Information and Privacy Commissioner,
Ontario, Canada

Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER PO-3764

Appeal PA16-136

Ministry of Transportation

August 22, 2017

Summary: In this order the Adjudicator finds that disclosure of certain portions of a Request for Quotation proposal (specifically, billing and expense information and related amounts) could reasonably be expected to result in the third party harms set out in sections 17(1)(a) and (c) of the *Act*. The section 17(1) exemption claim for this information is therefore upheld.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 1, 10(1), 17(1)(a) and (c).

Orders Considered: MO-3058-F, MO-3266-F, PO-1753 and PO-3622.

Cases considered: *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31; *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, [2012] 1 S.C.R. 23.

BACKGROUND:

[1] The Ministry of Transportation (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act* or *FIPPA*) for access to two specified Request for Quotation (RFQ) documents.

[2] The ministry identified two responsive RFQ documents and issued a decision letter erroneously indicating that it was providing access to the records in their entirety. This was because information had actually been withheld from the records that the

requester received. The requester then advised the ministry that he had not received the complete records, and indicated that he continued to seek access to withheld information. After notifying two affected parties (affected parties A and B) under section 28 of the *Act*, and receiving their positions on disclosure, the ministry issued a supplementary access decision to the requester. The ministry granted partial access to the responsive RFQ documents, relying on sections 17(1) (third party information) and 21(1) (personal privacy) to deny access to the portion it withheld.

[3] Affected party A appealed the ministry's decision to disclose their information and Appeal File PA15-584 was opened to address that appeal.

[4] The requester also appealed the ministry's decision to withhold any information from the two responsive records and Appeal File PA15-634 was opened to address that appeal.

[5] At the mediation of Appeal PA15-634, the ministry reconsidered its position and issued a further supplementary revised decision to the requester and the affected parties, granting access to a portion of the records previously withheld pursuant to section 17(1) of the *Act*.

[6] After the issuance of the supplementary revised decision letter and further discussion, the issue of access to affected party A's information was resolved at mediation. Accordingly, Appeal Files PA15-584 and PA15-634 were closed and access to affected party A's information is no longer at issue.

[7] Affected party B (now the appellant) appealed the ministry's supplementary revised decision and the within Appeal File (PA16-136) was opened.

[8] During mediation of this appeal the appellant advised the mediator that it only took issue with the disclosure of the billing and expense information and related amounts listed in part B and the lump sum amount listed in part C, on page 120 of its RFQ proposal. The appellant took the position that this information qualifies for exemption pursuant to section 17(1) of the *Act*. The appellant also advised the mediator that they would consent to the disclosure of other withheld information in its RFQ proposal to the requester, including the total amount. After receiving written confirmation from the appellant, the ministry then disclosed this further information to the requester, withholding the billing and expense information and related amounts listed in part B and the lump sum amount listed in part C, on page 120 of the appellant's RFQ proposal.

[9] As no further mediation was possible, this appeal was moved to the inquiry stage of the appeals process where an adjudicator conducts an inquiry under the *Act*.

[10] I commenced my inquiry by sending the appellant a Notice of Inquiry setting out the facts and issues in the appeal. The appellant provided responding representations. I then sought representations from the ministry and the original requester on the facts

and issues set out in a Notice of Inquiry as well as the non-confidential representations of the appellant. The ministry decided not to submit responding representations. The original requester's responding representations focussed on the purposes of the *Act* as set out in section 1 and his general right to access information under section 10(1) of the *Act*[1] to which he added:

> … Nothing in this section would indicate that this information should be kept from public viewing.
>
> As for past practice, perhaps it is time to take a new look at things and create a new past practice.
>
> This is public money that is being spent. The public has a right to see where their money is being spent.
>
> The contract has been executed and will not jeopardize negotiations. Negotiations are done and have been for the past many months.

[11] In this order I find that the billing and expense information and related amounts listed in part B and the lump sum amount listed in part C, on page 120 of the responsive RFQ proposal qualifies for exemption under section 17(1)(a) and (c) of the *Act*.

RECORD:

[12] Only the billing and expense information and related amounts listed in part B and the lump sum amount listed in part C, on page 120 of the responsive RFQ proposal remains at issue in the appeal.

DISCUSSION:

[13] Sections 17(1)(a) and (c) read:

> 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, where the disclosure could reasonably be expected to,

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[1] That section reads: Subject to subsection 69(2), every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless, (a) the record or the part of the record falls within one of the exemptions under sections 12 to 22; or (b) the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.

