



OFFICE OF THE  
INFORMATION & PRIVACY  
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Order F15-37

**CITY OF VANCOUVER**

Ross Alexander  
Adjudicator

August 19, 2015

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**Summary:** An applicant requested records about City of Vancouver Bid Committee meetings. The Bid Committee makes decisions regarding the procurement of goods and services for the City. In response to the applicant's request, the City identified reports that were prepared by City staff for the Bid Committee. It disclosed portions of these reports, but withheld some information under ss. 13, 16, 17 and 21 of FIPPA. The adjudicator determined that the City is authorized to refuse to disclose nearly all of the information withheld under s. 13 (policy advice or recommendations), but that it must disclose the remaining information.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 13, 16, 17 and 21.

**Authorities Considered: B.C.:** Order F13-17, 2013 BCIPC 22 (CanLII); Order 04-06, [2004] B.C.I.P.C.D. No. 6; Order F14-17, 2014 BCIPC 20 (CanLII); Order F14-04, 2014 BCIPC 4; Order F13-20, 2013 BCIPC 27; Order 01-36, 2001 CanLII 21590 (BC IPC); Order 03-02, [2003] B.C.I.P.C.D. No. 2; Order F10-24, 2010 BCIPC 35 (CanLII).  
**ON:** Ontario Order PO-3148, [2012] O.I.P.C. No. 258.

**Cases Considered:** *John Doe v. Ontario (Finance)*, 2014 SCC 36; *College of Physicians of British Columbia v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 (CanLII); *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31; *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3; *British Columbia Society for the Prevention of Cruelty to Animals v. British Columbia (Farm Industry Review Board)*, 2013 BCSC 2331.

## INTRODUCTION

[1] This inquiry relates to a journalist's request to the City of Vancouver ("City") for agendas and minutes of the City's Bid Committee meetings over a specific three and a half month period.

[2] The City identified records in response and disclosed some information in them to the applicant, while withholding other information under ss. 12(3)(a), 13(1), 14, 16(1)(b), 17(1) and 21(1) of the *Freedom of Information and Protection of Privacy Act* ("FIPPA").

[3] The applicant requested that the Office of Information and Privacy Commissioner ("OIPC") review the City's decision to withhold information.

[4] During the OIPC mediation process, the City reconsidered its original decision and disclosed additional information to the applicant. It also advised that it was no longer relying on ss. 12(3)(a) and 14 of FIPPA to withhold information. Mediation did not resolve the remaining issues, and the applicant requested that they proceed to inquiry.

[5] For this inquiry, the City provided initial and reply submissions, as well as supporting affidavits. The applicant provided initial submissions. Since most of the information relates to 34 third parties who submitted proposals to bid on City work, the OIPC invited the third parties to participate in the inquiry. Two of them, Totter, LLC ("Totter") and Sierra Systems Group Inc. ("Sierra Systems"), provided submissions opposing disclosure on the basis that disclosure of the information about their bids would be harmful to their business interests (s. 21 of FIPPA). The other 32 third parties chose not to participate in the inquiry.

## ISSUES

[6] The issues in this inquiry are as follows:

- a) Is the City authorized to refuse access to information under s. 13 of FIPPA because disclosure would reveal advice or recommendations?
- b) Is the City authorized to refuse access to information under s. 16 of FIPPA because disclosure could reasonably be expected to harm intergovernmental relations or negotiations?
- c) Is the City required to refuse access to information under s. 21 of FIPPA because disclosure could reasonably be expected to harm the business interests of a third party?
- d) Is the City authorized to refuse access to information under s. 17 of FIPPA because disclosure could reasonably be expected to harm the financial or economic interests of a public body?

[7] Pursuant to s. 57(1) of FIPPA, the burden is on the City to prove that the applicant has no right of access to the withheld information.

## DISCUSSION

[8] **Background** – The applicant is a journalist who requested agendas and minutes of City Bid Committee meetings for a three and a half month period from late 2012 to early 2013.

[9] The Bid Committee is an internal management committee of the City that assesses and decides on the procurement of goods and services for the City. The City does not have agendas or minutes for its Bid Committee.<sup>1</sup> However, the City identified Bid Committee reports (“Reports”) as responsive to the applicant’s request for records.

[10] City staff prepare the Bid Committee reports. They use the reports to provide the Bid Committee with information about proponents’ bids and make suggestions about the preferred course of action, with the objective of obtaining the Bid Committee’s approval, rejection or direction with respect to those recommendations.<sup>2</sup>

[11] The Bid Committee awards contracts up to \$2 million in value. For contracts worth more than \$2 million, the Bid Committee reviews the Bid Committee report and determines whether to take the recommendations contained in it forward to City Council for Council’s decision.

[12] **Records in Dispute** – The records in dispute in this inquiry are the Reports from City staff to the Bid Committee. There are 11 Reports, most of which relate to request for proposals (“RFP”) procurement processes.<sup>3</sup> The City has already disclosed most of the information in these Reports to the applicant.

[13] In addition to the information withheld under ss. 13, 16, 17 and 21, there is a small amount of handwriting in one Report that the City is withholding but not under any provision of FIPPA.<sup>4</sup> The City has marked it as “doesn’t say – (may be non-responsive)”. Absent an explanation of which FIPPA provision it is relying on to withhold this information, I find that the City must disclose it to the applicant.

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<sup>1</sup> City’s initial submission at pp. 1 and 2.

<sup>2</sup> Affidavit of the City’s Chief Purchasing Official #1 at para. 10.

<sup>3</sup> In this inquiry, the City refers to its other procurement processes as Requests for Expressions of Interest, and Invitations to Tender. Further, one of the Reports refers to a Request for Quote procurement process (p. 78).

<sup>4</sup> Records at p. 9 (at the bottom).

### **Policy Advice or Recommendations – s. 13**

[14] The City is withholding information contained in seven of the Reports under s. 13 of FIPPA. Section 13 authorizes public bodies to refuse to disclose advice or recommendations, subject to specified exceptions in s. 13(2). It states in part that:

- (1) The head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.
- (2) The head of a public body must not refuse to disclose under subsection (1)
  - (a) any factual material,
  - ...

