



Australian Government

Department of Immigration and Border Protection

**Attachment A**

**DECISION RECORD**

**Request Details**

FOI Request FA 14/03/00745

File Number ADF2014/9109

**Scope of request**

*I request the formal letter of Intent from the Commonwealth of Australia for provision of garrison and welfare services on the offshore immigration processing centres on Nauru and Manus Island.*

**Documents in scope**

1. Electronic record of Letter of Intent containing 7 folios.

**Authority to make decision**

I am an officer authorised under section 23 of the FOI Act to make decisions in respect of requests to access documents or to amend or annotate departmental records.

**Information considered**

In reaching my decision, I have considered the following:

- The *Freedom of Information Act 1982*;
- Departmental documents (identified above);
- The Australian Information Commissioner's guidelines relating to access to documents held by government;
- The department's FOI handbook
- Consultation with Transfield Services (Australia) Pty Ltd.
- Consultation with relevant business areas.

**Reasons for decision**

I have considered the file within the scope of your request and applied exemptions in part to the document as detailed in the Schedule of Documents. You should read the schedule in conjunction with the exemptions below.

**Deletion of exempt or irrelevant material under s.22 of the FOI Act**

Section 22(2) of the FOI Act provides that, where an agency reaches the view that a document contains exempt information or material that is irrelevant to the request **and** it is possible for the agency to prepare an edited copy of the document with the irrelevant or exempt material deleted, then the agency must prepare such a copy.

This edited copy must be provided to the applicant. Further, the decision maker must advise the applicant in writing that the edited copy of the document has been prepared and of the reason(s) for each of the deletions in the document (s.22(3) of the FOI Act).

Exempt material is deleted pursuant to s.22(1)(a)(i) of the FOI Act.

The attached Schedule of Documents identifies where material has been deleted as exempt information under the FOI Act.

**Section 47 – Documents disclosing trade secrets or commercially valuable information**

I have determined that information within the documents which I am exempting pursuant to Section 47(1)(b) is information which holds a significant commercial value that could reasonably be expected to be diminished if the information were disclosed.

The department seeks the information provided by Transfield Services to fulfil its obligations under the *Migration Act 1958*. The information has been supplied on the expectation that it will only be used for the purposes for which it was supplied and would be treated as confidential.

The commercial information is not known outside of Transfield Services and/or the department. If such information were to be disclosed, Transfield Services' competitors would be likely to use the information to gain an advantage for the purposes of similar contracts with the Commonwealth or other entities, which would diminish the value of the information.

During formal consultation with Transfield Services, they have advised that disclosure of such information would lead to enhancement of future tenders by competitors to which such information would be available to undercut or otherwise adversely impact on Transfield Services' bargaining/competitive position.

I consider that if a competitor was given an opportunity to peruse parts of the Letter of Intent, specifically the parts that contain commercially valuable information, those businesses would utilise that information to the fullest extent within the industry. This could reasonably be expected to result in its value being diminished.

The information being exempt specifies payment arrangements, fees and charges calculation, dollar values, payment time frames and/or details in which are unique to this particular Letter of Intent.

In accordance with the FOI Act and Office of the Australian Information Commissioner's Guidelines, I consider that the information provided by Transfield Services has a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

**Conditional exemption – personal information - s.47F(1))**

A document is 'conditionally exempt' under s.47F(1) of the Act if its release would 'involve the unreasonable disclosure of personal information about any person (including a deceased person)'. A conditionally exempt document **must** be released under the FOI Act unless the release would be 'contrary to the public interest'. The Act requires me to undertake a 2 step process in deciding if an exemption applies.

Would the disclosure be an 'unreasonable' disclosure of personal information?

The exemption in s.47F(1) of the Act will only apply if I am satisfied that the disclosure would involve 'unreasonable' disclosure of a third party's personal information. The Act states that, when deciding whether the disclosure of the personal information would be 'unreasonable', I 'must' have regard to the factors set out in s.47F(2) of the Act:

- (a) the extent to which the information is well known;
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
- (c) the availability of the information from publicly available resources;
- (d) any other matters that I consider relevant.

I have considered each of these elements separately below.

*(a) Extent to which the information is known*

The document that is exempt in part, under section 47F(1) of the FOI Act contain personal information of Transfield Services employees.