> (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
>
> (c) result in undue loss or gain to any person, group, committee or financial institution or agency…

[14] Section 17(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions.[2] Although one of the central purposes of the *Act* is to shed light on the operations of government, section 17(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.[3]

[15] For section 17(1)(a) and/or (c) to apply, the appellant 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 17(1) will occur.

[16] The appellant submits that its bidding process is a key element behind its success. It submits:

> … This process is undertaken with great care and strategy. It is developed and conducted by a select team of people at [the appellant]. The company invests considerable expense, research and development in developing the right bidding strategy. Within the company itself, the information included on bids is only available to a select group of individuals, so as to keep this sensitive information confidential. In addition, it may not be obtained from outside sources.
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> Competition in the Construction industry
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> It is well known that the competition in the construction industry is quite aggressive. In the matter at hand, only a few companies qualify to present bids to the Ministry of Transportation of Ontario and must fight to

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[2] *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.) (*Boeing Co.*).
[3] Orders PO-1805, PO-2018, PO-2184 and MO-1706.

> earn every point possible to obtain the best overall score. The pricing is a key factor (and often the only factor) in determining the winning bid. Given that the competition is limited to a small amount of players, [the appellant’s] pricing information should be kept confidential.
>
> Other relevant facts pertaining to the records
>
> Over the years, [the appellant] has acquired significant experience in bidding on and winning public projects. It has NEVER been asked or forced to divulge confidential commercial and financial information, such as its pricing information. … . The appellant insists that it is essential to keep the information contained in the records at issue confidential, so as to avoid causing irreparable harm to [the appellant's] competitive position in the marketplace. [The appellant] will also argue that its position in this regard is shared by other similar firms in the Industry.

Part 1: type of information

[17] The types of information listed in section 17(1) have been discussed in prior orders:

> *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.[4] The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.[5]
>
> *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.[6]

[18] The appellant submits that the withheld information at issue qualifies as financial and commercial information. It submits that “[t]he sensitive information in question consists of [the appellant’s] detailed daily and hourly billing rates, daily expense rates and various other quotes, prices and rates that form part of [the appellant's] bid”.

[19] It submits:

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[4] Order PO-2010.
[5] Order P-1621.
[6] Order PO-2010.

> The specific document at issue, namely page 120 of [the appellant's] proposal in response to a request for quotation (RFQ) issued by the [ministry], contains information describing various rates charged by [the appellant] for its services. The dollar values set forth in said proposal constitute commercial information within the meaning of section 17(1) as they relate directly to the appellant's commercial operations. More specifically, they consist of the contractual terms relating solely to the potential of buying and selling of construction contract administration services to the [ministry].

[20] The appellant further submits that the information at issue in this appeal also consists of "financial" information, as contemplated by section 17(1), given that the pricing breakdown for the provision of its services provided in the record evidently relates to money and its use.

[21] It is unnecessary to consider whether the information at issue qualifies as financial information as I am satisfied that it fits within the definition of commercial information as part of a detailed proposal for the provision of construction contract administration services to the ministry. It was created for the purpose of entering into a commercial arrangement. Accordingly, I find that part 1 of the three-part test for exemption under section 17(1) of the *Act* has been satisfied.

Part 2: supplied in confidence

Supplied

[22] The requirement that the information was "supplied" to the institution reflects the purpose in section 17(1) of protecting the informational assets of third parties.[7]

[23] 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.[8]

In confidence

[24] In order to satisfy the "in confidence" component of part two, the party resisting disclosure must establish that the supplier of the information had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis.[9]

[25] In determining whether an expectation of confidentiality is based on reasonable

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[7] Order MO-1706.
[8] Orders PO-2020 and PO-2043.
[9] Order PO-2020.

and objective grounds, all the circumstances of the case are considered, including whether the information was

- communicated to the institution on the basis that it was confidential and that it was to be kept confidential
- treated consistently by the appellant in a manner that indicates a concern for confidentiality
- not otherwise disclosed or available from sources to which the public has access
- prepared for a purpose that would not entail disclosure.[10]

[26] The appellant submits that:

> It is clear that the records were supplied in confidence by [the appellant] to the [ministry]. The facts clearly reveal that the records were provided in response to a Proposal, and that the information supplied within the Records was not gathered, obtained or modified in any way by the [ministry]. Furthermore, the information was and still is confidential and privileged. Access to the information contained to the records is limited to a few of [the appellant's] employees.

