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NOTICE OF DECISION
Government Information (Public Access) Act 2009

File Ref:	T22-02028
Decision-maker:	Peter Brandt, Associate Director Information access
Date of decision:	8 September 2022

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1. Summary of access application

On 16 August 2022, Treasury received your access application under the *Government Information (Public Access) Act 2009* (the GIPA Act). We received payment of the \$30.00 application fee on 17 August 2022, on which day your application became valid.

You requested access to the following information:

NSW Treasury - Infrastructure Advisory Standard Commercial Framework – **request for information from Australian Institute of Architects**

Documents (including internal emails, working papers, meeting notes, and other forms of documentation) that provide information on the following questions in relation to the Infrastructure Advisory Standard Commercial Framework (the project):

- Specifically, how many architectural practices (ie. practices whose core business is providing architectural services) applied or were selected to participate in this project?
- Specifically, how many architectural practices participated in this project throughout the project and in various stages?
- Specifically, how many architectural practices' data were used to formulate the benchmark for capped daily rates and how many of those architectural practices were small (0-5 people)? medium (6-50 people)? large (50+ people)?
- What proportion of the architectural practices participating had recent government sector experience in the delivery of significant infrastructure projects valued up to \$9million? above \$9million?
- What proportion of the architectural practices participating in the project had demonstrated design quality outcomes in their projects? How was this assessed?
- How many of the architectural practices participating had specific sector experience in health? transport? education?
- How have market variations, differing complexities of project scope and disruptions to timeframes been factored into the capped rates?
- How have the varying levels of specific architectural expertise between sectors been factored into the capped rates (ie. laboratory vs school storage shed)?
- How you will address the potential result of a reduction in architectural practices bidding for government work because the capped rates are below the cost rates of the business?
- Are the capped rates intended to be the same regardless of the nature of the construction phase or type of architectural service provided?

Although you mentioned documents, including internal emails, working papers, meeting notes and other forms of documentation, your request is a series of questions.

2. Decision

I am authorised by the principal officer of Treasury, for the purposes of section 9(3) of the GIPA Act, to decide your access application.

I have decided under section 58(1)(a) of the GIPA Act to provide you with the prepared answers to your questions, in full.

In this Notice I explain my reasons. To meet the requirements of section 61 of the GIPA Act, I am required to tell you:

- the reasons for my decision and the findings on any important questions of fact underlying those reasons (together with a reference to the sources of information on which those findings are based); and
- the general nature and format of the records containing the information you asked for, with reference to the relevant public interest considerations against disclosure; please see the attached Schedule of Documents.

You can ask for a review of this decision. For details about how to do so, please see part 7 of this Notice.

3. Searches for information

Under the GIPA Act, we must conduct reasonable searches for the government information requested in your application.

Searches were conducted within Treasury for information subject to your application. These searches were conducted by staff members of NSW Procurement, being the area that was expected to hold the information you sought. I have been advised that information prepared in response to your questions is as detailed as possible, bearing in mind that the information you seek relates to an open tender. A search certification has been provided by the Executive Director, NSW Procurement certifying the answers to your questions.

In total, one document, comprising answers to your questions, has been created. The answers are in the body of this decision.

4. Reasons for decision

Under section 9(1) of the GIPA Act, you have a legally enforceable right to access the information you have requested, unless there is an overriding public interest against its disclosure.

Further, under section 5 of the GIPA Act, there is a presumption in favour of disclosing government information unless there is an overriding public interest against its disclosure.

To decide whether or not there is an overriding public interest against disclosure of the information you asked for, I applied the public interest test, which is set out in section 13 of the GIPA Act.

I applied the public interest test by:

- identifying any public interest considerations in favour of disclosure;
- identifying any relevant public interest considerations against disclosure;
- attributing weight to each consideration for and against disclosure, and deciding where the balance between them lies.

I did this in the way required by section 15 of the GIPA Act, which is:

- in a way that promotes the objects of the GIPA Act;
- with regard to any relevant guidelines issued by the Information Commissioner;
- without taking into account the fact that disclosure of information may cause

embarrassment to, or a loss of confidence in, the Government (as that fact is irrelevant);

- without taking into account the fact that disclosure of information might be misinterpreted or misunderstood by any person (as that fact is irrelevant); and
- with regard to the fact that disclosure cannot be made subject to any conditions on the use or disclosure of information.

4.1 Public interest considerations in favour of disclosure

Under section 12(1) of the GIPA Act, there is a general public interest in favour of disclosing government information. Section 12(2) of the GIPA Act sets out some examples of additional public interest considerations in favour of disclosure. I am not limited to only those considerations in deciding your application.

I find the following considerations in favour of disclosure are relevant to your application:

- Disclosure of the information could reasonably be expected to promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate on issues of public importance.
- Disclosure of the information could reasonably be expected to inform the public about the operations of agencies and, in particular, their policies and practices for dealing with members of the public.
- Disclosure of the information could reasonably be expected to ensure effective oversight of expenditure of public funds.
- Disclosure of the information could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision.

4.2 Public interest considerations against disclosure

When applying the public interest test, the only public interest considerations against disclosure that I can take into account are those set out in Schedule 1 of the GIPA Act and the table to section 14 of the GIPA Act.

Having reviewed the information you have requested, and the answers provided to your questions, I have decided that there are no public interest considerations against disclosing the answers to your questions. The answers provided by NSW Procurement are provided to you in full, in the body of this decision.

4.3 Balancing the public interest test

In balancing the public interest considerations in favour of disclosure, and finding no public interest considerations against disclosure, the answers to your questions are disclosed to you in full.