[15] In *John Doe v. Ontario (Finance)*, the Supreme Court of Canada stated that the purpose of exempting advice or recommendations within public bodies from disclosure “is to preserve an effective and neutral public service so as to permit public servants to provide full, free and frank advice.”<sup>5</sup> The British Columbia Court of Appeal similarly stated in *College of Physicians of British Columbia v. British Columbia (Information and Privacy Commissioner)* that s. 13 “recognizes that some degree of deliberative secrecy fosters the decision-making process.”<sup>6</sup>

[16] In determining whether s. 13 applies, it is first necessary to establish whether disclosing the information “would reveal advice or recommendations developed by or for a public body or a minister”. If it would, it is then necessary to consider whether the information is excluded from s. 13(1) because it falls within a category listed in s. 13(2) of FIPPA.

#### **Positions of the Parties**

[17] The City submits that the information it is withholding under s. 13 is either advice or recommendations developed by City management about preferred courses of action, or information that would allow accurate inferences to be drawn about advice or recommendations if disclosed. The City submits that s. 13(2) does not apply to the information it is withholding under s. 13(1). It further submits that it exercised its discretion in determining what information it would withhold under s. 13, as demonstrated by the fact that it has disclosed some advice or recommendations to the applicant that it could have withheld under s. 13.

[18] The applicant submits that s. 13 does not apply because the information the City is withholding under s. 13 is “factual material” within the meaning of

<sup>5</sup> *John Doe v. Ontario (Finance)*, 2014 SCC 36 at para. 43.

<sup>6</sup> *College of Physicians of British Columbia v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 (CanLII) at para. 105.

s. 13(2)(a) of FIPPA. He further submits that the City has not properly exercised its discretion in deciding whether to disclose the information at issue.

Section 13(1)

[19] The records at issue in this inquiry are Reports relating to the selection of proponents. The City states that the purpose of these Reports is to provide information, advice and recommendations to the Bid Committee.<sup>7</sup> The applicant does not address this point.

[20] I find that some of the information at issue is properly withheld under s. 13 because it is clearly “advice or recommendations” about how the City should proceed with the procurement for specific types of goods or services. It is not factual material under s. 13(2)(a) as submitted by the applicant.<sup>8</sup>

[21] The records also contain other information withheld under s. 13 that are arguably factual. However, disclosure of nearly all of this information would allow an individual to draw accurate inferences about advice or recommendations because the information is in a context that forms an essential part of the recommendations or advice contained in a Report. For example, there is management strategy information, reference check information and information about allocated or projected City funding that – when read in context – forms part of the advice and recommendations provided to the decision makers.<sup>9</sup> Further, some of this information is the City staff’s evaluation scores of proponents.<sup>10</sup> In many instances such information would not be advice or recommendations under s. 13,<sup>11</sup> since it is created by the decision-maker. However, the proponent scoring information in this case is analogous to a memo or briefing note because it is part of the advice City staff provided to the Bid Committee to make its decisions.

[22] There is only one excerpt (on page 10) that I find is not advice or recommendations. It identifies proponents who were disqualified because their bids were incomplete or did not meet other basic requirements of the procurement process. In my view, this information neither directly reveals advice or recommendations, nor enables accurate inferences to be drawn about underlying advice or recommendations. This is because the information relates to decisions that had already been made by City staff rather than advice that City staff was providing to the Bid Committee. This information is merely background information about previously disqualified proponents. Further, even if I am wrong

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<sup>7</sup> Affidavit of the City’s Chief Purchasing Official #1 at para. 10 and the Reports themselves.

<sup>8</sup> Records at pp. 1, 2, 61 (bottom withheld excerpt), 62, 72, 75 (top excerpt withheld under s. 13).

<sup>9</sup> Records at pp. 4, 9, 15, 16, 27, 34, 35, 36, 48 and 75 (top excerpt withheld under s. 13).

<sup>10</sup> Records at p. 61 (top portion of the withheld information).

<sup>11</sup> For example, in Order F13-17, 2013 BCIPC22 (CanLII) and Order 04-06, [2004] B.C.I.P.C.D. No. 6, s. 13 was not even at issue for similar types of information.

and this information reveals advice or recommendations, I find that s. 13(1) does not apply because the information is factual material under s. 13(2)(a).

[23] In summary, with the one exception on page 10 mentioned above, I find that disclosure of the information withheld under s. 13(1) would reveal advice or recommendations developed by or for the City.

Section 13(2)

[24] For the reasons discussed above, except for the excerpt on page 10, I find that none of the information that reveals advice or recommendations under s. 13(1) is “factual material” falling under s. 13(2)(a). Further, I find that none of the other provisions in s. 13(2) apply to this information.

Exercise of Discretion (s. 13)

[25] Even if the information falls under s. 13(1), the applicant submits the City does not appear to have properly exercised its discretion in choosing to withhold information under s. 13. The applicant suggests the City must be able to demonstrate that disclosing the information it has withheld could reasonably be expected to result in harm to a third party before it can properly exercise its discretion to apply s. 13(1). He further submits the City failed to consider and respect that the stated purpose of FIPPA is to make information available to the public.

[26] The City submits that it is not required to provide evidence of harm before it can rely on s. 13(1) to refuse access to information. It submits it is sufficient if the City puts forward evidence that it exercised its discretion and on what grounds this discretion was exercised. The City submits the evidence and records themselves amply demonstrate that the City considered the relevant factors and exercised its discretion in determining what information to withhold. It further submits that there are some instances where the City disclosed information relating to advice and recommendations, and that this is evidence that it considered relevant factors and exercised its discretion.

[27] The purposes of FIPPA, which are set out at s. 2 of the Act, are “to make public bodies more accountable to the public and to protect personal privacy” by, among other things, giving the public a right of access to records and “specifying limited exceptions to the rights of access”. The Legislature intended for certain information to be excepted from the general right of access, and information that would reveal policy advice or recommendation as set out in s. 13 is one of those limited exceptions.

[28] I disagree with the applicant's submission that the City is required to prove harm before it can properly exercise its discretion to withhold the information

under s. 13. Section 13 is not a harms-based exception to disclosure. As stated in Order F14-17, relevant factors for public bodies to consider when exercising their discretion to refuse access under s. 13 include: the age of the record, past practice in releasing similar records, the nature and sensitivity of the record, the purpose of the legislation, and the applicant's right to have access to his or her own personal information.<sup>12</sup>

[29] Based on my review of materials, I am satisfied that the City has properly exercised its discretion when deciding whether to withhold the information under s. 13. In conclusion, I find that the City is authorized to withhold all of the information it is withholding under s. 13(1), except for the one excerpt on page 10.

