

Government Information (Public Access) Act 2009 (NSW)

Explanatory Table

Sydney Metro West – Eastern Tunnelling Works Incentivised Target Cost Contract

Contract Number: 00013/13102

Deed of Amendment No 3

Capitalised terms in this table have the meaning given to them in the Sydney Metro West Eastern Tunnelling Works Incentivised Target Cost Contract (**ETP Deed**), unless the context indicates otherwise.

In preparing this explanatory table, Sydney Metro has:

- (a) identified the reason(s) under the *Government Information (Public Access) Act 2009 (NSW)* (**GIPA Act**) for each redaction; and
- (b) weighed each redaction against the following key public interest considerations for disclosure:
 - (i) promoting open discussion of public affairs, enhancing Government accountability or contributing to positive and informed debate on issues of public importance;
 - (ii) creating public awareness and understanding on issues of public importance;
 - (iii) enhancing government transparency and accountability;
 - (iv) informing the public about the operations of the agency;
 - (v) ensuring effective oversight of the expenditure of public funds and the best use of public resources; and
 - (vi) ensuring fair commercial competition within the economy.

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
SCHEDULES				
1.	Schedule A2 (Portions and Milestones)	The redacted information is dates, dollar amounts and Portion descriptions.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at clause 1 of Schedule 4</i></p> <p>The disclosure of this information discloses the Tunnelling Contractor's cost structure or profit margins and would place the Tunnelling Contractor at a substantial commercial disadvantage in relation to potential contractors and provide visibility on the Tunnelling Contractor's profit margins.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could also reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure for the following reasons:</p> <p>a) the redacted information sets out:</p> <ul style="list-style-type: none"> i. the description of each Portions; ii. the Date for Substantial Completion of each Portion; and iii. the rate of Liquidated Damages if Substantial Completion does not occur by the Date for Substantial Completion; <p>b) exposing the redacted information would reveal the risk that the Tunnelling Contractor priced and accepted in relation to Liquidated Damages regime and the relevant Dates for Substantial Completion. Exposing this information may provide insight into the Tunnelling Contractor's views on its potential capabilities and likelihood of there being a delay to the project;</p> <p>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the</p>

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				<p>parties' legitimate business, commercial or financial interests; and</p> <p>d) the public interest has been served by revealing the obligation of the Tunnelling Contractor to achieve Substantial Completion of the relevant portions by the Date for Substantial Completion for each Portion. In light of this disclosure there is an overriding public interest against the disclosure of the precise dates, dollar amounts and Portion descriptions.</p> <p>Review: This information would be reviewed for disclosure as events and circumstances change.</p>
2.	Schedule A23 (Overall ETP Program)	The information redacted is the entire schedule.	<p><i>Section 32(1)(a), paragraph (e) of the definition of "commercial-in-confidence provisions" at clause 1 of Schedule 4</i></p> <p>Would place the Tunnelling Contractor at a substantial commercial disadvantage in relation to potential contractors and provide visibility.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure for the following reasons:</p> <p>a) disclosure of the redacted information would reveal how the Supplier has programmed the work for the project and provide insight into the Supplier's views on its potential capabilities and likelihood of certain risks arising;</p> <p>b) exposing the redacted information would reveal the level of risk the Tunnelling Contractor was willing to price and accept in relation to the timing of the delivery of the Project Works. It would also reveal a program which the Tunnelling Contractor has invested a significant amount of time developing, and which the Tunnelling Contractor</p>

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			There is an overriding public interest against disclosure.	<p>may want to use in future bids to gain a competitive advantage; and</p> <p>c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p>Review: This information would be reviewed for disclosure as events and circumstances change.</p>
3.	Schedule D1 (Site Access Schedule)	The information redacted is tables.	<p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure for the following reasons:</p> <p>(a) the redacted information sets out:</p> <ul style="list-style-type: none"> (i) details relating to the site access drawings and descriptions of site areas; and (ii) the Early Site Access Dates, Site Access Dates, Site Access Expiry Dates and Site Access Restrictions for various site areas; <p>(b) the Tunnelling Contractor's delivery strategy and timing of works is a competitive differentiator of its proposal, and therefore part of its successful bidding strategy. Significant investment may have been made by the Tunnelling Contractor in the</p>

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				<p>development and refinement of such strategy, and the access locations and access dates, combined with other information, could contain the Tunnelling Contractor's intellectual property. The Tunnelling Contractor may benefit from using this information in future bids to obtain a commercial advantage, and the disclosure of this information would reduce its competitive commercial value;</p> <p>(c) the Tunnelling Contractor has obligations under the ETP Deed with respect to accessing the Construction Site, including obligations relating to the prevention of delay and avoiding or minimising the consequences of such delay and disruption during construction. Revealing the redacted information would provide insight into the Tunnelling Contractor's views on its own capabilities and the level of risk the Tunnelling Contractor was willing to price and accept. If this information were revealed, it could place the Tunnelling Contractor at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to other contractors who the Tunnelling Contractor may have to negotiate or bid against. Therefore the disclosure of the information could prejudice the Tunnelling Contractor's legitimate business, commercial or financial interests; and</p> <p>(d) the public interest has been served by revealing the existence of the Site Access Schedule.</p>

