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Confidential Information Management: FAQs

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Strategic advice  
practical legal solutions

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## What documents are confidential?

A significant amount of confidential information will be generated throughout the Project, such as records of discussions with potential suppliers, documentation generated as a result of procurement activities associated with the Project and other information that has not been made public. Confidential information is any information that should not be released to anyone outside the Project who is not otherwise entitled to receive the information.

The following documents are classified as confidential and therefore should be dealt with according to the advice provided in this document:

- Contents of the RFP submissions and documentation generated from discussions and meetings with potential respondents.
- Confidential information produced throughout procurement activities associated with the Project, including (but not limited to):
  - Tender documentation prior to it being issued to potential respondents (i.e. during the preparation stage)
  - Evaluation methodology and weightings of evaluation criteria
  - Notes and records of the evaluation process
  - Contents of submissions to procurement processes
  - Reports prepared regarding the evaluation and its outcomes
- Any other information related to the Project that is not publicly available, including (but not limited to) Board reports and meeting minutes.

## How do I know if a document is confidential?

In the first instance, you should seek guidance from this document as to what documents are considered confidential (see above). If you identify a document that you believe is not covered in this list but you suspect may be classified as confidential, you should seek guidance from the Project Manager or nominee before releasing the information to external parties.

## Why is it important to maintain confidentiality?

The unauthorised release of confidential information could also damage [agency's] reputation which could potentially impact on the success of the Project to achieve its objectives. Breaches of confidentiality requirements such as unauthorised release of confidential information can compromise the fairness of any decision making activities associated with the Project, such as procurement processes, and lead to outcomes which do not represent best value for money. In addition, any release of confidential information can compromise the integrity of the Project, which could result in potential suppliers not responding to procurement processes due to a lack of faith in the process.

## Who is allowed to access documentation in relation to the Project?

Generally, access to documentation in relation to the Project is limited to the Project Team members, which includes the following:

- Members of the Implementation and Project Team
- Members of the panel for the evaluation of RFP submissions
- Board members who are free from conflicts of interest that could impact on the independence of their decision making
- Members of the Probity Auditor team

Any officers who will be required to access confidential information during the Project will be required to sign confidentiality undertakings.

## **What is a confidentiality undertaking and why do I need to sign one?**

A confidentiality undertaking is a document signed by all members of the Project team that will be required to access confidential information which verifies that they understand their obligations in relation to maintaining the confidential information.

The confidentiality undertaking also seeks confirmation from team members that they will act in accordance with this document and the Code of Conduct when dealing with confidential information during the course of their duties on the Project.

## **Why can't I access some folders within the Project network drive when I am a member of the program team?**

In accordance with the need to ensure that access to confidential information is appropriately managed, the Project has set up various security controls within the network. The security controls aim to limit officers' access to information on a 'need to know' basis. As such, there are some areas of the network drive where access will be limited to specific officers.

For example, access to any confidential information generated as a result of procurement activities associated with the Project will be limited to officers directly involved in the procurement activities such as evaluation team members and administrative staff.

## **What is meant by 'need to know'?**

The concept of the 'need to know' principle is that officers within organisations are only provided with information that is necessary for them to perform their duties.

In the case of the Project, the 'need to know' principle is applied in order to maintain the security of confidential information that is generated during the Project to protect the integrity of the program and its associated processes.

## **What do I do if I think confidential information has been provided to someone external to the Project or within the Project that is not authorised to receive the information?**

If you identify information that has been provided to officers that are not ordinarily entitled to this information, you should inform the Project Manager.

## **What happens if I want to access information I can't currently access?**

If there is information that you believe you require access to (that you cannot currently access) in order to complete some aspects of your job that you currently cannot access, you will need to discuss this with the Project Manager and identify the information required as well as provide the Project Manager with advice regarding why there is a need to know this information. It will then be a matter for the Project Manager as to whether access to this information should be granted.

## **If I am contacted by a current company who has a current supplier relationship with a Project team member or member of the Board for information in relation to the Project, what am I able to tell them?**

If you are in a position where you have contact with a company that has a current supplier relationship with a Board or Project team member that also may be potential respondent to the RFP, it is important that you are aware of the

limitations on the information that can be provided to such suppliers in relation to the Project.

Your role on the Project should not interfere with the performance of your normal day-to-day duties with [agency] or your employer. Specifically, if the performance of your job requires contact with current suppliers who may also be potential suppliers to the Project, then your involvement with the Project will not prevent you from discussing such aspects of your job with these suppliers.

However, in the event that a potential supplier approaches you for information specifically in relation to your involvement with the Project or other information regarding the Project, such as the status or other information about procurement activities, no information should be provided to the supplier that is not public. The supplier should be referred to the Project Manager. For example, if a company attempts to obtain information from you in relation to the Project, such as procurement activities, they should be informed that you are prevented from discussing these aspects of the Project with them and refer them to the Project Manager in order to obtain such advice. In addition, if such an approach is made you should inform the Project Manager of the approach, including the details of the supplier and the information that was requested from you. The Project Manager will then document the communication and decide the appropriate management strategy, if required.

### **What happens if, during any procurement activities, a potential respondent to the EOI/tender contacts me seeking information? What should I do?**

It is important for the management of confidential information and ensuring the integrity of procurement activities that strategies are in place to control the information that is provided to potential respondents to procurement processes. In addition, it is integral

to the transparency of the process that information provided to one proponent is provided to all proponents to ensure all potential respondents to procurement processes are on equal footing when responding to the RFP.

In light of this, it is important that you do not provide any information to suppliers, specifically in relation to procurement activities, that could be perceived to have favoured them or provided them with an advantage over other suppliers or respondents to the EOI/tender processes. Any requests for information such as this should be referred to the Project Manager

### **Given my role on the Project, am I prevented from attending business meetings or social activities with potential respondents to the RFP process?**

In relation to attendance at social activities, care should be taken to ensure that your attendance at such activities does not have, or appear to, an adverse influence on the performance of your work with the Project. If you are not sure about whether your attendance at specific social activities could compromise your or the Project's integrity or create a perception of undue influence, seek guidance from the Project Manager.

This topic was the subject of the monthly VGSO lunchtime seminar held on 30 April 2009.

These notes are published with the permission of the presenter, **Andrea Hassett**.

The notes are not to be regarded as legal advice.