

Disclosure of Contract Information

Summary The Government Information (Public Access) Act 2009 requires that all Government contracts with the private sector with a value of \$150,000 or more have certain information disclosed. This policy describes the obligations of agencies and the following associated procedures will ensure NSW Health complies with its responsibilities under the Act.

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Applies to Affiliated Health Organisations, Board Governed Statutory Health Corporations, Cancer Institute, Chief Executive Governed Statutory Health Corporations, Community Health Centres, Dental Schools and Clinics, Local Health Districts, Ministry of Health, NSW Ambulance Service, NSW Health Pathology, Public Health System Support Division, Public Health Units, Public Hospitals, Specialty Network Governed Statutory Health Corporations

Distributed to Ministry of Health, NSW Ambulance Service, Public Health System

Audience All staff

DISCLOSURE OF CONTRACT INFORMATION

PURPOSE

To ensure NSW Health meets its contract disclosure obligations under the *Government Information (Public Access) Act 2009* (GIPA Act).

MANDATORY REQUIREMENTS

Disclose Government Contracts with Private Sector of \$150,000 or more

NSW Health must disclose a register of government contracts with the private sector on the NSW Government tenders website. The register must include all contracts with private sector where the commitment value is, or is likely to be, \$150,000 (GST inclusive) or more.

The private sector, for this purpose, includes not-for-profit organisations and Non-Governmental Organisations (NGOs).

IMPLEMENTATION

Each NSW Health entity is responsible for disclosing relevant contracts which they enter into.

The attached procedures provide detailed implementation guidance including:

- The *Government Contract* definition per the GIPA Act
- Who must disclose for each type of contract
- What information must be disclosed
- When must disclosure be made
- How to disclose

For advice or assistance in implementing this policy, contact the Procurement Advisory Service (PAS):

Email: pas@doh.health.nsw.gov.au

Phone: 02 9391 9933 or 02 9391 9732

In summary:

- This Policy Directive applies to all entities within the Health cluster.
- All disclosures will be made on the NSW Government tenders website - www.tenders.nsw.gov.au.
- The GIPA Act requirement for agencies to maintain a contract register and disclose contract information on their websites will be met by incorporating a link to the NSW Government tenders website on the appropriate NSW Public Health System websites. Chief Executives are to ensure that these links are in place and remain operational.

- Disclosure is the responsibility of the officer undertaking or managing a procurement activity or raising a Purchase Requisition. This officer is required to provide all necessary information to their HealthShare NSW Service Centre, or in the case of Ministry of Health, the Procurement Advisory Service (PAS), to enable the contract information to be published.
- The *Contract Award Details* form is available from the Procurement Portal on the Templates > Forms > Contract Disclosure menu, and is to be used as the pro forma for the disclosure of information.
- The disclosure is to be made within 45 working days of the contract becoming effective.
- The Chief Procurement Officer is required to approve the withholding of any information from disclosure or the removal of any commercial-in-confidence information from contracts prior to publishing.

REVISION HISTORY

Version	Approved by	Amendment notes
June 2018 (PD2018_021)	A/CFO & Deputy Secretary, Financial Services and Asset Management	Update previous version in accordance with amendments to the Government Information (Public Access) Act 2009
February 2011 (PD2011_011)	DDG Health System Support	Replaces PD2009_047. Updates disclosure requirements in accordance with Government Information (Public Access) Act 2009
July 2009 (PD2009_047)	DDG- HEALTHSHARE NSW	Updates latest Premier's Memo on Disclosure and additional requirements under the Freedom of Information Act.
Nov 2000 (PD2005_188)	Director-General	New policy

ATTACHMENTS

1. Disclosure of Contract Information: Procedures

Disclosure of Contract Information



Issue date: June 2018

PD2018_021

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1 BACKGROUND

1.1 About this document

The purpose of this document is to provide detailed procedures to ensure NSW Health meets its contract disclosure obligations under the GIPA Act.

From 1 July 2010, the *Government Information (Public Access) Act 2009* (GIPA Act) came into force replacing the former *Freedom of Information Act 1989*.

The GIPA Act provides a framework for accessing information from NSW Government agencies and seeks to promote a more open, proactive and transparent approach towards accessing and releasing government information.