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4.	Schedule E1 (Payment)	The information redacted is the entire schedule.	<p><i>Section 32(1)(a), paragraphs (b) and (e) of the definition of "commercial-in-confidence provisions" at clause 1 of Schedule 4</i></p> <p>The disclosure of this information discloses the Tunnelling Contractor's cost structure or profit margins and would place the Tunnelling Contractor at a substantial commercial disadvantage in relation to potential contractors and provide visibility on the Tunnelling Contractor's profit margins.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> a) the redacted information specifies the amounts payable to the Tunnelling Contractor for the works and itemises the components of the Target Cost and the Project Contract Sum and payment constraints in respect of the Target Cost and pricing assumptions; b) exposing the redacted information may provide insight into the amount that the Contractor was willing to price and accept for performing the work (and all affiliated risks) and would provide insight into the Contractor's cost structure and profit margins; c) disclosure of the redacted information may provide insight on how the Tunnelling Contractor priced and accepted the work for the project; and; d) if this information were revealed, it would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the

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				<p>Tunnelling Contractor's legitimate business, commercial or financial interests.</p> <p>Review: This information would be reviewed for disclosure as events and circumstances change.</p>
5.	Schedule E16 (KP&E Residual Value Amounts)	The information redacted is the entire schedule.	<p><i>Section 32(1)(a), paragraphs (a), (b), (c) and (e) of the definition of "commercial-in-confidence provisions" at clause 1 of Schedule 4</i></p> <p>The disclosure of this information could reveal the Tunnelling Contractor's financing arrangements, cost structure or profit margins, full base case financial model and would place the Tunnelling Contractor at a substantial commercial disadvantage in relation to other contractors.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure for the following reasons:</p> <ul style="list-style-type: none"> a) the redacted information sets out the KP&E Residual Value Amount for a corresponding KP&E Residual Value Adjustment Month; b) exposing the redacted information would reveal commercially sensitive information related to the value of the Key Plant and Equipment under the ETP Deed. Exposing this information may provide insight into the Tunnelling Contractor's financing arrangements, cost structure and full base case financial model; and c) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.

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6.	Schedule F1 (<i>Electronic Files</i>)	The information redacted are the electronic files names for the documents relating to the Overall ETP Program and tunnel Access Plans	<p><i>Section 32(1)(a), paragraph (e) of the definition of "commercial-in-confidence provisions" at clause 1 of Schedule 4</i></p> <p>Would place the Tunnelling Contractor at a substantial commercial disadvantage in relation to potential contractors and provide visibility.</p> <p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), item 4(b), (c) and (d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure for the following reasons:</p> <p>(a) the redacted information sets out details relating to the Overall ETP Program, site access drawings and descriptions of site areas;</p> <p>(b) the Tunnelling Contractor's delivery strategy and timing of works is a competitive differentiator of its proposal, and therefore part of its successful bidding strategy. Significant investment may have been made by the Tunnelling Contractor in the development and refinement of such strategy, and the access locations and access dates, combined with other information, could contain the Tunnelling Contractor's intellectual property. The Tunnelling Contractor may benefit from using this information in future bids to obtain a commercial advantage, and the disclosure of this information would reduce its competitive commercial value;</p> <p>(c) the Tunnelling Contractor has obligations under the ETP Deed with respect to accessing the Construction Site, including obligations relating to the prevention of delay and avoiding or minimising the consequences of such delay and disruption during construction. Revealing the redacted information would provide insight into</p>

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				<p>the Tunnelling Contractor's views on its own capabilities and the level of risk the Tunnelling Contractor was willing to price and accept. If this information were revealed, it could place the Tunnelling Contractor at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to other contractors who the Tunnelling Contractor may have to negotiate or bid against. Therefore the disclosure of the information could prejudice the Tunnelling Contractor's legitimate business, commercial or financial interests; and</p> <p>(d) disclosure of the redacted information would reveal how the Supplier has programmed the work for the project and provide insight into the Supplier's views on its potential capabilities and likelihood of certain risks arising;</p> <p>(e) exposing the redacted information would reveal the level of risk the Tunnelling Contractor was willing to price and accept in relation to the timing of the delivery of the Project Works. It would also reveal a program which the Tunnelling Contractor has invested a significant amount of time developing, and which the Tunnelling Contractor may want to use in future bids to gain a competitive advantage; and</p> <p>(f) revealing the information would place the parties at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to potential future clients, competitors and</p>

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				<p>contractors. Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p>(g) the public interest has been served by revealing the existence of these documents.</p> <p>Review: This information would be reviewed for disclosure as events and circumstances change.</p>
7.	Execution Page	The information redacted is the names and signatures of the signatories.	<p><i>Section 32(1)(d), item 3(a) of the table in section 14</i></p> <p>The disclosure of this information would reveal an individual's personal information.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because the redacted information would disclose personal information of individuals, including names and signatures.</p> <p>The Principal considers that any public interest in favour of the disclosure is not significantly advanced by the disclosure of this information, and is outweighed by the public interest against the disclosure as identified above.</p>