

<b>Treasurer's Instruction No</b>	<b>1401</b>
Title	<b>Confidentiality of Government Contracts</b>
Effective date	<b>1 January 2009</b>
Objective and Background	<b>Provides instructions on the procedures to be adopted to comply with the Government's Crown Contracts Confidentiality Policy.</b>
Version Number	<b>4</b>
Last Reviewed Date	<b>August 2010</b>

*Black letter (or bold) items within these Instructions are mandatory and other plain font items are instructional or for the purpose of providing guidance only.*

The Government is committed to ensuring that government contracting is conducted in an open and transparent manner and that unnecessary confidentiality provisions do not fetter scrutiny of contracts. The Government's policy in relation to confidentiality, effective from 15 February 2007, provides that in any contract between the Crown and any other party, confidentiality requirements in relation to the provisions of the contract are not to be included. An exemption from this position may be approved by the Standing Committee if it is determined that confidentiality is in the public interest.

The restriction on confidentiality applies only to the contract itself, including annexures or schedules, but not to the services or products that flow from the performance of the contract. Information which passes between the parties in order to enable the contract to be performed is not captured by the policy, provided that information does not form part of the contract documentation. Where sensitive information is provided to either party under a contract and that information forms part of the contract documentation, an exemption may be sought.

**(1) Except as provided for in Clause (2), this Instruction applies to all contracts entered into between the Crown and any other party.**

This includes an assignment of an existing contract or a novation of a contract by agreement between the parties.

**(2) This Instruction does not apply to:**

- (a) a contract in existence prior to 15 February 2007;**
- (b) a novation of a contract that occurs by exercise of a contractual entitlement to novate in existence on 15 February 2007;**
- (c) information protected under the *Personal Information Protection Act 2004 (Tas)*;**
- (d) information protected under the *Privacy Act 1988 (Cwlth)*; or**
- (e) contracts of employment under the *State Service Act 2000 (Tas)*.**

For contracts that result from a procurement process, Instruction 1401 should be read in conjunction with Instructions 1109, 1124 and 1229.

**(3) A contract must not contain a provision protecting confidentiality of any provisions of the contract unless an exemption under clause (4) is granted.**

To ensure clear understanding of all parties involved in Crown contracts, it is recommended that where possible, unless an exemption has been granted, contracts contain provisions indicating that confidentiality does not apply. For directions on suitable wording for contracts arising from a procurement process, see Instructions 1109, 1206 and 1207. For suitable wording for all other contracts, Crown Solicitor's advice should be sought.

**(4) An exemption from the requirement that Crown contracts must not protect confidentiality of any provisions of the contract may be approved only by the Standing Committee comprising the Secretaries of the Departments of Treasury and Finance (Chair), Justice, and Premier and Cabinet or, where necessary, the Secretary of the Department of Health and Human Services as an alternate ("the Crown Contracts Confidentiality Standing Committee").**

An application for exemption is to be made during the contract negotiation stage by the Head of the relevant Agency or an officer representing the Crown in relation to that contract.

The request is to be forwarded to the Department of Treasury and Finance, Procurement and Property Branch, marked to the attention of the Manager, Procurement and Risk Management. An urgent request may be emailed to [purchasing@treasury.tas.gov.au](mailto:purchasing@treasury.tas.gov.au) with a hard copy to follow. Detailed information on the requirements for requesting an exemption can be found on the Treasury website at [www.treasury.tas.gov.au](http://www.treasury.tas.gov.au) and should be referred to for all applications.

An exemption will be granted only where the Standing Committee determines that confidentiality, in part or in whole, is in the public interest.

The Standing Committee may impose a limit on the period of confidentiality if it considers it appropriate to do so. The Committee, in its absolute discretion, may decide that part of the contract provisions referred to in an application for exemption, are to be disclosed even if an exemption is granted for other provisions.

Retrospective exemptions will not be granted.

If an application for an exemption is not granted, or if an application is granted in terms not acceptable to either party, that party may either withdraw from the negotiations or waive their confidentiality requirements.

**(5) Contracts containing confidential provisions as a result of an exemption granted by the Standing Committee will be disclosed on the Tenders website at [www.tenders.tas.gov.au](http://www.tenders.tas.gov.au). All such contracts will also be reported in the Department of Treasury and Finance Annual Report. When an exemption has**

**been granted, the responsible agency must ensure that the confidential provisions are clearly identified in the contract.**

Crown Solicitor's advice should be sought for the appropriate wording for the contract in such circumstances.

#### **DISCLOSURE – CONTRACTS VALUED AT OVER \$2 MILLION**

For disclosure requirements in relation to contracts arising from a procurement process, refer to Instructions 1110 and 1212. For disclosure requirements in relation to all other contracts refer to Instruction 1402.