[27] In support of its position, the appellant provided an affidavit of a senior employee of one of the appellant's companies (senior employee) wherein he states:

> The records that are at issue in the Notice of Inquiry consist of a breakdown and allocation of money to detail [the appellant's] bid presented to the [ministry], for the Madawaska River Bridge and Amble Creek Culvert Rehabilitation Project. More specifically, the information found in the records includes the daily Billing Rate and the Daily Expense Rate for specific [appellant] staff positions and technical field staff positions. This information is of the utmost sensitivity and it would never have been communicated to the [ministry] if [the appellant] had known that this information could be considered to be non-confidential.
>
> [The appellant] chose to proceed to this specific quotation in the belief that the records were and would remain confidential, as specified in section 4.10 of the RFP.

[28] The appellant submits that in Order PO-1753, this office considered the past "business practices" of a company participating in a bidder selection process in order to

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[10] Orders PO-2043, PO-2371 and PO-2497, *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII 45005 (ON SCDC).

confirm a "reasonable expectation of confidentiality". The appellant submits:

> In the case at bar, it is reasonable to deduce from the nature of both the RFP process and [the appellant's] past participation therein, that the information contained in the records at issue was supplied under the assumption that it would remain entirely confidential. Furthermore, content of the RFP is specific as to the confidentiality of the Quotations, as section 4.10 of the RFP provides: "The ministry will consider all Quotations as confidential, subject to the provisions and disclosure requirements of the *Freedom of Information and Protection of Privacy Act*..."

[29] The appellant submits that taking into consideration all the circumstances, it had "an expectation of confidentiality based on reasonable and objective grounds, identified by case law, namely because the information was":

> • <u>communicated to the institution on the basis that it was confidential and that it was to be kept confidential</u>
>
> The records consist of a breakdown and allocation of money to detail [the appellant's] bid. The information is of the utmost sensitivity and it would never have been communicated to the [ministry] if [the appellant] had known that this information could be considered to be non-confidential.
>
> [The appellant] chose to proceed with this specific quotation in the belief that the records were and would remain confidential, as specified in section 4.10 of the RFP.
>
> • <u>treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the government organization</u>
>
> [The appellant's] price charting has never been divulged to any third party. [the appellant's] pricing and quotation process is undertaken with great care, and the information contained in the records is made available only to the person(s) in charge of the bidding process.
>
> [The appellant's] employees do not have access to the records to protect disclosure even from inside sources.
>
> • <u>not otherwise disclosed or available from sources to which the public has access</u>
>
> The information is not accessible from any other sources.
>
> • <u>prepared for a purpose that would not entail disclosure</u>

> The competitive nature of the RFP proposal process entails that the information submitted by each bidding party be protected from disclosure to allow for the competiveness in the construction industry to be preserved.

Analysis and finding

[30] In Order MO-3058-F, Assistant Commissioner Sherry Liang undertook a thorough examination of this office's historical approach on whether a proposal is "supplied" to an institution and distinguished between an access request for a winning proposal and an access request for a contract between a third party and an institution. In addressing the municipal equivalent of section 17(1), she wrote:

> Record 1, the winning RFP submission, was also "supplied" to the town within the meaning of section 10(1). My conclusion with respect to this record is consistent with many previous orders of this office that have considered the application of section 10(1) or its provincial equivalent to RFP proposals. [Footnote omitted]. As this office stated, in Order MO-1706, in discussing a winning proposal:
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>> …it is clear that the information contained in the Proposal was supplied by the affected party to the Board in response to the Board's solicitation of proposals from the affected party and a competitor for the delivery of vending services. This information was not the product of any negotiation and remains in the form originally provided by the affected party to the Board. This finding is consistent with previous decisions of this office involving information delivered in a proposal by a third party to an institution… [page 9]
>
> I am aware that in some orders, adjudicators have found the contents of a winning proposal to have been "mutually generated" rather than "supplied", where the terms of the proposal were incorporated into the contract between a third party and an institution. In this appeal, it may well be that some of the terms proposed by the winning bidder were included in the town's contract with that party. But the possible subsequent incorporation of those terms does not serve to transform the proposal, in its original form, from information "supplied" to the town into a "mutually generated" contract. In the appeal before me, the appellant seeks access to the winning proposal, and that is the record at issue.
>
> I distinguish the circumstances before me from those where a winning proposal becomes, on acceptance, the basis of the commercial arrangement between the parties, and no separate contract between the parties is created. In Order MO-2093, for instance, this office found that

> where a winning proposal governed the commercial relationship between a city and a proponent, and there was no separate written agreement, the terms of the winning proposal were mutually generated and not "supplied" for the purpose of section 10(1). In such a case, it is reasonable to view the winning proposal as no longer the "informational asset" of the proponent alone but as belonging equally to both sides of the transaction.