[30] I will now address whether the City is authorized to withhold information under s. 16 of FIPPA. I will only consider the information that I found is not subject to s. 13.

### **Disclosure Harmful to Intergovernmental Relations or Negotiations – s. 16**

[31] Section 16 of FIPPA authorizes public bodies to refuse access to information if disclosure would be harmful to intergovernmental relations or negotiations. Section 16(1) states in part:

- (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
  - (a) harm the conduct by the government of British Columbia of relations between that government and any of the following or their agencies:
    - (i) the government of Canada or a province of Canada;
    - (ii) the council of a municipality or the board of a regional district;
    - (iii) an aboriginal government;
    - (iv) the government of a foreign state;
    - (v) an international organization of states,
  - (b) reveal information received in confidence from a government, council or organization listed in paragraph (a) or their agencies, or

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[32] In this case, the City is withholding portions of one Report regarding multiple affordable housing sites under s. 16(1)(b). The information relates to bids the City received in response to a “request for expression of interest”

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<sup>12</sup> Order F14-17, 2014 BCIPC20 (CanLII) at para. 52.

("RFEOI") procurement process. It is the only project for which there is evidence that negotiations or a procurement process has not concluded, with the City stating that negotiations are underway with one proponent and that an RFP is being considered for two other housing sites.<sup>13</sup> The only information I am considering under s. 16(1)(b) is the score(s) the City gave RFEOI proponents.<sup>14</sup>

### Positions of the Parties

[33] The City submits that s. 16(1)(b) applies because the withheld information relates to a potential joint project between the City, provincial and federal governments, and several not-for-profit organizations, at least one of which is "aboriginal-focused".<sup>15</sup> It states that discussions and negotiations about this project are confidential.

[34] The applicant did not make submissions regarding s. 16.

### Analysis

[35] For s. 16(1)(b) to apply, it must reveal information received in confidence from a government, council or other entity listed in s. 16(1)(a), or from one of their agencies. This is clearly not the case for nearly all the information withheld under s. 16(1)(b) because, with possibly one exception, the proponents are non-profit organizations and are not included in the list in s. 16(1)(a).<sup>16</sup> Since these proponents are not entities listed in s. 16(1)(a), I find that s. 16(1)(b) does not apply to this information.

[36] The City refers to one of the proponents as a not-for-profit organization that is "aboriginal-focused". Given the name used to identify this proponent in the Report, there is a possibility that this proponent is actually an aboriginal government as set out in s. 16(1)(a) rather than a non-profit organization. However, even if this were the case, s. 16(1)(b) would not apply because the withheld information for this proponent is the score the City assigned the proponent's proposal. This score was generated by the City, and in my view it does not disclose the proposal or any other information the City received in confidence from this proponent. Therefore, regardless of whether the proponent is an aboriginal government, I find that s. 16(1)(b) does not apply this information.

[37] In summary, I find that s. 16(1)(b) does not apply and that the City may not withhold information under s. 16.

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<sup>13</sup> Affidavit of the City's Chief Purchasing Official #2 at Exhibit "C" at p. 3.

<sup>14</sup> Records at p. 3. The City is only withholding this information under ss. 16 and 17. For most of the information the City is withholding under s. 16(1)(b), I have already determined that the City is authorized to withhold it under s. 13.

<sup>15</sup> City's initial submissions at para. 18.

<sup>16</sup> The identities of these organizations have already been disclosed to the applicant.



[38] I will next consider ss. 17 and 21 of FIPPA. However, I will not consider the application of ss. 17 and 21 to the information that I have already determined may be withheld under s. 13.

### **Sections 17 and 21**

[39] Section 17 relates to disclosure that is harmful to the financial or economic interests of a public body. Section 21 relates to disclosure that is harmful to a third party's business interest. All of the information withheld under s. 21 is also withheld under s. 17, but some information is withheld under s. 17 only.

[40] The City is withholding the "price per unit" bid by a successful proponent.<sup>17</sup> However, the City has already disclosed the total bid price and the number of units requested by the City, so the applicant is already in a position to determine the price per unit by completing a simple calculation. Given this, I find there would be no harm under either ss. 17 or 21 if this information was disclosed, so I will not address it further.

[41] The remaining types of information withheld under ss. 17 and 21 can be grouped as follows for the purposes of this analysis:

- The evaluation categories and the scoring weight assigned to each category ("Evaluation Criteria"), and the grade or score the City gave to each proposal ("Scoring Information"). I will collectively refer to this information as the "Evaluation Scorecard".<sup>18</sup>
- The bid amounts listed in the proposals of unsuccessful proponents,<sup>19</sup> the price breakdowns of the bid amounts,<sup>20</sup> and other terms submitted by proponents as part of the proposal process (collectively "Proposal Information").<sup>21</sup>
- The City's budget or current expenditures in relation to the matters that are the subject of the procurement processes, details about the City's plans and timing for completing a project, and potential costs to the City that are related to the procurement ("Project Details").<sup>22</sup>

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<sup>17</sup> Records at p. 79.

<sup>18</sup> Records at pp. 3, 31, 40, 41, 42, 46, 69, 74 and 75.

<sup>19</sup> The City has already disclosed the bid amounts of the successful proponents.

<sup>20</sup> For both successful and unsuccessful proponents.

<sup>21</sup> Records at pp. 7, 8, 14, 19, 21, 30, 32, 45, 47, 60, 68, 74 and 79.

<sup>22</sup> Records at pp. 9, 16, 21 (under the columns "Project Budget and "Budget Remaining"), 24, 28, 47, 48 49, 54, 63, 73 and 80.

### Positions of the Parties

[42] For the information withheld under s. 17, the City submits that ss. 17(1)(d), (e) and/or (f), or s. 17(1) generally, applies.

[43] With respect to s. 21, the City is withholding information about 34 third parties under s. 21. As previously stated, two of the 34 third parties chose to participate in this inquiry. Those third parties, Totter and Sierra Systems, oppose disclosure of their information that the City is withholding under s. 21. The City submits that it “supports the third parties’ position that release of unit pricing information could reasonably be expected to harm their competitive and negotiating position for future City of Vancouver projects as well as similar projects throughout their market areas.”<sup>23</sup>

[44] The applicant states the root issue here is that the City does not operate a transparent procurement process. He quotes a number of orders from this and other jurisdictions about how to interpret ss. 17 and 21, but he does not explain how the jurisprudence he cites applies in this case. I have considered the cases referred to by the applicant and applied those principles where appropriate. However, I will not refer to the applicant’s submissions when applying ss. 17 and 21 below because he did not provide submissions with respect to how these provisions apply to the information at issue.

