Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER MO-2093

Appeal MA-040295-1

City of Hamilton

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NATURE OF THE APPEAL:

The City of Hamilton (the City) received a multi-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information:

(a) With respect to Tender/RFP C6-7-03
("Desktop and Notebook Computer Supply"):

A copy of the successful Bid

The evaluation summary/scoring results for the tender bids

(b) With respect to Tender/RFP C6-17-03
("Supply and Implementation of a Portal Solution"):

A copy of the successful bid

The evaluation summary/scoring results for the tender bids

The request indicated that an electronic version of the information was preferred.

After identifying records responsive to the request and notifying three successful bidders under the tenders (which I will refer to as A, B and C) and only receiving an objection from A, the City made a decision granting partial access to the requested information.

The City identified A as being the successful bidder in Tender/RFP C6-7-03. B and C were identified as the successful bidders in Tender/RFP C6-17-03. Information relating to C's bid in Tender/RFP C6-7-03 is also contained in the record entitled "financials on equipment costs – scoring". The City identified this record as being responsive to the request for the evaluation summary/scoring results for the tender bids. The City advised that this record relates only to Tender/RFP C6-07-03.

In its decision letter, relying on section 10(1) of the *Act* (third party information), the City denied access to A's entire successful bid for Tender/RFP C6-7-03 and to a document that it identified as "financials on equipment costs – scoring", relating to that tender. Although only A objected to the disclosure of its information, the City also withheld access to certain pages and two appendices of the successful bids by B and C for Tender/RFP C6-17-03.

The requester (now the appellant) appealed the City's decision to deny access.

During mediation, the appellant confirmed that he was only seeking the information pertaining to the three successful bidders. Also during mediation, the appellant advised that he was no longer seeking access to one of the withheld appendices relating to C's bid in Tender/RFP C6-17-03. As no other matters could be resolved at mediation the appeal was moved to the adjudication stage.

I sent a Notice of Inquiry to the City and A, B and C initially. Only the City and A filed representations in response. B consented to the release of any responsive records relating to it. A objected to the disclosure of any records containing its information and asked that portions of its representations be withheld due to its confidentiality concerns.

I then sent a Notice of Inquiry, along with the complete representations of the City, and the non-confidential representations of A, to the appellant. The appellant provided representations in response.

As the appellant's representations raised issues to which I determined the City and A, B and C should be given an opportunity to reply, I sent the appellant's representations to them and invited their representations in reply. In the covering letter to B, I advised that as they were consenting to the release of records relating to them, unless they wished to, it was not necessary for them to file any reply representations. Only the City and A submitted representations in reply.

The City advised in its reply that since B consented to the disclosure of its information, it would be providing the appellant with access to this information. The City also stated that, presuming that this office had received no objection from C, it would be releasing information relating to C as well. The City further stated that because pages 35 to 65 of A's successful bid submission contained information that was in the public domain, it would no longer be relying on section 10(1) of the *Act* to deny access to those pages. Finally, the City made certain assertions that the particulars that of the Desktop and Notebook Computer Supply RFP had changed.

I determined that the appellant should be given an opportunity to address this assertion. Accordingly, I sent a letter to the appellant setting out that specific matter, inviting a response. The appellant filed representations in sur-reply.

Subsequently, in response to an inquiry from this office, the City advised that, notwithstanding the statements in its reply, it had not released any of B's information to the appellant. The City verbally confirmed, however, that upon payment of a fee, it would provide access to B's withheld information.

In addition, in the course of the adjudication of this appeal, this office asked the City whether a finalized agreement arose out of any of the bids. In response, the City advised that a written agreement between the City and C was created as a result of C's successful bid. The City advised that this agreement contains C's bid as a schedule. The City also reiterated its position referred to above, that provided C had not voiced any objection to this office about disclosure of its information, the City was prepared to release it to the appellant.

I have considered the parties confidential and non-confidential representations in making my determinations in this appeal.

RECORD

All, or parts of, the following records are at issue in this appeal:

> With respect to Tender/RFP C6-7-03
> (Desktop and Notebook Computer Supply):
>
> > A copy of A's successful bid in its entirety
> >
> > Any information pertaining to A and C that the City severed from the three page record it identified as "financials on equipment costs – scoring"
>
> With respect to Tender/RFP C6-17-03
> (Supply and Implementation of a Portal Solution):
>
> > Pages 83, 84, 85, 86, 160 and 161 of B's successful bid.
> > Appendix G to C's successful bid.