The GIPA Act requires all Government agencies to disclose certain information relating to government contracts with the private sector valued at \$150,000 (GST incl.) or more.

In order for the NSW Public Health System to meet its legal obligations under the GIPA Act with respect to government contracts disclosure requirements it is important that everyone in the NSW Health, especially those officers responsible for contracting with the private sector, are aware of and comply with the disclosure requirements.

It should be noted that the Office of the Information Commissioner may conduct a compliance review as a result of a complaint or as part of their annual audit program.

1.2 Key definitions

Agency means NSW Health (and all its entities).

Commercial-in-Confidence provisions of a contract means any provisions of the contract that disclose:

- The contractor's financial arrangements
- The contractor's cost structure or profit margins
- The contractor's full base financial model
- Any intellectual property in which the contractor has an interest
- Any matter the disclosure of which would place the contractor at a substantial commercial disadvantage in relation to other contractors or potential contractors, whether at present or in the future.

Private Sector entity means any person or body (whether incorporated or unincorporated) who or which is not a public sector agency. This includes non-governmental organisations.

1.3 Legal and legislative framework

These procedures are to comply with the disclosure requirements of the *Government Information (Public Access) Act 2009* (GIPA Act).

2 WHAT IS A GOVERNMENT CONTRACT?

The GIPA Act defines a Government Contract as:

Any of the following contracts between a government agency and a private sector entity:

- (a) *a contract under which a party agrees to undertake a specific project (such as a construction, infrastructure or property development project), or*
- (b) *a contract under which a party agrees to provide specific goods or services (such as information technology services or consultancies), other than a contract of employment,*
- (c) *a contract under which a party agrees to transfer real property to another party to the contract,*
- (d) *a lease of real property.*

Where public health officers enter into any of the above-mentioned contractual arrangements with a private sector entity there is a government contract for the purposes of the GIPA Act.

Some examples of everyday government contracts which the NSW Health may be involved with include:

- Whole of Government Contracts and Health Administration Corporation (HAC) standing offer agreements developed by HealthShare NSW.
- All multi agency access contracts, e.g. Australian government contracts, lead agency contracts, etc.
- A preferred supplier agreement that may be entered into by a Local Health District or other entity under a standing offer panel contract. The projected expenditure over the life of the Agreement is to be used in determining the contract value.
- A formal pricing agreement where there is a commitment on part of the supplier to maintain a particular price whilst expenditure remains above a specific benchmark and there is sign-off by both parties.
- Period or standing orders that allow for the supply of goods or services for a defined period of time or value.
- Contracts for the supply of goods and services.
- Leases for equipment, offices or other premises.

Note: a firm price quotation where a supplier of goods or services commits to hold a price for a period of time but there is no guarantee or commitment to volumes or value of purchases by the NSW Health agency does not require disclosure unless an individual order of \$150,000 (GST incl.) or more is placed.

3 WHAT GOVERNMENT CONTRACTS ARE TO BE DISCLOSED?

All government contracts with the private sector with a value of \$150,000 (GST inc.) or more must be published on the NSW Government tender website and are to have certain information disclosed. The GIPA Act defines contract value as:

*The **value** of a contract is whichever of the following values is appropriate to the kind of contract concerned:*

- (a) *the total estimated value of the project*
- (b) *the total estimated value of the goods or services over the term of the contract*
- (c) *the value of the real property transferred*
- (d) *the rent for the term of the lease*

If GST pushes the value of a contract above \$150,000 the contract must be disclosed. A purchase order that is a mix of taxable and non-taxable items will be valued as the cost of the goods and/or services **plus** the value of GST attributable to the taxable items.

The GIPA Act creates a presumption in favour of disclosure. If you think that a contract is likely to have a value of \$150,000 (GST incl) or more, it must be disclosed.

4 GOVERNMENT CONTRACTS REGISTER

The GIPA Act requires that every government agency maintain a register of government contracts that have, or are likely to have, a value of \$150,000 or more (GST incl.). NSW Health will comply with this requirement by publishing a link to the NSW Government tenders website www.tenders.nsw.gov.au and on the relevant websites of the NSW Public Health System. Chief Executives are to ensure these links are incorporated into their websites and remain operational.