### Analysis

[45] The standard of proof for ss. 17 and 21 is whether disclosure could reasonably be expected to result in the specified harm. The Supreme Court of Canada has described this standard as requiring a reasonable expectation of probable harm from disclosure of the information.<sup>24</sup> It is a middle ground between what is probable and that which is merely possible. A public body must provide evidence “well beyond” or “considerably above” a mere possibility of harm in order to reach this standard. The determination of whether the standard of proof has been met is contextual, and the quantity and quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and the “inherent probabilities or improbabilities or the seriousness of the allegations or consequences”.<sup>25</sup>

[46] Before individually considering ss. 17 and 21, I will address two issues that apply to both provisions. I will first consider the point in time when harm is to be assessed, followed by the City’s general arguments about harm.

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<sup>23</sup> City’s initial submissions at p. 18.

<sup>24</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para. 54.

<sup>25</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at para 94 citing *F.H. v. McDougall*, 2008 SCC 53, at para. 40.

Date for assessing harm

[47] When determining the date for assessing harm arising from disclosure, one possibility is to assess harm as of the time of the applicant's initial request for records. Another is to consider harm at the time of this inquiry. This is an important distinction in this case because it may be that there was a reasonable expectation of probable harm at the time the City provided its original decision to the applicant, but that such harm no longer exists due to changing circumstances and the passage of time. In this case, most of the City's evidence and submissions relate to alleged harm from disclosure as of the date of the applicant's request for records or some other time period prior to the inquiry.<sup>26</sup>

[48] A primary purpose of FIPPA is to make public bodies more accountable to the public by giving the public a right of access (subject to limited exceptions to the right of access). When an applicant requests records from a public body, it has the duty to assist the applicant and respond openly, accurately and completely.<sup>27</sup> This duty does not necessarily end the moment the public body provides its initial response to a request for records.

[49] If an applicant does not agree with a public body's response to a request for records, the applicant has a right to request a review from the OIPC. However, this review is not a "true appeal" of the public body's decision.<sup>28</sup> It entails more than just an adjudication of whether the public body's decision was reasonable or correct. For example, an investigation/mediation process is conducted prior to inquiry. In many instances, including this case, the breadth of the information being withheld and/or the provisions under FIPPA that are at issue change by the time an inquiry is held. At inquiry, the parties then provide fresh evidence and submissions to support their position (*i.e.* it is a hearing *de novo*) about the issues as at the time of the inquiry.

[50] The issue before me with regards to ss. 17 and 21 is whether disclosure of the information in dispute could reasonably be expected to result in the harms specified in those sections. In my view, given the purposes of FIPPA<sup>29</sup> and the access to information process that leads to an inquiry, it is appropriate to consider harm-based exceptions to disclosure as of the date of the inquiry. To

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<sup>26</sup> I note however that the City lists "the phase of the procurement process the procurement item is currently in" as one of the factors that ought to be considered in determining whether to release records. It also disclosed additional information to the applicant during the freedom of information process, as it reconsidered its response "given the passage of time and the phase of the procurement process for each of the procurement items referenced in the Bid Committee reports.": City's reply submissions at paras. 38 and 39.

<sup>27</sup> Section 6 of FIPPA.

<sup>28</sup> See *British Columbia Society for the Prevention of Cruelty to Animals v. British Columbia (Farm Industry Review Board)*, 2013 BCSC 2331 for a discussion on the topic of appeals.

<sup>29</sup> See s. 2 of FIPPA.

require or authorize a public body to withhold information at inquiry on the basis of circumstances and harms that no longer exist at the time of the inquiry would be inconsistent with the objectives of FIPPA. For the above reasons, I find that the appropriate date for considering harm in this case is as of the date of the inquiry.

### General Arguments about Harm

[51] The information at issue in the Reports relates to the procurement of a number of disparate types of goods and services offered by assorted companies operating in different industries. However, the City makes a number of relatively broad and sweeping submissions with respect to harm from disclosure of the withheld information under ss. 17 and 21. I understand the City's position to be that, at least to some extent, the difference in the goods, services and industries that the withheld information relates to is irrelevant when considering harm. It submits that all companies establish their prices in a complex and competitive environment given "today's global competitive environment".<sup>30</sup>

[52] In my view, the market dynamics of specific industries is a significant factor in determining whether there is a reasonable expectation of harm from disclosure. For example, the potential s. 17 harm to the City from the disclosure of information may differ depending on the competitive market, including the number of companies willing and able to provide the goods or services the City requires.

[53] Moreover, there may be other contextual factors in determining whether disclosure could reasonably be expected to harm a public body under s. 17. For example, harm from disclosure may be tied to the City's anticipated need to procure similar goods and services in the future, since the likelihood of harm may be different for repeat procurements compared to a one-time procurement, especially if the next procurement is anticipated to be relatively soon before market conditions or pricing change.

[54] In this case, other than information in some of the Reports, there is little evidence about the market conditions and competitive industry environment for the specific industries whose goods or services were being procured. In my view, given the disparate industries and subject matter in the Reports, the general statements by the City about all of the information being "sensitive" or important for maintaining a "competitive position" are not persuasive in establishing a reasonable expectation of harm from disclosure of the withheld information.

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<sup>30</sup> City's initial submissions at para. 28.

[55] With my findings for the two above issues in mind, I will address s. 21 before turning to s. 17.

### **Disclosure Harmful to Business Interests of a Third Party – s. 21**

[56] Section 21 relates to disclosure harmful to the business interests of a third party. The City is withholding information relating to nine Reports under s. 21. Section 21 of FIPPA states in part:

21(1) The head of a public body must refuse to disclose to an applicant information

(a) that would reveal

...

(ii) commercial, financial, labour relations, scientific or technical information of or about a third party,

(b) that is supplied, implicitly or explicitly, in confidence, and

(c) the disclosure of which could reasonably be expected to

(i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,

(ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,

(iii) result in undue financial loss or gain to any person or organization, or

...

