GIPA Act – complying with contract requirements

The new Government Information (Public Access) Act (GIPA), 2009, replaced the Freedom of Information (FOI) legislation on 1 July 2010. The main thrust of this new Act is to make information about Government agencies, including the DET and schools, more freely available to the public, particularly on the internet.

The impact on business units undertaking eTendering will be minimal, as the requirements under the new Act are similar to the requirements under s.15A of the Freedom of Information Act.

**Contract Register (Contract Notice)**

From 1 July 2010, the introduction of the GIPA Act (s.27 to 40) results in changes to the way that DET eTendering Administrators publish contract notices for new contracts over $150k through the [NSW Government’s eTendering website](http://www.det.nsw.edu.au). At present, contract notices are loaded and published by DET Local eTendering Administrators through the ‘contract notice’ function on the eTendering website.

There are slight changes to this process:

1. The ‘contract notice’ function on the NSW eTendering website will undergo a name change and become ‘contract register’ to comply with GIPA terminology. This name change is expected to be completed by the end of July 2010 and is not likely to change the functionality of the site.

2. Contract Notice Editors and Contract Notice Publishers are no longer responsible for loading and publishing contract notices within the NSW Government’s eTendering website. Instead, the Procurement Directorate team manages this process.

3. Local eTendering Administrators complete the [Government Contract Disclosure form](http://www.det.nsw.edu.au) and email the completed form to detbuy@det.nsw.edu.au with a subject of - Attention: Documents and Contract Officer. Detailed procedures can be found on the department’s Procurement Directorate intranet site.

The GIPA Act also requires the publication of a copy of the contract document (minus commercial-in-confidence content) for all Class 3* contracts on the department’s website. DET Procurement Directorate will be responsible for this action.

**Contract Clauses**

When DET enters into a contract with a private-sector vendor to provide services to the public on its behalf, DET must have a contractual right to immediately access certain information in the contractor’s records.

The Office of the Information Commissioner (OIC) has developed two template clauses for agencies to insert into their private-sector contracts. Not all private-sector contracts are required to include the access to information clause.
Access to Information Clause (GIPA Act, s. 121)
Consultation Clause (GIPA Act, s. 54)

The clauses are available from the Office of the Information Commissioner’s website.

ANY QUESTIONS?

General procurement and contract queries:
DET’s Procurement Directorate
1300 338 289
detbuy@det.nsw.edu.au

eTendering queries:
NSW BUY
1800 679 289
nswbuy@services.nsw.gov.au

If you require more advice about the impact of the GIPA Act, visit the department’s Information Access Unit website www.det.nsw.edu.au/information-access or contact the unit on (02) 9561 8100 or via email: iaunit@det.nsw.edu.au.

* Class 3 contracts are published both through the contract register on the NSW’s eTendering website and DET’s GIPA internet site.

A Class 3 contract is defined as where:

(a) There has not been a tender process, the proposed contract has not been made publicly available and the terms and conditions of the contract have been negotiated directly with the contractor,

(b) The proposed contract (whether or not made publicly available) has been the subject of a tendering process and the terms and conditions of the contract have been substantially negotiated with the successful tenderer,

(c) The obligations of one or more parties under the contract to maintain or operate infrastructure or assets could continue for 10 years or more,

(d) The contract involves a privately financed project as defined by guidelines published by the Treasury (as in force from time to time),

(e) The contract involves a transfer of a significant asset of the agency concerned to another party to the contract in exchange for the transfer of an asset to the agency.

and

(f) Is valued over $5 million