DISCUSSION:

THIRD PARTY INFORMATION

Sections 10(1)(a), (b) and (c) of the *Act* state:

> A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,
>
> (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
>
> (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied; or
>
> (c) result in undue loss or gain to any person, group, committee or financial institution or agency.

Based on the representations of the City and A, as outlined below, it is apparent that they rely on sections 10(1)(a) and/or (c). I will therefore not consider section 10(1)(b).

Section 10(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions [*Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.)]. Although one of the central purposes of the *Act* is to shed light on the operations of government, section 10(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace [Orders PO-1805, PO-2018, PO-2184, PO-2371, PO-2384, MO-1706].

For section 10(1)(a) and/or (c) to apply, the institution and/or the affected party resisting disclosure must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and

2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and

3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a) and/or (c) of section 10(1) will occur.

As discussed in the section on harms below (under part 3 of the test), in order to establish the harms set out in section 10(1) of the *Act*, the institution (in this appeal the City) and/or an affected party must provide "detailed and convincing evidence to establish a "reasonable expectation of harm". [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)]. Both B and C are in the best position to provide me with evidence of harm under section 10(1). At the request stage the City received no objection to disclosure from either B or C. In the appeal, B has consented to the release of its information and C has not provided me with any representations opposing disclosure. The City has advised that it is willing to release the information pertaining to B and C. In light of the above, and following my independent review of the representations and the records pertaining to B and C, I conclude that I have not been provided with sufficiently "detailed and convincing evidence to establish a "reasonable expectation of harm" under section 10(1) of the *Act*, nor am I prepared to infer such harm in the circumstances of this appeal. As a result, even if the information satisfied the other parts of the three part test under section 10(1), as set out below, it would still not meet the harms component of the test.

As all three parts of the test under section 10(1) must be met, I find that section 10(1) does not apply to the withheld information pertaining to B and C. Accordingly, I will order that the information pertaining to B and C be disclosed to the appellant.

I now turn to the remaining information at issue relating to A. This consists of A's successful bid in Tender/RFP C6-7-03 and A's information in the three page responsive record identified as "financials on equipment costs – scoring".

Part 1: Type of Information

Previous orders have defined "trade secret", "technical information", "commercial information" and "financial information" as follows:

> *Trade secret* means information including but not limited to a formula, pattern, compilation, programme, method, technique, or process or information contained or embodied in a product, device or mechanism which
>
> (i) is, or may be used in a trade or business,
>
> (ii) is not generally known in that trade or business,
>
> (iii) has economic value from not being generally known, and
>
> (iv) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy [Order PO-2010].
>
> *Technical information* is information belonging to an organized field of knowledge that would fall under the general categories of applied sciences or mechanical arts. Examples of these fields include architecture, engineering or electronics. While it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing [Order PO-2010].
>
> *Commercial information* is information that relates solely to the buying, selling or exchange of merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises [Order PO-2010]. The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information [P-1621].
>
> *Financial information* refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs [Order PO-2010].

A's bid includes pages FP1 to FP13 of the City's bid document with information inserted by A, warranty coverage information, additional "value added" services, and various appendices. Pages 35 to 65 of the bid appendices contain product specifications as well as a one-page profile of A's business.

The three-page record the City identified as "financials on equipment costs - scoring" for Tender/RFP C6-7-03, consists of a series of columns. The first column on each page sets out a

series of letters with corresponding dollar amounts. This is followed by four columns under different company names, including A's. There are also dollar amounts in each of the four columns and they all have a grand total dollar amount. Each column shows price scores for the different companies and a ranking out of 100. The City submits that the scoring sheets are essentially a pricing summary containing explicit cost calculations. The City states that these are based on product quantities and unit pricing provided by each of the bidders in their bids. The City has granted access to the vendor's identification, grand totals, price scores and scores out of 100 for each of the vendors. Access was denied to the other information in this record.