#### ***Commercial or financial information – s. 21(1)(a)***

[57] Section 21(1)(a) applies to, among other things, commercial or financial information of or about a third party. Commercial information relates to a commercial enterprise, but it does not need to be proprietary in nature or have an independent market or monetary value. It suffices if the information is associated with the buying, selling or exchange of the entity's goods or services.<sup>31</sup>

[58] I find that s. 21(1)(a) applies to the Proposal Information because it is clearly commercial or financial information “of or about a third party”. Further, I find that s. 21(1)(a) also applies to the Scoring Information. Numerous Ontario orders have considered this type of information and concluded that it is

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<sup>31</sup> Order F14-04, 2014 BCIPC No. 4 at para. 9 citing Order F05-09, 2005 CanLII 11960 at para. 10.

commercial information because it is related to the "buying, selling or exchange of merchandise or services."<sup>32</sup> I agree. Further, despite having been generated by the City, I am satisfied that the Scoring Information is sufficiently "about" the proponents for s. 21(1)(a) to apply.

[59] However, I find that s. 21(1)(a) does not apply to the Project Details and the Evaluation Criteria information (see paragraph 41 above for descriptions) because this information is not information "of or about a third party".

[60] In summary, I find that s. 21(1)(a) applies to the Proposal Information and Scoring Information, but not the Project Details and the Evaluation Criteria.

### ***Supplied in confidence – s. 21(1)(b)***

[61] For s. 21(1)(b) to apply, the information must have been supplied, either implicitly or explicitly, in confidence by a third party. This is a two-part analysis. The first step is to determine whether the information was supplied to a public body. The second step is to determine whether the information was supplied "in confidence".

#### *"Supplied"*

[62] The City drafted the records at issue, but that does not by itself determine whether the information was supplied by a third party. In determining whether the information was supplied, it is necessary to consider both the content and the form of the information.<sup>33</sup>

[63] In this case, the proponents submitted the Proposal Information to the City. I therefore find that this information was supplied by a third party.

[64] City staff generated the Scoring Information. The issue of whether scoring information is "supplied" was previously considered in Ontario Order PO-3148, where it was determined that it was not supplied because it was internally generated by the public body.<sup>34</sup> Similarly, in Order F13-17, a city's written evaluative comments in a summary of proponents' bids were found not to be supplied under s. 21(1)(b) because the comments were made by city staff and were not provided by third parties.<sup>35</sup> I agree with these cases. In the present case, the scores assigned to the proponents were internally decided and generated by City staff. I therefore find that s. 21 does not apply to the Scoring Information because it was not supplied within the meaning of s. 21(1)(b).<sup>36</sup>

<sup>32</sup> For example, Ontario Order PO-3148, [2012] O.I.P.C. No. 258 at para. 132.

<sup>33</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at para 158.

<sup>34</sup> Ontario Order PO-3148, [2012] O.I.P.C. No. 258 at paras. 120 to 142.

<sup>35</sup> Order F13-17, 2013 BCIPC No. 22 (CanLII) at para. 16.

<sup>36</sup> This is part of the Evaluation Scoring information and is on pp. 3, 31, 40, 41, 42, 46, 69 and 75.

*“In Confidence”*

[65] The City submits that the RFP proposals were submitted in confidence. Sierra Systems states that it supplied its information in confidence to the City. Totter submits that it supplied its information implicitly in confidence. The applicant does not address this issue.

[66] For s. 21(1)(b) to apply, the information must be supplied, explicitly or implicitly, in confidence. This test for “in confidence” is objective, and the question is one of fact. Evidence of the third party’s subjective intentions with respect to confidentiality is not sufficient.<sup>37</sup> As stated in Order F13-20, the determination of whether information is confidential depends on its contents, its purposes and the circumstances under which it was compiled.<sup>38</sup> One of the factors that may assist in making this determination is a confidentiality clause. As stated by former Commissioner Loukidelis in Order 03-02:

...a confidentiality clause can greatly assist the determination of whether the parties to a contract intend information related to it to be confidential...Public bodies should also address their confidentiality intentions in records that govern tenders, requests for proposal and other procurement processes. Similarly, where third parties voluntarily supply information to a public body, they ideally should do so knowing the public body's confidentiality practices.<sup>39</sup>

[67] In this case, there is no evidence before me about any verbal communications between the City and proponents regarding how the City was going to handle the information it received with respect to confidentiality. However, the City provided evidence about its general practice with respect to its RFP processes. It explains that it keeps proposal information confidential until after contract negotiations are complete, at which time the name of the proponent and the final aggregate dollar amount of the contract may be publicly posted on the City's website. Further, the City's Chief Purchasing Official also deposed that the proponents' RFP proposals were based on the terms of RFPs, all of which contained the following confidentiality clause:

Subject to the applicable provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia) and the City's full right to publicly disclose any and all aspects of the Proposal in the course of publicly reporting to the Vancouver City Council on the proposal results or announcing the results of the RFP, the City will treat the Proposal (and the

<sup>37</sup> Order F13-20, 2013 BCIPC No. 27 at para. 22.

<sup>38</sup> Order F13-20, 2013 BCIPC No. 27 at para 27; Also see Order 01-36, Order 01-36, 2001 CanLII 21590 at para. 27.

<sup>39</sup> Order 03-02, [2003] B.C.I.P.C.D. No. 2, at para. 62.

City's evaluation of it), in confidence in substantially the same manner as it treats its own confidential material information.<sup>40</sup>

[68] The confidentiality clause states that the City will treat proposals in confidence in substantially the same manner as it treats its own confidential material information, with a few exceptions. However, the exceptions to the confidentiality promised in the clause are broad enough that they arguably undermine the City's submission that the information in dispute was supplied in confidence. One exception is that FIPPA applies to the proposal information. In my view, this provision does not impact the expectation of confidentiality under s. 21(1)(b) because FIPPA applies regardless of the preference of the contracting parties. Repeating this unchangeable fact in the confidentiality clause does not impact whether the parties intended for the information to be treated in confidence. However, the plain meaning of the other exception in the confidentiality clause that the City has the right to disclose information in the course of publicly reporting to City Council on the proposal results arguably undermines the assertion that proposal information will be treated as confidential.

[69] In light of the exceptions in its confidentiality clause, combined with the City's evidence that it only discloses the name and final contract amount of the successful proponent, I find that the proponents reasonably expected that the City would treat their proposal information in confidence with the proviso or understanding that confidentiality would be lost in the event that they were the successful proponent. I therefore find that for the purposes of s. 21(1)(b), the information supplied by the unsuccessful proponents was supplied in confidence. However, the information supplied by the successful proponents was not supplied in confidence.

