

## QUESTION TAKEN ON NOTICE

### BUDGET ESTIMATES HEARING: 23 MAY 2011

#### IMMIGRATION AND CITIZENSHIP PORTFOLIO

#### (BE11/0032) Program : Internal Product

Senator Cash (L&CA 22-23) asked:

- (1) Of all the contracts issued by the department in for capital works in 2010-2011 to date, how many have included confidentiality provisions?
- (2) What do the confidentiality provisions relate to?
- (3) Provide a copy of the most recent agreement

*Answer:*

(1) Seven departmental contracts for capital works in 2010-11 contained standard confidentiality provisions.

(2) The confidentiality provisions require each party to the contract to not disclose the other party's confidential information, except in specifically defined circumstances.

(3) The standard confidentiality clauses in a capital works contract is as follows:

#### 1. Confidential Information

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##### 1.1. Interpretation of clause

1.1.1. In this clause:

<b>Third Party Interest</b>	means any legal or equitable right, interest, power or remedy in favour of any person other than the Principal or the Project Manager in connection with this Contract, including, without limitation, any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest.
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##### 1.2. Confidential Information not to be disclosed

1.2.1. Subject to *Clause 1.4*, a party must not disclose any Confidential Information of the other party to a third party without the prior written consent of the other party.

1.2.2. The Principal may impose any conditions it considers appropriate when giving consent under this sub-clause and the Contractor agrees to comply with these conditions.

### **1.3. Written undertakings**

1.3.1. The Contractor agrees, on request by the Principal at any time, to arrange for:

- a. its Personnel; or
- b. any person with a Third Party Interest,

to give a written undertaking in a form acceptable to the Principal relating to the use and non-disclosure of the Principal's Confidential Information.

### **1.4. Exceptions to obligations**

1.4.1. The obligations on the parties under this clause will not be taken to have been breached to the extent that Confidential Information:

- a. is disclosed by a party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Contract;
- b. is disclosed to a party's internal management Personnel, solely to enable effective management or auditing of contract-related activities;
- c. is disclosed by the Principal to the responsible Minister;
- d. is disclosed by the Principal, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- e. is shared by the Principal within the Principal's organisation, or with another agency, where this serves the Commonwealth's legitimate interests;
- f. is authorised or required by law to be disclosed; or
- g. is in the public domain otherwise than due to a breach of this clause.

1.4.2. Where a party discloses Confidential Information to another person under *Clauses 1.4.1.a to 1.4.1.e*, the disclosing party must notify the receiving person that the information is confidential.

1.4.3. In the circumstances referred to in *Clauses 1.4.1.a, 1.4.1.b and 1.4.1.e*, the disclosing party agrees not to provide the information unless the receiving person agrees to keep the information confidential.

### **1.5. Additional Confidential Information**

1.5.1. The parties may agree in writing after the date of this Contract that certain additional information is to be Confidential Information for the purposes of this Contract.

**1.6. Period of confidentiality**

1.6.1. The obligations under this clause continue, notwithstanding the expiry or termination of this Contract:

- a. in relation to an Item of information described in *Schedule 1 Item V (Confidential Information)* – for the period set out in *Item V* in respect of that Item; and
- b. in relation to any Item of information referred to in *Clause 1.5* – for the period agreed by the parties in writing in respect of that Item.

**1.7. No reduction in privacy obligations**

1.7.1. This clause does not detract from any of the Contractor's obligations under the *Privacy Act 1988* in relation to the protection of Personal Information.