The City claims that the tender submission contains "technical" and "commercial information" and that the withheld information in the document described as "financials on equipment costs–scoring" consists of unit pricing relating to the bids. Referring to Order MO-1813, the City claims that this unit pricing qualifies as "commercial information" for the purposes of section 10(1). The City submits that disclosing this information would reveal or permit an accurate inference to be drawn about the nature of the information that was supplied by the bidders in their tender bids.

A submits that its bid document contains its intellectual property, stating that it forms a template for all of its tender submissions. It submits that it is the culmination of "countless hours of implementing best practices and industry knowledge" and was generated with input from consultants. A also submits that information relating to its service response time, extended warranty options, unique value propositions and maintenance contract represent examples of its intellectual property. The appellant takes issue with A's characterization of its bid template.

I am satisfied that A's bid document contains "technical" and "commercial" information within the meaning of those terms in section 10(1) of the *Act*. This is consistent with the findings made by former Assistant Commissioner Tom Mitchinson in Order MO-1559, which also addressed the application of section 10(1) to bid documents. I am satisfied that, in accordance with the reasoning in Order MO-1813, the unit pricing in the "financials on equipment costs–scoring" also falls within the definition of "commercial information".

However, I am not satisfied that the template of A's bid, nor the examples of information that A says is its intellectual property, meet the definition of a "formula, pattern, compilation, programme, method, technique, or process or information contained or embodied in a product, device or mechanism", or otherwise meets the definition of a "trade secret" as contemplated by section 10(1).

Because I have concluded that the information remaining at issue in the records qualifies as both "commercial" and "technical" information, I find that the requirements of Part 1 of the section 10(1) test have been met.

Part 2: supplied in confidence

In order to satisfy Part 2 of the test, the institution and/or the affected party must establish that the information was "supplied" to the institution "in confidence", either implicitly or explicitly.

Supplied

The requirement that information be supplied to an institution reflects the purpose in section 10(1) of protecting the informational assets of third parties [Order MO-1706]. Information may qualify as "supplied" if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party [Orders PO-2020, PO-2043].

The contents of a contract involving an institution and a third party will not normally qualify as having been "supplied" for the purpose of section 10(1). The provisions of a contract, in general, have been treated as mutually generated, rather than "supplied" by a third party, even where the contract substantially reflects terms proposed by a third party and where the contract is preceded by little or no negotiation [Orders PO-2018, MO-1706, PO-2371]. Except in unusual circumstances, agreed upon essential terms of a contract are considered to be the product of a negotiation process and therefore are not considered to be "supplied" [Orders MO-1706, PO-2371 and PO-2384].

This approach has recently been upheld by the Divisional Court in *Boeing v. Ontario (Ministry of Economic Development and Trade)* [2005] O.J. No. 2851 (Reasons on costs at [2005] O.J. No. 4153) (Div. Ct.); motion for leave to appeal dismissed, Doc. M32858 (C.A.).

In Order PO-2384, I addressed this aspect of 17(1) of the provincial *Freedom of Information and Protection of Privacy Act* (*FIPPA*), which is the equivalent provision to section 10(1) of the *Act*:

> If the terms of a contract are developed through a process of negotiation, a long line of orders from this office has held that this generally means that those terms have not been "supplied" for the purposes of this part of the test. As explained by Adjudicator DeVries in Order MO-1735, Adjudicator Morrow in Order MO-1706 identified that, except in unusual circumstances, agreed upon terms of a contract are not qualitatively different, whether they are the product of a lengthy exchange of offers and counter-offers or preceded by little or no negotiation. In either case, except in unusual circumstances, they are considered to be the product of a negotiation process and therefore not "supplied".
>
> As discussed in Order PO-2371, one of the factors to consider in deciding whether information is supplied is whether the information can be considered relatively "immutable" or not susceptible of change. For example, if a third party has certain fixed costs (such as overhead or labour costs already set out in a collective agreement) that determine a floor for a financial term in the contract, the information setting out the overhead cost may be found to be "supplied" within the meaning of section 17(1). Another example may be a third party producing its financial statements to the institution. It is also important to consider the context within which the disputed information is exchanged between the parties. A bid proposal may be "supplied" by the third party during the tendering process.

> However, if it is successful and is incorporated into or becomes the contract, it may become "negotiated" information, since its presence in the contract signifies that the other party agreed to it. The intention of section 17(1) is to protect information of the third party that is not susceptible of change in the negotiation process, not information that was susceptible to change but was not, in fact, changed.