This information is not publically known. The department has taken measures to withhold Transfield Services employee names, email addresses, mobile numbers and signatures to protect the individual(s) right to privacy.

On balance, I believe that the factor weighs in favour of the disclosure being unreasonable.

*(b) Whether the person to whom the information relates is known to be associated with the matters in the document*

The names, email addresses, mobile numbers and signatures of Transfield Services employees are not associated with the matters in the document.

The information itself identifies non-government employees within Transfield Services which were provided for the purposes of signing the Letter of Intent, this information was provided on the basis that it would be kept confidential. The folios itself provides details that Transfield Services have signed the Letter of Intent which provides context to the information being exempt.

On balance, I believe that the factor weighs in favour of the disclosure being unreasonable.

*(c) The availability of the information from publicly available sources*

The names, email addresses, mobile numbers and signatures of Transfield Services (Australia) Pty Ltd employees are not available from publicly available sources.

On balance, I believe that the factor weighs in favour of the disclosure being unreasonable.

*(d) Any other matters that the agency considers relevant*

I consider that an applicant requesting information under FOI Act have a general right of access to any material held by the government. I also consider that there is a general public interest in making information held by the government accessible to the public.

On balance, I believe that the factor weighs in favour of the disclosure being reasonable.

After considering each element in s.47F(2), I am satisfied that disclosure of the personal information would be an 'unreasonable' disclosure of personal information.

Therefore, I am satisfied that the information I have identified in the relevant documents is 'conditionally exempt' under s.47F(1) of the Act.

Is the release contrary to the public interest?

As a result, I must now consider the factors set out in the public interest test in s.11B(3) of the Act.

*Factors favouring disclosure*

I have considered the factors set out in s.11B(3) of the Act which were discussed above.

- A person having a general right of access to any material held by the government;
- There is a general public interest in making information held by the government accessible to the public.

*Factors weighing against disclosure*

As discussed above, the Australian Information Commissioner has issued Guidelines that contain a list of factors weighing against disclosure which must be considered under s.11B(5) of the Act.

I consider that the below factor is relevant to the documents in question:

- It is a core Government concern to maintain the integrity of the information it holds and in the maintaining of an individual's privacy.

The information contained within the identified documents wholly relates to a person other than you whom is a non-government employee. The department is obliged to take action to

prevent the unreasonable disclosure of an individual's personal information and I have given this the greatest weight.

On balance, I am satisfied that the disclosure of the information I have identified as 'personal information' would amount to an 'unreasonable disclosure of personal information'. Further, I am satisfied that the release of the personal information in the documents would be 'contrary to the public interest'. Therefore, I am satisfied that the personal information in the documents is exempt from release under section 47F(1) of the Act.

Maryada Dubey  
Authorised decision maker  
Ministerial, Executive and External Accountability Branch  
Department of Immigration and Border Protection  
Telephone (02) 6264 1740  
Email [foi@immi.gov.au](mailto:foi@immi.gov.au)

16 May 2014

## Attachment B

### SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 14/03/00745

File Number ADF2014/9109

#### 1. Departmental File: Electronic record of Letter of Intent

Folio	Description	Decision	Legislation
1	Third party name	Exempt in part	S47F(1)
2	Basis on which subcontractors are engaged	Exempt in part	S47(1)(b)
3	Payment terms on termination, Price and Payment details and calculations	Exempt in part	S47(1)(b)
4	Payment arrangements	Exempt in part	S47(1)(b)
5		Released in full	
6		Released in full	
7	Third party names, email addresses, mobile numbers, signatures and staff signature	Exempt in part	S47F(1)

## **Attachment C – Extract of relevant legislation**

### **Section 22 - Access to edited copies with exempt or irrelevant matter deleted**

- (1) This section applies if:
  - (a) an agency or Minister decides:
    - (i) to refuse to give access to an exempt document; or
    - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
  - (b) it is possible for the agency or Minister to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that:
    - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
    - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
  - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
    - (i) the nature and extent of the modification; and
    - (ii) the resources available to modify the document; and
  - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

#### Access to edited copy

- (2) The agency or Minister must:
  - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
  - (b) give the applicant access to the edited copy.

#### Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
  - (a) that the edited copy has been prepared; and
  - (b) of the grounds for the deletions; and
  - (c) if any matter deleted is exempt matter--that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

### **Section 47 - Documents disclosing trade secrets or commercially valuable information**

- (1) A document is an exempt document if its disclosure under this Act would disclose:
  - (a) trade secrets; or
  - (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
- (2) Subsection (1) does not have effect in relation to a request by a person for access to a document:
  - (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
  - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the

person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or

(c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.

(3) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.

#### **Section 47F(1) - Public interest conditional exemptions--personal privacy**

##### **General rule**

(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

(2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:

- (a) the extent to which the information is well known;
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
- (c) the availability of the information from publicly accessible sources;
- (d) any other matters that the agency or Minister considers relevant





**Australian Government**

**Department of Immigration and Citizenship**

21 February 2014

Transfield Services (Australia) Pty Ltd  
Level 3, 509 St Kilda Road  
MELBOURNE VIC 3004

**Attention:** s. 47F(1) **General Manager - Property and Asset Services**

Dear Derek,

**RE: Draft Contract for Request For Quote in relation to provision of Garrison and Welfare Services at Regional Processing Countries ('the Contract')**

We refer to the following material/documentation:

- (a) the Request for Quotation ('RFQ') issued by the Commonwealth of Australia as represented by the Department of Immigration and Border Protection ('Commonwealth') to Transfield Services (Australia) Pty Ltd ABN 11 093 114 553 ('Transfield Services');
- (b) the quotation submitted by Transfield Services in response to the RFQ dated December 19 2013 and subsequently finalised on 20 February 2014 ('Revised Quotation'); and
- (c) the first Letter of Intent between the Commonwealth to Transfield Services dated 24 January 2014 ('First LOI').

**1. Background**

- (a) The Commonwealth is evaluating the Revised Quotation provided by Transfield Services in response to the above RFQ.
- (b) The Commonwealth anticipates that it will finalise evaluation of the Revised Quotation no later than 21 February 2014.
- (c) This Letter of Intent does not limit or otherwise affect the rights of the Commonwealth in respect of the RFQ (including the rights of the Commonwealth detailed within Clause 10.2 of the RFQ) or the evaluation process as detailed within the RFQ.

**2. Termination of First LOI**

- (a) Subject to the Commonwealth's obligation to pay Transfield Services any fees relating to Services completed under First LOI and not paid at the date of this Letter of Intent, the Commonwealth and Transfield Services acknowledge and agree that the First LOI is mutually terminated by the parties on 21 February 2014 at midnight AEST.

**3. Defined Terms**

- (a) Unless the context otherwise requires, capitalised terms used within this Letter of Intent have the meaning given to such terms within the Contract.

**4. Services**

- (a) The Commonwealth, in order to ensure the continuity of essential/critical garrison and welfare services on Nauru and Manus Island (Papua New Guinea (PNG)), proposes to engage Transfield Services to:

- (i) perform garrison transition-in services at Manus Island as defined in the RFQ ('**Garrison Transition-in Services**'); and
  - (ii) perform welfare services ('**Welfare Services**') on Manus Island and Nauru as specified in the RFQ (collectively defined as the '**Services**').
- (b) Transfield Services acknowledges agrees to:
- (i) perform the Services in a manner subject to the terms and conditions in this Letter of Intent;
  - (ii) use best endeavours to ensure that the Services meet the obligations specified within the Letter of Intent;
  - (iii) use best endeavours to ensure that its personnel and subcontractors are appropriately qualified and experienced to perform the Services;
- (c) Transfield Services, due to the short duration of this Letter of Intent and the Commonwealth's urgency to commence the Services, is likely to engage subcontractors on the basis of s. 47(1)(b) [REDACTED]
- (d) The Commonwealth will:
- (i) provide reasonable assistance to Transfield Services to facilitate obtaining any necessary Entry Permits or Work Permits (or appropriate exemptions for such permits); and
  - (ii) cooperate and work collaboratively with Transfield Services in the performance of the Services including (but not limited to) the provision of information, documentation and data that is reasonably required by Transfield Services for the performance of the Services.