[31] Based on the evidence before me I am satisfied that the information at issue was supplied to the ministry within the meaning of section 17(1). I am also satisfied that it was supplied with a reasonably held expectation of confidentiality. As noted, the evidence before me is that the confidentiality provision in the RFP states that the RFQ proposal it is subject to the *Act*. Given that the *Act* explicitly protects the confidential informational assets of third parties, this reference does not negate the expectation of confidentiality regarding the appellant's RFQ proposal. It is an expression of the ministry's intent to maintain the confidentiality of the proposal, and it is reasonable for the appellant to rely on it.

[32] In sum, I find that the information remaining at issue was supplied in confidence by the appellant and meets the second part of the test for exemption under section 17(1).

Part 3: harms

[33] 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 the surrounding circumstances. However, parties should not assume that the harms under section 17(1) are self-evident or can be proven simply by repeating the description of harms in the *Act.*[11]

[34] In applying section 17(1) to government contracts, the need for public accountability in the expenditure of public funds is an important reason behind the need for "detailed and convincing" evidence to support the harms outlined in section 17(1).[12]

[35] In *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)* (*Community Safety*),[13] the Supreme Court of Canada discussed the standard of proof required to establish the risk of harm from disclosure under access to information legislation. Although that decision dealt with the interpretation by this office of the law enforcement exemption in the provincial *Act*, it provided general guidance on the application of exemptions that are based on risk of harm. The Court reviewed the various ways in which the standard of proof has been described, in Ontario and in other jurisdictions. It concluded that there should be one

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[11] Order PO-2435.
[12] Order PO-2435.
[13] 2014 SCC 31.

consistent formulation of the standard, requiring that a party resisting disclosure provide evidence establishing a "reasonable expectation of probable harm". The Court described this burden as follows:

> The "reasonable expectation of probable harm" formulation simply "captures the need to demonstrate that disclosure will result in a risk of harm that is well beyond the merely possible or speculative, but also that it need not be proved on the balance of probabilities that disclosure will in fact result in such harm"…[14]

[36] The Court added:

> This inquiry of course is contextual and how much evidence and the quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and "inherent probabilities or improbabilities or the seriousness of the allegations or consequences" …[15]

[37] While proposing this single formulation, the Court also recognized that there was "no practical difference" between it, and the formulation applied by this office in previous decisions.[16]

[38] In Order MO-3058-F, although dealing with the municipal provincial equivalent of section 17(1), Assistant Commissioner Liang addressed the application of *Merck Frosst Canada Ltd. v. Canada (Health)*[17], a case relied upon by the appellant, in the context of the harms test in the following way:

> In the Notice of Inquiry, I invited the parties to address a previous decision by the Supreme Court that also discussed the standard of proof required to establish a risk of harm from disclosure, *Merck Frosst Canada Ltd. v. Canada (Health)* (*Merck*). [Footnote omitted] None of the parties addressed this decision in its representations. In this decision, I will apply the new formulation proposed in *Community Safety* recognizing, however, that neither *Merck* nor *Community Safety* alters the principles this office has long applied in discussing this part of section 10(1). I therefore turn to consider whether the material before me provides clear and convincing evidence establishing the "reasonable expectation of probable harm" required to support the application of the section 10(1) exemption.

[39] I agree with her approach and find it equally applicable in considering the application of the section 17(1) exemption at issue in the appeal before me.

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[14] Ibid, at para 52.
[15] Ibid, at para 54.
[16] Ibid, at para 53.
[17] 2012 SCC 3, [2012] 1 S.C.R. 23.

[40] The appellant submits that the evidence it provides "clearly shows that should the information at issue be disclosed, one of or all of the harms specified in sections 17(1) (a) and (c) will occur."

[41] In the affidavit accompanying the appellant's representations, the senior employee states:

> [The appellant's] price charting should never be divulged to any third party. [The appellant's] pricing and quotation process is undertaken with great care, and the information contained in the pricing records is made available only to the senior management person(s) involved in the preparation of the proposals and those charged with approving the proposal submissions. In fact, most [of the appellant's] employees do not have access to the pricing records to protect disclosure even from inside sources. In addition, the information is not accessible from any other sources.
>
> There are many reasons to protect this information from disclosure. But more importantly, our industry in general acknowledges that the competitive nature of the RFP proposal process entails that the information submitted by each bidding party be protected from disclosure to allow for the competiveness in the construction industry to be preserved.
>
> There is no doubt that the disclosure of the records at issue could reasonably be expected to significantly prejudice [the appellant's] competitive position by disclosing to their competitors their best price for services. Such sensitive financial and commercial information at issue could easily be exploited by competitors to undercut [the appellant's] bids in future contracts with the government and other entities. Competitors could, for example, use the information to develop their own strategies and establish their own pricing practices for contracts, thus conferring upon them an unfair advantage.
>
> Maintaining an even competitive ground is of particular significance in the public tendering process where the bid price is a key factor (and sometimes the only factor) in each bid's overall score. Rendering the bidding information publicly available would have the effect of sharing with competitors [the appellant's] commercial methods, decisions and approaches to providing some of its core services. Moreover, competitors would gain access to [the appellant's] pricing strategy, and how it allocates costs among the various steps taken in providing its services, which would clearly be prejudicial to [the appellant].