***Harm to third party interests – s. 21(1)(c)***

[70] I will now consider whether there could reasonably be harm to third party interests from disclosure within the meaning of s. 21(1)(c). Sections 21(1)(c)(i) and (iii) state:

- (c) the disclosure of which could reasonably be expected to
  - (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
  - ...
  - (iii) result in undue financial loss or gain to any person or organization, or...

[71] The City submits the following regarding harm under s. 21:

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<sup>40</sup> Affidavit of the City's Chief Purchasing Official #2 at para. 12.



From a proponent's standpoint, their pricing structure and ability to fulfill the detailed assessment requirements provided as part of the confidential RFP process...could reasonably be expected to harm the[ir] competitive position and/or interfere significantly with their negotiat[ing] position if made public. Public release of the third party unit pricing information, precludes the third party's ability to adapt and negotiate their pricing based on the terms and conditions of an RFP, thus potentially causing undue financial loss to the [third] party.

...

The City...supports the third parties' position that the release of the unit pricing information could reasonably be expected to harm the competitive and negotiating position for future City of Vancouver projects as well as similar projects throughout their market areas.<sup>41</sup>

[72] In my view, neither the City's general assertion that there may be harm from disclosing third party unit pricing information, nor the records on their face, establish that disclosure of the withheld information could reasonably be expected to harm significantly the competitive position or interfere significantly with the negotiating position of these third parties, or result in undue financial loss to them or an undue financial gain to another person or organization.

[73] Since the issue under s. 21 is harm to a third party, it is ordinarily the third party who is in the best position to provide evidence of harm arising from disclosure. Thirty-two of 34 invited proponents chose to not participate or provide evidence for this inquiry. Based on the limited information before me, I am not satisfied that disclosure of the information about these 32 third parties could reasonably be expected to result in harm under s. 21(1)(c).

#### Sierra Systems' information

[74] The information in dispute about Sierra Systems is contained in one Report. It reveals the total bid amount Sierra Systems submitted in response to an RFP, and the total bid amount and a pricing breakdown it submitted when the RFP was amended. Sierra Systems submits that if the total bid amounts are disclosed, "[c]ompetitors will know exactly what price Sierra Systems bid for this type of work and will be able to reverse engineer the bid amount to ensure that they underbid Sierra Systems." For the pricing breakdown information, it submits that disclosure will identify "the deviations in price between the different portions

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<sup>41</sup> The City's initial submissions at para. 31 and unnumbered on p. 18. I also note that the Affidavit of the City's Chief Purchasing Official #1 at para. 12 could be interpreted as taking that position that s. 21(1)(ii) applies. Section 21(1)(ii) relates to disclosure that could reasonably be expected to "result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied". However, the City does not make submissions under s. 21 based on this point. Further, based on the materials before me, in my view this argument does not apply in this case. This issue is considered in more detail below under s. 17 at para. 104.

of Sierra Systems' offering". It submits that disclosure of all of this withheld information will significantly harm its competitive position and significantly interfere with its negotiating position in the future, resulting in significant financial loss to Sierra Systems and significant financial gain to its competitors.

[75] The RFP, the amended RFP and Sierra Systems' proposal(s) are not before me in this inquiry. Further, other than the contents of the Report itself, there are few details about the project, Sierra Systems' proposal(s), or the competitive market for the companies that compete for this type of work.

[76] Sierra Systems' total bid amounts are the amounts it bid for a specified scope of work for a relatively large City project at one point in time. There is one bid amount in response to the initial RFP, as well as a bid amount in response to the amended RFP. Despite Sierra Systems' argument to the contrary (it did not elaborate or provide supporting background information), I am not satisfied based on the materials before me that a competitor would be able to use the total bid amounts to "reverse engineer" Sierra Systems' specific prices or costs.

[77] Information about Sierra Systems' pricing could conceivably be learned by comparing the two bid amounts with the differences between the two RFPs. However, the extent to which Sierra Systems' total bid amount changed or stayed the same in response to the original and the amended RFP could reflect multiple factors, including changes in the scope of work, pricing, costs or market conditions. Further, it is not apparent based on the materials before me what pricing information would be revealed if both total bid amounts are disclosed, let alone that there would be a reasonable expectation of probable harm under s. 21(1)(c) arising from such a disclosure. Moreover, even if the pricing information is revealed, it may have changed since the proposals were submitted. For the above reasons, I find that there is no reasonable expectation of probable harm from disclosing Sierra Systems' total bid amount information, and it cannot be withheld under s. 21.

[78] The City is also withholding Sierra Systems' pricing breakdown for the amended total bid amount. The pricing breakdown is for broad categories of goods and services in relation to a specific scope of work, such as "software" and "professional services & disbursements".<sup>42</sup> Despite arguing that competitors could use this information to compete against Sierra Systems, Sierra Systems and the City do not elaborate or provide background facts or evidence in support of their position. Based on the materials before me, I am not satisfied that there is a reasonable expectation that disclosure of this information would result in harm or financial loss to Sierra Systems, or a gain to any other person or organization. I therefore find that neither s. 21(1)(c)(i) nor (iii) apply to the pricing breakdown information.

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<sup>42</sup> Records at p. 32. These categories have already been disclosed to the applicant.

### Totter's information

[79] Totter submits that there are a few different types of withheld information that will significantly harm its competitive position. I have already determined that the City is authorized to withhold some of this information under s. 13, and that s. 21 does not apply to other information because it was not “supplied” under s. 21(1)(b). The remaining withheld information reveals Totter’s total bid amount, as well as a price breakdown of its total bid amount into two categories.<sup>43</sup>

[80] Totter does not provide specific information to support its argument that disclosure would result in harm to its competitive position. Further, the total bid amount is a fixed sum for a relatively large project from over two years ago, and it is not apparent to me that breaking down the pricing into two categories reveals detailed pricing information, let alone that there would be a reasonable expectation of harm from disclosing this information. Moreover, there is information in the Report that leads me to believe that disclosure of the withheld information is unlikely to reveal Totter’s current pricing. Based on the materials before me, and absent specific evidence from Totter with respect to harm, I am not satisfied that disclosure of the total bid amount or the price breakdown amounts could reasonably be expected to harm significantly Totter’s competitive position or interfere significantly with its negotiating position. Further, I find that there is no reasonable expectation that disclosure would result in undue financial loss or gain to any person or organization under s. 21(1)(c). Therefore, I find that s. 21 does not apply to this information.

