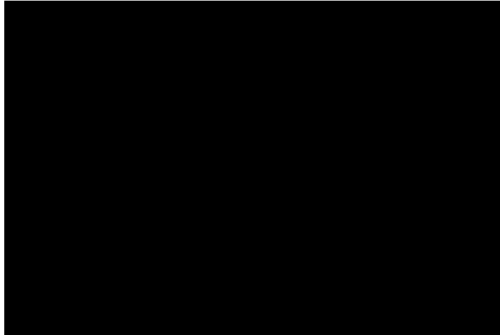




ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDD2017/4093



Freedom of Information Request

I refer to your access request under section 14 of the ACT *Freedom of Information Act 1989* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 29 September 2017.

In your request you sought:

"...information in relation to the ACT Government's Canberra Regional Local Industry Participation Policy (LIPP). Specifically, I am seeking information regarding:

- 1. The LIPP's interaction with the ACT's Free Trade obligations under agreements with the United States (AUSFTA), New Zealand (including the Australia and New Zealand Government Procurement Agreement) and Singapore (Singapore - Australia Free Trade Agreement); and*
- 2. Guidance provided to government entities surrounding the application of the Economic Contribution Test (ECT) introduced under the LIPP in procurement activities."*

As noted in an acknowledgement letter to you of 6 October 2017, the Directorate has completed searches for documents containing information relevant to the scope of your request.

Decision Maker

I am authorised under section 22 of the Act and have been approved to make decisions on access to documents and liability for charges.

Charges

I have decided, under section 29 of the Act, not to impose processing charges for this request.

Identification of documents

The LIPP's interaction with the ACT's Free Trade obligations under agreements with the United States (AUSFTA), New Zealand (including the Australia and New Zealand Government Procurement Agreement) and Singapore (Singapore -Australia Free Trade Agreement)

With regard to the first component of your request, the Territory has been conscious of its Free Trade Agreement (FTA) obligations in each iteration of procurement policies that supports Small to Medium Enterprises (SMEs) and the local economy.

The Local Industry Participation Policy (LIPP) is the latest policy iteration, however its development on this matter is based on the analysis conducted for a proposed extension to the previous SME Policy.

In responding to your FOI request I have decided to include documentation of the proposed extension to the SME Policy in order to explain how the LIPP's interaction with the FTAs was analysed prior to the drafting of the Policy as it currently stands. This analysis was internalised by Procurement's policy officers and provided as verbal advice during the development of the LIPP almost two years later. Few documents, therefore, are available specifically discussing the LIPP and FTAs as this issue, to a large extent, had already been considered for previous iterations.

As the Australian and New Zealand Government Procurement Agreement (ANZGPA) was revised in late 2013, The Territory responded with proposed changes to its then SME Policy in early 2014. At this stage the Territory was considering extending the SME Policy of attributing a 5% weighting to SMEs in tender evaluations to include Capital Works procurements instead of just goods and services. This approach was not progressed, due to a number of identified challenges. Instead of the SME Policy, an Industry Participation Policy model was proposed as an alternative. Options of the different Policy models of different jurisdictions were analysed with an option selected as preferred however clarity around the Territory's desired objectives needed to come to fruition.

A year later, the Territory's objectives were determined and the Local Industry Advocate (LIA) was appointed 18 December 2015, with the mandate to deliver a Local Industry Participation Policy. The LIA engaged with industry stakeholders and Procurement and Capital Works while supported by the Innovate Canberra division of the ACT Government. The advice provided by Procurement and Capital Works and the ACT Government Solicitor, based on the previous policy iterations, was the foundation of the LIPP to ensure it met FTA Obligations.

Guidance provided to government entities surrounding the application of the Economic Contribution Test (ECT) introduced under the LIPP in procurement activities.

With regard to your second point regarding guidance provided to ACT Government agencies, I note that the approach to guidance thus far has been verbal, as Procurement and Capital Works improved its evaluation methodology before formalising its best practice approach to teach the directorates. I have included evaluation templates relevant to the LIPP and information about training provided to relevant staff.