In Order PO-2435, Assistant Commissioner Beamish rejected the position of the Ministry of Health and Long-Term Care that proposals submitted by potential vendors in response to government RFPs, including per diem rates, are not negotiated because the government either accepts or rejects the proposal in its entirety. Assistant Commissioner Beamish observed that the exercise of the government's option in accepting or rejecting a consultant's bid is a "form of negotiation". He wrote:

> The Ministry's position suggests that the Government has no control over the per diem rate paid to consultants. In other words, simply because a consultant submitted a particular per diem in response to the RFP release by [Management Board Secretariat (MBS)], the Government is bound to accept that per diem. This is obviously not the case. If a bid submitted by a consultant contains a per diem that is judged to be too high, or otherwise unacceptable, the Government has the option of not selecting that bid and not entering into a [Vendor of Record] agreement with that consultant. To claim that this does not amount to negotiation is, in my view, incorrect. The acceptance or rejection of a consultant's bid in response to the RFP released by MBS is a form of negotiation. In addition, the fact that the negotiation of an acceptable per diem may have taken place as part of the MBS process cannot then be relied upon by the Ministry, or [Shared Systems for Health], to claim that the per diem amount was simply submitted and was not subject to negotiation.
>
> It is also important to note that the per diem does not represent a fixed underlying cost, but rather it is the amount being charged by the contracting party for providing a particular individual's services.

The City, A, and the appellant all acknowledge that the bid was supplied by A to the City in the context of a bid process.

A submits that except for certain pages it identifies, none of the information in the bid is available from publicly accessible sources.

I have reviewed A's successful bid and find that the information inserted by A on page FP13, the OPS price inserted by A on pages FP8 to FP11, and all of the information on pages 35 to 65 meets the definition of being "immutable" or not susceptible of change through negotiation.

In my view, therefore only the information A provided for the list of projects for reference purposes, along with their particulars on page FP13, the OPS price inserted by A on pages FP8 to

FP11 and all of the information on pages 35 to 65 of A's successful bid is "immutable" and was supplied to the City within the meaning of the "supplied" component of the part 2 test. I now turn to the balance of the information in the records.

The bid document governing the bid process for Tender/RFP C6-07-03, in which A was the successful bidder, provides that if the successful bidder has not complied with its terms, the City may cancel the agreement. Although the City advises that there was no subsequent formal written agreement entered into with A, there was no evidence provided to refute an assumption that A is conducting business with the City in accordance with the terms of its bid.

This indicates to me that, except for the information that I have found to be "immutable", the remaining information consists of the basic bid terms and conditions for A's bid (including the value added warranty service add-ons that A provided in the bid). For example, the percentage set out in upper right hand corner of pages FP8 to FP11 reveals the *total* discount that A provides the City, not the amount of any discounts that A may receive from any supplier. These terms and conditions were accepted by the City when the tender was successful and an agreement was formed based upon those terms and conditions. This agreement was not, however, reduced to writing.

Based on the authorities reproduced above, and my review of the representations and the records, I conclude that this information was mutually generated through the process of negotiation. As a result, I find that it was not "supplied" for the purposes of part 2 of the section 10(1) test.

I also find that any amounts in the record the City identified as "financials on equipment costs - scoring" that originated from the information in A's bid, is similarly not supplied, but rather represents the mutually generated product of a negotiation process.

Therefore, I do not consider the remaining information withheld from A's successful bid, and the related information that was not disclosed from the "financials on equipment costs - scoring", to have been supplied for the purposes of part 2 of the section 10(1) test.

In the result, I find that only the information A provided on page FP13, the OPS price inserted by A on pages FP8 to FP11 and pages 35 to 65 of A's successful bid were "supplied" by A for the purposes of part 2 of the section 10(1) test. I will now consider whether that information was provided "in confidence".

In Confidence

In order to satisfy the "in confidence" component of part 2, the parties resisting disclosure, must establish that the supplier had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis [Order PO-2043].

In determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case, including whether the information was:

- communicated to the City on the basis that it was confidential and that it was to be kept confidential;
- treated consistently in a manner that indicates a concern for its protection from disclosure by the affected party prior to being communicated to the City;
- not otherwise disclosed or available from sources to which the public has access;
- prepared for a purpose that would not entail disclosure [PO-2043].