5 CONTRACT INFORMATION DISCLOSURE REQUIREMENTS

The GIPA Act requires that certain contractual information be disclosed and entered into the government contracts register. The type of information required to be disclosed depends on the type of contract entered into. The GIPA Act divides the contracts into 3 classes. Please refer to the attached flowchart (Attachment 2) to assist in determining the class of the contract that has been entered into and thus the information that is to be disclosed.

CLASS 1 CONTRACTS:

Class 1 Contracts include all NSW Health System contracts with the private sector with an estimated likely value of \$150,000 (GST incl.) or more.

What information is disclosed for Class 1 Contracts? (GIPA Act Section 29)

The information required to be disclosed for Class 1 Contracts is as follows:

- (a) the name and business address of the contractor,
- (b) particulars of any related body corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth) in respect of the contractor, or any other private sector entity in which the contractor has an interest, that will be involved in carrying out any of the contractor's obligations under the contract or will receive a benefit under the contract;
- (c) the date on which the contract became effective and the duration of the contract;
- (d) particulars of the project to be undertaken, the goods or services to be provided or the real property to be leased or transferred under the contract;
- (e) the estimated amount payable to the contractor under the contract;
- (f) a description of any provisions under which the amount payable to the contractor may be varied;
- (g) a description of any provisions with respect to the renegotiation of the contract;
- (h) in the case of a contract arising from a tendering process, the method of tendering and a summary of the criteria against which the various tenders were assessed; and
- (i) a description of any provisions under which it is agreed that the contractor is to receive payment for providing operational or maintenance services.

CLASS 2 CONTRACTS:

Class 2 Contracts are all Class 1 Contracts to which any of the following also applies:

- (a) there has not been a tender process (NB: a tender process includes obtaining quotations for procurements between \$150,000 and \$250,000), the proposed contract has not been made publicly available and the terms and conditions of the contract have been directly negotiated with the contractor; or
- (b) the proposed contract (whether or not made publicly available) has been the subject of a tendering process and where the final contract terms and conditions have been substantially negotiated with the successful tenderer; or
- (c) the obligations of one or more of the parties under the contract to maintain or operate infrastructure or assets could continue for ten (10) years or more; or
- (d) the contract involves a privately financed project as defined by guidelines published by the Treasury (as in force from time to time); or
- (e) the contract involves a transfer of a significant asset of the NSW Health to another party to the contract in exchange for the transfer of an asset to NSW Health.

What information is disclosed for Class 2 Contracts?

(GIPA Act Section 30(2))

In addition to the information required to be disclosed for Class 1 Contracts the information required to be disclosed for Class 2 Contracts is as follows:

- (a) particulars of future transfers of significant assets to the State at zero, or nominal, cost to the State, including the date of their proposed transfer;
- (b) particulars of future transfers of significant assets to the contractor, including the date of their proposed transfer;
- (c) the results of any cost-benefit analysis of the contract conducted by the agency;

- (d) the components and quantum of the public sector comparator if used;
- (e) if relevant, a summary of information used in the contractor's full base case financial model (for example, the pricing formula for tolls or usage charges);
- (f) if relevant, particulars of how risk, during the construction and operational phases of a contract to undertake a specific project (such as construction, infrastructure or property development), is to be apportioned between the parties, quantified (where practicable) in net present-value terms and specifying the major assumptions involved;
- (g) particulars as to any significant guarantees or undertakings between the parties, including any guarantees or undertakings with respect to loan agreements entered into or proposed to be entered into; and
- (h) particulars of any other key elements of the contract.

CLASS 3 CONTRACTS:

Class 3 Contracts are Class 2 Contracts which have or are likely to have an estimated value of \$5 million or more.

What information is disclosed for Class 3 Contracts? (GIPA Act Section 31)

The information required to be disclosed for Class 3 Contracts is as follows:

- (a) The same information as for Class 2 Contracts, and
- (b) A copy of the contract

6 WHEN MUST THE CONTRACTS BE DISCLOSED?

The contract information for all classes of contracts must be disclosed within 45 working days after the contract becomes effective.

A contract becomes effective:

- (a) When it is entered into by the NSW Health; or
- (b) If the contract contains provisions which state that the contract will not commence until such time as a specific condition(s) is satisfied, at the time when that condition(s) is met.