The Draft LIPP Territory Entity Guidelines identified at folio 12 in the attached schedule remains a draft that has not been provided to government entities as guidance material. I consider these Guidelines to fall outside the scope of your request. Work is currently underway to finalise this draft and I will ensure that a copy of the completed Guidelines is provided to you when available.

Decision on access

I have deliberated on the identified documents and decided to fully release eight documents to you, fully exempt two documents from release and partially release the remainder. One document has been partially released to you as it is predominantly concerned with matters unrelated to your request. I have released to you the relevant part of this document.

My decision to exempt documents and components of documents from release is detailed further below and redactions are identified in the attached schedule.

Exemptions claimed

Documents concerning certain operations of agencies

Section 40 of the Act provides:

- (1) *Subject to subsection (2), a document is an exempt document if its disclosure under this Act would, or could reasonably be expected to—*
 - (a) *prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency; or*
 - (b) *prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency; or*
 - (c) *have a substantial adverse effect on the management or assessment of personnel by the Territory or by an agency; or*
 - (d) *have a substantial adverse effect on the proper and efficient conduct of the operations of an agency; or*
 - (e) *have a substantial adverse effect on the conduct by or on behalf of the Territory or an agency of industrial relations.*
- (2) *This section does not apply to a document the disclosure of matter in which under this Act would, on balance, be in the public interest.*

I have decided to exempt, under section 40(a) of the Act, components of documents that would prejudice the Territory's tender evaluation processes if released.

Release of the redacted information is likely to prejudice the ability of the Territory to effectively assess tenders. Releasing confidential information about the tender evaluation process is likely to allow potential respondents to tailor their submissions to achieve high scores for each criteria. This is likely to adversely impact the Territory by affecting its ability to achieve optimal procurement outcomes.

Although the release of the redacted information would inform the public in detail about the Territory's evaluation procedures, some information that can be released without detriment is included in the documents released to you. I consider that any public benefit from release of the redacted components is outweighed by the potential detriment of release and therefore not in the public interest. I also note that the majority of the document concerns evaluation processes unrelated to the LIPP.

Documents subject to legal professional privilege

Section 42 of the Act provides:

- (1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.*
- (2) A document of the kind referred to in section 8 (1) is not an exempt document under subsection (1) of this section only because of the inclusion in the document of matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in section 8 (1).*

I have decided to exempt from release information that would disclose legal advice received by the Directorate in confidence. I consider this information to be exempt under section 42(1) of the Act.

Your right of review

Internal Review

Under section 59(1) of the Act, you may request a review of my decision. You have 28 days after receiving notice of my decision to ask for a review, or a further period as allowed by the Director-General.

Your request should be addressed to:

Director-General
c/o Freedom of Information Co-ordinator
Chief Minister, Treasury and Economic Development Directorate
GPO Box 158
CANBERRA ACT 2601
Via email: CMTEDDFOI@act.gov.au

Complaints to the Ombudsman

Under section 54 of the Act, you may complain to the Ombudsman about administrative matters relating to the processing of your FOI request. There is no fee for making a complaint. The Ombudsman will conduct an independent investigation into your complaint.

You can contact the Ombudsman either by telephone on 1300 362 072 or in writing to:

The Ombudsman
GPO Box 442
CANBERRA ACT 2601

Online FOI Policy

I have assessed your request for information under the ACT Government's Online FOI Publication Policy and have determined that my decision on your request will be published online. Personal information or business information will not be made available under this policy. A copy of the policy, with details about what information may be published on the Internet, is available online at:

http://www.cmd.act.gov.au/data/assets/pdf_file/0016/250333/FOI_Web_Release_Policy_-_Final.pdf

If you would like to discuss this matter further please contact me on (02) 6205 8013.

Yours sincerely



Dave Purser
Director
Goods and Services

25 October 2017