Representations of the City

The City submits all of the vendors who submitted bids in accordance with Tender/RFP C6-7-03 had the expectation that their submissions were supplied in confidence.

In support of this contention, the City refers to a provision contained in an appendix to the Tender/RFP C6-7-03 bid information document. This provision states that to safeguard their rights, the bidders were to mark each part of their bid submission (other than the names of bidders and their total contract prices, which the City routinely discloses) that they wished kept confidential. The City states that in accordance with this directive, A marked every page of its bid submission as "confidential". My review of the copy of A's bid that was provided to this office indicates otherwise, however. On the copy that I have, there is no notation of confidentiality on the page which profiles A's business and on pages FP1 to FP13, being the pages of the City's bid document with information inserted by A.

Representations of A

A submits that its bid was provided in the strictest of confidence. In support of this submission, A says it marked its tender as confidential in accordance with the City's directive. A also points to another portion of the same appendix to the City's bid information document, which provided that:

> The [City] shall make every effort to maintain the confidentiality of each submission. City policy is to disclose such information as is required by law. Please note that all submissions are subject to the provisions of the [*Act*].

According to A, this statement gave rise to its expectation that that the City would treat its bid with a high degree of confidentiality, and that information would only be released where required by law. It submitted that, except for pages 35 to 65 of its bid, none of the other information is available from sources to which the public has access. To further support A's contention that the information in the bid was submitted in confidence, A states that in order to

maintain the confidentiality of the bid, it refused a request from a senior employee of the City to share it with his son to use in a school project.

The Representations of the Appellant

The appellant takes issue with certain factual assertions made by A. He submits that, based on his experience the City regularly releases unit pricing to certain of its departments, agencies and individuals that he says are not subject to any requirement to keep the received information confidential. Furthermore, the appellant asserts that information relating to successful bids, have historically been released by the City. He also points to Order MO-1559 of this office which ordered the release of a copy of the 2001 winning bid for desktop computer equipment supply to the City.

The Reply Representations of A and the City

The City submits that the departments the appellant identified in his representations are City departments, and are not entities separate from the City. The City states that the appellant has not identified any non-City agency that has had access to the information. The City further submits that Order MO-1559 is distinguishable on its facts. The City points out that it has reworded its policies to address that order.

The City submits that in its new tender documents it clarified what would be disclosed and the steps a vendor should take if it wishes to safeguard its information. The City states that it does not disclose a submission in its entirety unless it has the vendor's consent.

Analysis

A has already indicated that pages 35 to 65 of its bid are publicly available. As all of this information is available from sources to which the public has access, I am not satisfied that it was submitted in confidence. I am also of the same opinion with respect to the OPS price inserted by A on pages FP8 to FP11. This information is not, by its nature A's information; rather it is sourced from the OPS, a source to which the public has access.

However, I am satisfied that, in the circumstances of this appeal, the appellant had a reasonable held expectation of confidentiality with respect to the information on page FP13, which is a list of projects for reference purposes. While there is no notation of confidentiality on page FP13, the cover page of the bid was marked as confidential. Based on the submissions of A, I am satisfied that it considered the information confidential and took steps to ensure it was not otherwise made public. Accordingly, I find that the information in page FP13 of A's successful bid was "supplied in confidence" in the context of the City's tender process, thereby satisfying part 2 of the section 10(1) test. I will therefore consider whether this information meets part 3 of the test, relating to harms.

Although I am only required to conduct the "harms" analysis under part 3 of the test for the information at page FP13 that I have found to meet parts 1 and 2 of the test, my following comments on the application of part 3 of the test under section 10(1) harms are equally

applicable to the entirety of A's bid submission, as well as the information pertaining to A that is found in the "financials on equipment costs - scoring".

Part 3: harms

General principles

As discussed above, to meet this part of the test, the City and/or A must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

The failure of a party resisting disclosure to provide detailed and convincing evidence will not necessarily defeat the claim for exemption where harm can be inferred from other circumstances. However, only in exceptional circumstances would such a determination be made on the basis of anything other than the records at issue and the evidence provided by a party in discharging its onus [Order PO-2020].

The Representations of the City and A

The City submits that disclosure of A's bid could reasonably be expected to significantly prejudice A's competitive position and harm its competitive advantage. This is because it would reveal its pricing structure and its marketing and value-added service strategies.