7 RESPONSIBILITY FOR DISCLOSURE OF CONTRACT INFORMATION

Disclosure is the responsibility of the officer undertaking or managing a procurement activity or raising a Purchase Requisition. This officer is required to provide all necessary information to their HealthShare NSW Service Centre or, in the case of Ministry, the Procurement Advisory Service to enable the contract information to be published. If you are unsure who the information should be provided to, forward it to the Procurement Advisory Service.

The approach to disclosing the various forms of contracts entered into by the NSW Health System can be found in the table below.

Contract Type	Additional Info	Accountable for Disclosure	How to Disclose
Whole of Government Contracts	Executed by HealthShare NSW	HealthShare NSW	HealthShare NSW Procurement Team to Disclose.
Whole of Health Standing Offer Agreements¹	Executed by HealthShare NSW	HealthShare NSW	HealthShare NSW Procurement Team to Disclose.
Health Entity Contracts	No tender process or process conducted by Health Entity	Health Entity	Send completed GIPA Disclosure Form to HealthShare NSW Sourcing Team who will Disclose.
	Tender process run by HealthShare NSW	Health Entity	Send completed GIPA Disclosure Form to HealthShare NSW Local Tenders and Contracts Team to Disclose.
Purchase Orders of \$150,000 value or more (incl. GST) by non-Ministry entity		Health Entity	Respond to HealthShare NSW notification request. Send completed GIPA Disclosure Form to HealthShare NSW Sourcing Team who will Disclose.
Contracts or Purchase Orders by the Ministry of Health		Ministry of Health officer conducting the procurement	Send completed GIPA Disclosure Form to Procurement Advisory Service.

¹ There is potential for expenditure off standing offer contracts to be overstated if there are also individual procurements over \$150,000 that are properly disclosed as they occurred during the year. The following statement is to be included with the annual standing offer expenditure disclosures.

“This amount may also include previously disclosed individual contracts with a value of \$150,000 or more so should not be taken as an accurate reflection of overall expenditure by the NSW Health System”

8 EXEMPT CONTRACTS AND INFORMATION

What contracts are exempt from disclosure?

Individual employment contracts (but not labour hire contracts with employment agencies), and contracts not with the private sector (such as those with another government agency or internal business unit) are exempt and do not have to be disclosed.

What information is not required to be disclosed?

When disclosing contractual information on the government contracts register the NSW Health System is not required to disclose certain confidential information as follows:

- (a) the commercial-in-confidence provisions of a contract (see Definitions), or
- (b) details of any unsuccessful tender, or

- (c) any matter that could reasonably be expected to affect public safety or security, or
- (d) a copy of a contract, a provision of a contract or any other information in relation to a contract that is of such a nature that its inclusion in a record would result in there being an overriding public interest against disclosure of the record.

Visiting Medical Officer (VMO) Contracts

Contracts between the NSW Health and VMOs require disclosure in accordance with this Policy. However, in accordance with the above exemption for confidential information, personal information and details of the VMOs are not required to be disclosed.

Note:

If a Class 3 Contract is not published in its entirety or some items of the contract are not disclosed for reasons of confidentiality, all of the following information must still be disclosed:

- (a) the reasons why the contract or those provisions have not been included in the register, and
- (b) a statement as to whether it is intended that the contract or those provisions will be included in the register at a later date and, if so, when it is likely that they will be included, and
- (c) if some but not all of the provisions of the contract have been included in the register, a general description of the types of provisions that have not been included.

Approval not to disclose information

If a vendor requests some details of a contract to be withheld, or NSW Health believes it is not required to disclose certain information, a brief from the Chief Executive or Ministry Branch Executive Director detailing the information to be withheld and justification for not disclosing it is to be forwarded to the Chief Procurement Officer for approval.

9 CONTRACT VARIATIONS

If a contract is varied and the variation affects the particulars that are required to be included in the government contracts register in relation to the contract, the register must be updated within 45 working days after the variation becomes effective. Some examples include:

- extending the term of a contract,
- varying the value of a contract,
- any other key elements of the contract such as the nature of services provided.

If you are unsure whether a contract variation should be disclosed contact the Procurement Advisory Service for advice.

Likewise, if a material variation is made to a Class 3 Contract a copy of the variation or the varied provisions is to be included in the register within 45 working days after the variation becomes effective.