## 5. Commencement of Services

- (a) The Commonwealth requires Transfield Services to commence the Services on the following dates/events:
- (i) Garrison Transition-in Services on 22 February 2014.
  - (ii) Welfare Services on 22 February 2014.

## 6. Expiry of Services

- (a) The Commonwealth requires Transfield Services to cease the Services on the following dates/events:
- (i) Garrison Transition-in Services on 28 March 2014 or upon the date of execution of the Contract (whichever is the earlier dates/timeframe);
  - (ii) Welfare Services upon the date of execution of the Contract;
  - (iii) the Commonwealth providing written notification to Transfield Services (prior to the execution of the Contract) that it does not accept the Revised Quotation and, subsequently, it does not intend to execute the Contract; or
  - (iv) the Commonwealth providing written notification to Transfield Services (prior to the execution of the Contract) that it no longer requires the Services (collectively defined as the 'Expiry Dates').
- (b) Except as set out in clauses 6. (a) (c) and 7 below, this Letter of Intent shall cease to be legally binding on the Commonwealth and Transfield Services upon the full expiration of Services in this Letter of Intent.

(c) The Commonwealth, in the event that it terminates this Letter of Intent in accordance with clause 6 (a) (iii) or 6 (iv) , will only be liable:

(i) s. 47(1)(b)

(ii) s. 47(1)(b)

(d) Transfield Services will not be entitled to compensation for loss of prospective profits.

(e) The payment set out above shall be Transfield Services sole and exclusive remedy in respect of the Commonwealth terminating this Letter of Intent.

**7. Price & Payment**

(a) The Commonwealth will pay Transfield Services for the provision of the Services until expiry or termination of this Letter of Intent on the basis of:

(i) Garrison Transition-in Services (only Manus Island):

(A) s. 47(1)(b)

(B) s. 47(1)(b)

**LESS:**

s. 47(1)(b)

**AND:**

(ii) Welfare Services (Nauru and Manus Island):

a. s. 47(1)(b)

b. s. 47(1)(b)

c. s. 47(1)(b)

(b) Transfield Services acknowledges and agrees that the commercial arrangements in respect of the Services detailed within this Letter of Intent will not prejudice or otherwise effect the negotiations (if any) of the Revised Quotation or Contract.

(c)

s. 47(1)(b)

(d)

s. 47(1)(b)

**8. Transfield Services Entity**

- (a) Transfield Services (for the purposes of this Letter of Intent) will perform the Services using the following legal entities:
- (i) For those Services to be performed for Nauru: Transfield Services (Australia) Pty Ltd (registered as a foreign corporation in Nauru) of Level 10, 111 Pacific Highway, North Sydney, New South Wales, 2060; and
  - (ii) For those Services to be performed for Manus Island: Transfield Services (Australia) Pty Ltd (3-100193) (a registered overseas company in Papua New Guinea) PO Box 130, Boroko, National Capital District (PNG).

**9. Contract Award**

- (a) Transfield Services acknowledges and agrees that the Commonwealth may, in its sole and absolute discretion, decide (for any reason) not to execute the Contract with Transfield Services.
- (b) Transfield Services acknowledges and agrees that the engagement of Transfield Services to perform the Services under this Letter of Intent does not represent acceptance by the Commonwealth of Transfield Services Revised Quotation and does not affect or limit the Commonwealth's rights or Transfield Services obligations under the RFQ.

**10. No Rights or Representations**

- (a) Transfield Services acknowledges and agrees (without limiting the terms of the RFQ) that the engagement of Transfield Services to perform the Services in accordance with this Letter of Intent:
- (i) does not represent acceptance by the Commonwealth of the Revised Quotation;
  - (ii) does not entitle Transfield Services to carry out the services required or envisaged by the Contract (whether on the terms of the Contract or otherwise) other than the Services to be performed in accordance with this Letter of Intent;
  - (iii) does not affect or limit the Commonwealth's rights or Transfield Services' obligations under the RFQ; and
  - (iv) is not a representation that a contract will be entered into between the Commonwealth and Transfield Services to deliver the services as identified in, or reasonably ascertainable from, the RFQ and does not bind the Commonwealth to do so.