I have been advised that some of the questions could not be answered as fully as they could have as the information you seek relates to a tender which is still open. Some of the information sought by you, if released to the world, could provide some businesses with an advantage, or alternatively, could be a disadvantage to other businesses, during the open tender period.

I understand from NSW Procurement that you have already had discussions with them about this matter. Once the tender closes, additional information might be available for release.

The answers provided to me by NSW Procurement in relation to your questions, are as follows:

1	Specifically, how many architectural practices (ie. practices whose core business is providing architectural services) applied or were selected to participate in this project?	<p>The information requested is commercial in confidence and is part of an ongoing market engagement.</p> <p>The Supplier Input Panel (SIP) process was an open market engagement allowing all architectural suppliers within the Performance and Management Services – Infrastructure Services, Cabinet Standing Committee on Infrastructure and Government Architect NSW schemes to participate.</p>
2	Specifically, how many architectural practices participated in this project throughout the project and in various stages?	<p>The information requested is commercial in confidence and is part of an ongoing market engagement.</p> <p>The Supplier Input Panel (SIP) process was an open market engagement allowing all architectural suppliers within the Performance and Management Services – Infrastructure Services, Cabinet Standing Committee on Infrastructure and Government Architect NSW schemes to participate.</p>
3	Specifically, how many architectural practices' data were used to formulate the benchmark for capped daily rates and how many of those architectural practices were small (0-5 people)? medium (6-50 people)? large (50+ people)?	<p>The information requested is commercial in confidence and is part of an ongoing market engagement.</p> <p>The Supplier Input Panel (SIP) process was an open market engagement allowing all architectural suppliers within the Performance and Management Services – Infrastructure Services, Cabinet Standing Committee on Infrastructure and Government Architect NSW schemes to participate.</p>
4	What proportion of the architectural practices participating had recent government sector experience in the delivery of significant infrastructure projects valued up to \$9million? above \$9million?	The Supplier Input Panel is a broad representation of suppliers forming a balanced profile including: - large and small - diverse and specialist - broadly engaged and tightly focused across clusters and the 55 service types that includes projects with values over and below \$9m
5	What proportion of the architectural practices participating in the project had demonstrated design quality outcomes in their projects? How was this assessed?	The qualitative aspects of all IA suppliers will be assessed at the tender or engagement process.

6	How many of the architectural practices participating had specific sector experience in health? transport? education?	The Supplier Input Panel is a broad representation of suppliers forming a balanced profile including: - large and small - diverse and specialist - broadly engaged and tightly focused across clusters and the 55 service types that includes Health, Transport and Education clusters
7	How have market variations, differing complexities of project scope and disruptions to timeframes been factored into the capped rates?	The proposed capped resource rates, shared in draft for feedback with participating suppliers, are the maximum that can be charged and has considered all levels of risk. The agencies will continue to evaluate project scope including variations and disruptions during the life of a project.
8	How have the varying levels of specific architectural expertise between sectors been factored into the capped rates (ie. laboratory vs school storage shed)?	The qualitative aspects of all Infrastructure Advisory suppliers will be assessed at the tender or engagement process.
9	How you will address the potential result of a reduction in architectural practices bidding for government work because the capped rates are below the cost rates of the business?	We will address the potential risk of reduction in architectural practices bidding for government work by considering feedback from the Supplier Input Panel while finalising and implementing the SCF.
10	Are the capped rates intended to be the same regardless of the nature of the construction phase or type of architectural service provided?	The capped resource rates are applicable to all Infrastructure Advisory service types at all stages of the infrastructure asset life cycle

5. Processing charges

Under section 64 of the GIPA Act, we can require you to pay processing charges, at a rate of \$30.00 per hour, for the time spent dealing with your access application. The application fee of \$30.00 counts as payment for one hour of the processing charges.

Some 5 hours were spent processing your application; some 3 hours searching for information and creating the document containing the answers to your questions, and some 2 hours drafting this Notice.

Pursuant to section 127 of the GIPA Act, however, I have decided to waive all processing charges on this occasion.

6. Disclosure log

If information that would be of interest to other members of the public is released in response to a formal access application, an agency must record certain details about the application in its disclosure log, under sections 25 and 26 of the GIPA Act.

As the requested information, in the form of specific questions put on behalf of the

Australian Institute of Architects, is of direct interest to the Institute, I have decided the information would not be of interest to other members of the public. Consequently, the information will not be listed on the Treasury disclosure log.

7. Review rights

If you disagree with any of the decisions in this notice that are reviewable, you may seek a review under Part 5 of the GIPA Act. You have three review options:

- internal review by another officer of Treasury who is no less senior than me;
- external review by the Information Commissioner; or
- external review by the NSW Civil and Administrative Tribunal (NCAT).

You have 20 working days from the date of this Notice, that is by 7 October 2022, to apply for an internal review and 40 working days from the date of this Notice to apply for an external review by the Information Commissioner or NCAT, that is by 4 November 2022.

To assist you, I have enclosed a fact sheet published by the Information and Privacy Commission NSW (IPC) titled *Your review rights under the GIPA Act*. You can also find useful information and frequently asked questions on the IPC's website www.ipc.nsw.gov.au, and you can contact the IPC on 1800 472 679.

Information about NCAT can be found on their website www.ncat.nsw.gov.au.

8. Further information

If you have any further questions about this Notice or would like further information, please contact me on (02) 9228 3517 or by email at peter.brandt@treasury.nsw.gov.au.

Peter Brandt
Associate Director Information Access

8 September 2022.