[81] In summary, I find that s. 21 does not apply to any of the information to which it was applied (*i.e.*, the Proposal Information, Project Details, and Evaluation Scorecard information described above in paragraph 41).

### **Disclosure Harmful to the Financial or Economic Interests of a Public Body – s. 17**

[82] Section 17 of FIPPA states in part:

17(1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy, including the following information:

...

(d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;

<sup>43</sup> The RFP was in relation to goods and services for a three year period. However, the pricing breakdown is only for one of the three years.

- (e) information about negotiations carried on by or for a public body or the government of British Columbia;
- (f) information the disclosure of which could reasonably be expected to harm the negotiating position of a public body or the government of British Columbia.

[83] Sections 17(1)(a) to (e) are examples of harm under s. 17(1), but disclosing information that does not fit into these enumerated examples may still constitute harm under this provision.

[84] The City is withholding Proposal Information, Project Details, and Evaluation Scorecard information under s. 17. The City is withholding a few excerpts under s. 17(1) generally, but in most instances it specifies that ss. 17(1)(d), (e) and/or (f) apply.

#### *Section 17(1)(d)*

[85] Section 17(1)(d) relates to the disclosure of information that could reasonably be expected to result in the premature disclosure of a proposal or project, or in undue financial loss or gain to a third party.

[86] For the reasons discussed above with respect to s. 21(1)(c), I am not satisfied that disclosure of the information in dispute could reasonably be expected to result “in undue financial loss or gain to a third party”. I also find that disclosure of the information withheld under s. 17(1)(d) would not disclose a proposal or project because the City has already publicly revealed the existence of these projects by issuing RFPs. Further, the City has already disclosed most of the Reports to the applicant, so clearly he is aware of the projects. Therefore, disclosing the information in dispute would not be a “premature” disclosure of a proposal or a project under s. 17(1)(d).

#### *Section 17(1)(e)*

[87] Section 17(1)(e) relates to “information about negotiations carried on by or for a public body or the government of British Columbia”. As stated in Order F10-24,<sup>44</sup> the purpose of this provision is to protect information related to negotiating techniques, strategies, criteria, positions or objectives. As I found that most of the information to which the City applied s. 17(1)(e) may be withheld under s. 13, it is only necessary for me to consider two excerpts. One is in a project plan/work timeline containing dates that have all passed, so presumably the work was completed or the timeline was changed.<sup>45</sup> The other is the City’s budget for a specific project, but there is no evidence that negotiations for this

<sup>44</sup> Order F10-24, 2010 BCIPC 35 at para. 60.

<sup>45</sup> Records at p. 24. The dates had all passed by the date of this inquiry.

project are ongoing.<sup>46</sup> Given the amount of time that has elapsed from the date of the Report, and absent any evidence suggesting otherwise, I find that the negotiations were concluded as of the time of the inquiry.

[88] There is no reasonable expectation of harm to the City's financial or economic interests within the meaning of s. 17(1)(e) from disclosing either of the two excerpts, since the information is obsolete and relates to specific projects for which negotiations have concluded. I therefore find that this information may not be withheld under s. 17(1)(e).

#### *Section 17(1)(f) and Conclusions for Section 17(1)*

[89] Section 17(1)(f) relates to the disclosure of information that could reasonably be expected to harm the negotiating position of a public body or the government of British Columbia. Most of the City's submissions with respect to harm under s. 17 relate to how disclosure may impact its procurement processes and/or negotiations for current and future projects. These arguments are about s. 17(1)(f) or are closely related to s. 17(1)(f). Given this, I will consider s. 17(1)(f) and the ultimate question of harm under s. 17(1) in conjunction.

#### Current Projects and the RFEOI Information

[90] The City submits that disclosure will result in harm to its negotiating position with respect to the projects that are the subject of the Reports. It submits that even once an RFP has been awarded, many terms and conditions, including pricing, need to be negotiated and finalized before a contract is signed.

[91] However, I am assessing harm as of the date of the inquiry, and the only project for which there is evidence that negotiations were ongoing as of the date of the inquiry is the RFEOI for affordable housing that was discussed under s. 16. Therefore, I find that there is no reasonable expectation of harm under s. 17(1)(f) from disclosure of non-RFEOI information on this basis.

[92] The only RFEOI information that I am considering under s. 17 is the total score the City gave each proponent for the site(s) they bid on in response to the RFEOI.<sup>47</sup> The City states that since the terms of the RFEOI project are still being

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<sup>46</sup> Records at p. 73.

<sup>47</sup> This is Scoring Information. Records at p. 3. I note that the City is withholding this information under ss. 16 and 17, but not ss. 13 or 21. This information does not contain Evaluation Criteria for how the Scoring Information was graded.

negotiated with a proponent,<sup>48</sup> disclosing how the City scored the proposals could reasonably be expected to harm the City's interests because it may unfairly increase the proponent's negotiating leverage. It further submits that if negotiations with the proponent are unsuccessful, disclosure of the information at issue could severely affect negotiations with another proponent. The City also submits that disclosure could reasonably be expected to harm the City because it is considering issuing RFPs for two other affordable housing sites.

[93] Based on the materials before me, I find that disclosure of the score the City awarded each RFEI proposal could not reasonably be expected to harm the financial or economic interests of the City or the Government of BC. The City does not explain how these scores could be used as leverage in negotiations or how this information would influence proponents' future bids. I am not satisfied from my review of the materials that disclosure of this information could reasonably be expected to result in harm to the City's negotiating position, or its financial or economic interests. I therefore find that s. 17(1)(f), and ultimately s. 17(1), do not apply to this information.

#### Future Projects

[94] In addition to current projects, the City submits the disclosure will harm its financial or economic interests for future projects, including because disclosure will harm its negotiating position. It submits that “[r]elease of the severed information to the public domain provides competing companies with private commercial information, which in turn automatically precludes the City's right and need to negotiate with a variety of commercial firms so as to obtain unbiased, fair bids from all commercial participants for other similar or reissued RFPs...”<sup>49</sup> It submits that disclosure of the City's RFP pricing and assessment criteria information could result in proponents improving their proposals without necessarily upgrading their ability to provide goods or services.<sup>50</sup> In its view, this would prejudice not only the City's ability to negotiate fair prices and terms for its projects, but also proponents' ability to fairly and competitively bid on future projects.

