



**Australian Government**  
**Department of Defence**

Reference: Objective ID: R28258873

**FOI 087/16/17 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT**

1. I refer to the letter of 25 November 2016, in which [REDACTED] sought an internal review under section 54 of the *Freedom of Information Act 1982* (FOI Act) of the Accredited Decision Maker's decision dated 9 November 2016.

2. The applicant's request was for access to the following documents under the FOI Act:

*"I seek copies of all the documents comprising the Defence approved evaluation methodology for the Defence Infrastructure Panel 2017-2022 tender process that was released to market between June and August 2016. All active tenders under this process have now closed.*

*The documents of interest may be titled Defence Infrastructure Panel 2017-2022 Project Development and Delivery Plan and/or Evaluation Plan or similar. This request is inclusive of all amendments to the relevant document(s) since original delegate approval.*

*I also request a copy of the Objective configuration record for each document*

*I am not seeking the release of the following information:*

- names or positions of personnel who are tasked with the evaluation of tenders*
- any dollar value reference*
- personal email addresses*
- signatures*
- mobile telephone numbers or*
- PMKeys numbers"*

**Contentions**

3. In summary, the applicant has sought an internal review of the original decision. The applicant has contended:

- a. the decision maker erred in his consideration of the requirements of section 47E(d) [Public interest conditional exemptions-certain operations of agencies] of the FOI Act; and

- b. the decision maker erred in his application of the factors to consider under section 11B of the FOI Act.

4. The purpose of this statement of reasons is to provide the applicant with a fresh decision relating to the documents.

### **Reviewing officer**

5. I am authorised to make this internal review decision under arrangements approved by the Secretary of Defence under section 23 of the FOI Act.

### **Pages subject to review**

6. Taking into account the applicant's contentions, two pages are subject to internal review where section 47E(d) exemptions have been applied: page 21 (Annex A) and page 22 (Annex B).

### **Internal review decision**

7. I have decided to vary the original decision by partially releasing further information on page 21 with material considered exempt removed under section 47E(d) of the FOI Act.

8. Further to the above, material contained at page 22 was removed under subparagraph 22(1)(b)(ii) [Access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, as it relates to '*names or positions of personnel who are tasked with the evaluation of tenders*' which is irrelevant to the request. I note that this material was originally exempted under section 47E(d) of the FOI Act due to an administrative oversight.

9. A copy of the documents in the form approved for release is attached.

### **Material taken into account**

10. In arriving at my decision, I had regard to:

- a. the terms of the applicant's request and subsequent internal review application;
- b. the decision and documents which are the subject of internal review;
- c. relevant provisions in the FOI Act;
- d. the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines); and
- e. advice from Capital Facilities and Infrastructure Branch (CFIB).

### **Findings and reasons for the decision**

#### **Section 47E(d)**

11. Section 47E(d) of the FOI Act permits conditional exemption of a document where disclosure of the document would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

12. I consider that, if the remaining material in the weighting column was released, it may affect the selection of a successful tenderer in the future as it would effectively provide current and future tenderers with the ability to tailor their submissions by manipulating how much emphasis is placed on each criteria. This could result in an unfair advantage to a tenderer that would not necessarily be the most suitable value-for-money provider.

13. If the material in question was made publicly available, the information could reasonably be expected to prejudice the effectiveness of the tender process.

14. Noting the above reasons, I find that the material is conditionally exempt under section 47E(d) of the FOI Act.

15. Section 11A(5) of the FOI Act requires an agency to allow access to an exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest.

### **Public interest considerations**

16. I have considered the Guidelines, together with a range of factors that favour access to a document set out in section 11B(3) of the FOI Act. I consider that the factors outlined below weigh for and against disclosure in this case.

17. I note that disclosure may promote some of the objects of the FOI Act as information held by the Government is a national resource. However, I do not consider the release of the material would inform debate on a matter of public importance, nor would it promote effective oversight of public expenditure.

18. In coming to the above decision, I also considered subsection 11B(4) of the FOI Act. Accordingly, I consider that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the material in question. I therefore decided that it would be contrary to the public interest to release the specific information considered exempt under section 47E(d) of the FOI Act.

**TonyCorcoran**

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Mr Tony Corcoran PSM  
 Accredited Decision Maker – Internal Review

16 December 2016