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The Research Director
Legal, Constitutional and Administrative Review Committee
Parliament House
George Street
BRISBANE QLD 4000

**PUBLICATION OF DETAILS REGARDING CONTRACTS ENTERED INTO BY
PUBLIC SECTOR AGENCIES**

Dear Sir/Madam,

Reference is made to correspondence regarding the review of the accessibility of freedom of information and judicial review mechanisms in Queensland commenced by the Legal, Constitutional and Administrative Review Committee of the 51st Parliament.

In response to the supplementary issues, the following comments are submitted for your consideration.

Background

The Public Accounts Committee (PAC) Report No. 61, first recommendation is - That the Premier direct all public sector entities through the appropriate minister to develop and adopt guidelines in relation to commercial-in-confidence consistent with a number of detailed principles.

In the Ministerial Statement, dated 3 December 2002, responding to Commercial-in-confidence arrangements (PAC Report No.61), the former Premier Peter Beattie did not support the first recommendation and provided the following comment (excerpts from the Ministerial Statement):

- "If it is not in the public interest to withhold financial information it should be disclosed. However, a fundamental principle is that any information that would undermine a company's competitive position or undermine public sector agencies' ability to negotiate the best deal for Queensland taxpayers will not be publicly released."
- "The Victorian Auditor-General summed up the risks of greater disclosure well with respect to investment incentives when he said "the publication of the level of assistance provided to a recipient of investment assistance could cause harm to a company's competitive position and undermine the Department's future bargaining position in relation to other jurisdictions, thus damaging the capacity of the Government to compete for investment in the future.""

- "The Public Accounts Committee appears to want to create a system of disclosure that defies normal commercial practice and practicability with little additional benefit for the community."
- "To expect agencies to continually review the level of the disclosure adopted for each contract is one such example of the impracticality of the recommendations. For agencies that let a large number of contracts the requirement would be extremely onerous without any appreciative benefit in public accountability."

Comment

Rockhampton City Council provides a statement in their General Conditions of Contract that all parties to the contract will comply with the requirements for commercial-in-confidence and the protection of intellectual property (this is a standard clause in all Australian Standard contracts).

When formulating the tender documents, the Procurement Unit provides a statement in the Preamble to the Tender Conditions that:

"The Conditions of Tender have been prepared in accordance with the obligations of the Principal contained in AS 4120, Code of Tendering, which sets out the ethics and obligations of the Principal and Tenderer throughout the tendering process."

Clause 8 of the AS4120 - 1994 deals with Confidentiality and states that:

"All information provided between the Tenderers and the Principal shall be treated as confidential information. Both the Tenderer and the Principal shall undertake to maintain that information as confidential and commercial in confidence."

This clause is also repeated in the RCC Tender conditions.

Conclusion

The Procurement Unit agrees with the points made by the former Premier Peter Beattie that all Contracts (and associated Tender Submissions) should be treated as commercial in confidence and that divulging this information publicly does not add value to the process. In some cases it can be demonstrated that it has a detrimental effect on open and fair competition in the tendering process. In a recent example, a local Tenderer's submitted price was 4.9% higher than the non-local Tenderer's price (allowing for the 5% Local Preference the local Tenderer wins). It would appear that the Local Tenderer may have based their new tender on the knowledge gained from the public opening the year earlier.

Yours faithfully

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