> That said, the public tendering process is not our only concern. Disclosing the record at issue would undeniably give private sector customers the opportunity to negotiate more favourable contractual terms than they would otherwise have been able to obtain, further contributing to damaging [the appellant's] competitive position.
>
> Last, we need to consider that in releasing particular pricing information contained in an RFQ proposal, competitors could use the Proposal to enhance or design their own proposals, bypassing the considerable expense of research and development, and develop a strategy to use against this company in future bid situations.
>
> The link between the disclosure of the information and injury or harm to [the appellant] is clear and direct, and is not simply possible but probable.

[42] The appellant submits that disclosure of the information at issue in this appeal could reasonably be expected to significantly prejudice the appellant's competitive position by disclosing to their competitors their best price for services. It submits that the sensitive financial and commercial information at issue could easily be exploited by competitors to undercut [the appellant's] bids in future contracts with the government and other entities. It submits that:

> Competitors could, for example, use the information to develop their own strategies and establish their own pricing practices for contracts, thus conferring upon them an unfair advantage.

[43] The appellant submits that as set out in Order PO-3237, maintaining an even competitive ground "is of particular significance in the public tendering process where the bid price is a key factor in each bid's overall score."

[44] Referencing Order PO-3622, it submits:

> … Rendering the bidding information publicly available would have the effect of sharing with competitors [the appellant's] commercial methods, decisions and approaches to providing some of its core services. Moreover, competitors would gain access to [the appellant's] pricing strategy, and how it allocates costs among the various steps taken in providing its services, which would clearly be prejudicial to its position in pricing its services.

[45] Relying on the statements made in the senior employee's supporting affidavit the appellant submits that "[t]he link between the disclosure of the information and this injury is clear and direct, and is not simply possible but probable".

[46] In addition, the appellant takes the position that disclosure of the withheld information would very likely result in undue loss as contemplated by section 17(1)(c)

of the *Act*. The appellant submits that:

> These past orders are specific as to the clear and direct relation between the disclosure of detailed pricing information and the reasonable and probable harm that would undeniably follow disclosure. The facts related to this appeal and the evidence in support of the present representations are very similar to those found in the aforementioned Orders.
>
> In this respect. please consider the list of [the appellant's] competitors, namely the list of companies qualified and approved to bid on high complexity construction administration projects with the [ministry] [attached as an exhibit to its representations] …, which shows how limited the construction industry marketplace really is for similar contracts.

[47] The appellant takes the further position that the record has been reasonably severed and no further information should be disclosed:

> The [information at issue is] very limited and consists of specific rates and amounts listed in Part B and a lump sum amount listed in Part C. In application of the severance principle, we would accept that p.120 of [the appellant's] proposal be severed [as set out in the ministry's initial decision letter]. In this last form, p.120 contains the total price of the quotation as well as the number of work hours related to the proposed services. This ensures accountability towards the public without causing harm to [the appellant], in full compliance with the *Act* and its fundamental principles.

[48] On my review of the evidence and representations before me, I conclude that the withheld information meets the "harms" part of the test for exemption under section 17(1). A number of decisions have considered the application of section 17(1) to unit pricing information, and have concluded that disclosure of such information could reasonably be expected to prejudice the competitive position of an affected party. A reasonable expectation of prejudice to a competitive position has been found in cases where information relating to pricing, material variations and bid breakdowns was contained in the proposal.[18] I accept the appellant's submission that disclosure of the withheld information at issue could reasonably be expected to prejudice the appellant's competitive position or cause undue loss to the appellant because its competitors can use the withheld information to underbid the appellant in future RFP and/or RFQ processes. I find that the withheld information at issue in the appellant's proposal and the appellant's representations establish the harms in section 17(1)(a) and (c) to this information. Accordingly, as I have found that all three parts of the test have been met for this information, this information is exempt under section 17(1) of the *Act*.

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[18] Orders P-166, P-610, PO-1932, M-250 and MO-3246.

ORDER:

I allow the appeal and find that the withheld information at issue on page 120 of the appellant's RFQ proposal to be exempt from disclosure under section 17(1) of the *Act*.

Original Signed by: August 22, 2017

Steven Faughnan
Adjudicator