In its confidential and non-confidential representations A stresses the highly competitive nature of the personal and notebook computer business. It submits that release of the information in the bid and/or the template of the bid would cause it to suffer a measurable financial loss and undue hardship. It submits that releasing the bid would directly impact its ability to be unique and competitive in all of its future tender opportunities, including those with the City. Furthermore, A states that release of the bid would result in a financial loss due to potential lost sales and/or lower profits on sales.

In particular, A submits that releasing the amount of a discount it provides the City would provide competitive bidders with pricing knowledge. A says this would provide an advantage to its competitors in future tender bid opportunities.

A also submits that because others could use its bid as a template for their competitive bid submissions, without incurring any development costs, this would be providing others, including the appellant, with an undue financial gain. Furthermore A submits that using the same template would eliminate any strategic advantage A has obtained as a result of its development.

The Representations of the Appellant

The appellant submits that the City tenders for Desktop and Notebook Computer supply every two to three years, although the contract likely has monthly adjustments. The appellant submits

that information including pricing, manufacturer participation, models and specifications and warranties change on a monthly basis. The appellant asserts that "yesterday's bid will not win tomorrow's tender".

The appellant also submits that in his 15 years in the computer resale business he has never experienced any reseller using another's bid or terms as a template.

The Reply Representations of the City and A and the Appellant's Sur-Reply

In reply, A submits that an organization does not change the way it does business on a tender by tender basis. It does not change its core "value added" offerings. A submits that this is the very information that is contained in its bid.

The City agrees that the contract is tendered on a regular basis, but every two to four years. The City states, however, that the particulars change with each tender.

In sur-reply the appellant takes issue with the City's assertion that the particulars of the tender have changed.

Analysis

Having carefully reviewed the representations of the parties and the records at issue, I am not persuaded that disclosing the bid agreement, or the information pertaining to A from the bid agreement that is found in the "financials on equipment costs-scoring", could reasonably be expected to result in any of the harms described in section 10(1) of the *Act*.

While I accept that disclosure of the bid could serve as a guide to competitors, thereby reducing competitors' negotiating costs and possibly increasing A's costs, I am not satisfied that this amounts to "significant" prejudice or "undue" loss or gain under section 10(1)(a) and (c) of the *Act*. In that regard, I concur with the following comment made by Assistant Commissioner Beamish in Order PO-2435:

> The fact that a consultant working for the government may be subject to a more competitive bidding process for future contracts does not, in and of itself, significantly prejudice their competitive position or result in undue loss to them.

I have also reached this conclusion because I am not convinced that there is any inherent value in the information at issue in this appeal. The information contained in the bid is now some years old, and I accept the appellant's argument that the pricing in the computer and notebook supply business changes over time. I am satisfied that the amounts listed, including the discounts granted, would be of little value to any competitor now.

Furthermore, in my view, neither the City nor the affected party have provided sufficient evidence to demonstrate how disclosure of the references listed on page FP13 of the bid could cause the type of harms described in section 10(1)(a) or (c).

As stated in previous orders of this office, including those I have cited above, it is not enough to merely provide generalized statements of possible harm. In my view, this is all that the City and A have provided.

Accordingly, for the reasons set out above, I find that the part 3 harms test has not been met with regard to the information in A's successful bid agreement and the information pertaining to A that is found in the "financials on equipment costs-scoring".

As none of the information at issue has met all three parts of the test, as required under section 10(1), I find that section 10(1) does not apply. As no other exemptions have been claimed, I will order the information to be disclosed to the appellant.

ORDER:

1. I order the City to disclose the following records by sending a copy to the appellant by **November 3, 2006**, but not earlier than **October 30, 2006**.

    a. With respect to Tender/RFP C6-17-03, a copy of A's successful bid in its entirety and the information pertaining to A severed from the three page record identified as "financials on equipment costs – scoring";

    b. With respect to Tender/RFP C6-17-03, pages 83, 84, 85, 86, 160 and 161 of B's successful bid and Appendix G to C's successful bid.

2. In order to verify compliance with this order, I reserve the right to require the City to provide me with a copy of the records disclosed to the appellant in accordance with paragraph 1 above.

Original signed by: September 29, 2006
Steven Faughnan
Adjudicator