a commercial advantage;</p>

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		<p>There is an overriding public interest against disclosure.</p>	<p>(c) as a result, exposing the redacted information is reasonably expected to prevent the contractor from using its competitive advantage, diminish the competitive commercial value of information to the contractor and prejudice the contractor's legitimate business, commercial or financial interests; and</p> <p>(d) while there is a public interest in revealing the certification and monitoring plan, this consideration is outweighed by the concerns above.</p> <p>Review: This information will be reviewed for disclosure as events and circumstances change.</p>
9.	Exhibit B - Breakdown of Fee	<p>Section 32(1)(a) and definition (b), (d) and (e) of "commercial-in-confidence provisions" (clause 1, Schedule 4) and section 32(1)(d)</p> <p>Items 1(f) and 4 (b) (c) and (d) of the Table to section 14</p> <p>The disclosure of this information would disclose intellectual property in which the contractor has an interest and place the contractor at a substantial commercial disadvantage in relation to potential contractors and provide visibility on the contractor's profit margins.</p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, prejudice the effective exercise by an agency of the agency's functions, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p>	<p>The information redacted is the entirety of the Breakdown of Fee component of the exhibit.</p> <p>TfNSW considered identifiers (a), (b), (c), (d), (e) and (f) above to be relevant public interest considerations in favour of disclosure.</p> <p>TfNSW weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <p>(a) the masked information is the entirety of an excel document which forms part of Exhibit B and details the breakdown of the Fee, being the amount payable to the contractor for the performance of the Services in accordance with the Payment Schedule set out in Schedule 2; and</p> <p>(b) of the reasons set out in Item 5.</p> <p>Review: This information would be reviewed for disclosure as events and circumstances change.</p>

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		<p>There is an overriding public interest against disclosure.</p> <p>The disclosure of this information would reveal an individual's personal information.</p>	
10.	Exhibit B	<p>Section 32(1)(a) and definition (b), (d) and (e) of "commercial-in-confidence provisions" (clause 1, Schedule 4) and section 32(1)(d)</p> <p>Items 1(f) and 4 (b) (c) and (d) of the Table to section 14</p> <p>The disclosure of this information would disclose intellectual property in which the contractor has an interest and place the contractor at a substantial commercial disadvantage in relation to potential contractors and provide visibility on the contractor's profit margins.</p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, prejudice the effective exercise by an agency of the agency's functions, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p> <p>The disclosure of this information would reveal an individual's personal</p>	<p>The information redacted is numbers, a date and a percentage figure.</p> <p>TfNSW considered identifiers (a), (b), (c), (d), (e) and (f) above to be relevant public interest considerations in favour of disclosure.</p> <p>TfNSW weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> (a) the masked information details how the Breakdown of Fees will apply if escalation is applied; and (b) of the reasons set out in Item 5. <p>Review: This information would be reviewed for disclosure as events and circumstances change.</p>

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		information.	