10 HOW IS INFORMATION DISCLOSED?

All tender and contract information required to be disclosed is to be posted on the government tenders website - <https://tenders.nsw.gov.au>. This is the NSW Government Contracts Register. Links to this register are to be maintained on the external websites of the Ministry, Local Health Districts and all other related Health entities.

If a contract is required to be disclosed in accordance with this policy the Contract Award Details form found on the Procurement Portal is to be completed and forwarded to Procurement Advisory Service for NSW Ministry of Health contracts, and to the relevant HealthShare Service Centre for Local Health Districts and other non-Ministry contracts for publishing of the information.

A copy of the contract plus, if applicable, the CPO's approval to withhold information (as per Section 11 above) is to be emailed to pas@doh.health.nsw.gov.au or HealthShare Local Tenders and Contracts Team for publication within 45 working days of the contract becoming effective.

11 HOW LONG DOES THE INFORMATION DISCLOSED HAVE TO REMAIN ON THE WEBSITE?

Contract information remains posted for at least twenty (20) working days or until all work under the contract has been completed or goods are supplied, whichever is the greater.

12 TRAINING AND FURTHER INFORMATION

Online training

A 30-minute self-paced online training module is available for NSW Government employees that covers the responsibilities of public sector employees and what information you need to disclose under the GIPA Act at the following link:

<https://www.procurepoint.nsw.gov.au/video/gipa-act-contract-disclosure-requirements>

Additional information, advice or assistance can be obtained from the Procurement Advisory Service pas@doh.health.nsw.gov.au or (02) 9391 9933 / 9391 9732.

13 LIST OF ATTACHMENTS

1. Contract Award Details Form (disclosure of contract information)
2. Contract Class Flowchart

Attachment 1: Contract Award Details Form (disclosure of contract information)

<http://procurementportal.moh.health.nsw.gov.au/Documents/CONTRACT%20AWARD%20DETAILS%20-%20202013.pdf>

CONTRACT AWARD DETAILS

Complete this form to provide details of contracts awarded over \$150,000. Complete additional forms if a contract is awarded to more than one respondent.



Mandatory field(s) marked with *

Contract Details

1	Contract /RFT ID *	
	Contract Title: *	
	Particulars of the project to be undertaken: *	

Contract Notice Duration

2	Contract Effective Date: *	DD/MM/YYYY	Contract End Date: *	DD/MM/YYYY

Successful Contractor

3	Business Name: *	
	Trading Name: *	
	ACN Exempt?: * Not Exempt	ACN:
	ABN Exempt?: * Not Exempt	ABN:
	Street Address Line 1: * (not PO Box)	
	Street Address Line 2:	
	Town/City: *	State/Territory: *
	Postcode: *	Country: *

Other Details

4	Related RFT ID: (if any)

5	Other private sector entities involved in, with an interest in or benefiting from this Contract: (include sub-contractors, consortium partners, etc)

6	Contract Value: *
	Contract Value Type: *
	Description of any Operational or Maintenance Services provisions: *
	Tender Method: *

7	Description of any provision under which the amount payable to the contractor may be varied:
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8	Description of any provisions under which the Contract may be renegotiated:
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9	Disclosure Class: *
	Note: Additional information is required for Class 2 and 3 contracts. Refer to Policy Directive 2009_047. Attach additional information to this form

10	Contract contains Agency Piggyback clause: *
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NSW Health Contact Details

11	Contact Person: *	
	Street Address Line 1:	
	Street Address Line 2:	
	Town/City:	State/Territory:
	Postcode:	Country:
	Phone Number: #	Fax Number: #
	Email: #	

Note: # at least one to be provided

12	Evaluation Criteria: (Main criteria only. Do not include sub-criteria)	Weighting *
	1.	
	2.	
	3.	
	4.	
	5.	
	6.	
	7.	
	8.	
	9.	
	10.	
	11.	
	12.	

Note: If you require more space attach to this form

Please send completed form to:

Procurement Advisory Service
 NSW Ministry of Health
 73 Miller St NORTH SYDNEY 2060
 Tel. (02) 9391 9215 or 9391 9933
 Fax: (02) 9391 9522
 E-mail: pas@doh.health.nsw.gov.au

Print Form

Attachment 2: Contract Class Flowchart

Attachment 2

DISCLOSURE FLOWCHART