[95] To the extent the City is asserting that disclosure of the withheld information somehow means that future RFPs or negotiations would be unnecessary, in my view this argument is fanciful and unsupported by the evidence. However, I will address the issue of future negotiations, and proponents submitting “biased” or tailored proposals, in more detail.

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<sup>48</sup> The City explains that its RFEI procurement process (which is different than its RFP process) is generally associated with new undertakings when all parameters of the opportunity are not defined. This process may lead to direct negotiations with proponents, the issuance of one or more RFPs, or a cancellation or redesign of the project: Affidavit of the City's Chief Purchasing Official #1 at para. 8.

<sup>49</sup> City's initial submissions at both paras. 27 and 28.

Project Details and Proposal Information (other than pricing information)

[96] The City does not explain how disclosure of the Project Details or those portions of the Proposal Information that are not about pricing would impact future negotiations or RFPs. Further, it is not apparent to me how disclosure of this information would enable proponents to tailor their proposals for future City projects or effectively use the information in negotiations with the City, let alone that there would be harm arising from its disclosure. I therefore find that s. 17 does not apply to this information.

Evaluation Scorecard and Proponent Pricing Information

[97] The remaining information is the Evaluation Scorecard information (*i.e.* the Evaluation Criteria and the Scoring Information) and the proponents' pricing information (*i.e.* part of the Proposal Information).

[98] The Evaluation Criteria information is the type of assessment criteria and scoring breakdowns that are commonly seen in RFPs and other procurement processes. There are assessment categories, with each category being given a weighted percentage. The Evaluation Criteria categories are relatively generic (*e.g.* "pricing", etc.), so they are not particularly instructive or prescriptive. Given this, in my view it is unlikely that proponents would be able to use this information to tailor their proposals to win future RFPs.

[99] For the Scoring Information, the City does not explain how proponents could use this information for future procurement processes, or what other information would be disclosed by revealing the scores awarded to past proposals. Further, it is not apparent to me from my review of the materials what other information would be revealed by disclosing this Scoring Information. For example, I am not persuaded that knowing that the City gave one proposal a score of 84 and another proposal an 82 provides information that would undermine future procurement processes.<sup>51</sup>

[100] While a proponent may attempt to replicate another proponent's pricing information, most of the pricing information at issue here are lump sum amounts for a broad range of goods and services for specific procurements. The information is not unit pricing. Moreover, pricing and other aspects of the commercial marketplace change over time, so the prospect of harm is even more speculative. In my view, it is unlikely that a proponent would be able to use the information that is at issue in this case to tailor its future bids.

[101] This is not a case where the City is arguing that there is harm from disclosing the Evaluation Scorecard and proponent pricing information because the totality of it when combined would reveal information about how the City

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<sup>51</sup> I note that these scores are hypothetical and do not reflect actual proponent scores.

awards contracts. For example, there is no suggestion that comparing the proponents' pricing information to the Evaluation Scorecard information reveals a formula or any other information about how prices submitted by proponents translate to specific graded scores. This may be because the withheld information in this case is not detailed. However, in any event, based on the materials before me it is speculative to say that a potential proponent could use the Evaluation Scorecard information, or the proponent pricing information, to tailor its bid in a way that could meaningfully impact future City negotiations or procurement processes.

[102] Even if I were to accept the City's position that disclosing the withheld information will result in proponents tailoring their future proposals, I am not satisfied that this could reasonably be expected to harm the City's negotiating position. The City presumably chooses its evaluation criteria based on what it believes provides the best value to the City for a specific procurement. Therefore, if proposals are tailored to attempt to win a contract, this would result in proposals that provide better value to the City.

[103] I have considered the potential that a successful proponent might find some value in learning that the quality and value of its competitors' proposals were so lacking that the successful proponent does not need to offer as competitive a bid in the future. However, there is no evidence on this point with respect to the specific RFPs in this case. Further, much of the withheld information relates to one-time capital expenditures or relatively lengthy contracts (*i.e.*, five years). While there may be circumstances where knowledge of previous bid details or scoring information may result in inferior future bids, it is not apparent to me that this is the case here. In reaching this conclusion, I considered the City's submission that it frequently issues RFPs for specialized and routine equipment replacement and upgrades, but this argument does not persuade me that s. 17 applies to any of the information I am considering under s. 17.

[104] I have also considered the City's Chief Purchasing Official's evidence that he expects that disclosure of confidential Proposal Information will result in fewer proponents bidding on City projects, or that proponents will submit proposals at increased bid prices to address the fact that their confidential business information will be at risk of disclosure.<sup>52</sup> However, I am not persuaded by this because it is a broad assertion about disparate types of information for different types of projects. Further, his assertion is unsupported by background information that explains the foundation for his conclusion. For example, there is no evidence of similar harms resulting from the disclosure of information. There is also no evidence from any of the 34 third parties or other potential proponents that they intend to stop bidding on future City RFPs, increase the prices in their proposals, or provide less detailed information in response to the City's future

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<sup>52</sup> Affidavit of the City's Chief Purchasing Official #1 at para. 12.



RFPs if their information is disclosed. I therefore find that there is no reasonable expectation of probable harm to the City's negotiating position, or to its financial or economic interests generally, from disclosure of the withheld information.

[105] For the above reasons, I find that there is no reasonable expectation of harm to the financial or economic interest of the City arising from disclosure of the withheld information. I therefore find that s. 17(1) does not apply to this information.

## **CONCLUSION**

[106] In conclusion, I find that the City is authorized to withhold nearly all the information it is refusing to disclose under s. 13 of FIPPA. However, I find that ss. 16, 17 and 21 do not apply. For the reasons given above, under s. 58 of FIPPA, I order that the City is:

- a) authorized to withhold the information it is withholding under s. 13 of FIPPA, except for the information withheld at page 10 of the records, which I have highlighted for convenience in a copy of this page that will be sent to the City along with this decision; and
- b) required to give the applicant access to the information not withheld under s. 13 by **October 1, 2015**, pursuant to s. 59 of FIPPA. The City must copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records it provides to the applicant.

August 19, 2015

## **ORIGINAL SIGNED BY**

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Ross Alexander, Adjudicator

OIPC File No.: F13-52316