**11. Commonwealth Confidential Information**

- (a) In this clause:

**Official Resources** includes:

- a. Official Information;
- b. people who work for or with the Department; and
- c. assets belonging to (even if in the possession of contracted providers) or in the possession of the

Department;

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means any document, device, article or medium in which Commonwealth Material, Contract Material or Official Information is embodied.

**Confidentiality of Official Information**

- (b) Transfield Services will not, without prior written authorisation of the Commonwealth, disclose any Official Information to any person (unless required to do so by law).
- (c) Transfield Services is authorised, subject to clauses 11 (e) and (f), to provide Official Information to those Personnel and subcontractors who require access for the purposes of this Letter of Intent.
- (d) Transfield Services agrees to secure all Official Information against loss and unauthorised access, use, modification or disclosure.

**Other security obligations of Transfield Services**

- (e) Transfield Services agrees to comply with any security requirements notified by the Commonwealth from time to time.
- (f) Transfield Services agrees to implement security procedures to ensure that it meets its obligations under clauses 10 (e) and (f) and will provide details of these procedures to the Commonwealth on request.

**Management of Copies**

- (g) Transfield Services agrees, on expiration or termination of this Letter of Intent, to deal with all Copies as directed by the Commonwealth, subject to any requirement of law binding on Transfield Services.

**12. Transfield Services Confidential Information**

**Confidential Information not to be disclosed**

- (a) The Commonwealth (Subject to clause 12 (b)) will not, without the prior written authorisation of Transfield Services, disclose any Confidential Information of Transfield Services to a third party.

**Exceptions to obligations**

- (b) The obligations of the Commonwealth under this paragraph will not be taken to have been breached to the extent that Confidential Information:
  - (i) is disclosed by the Commonwealth to its Personnel solely in order to comply with its obligations, or to exercise its rights, under this Letter of Intent;
  - (ii) is disclosed by the Commonwealth to its internal management Personnel, solely to enable effective management or auditing of Letter of Intent-related activities;
  - (iii) is disclosed by the Commonwealth to the responsible Minister;
  - (iv) is disclosed by the Commonwealth in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
  - (v) is shared by the Commonwealth within the Commonwealth's organisation, or with another Commonwealth Department, where this serves the Commonwealth's legitimate interests;

- (vi) is authorised or required by law to be disclosed; or
- (vii) is in the public domain otherwise than due to a breach of this clause.
- (c) Where the Commonwealth discloses Confidential Information to another person pursuant to clause 12 (b)(i) – (v), the Commonwealth will notify the receiving person that the information is confidential.
- (d) In the circumstances referred to in clause 12 (b)(i), (ii) and (v) the Commonwealth agrees not to provide the information unless the receiving person agrees to keep the information confidential.

**13. Miscellaneous**

- (a) The Commonwealth and Transfield Services shall direct all queries and correspondence in relation to the Services to the following representatives:

Transfield Services Representative's Name: S. 47F(1)  
Address: Level 10, 111 Pacific Highway, North Sydney, NSW, 2060  
E-mail: S. 47F(1)  
Telephone: S. 47F(1)

Commonwealth Representative's Name: Ken Douglas  
Address: 6 Chan Street Belconnen  
E-mail: ken.douglas@immi.gov.au  
Telephone: (02) 6265 1996

- (b) the Laws of the Australian Capital Territory will govern this Letter of Intent. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory (and any court of appeal) to decide any matter arising from or in connection with this Letter of Intent.
- (c) Transfield Services shall, in the performance of this Letter of Intent, comply with the applicable laws from time to time in force in the State, Territory, or other jurisdictions in which any part of the Services are to be carried out.
- (d) The terms and conditions of this Letter of Intent may only be varied by an agreement in writing executed by or on behalf of Transfield Services and the Commonwealth.

Yours faithfully

S. 47F(1)

Ken Douglas  
Head Offshore Detention and Returns Task Group  
Department of Immigration and Border Protection  
Phone: (02) 6264 1996  
Email: ken.douglas@immi.gov.au

Please sign and return a copy of this letter by way of acknowledgement of Transfield Services agreement to the above.

Transfield Services (Australia) Pty Ltd confirms its agreement to the terms set out in this Letter of Intent:

Signature of authorised representative:

S. 47F(1)

Name of authorised representative: S. 47F(1)

Date: 21 February 2014