

# ALBERTA

## OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

### ORDER F2009-021

January 21, 2010

#### ALBERTA TRANSPORTATION

Case File Number F4544

Office URL: [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** Under the *Freedom of Information and Protection of Privacy Act*, the Applicant asked Alberta Transportation (the “Public Body”) for the contract value/price associated with a third party’s successful response to a request for proposals. The Public Body refused access under sections 16 (disclosure harmful to business interests of a third party) and 25 (disclosure harmful to economic interests of a public body).

The Adjudicator found that the contract value/price could not be withheld under section 16 of the Act, as it was not supplied in confidence and disclosure of that general total, which was in the context of a multi-faceted project with several components, could not reasonably be expected to harm the third party’s competitive position, interfere with its negotiating position, or cause it undue financial loss.

The Adjudicator found that the contract value/price was not properly withheld under section 25 of the Act, as the Public Body failed to show how disclosure would prejudice its or the Government of Alberta’s competitive position, or interfere with their contractual or other negotiations.

The Adjudicator ordered the Public Body to disclose the contract value/price to the Applicant.

**Statutes Cited:** AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 16, 16(1), 16(1)(a), 16(1)(a)(ii), 16(1)(b), 16(1)(c), 16(1)(c)(i),

16(1)(c)(ii), 16(1)(c)(iii), 16(3), 25, 25(1)(c), 25(1)(c)(ii), 25(1)(c)(iii), 71(1), 72 and 72(2)(a).

**Authorities Cited:** **AB:** Orders 96-013, 97-005, 97-013, 98-005, 99-018, 2000-010, 2001-025, F2002-002 and F2005-011; *Qualicare Health Service Corporation v. Alberta (Office of the Information and Privacy Commissioner)*, 2006 ABQB 515. **BC:** Order 03-33 (2003). **ON:** Order P-1553 (1998).

## **I. BACKGROUND**

[para 1] In a request to access information under the *Freedom of Information and Protection of Privacy Act* (the “Act”), dated April 17, 2008, a representative of Martin Newby Consulting (the “Applicant”) asked Alberta Infrastructure and Transportation, which is now called Alberta Transportation (the “Public Body”) for the name of the successful bidder and the contract value/price associated with a request for proposals (“RFP”) regarding a project for a National Road Network Update. The objective of the project was to ensure the maintenance of the Alberta portion of a National Road Network by detecting and collecting “all changes and corrections to the... road network” and detecting and collecting “all changes to street road names, place names and block face address ranges”.

[para 2] By letter dated June 2, 2008, the Public Body provided the Applicant with the name of the successful bidder, being Devel-Tech Inc. (the “Affected Party”). The Public Body withheld the contract value/price associated with the Affected Party’s bid under sections 16(1) and 25(1)(c) of the Act.

[para 3] By letter dated July 7, 2008, the Applicant requested that this Office review the Public Body’s decision to withhold the contract value/price. The Commissioner authorized a portfolio officer to investigate and try to settle the matter. This was not successful, so a written inquiry was set down.

## **II. INFORMATION AT ISSUE**

[para 4] The information at issue is the contract value/price associated with the Affected Party’s successful bid in the RFP.

## **III. ISSUES**

[para 5] The Notice of Inquiry, dated August 19, 2009, set out the following issues, which I have slightly rephrased:

Does section 16 of the Act (disclosure harmful to business interests of a third party) apply to the information at issue?

Did the Public Body properly apply section 25 of the Act (disclosure harmful to economic interests of a public body) to the information at issue?

#### IV. DISCUSSION OF ISSUES

##### A. Does section 16 of the Act (disclosure harmful to business interests of a third party) apply to the information at issue?

[para 6] The relevant parts of section 16 of the Act read as follows:

*16(1) The head of a public body must refuse to disclose to an applicant information*

*(a) that would reveal*

*...*

*(ii) commercial, financial, labour relations, scientific or technical information of a third party,*

*(b) that is supplied, explicitly or implicitly, in confidence, and*

*(c) the disclosure of which could reasonably be expected to*

*(i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,*

*(ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,*

*(iii) result in undue financial loss or gain to any person or organization...*

*...*

[para 7] Under section 71(1) of the Act, the Public Body has the burden of proving that the Applicant has no right of access to information withheld under section 16. Section 16(3) sets out circumstances where a public body cannot withhold information in reliance on section 16(1), but there is no suggestion that any of those circumstances exist here.

[para 8] In order for information to be subject to the mandatory exception to disclosure under section 16(1), the information must meet each of the three requirements of that section. Specifically, the information must reveal trade secrets of a third party, or commercial, financial, labour relations, scientific or technical information of a third party, under section 16(1)(a); the information must be supplied, explicitly or implicitly, in confidence under section 16(1)(b); and disclosure of the information must reasonably be expected to bring about one of the outcomes set out in section 16(1)(c) (Order 2000-010 at para. 12).

[para 9] The Public Body and Affected Party argue that the information at issue falls under section 16(1) because the contract value/price in question is commercial information, the Affected Party supplied it in confidence, and disclosure would significantly prejudice the Affected Party's competitive or negotiating position in a future RFP and thereby also result in undue financial loss.

[para 10] Conversely, the Applicant submits that the Public Body's decision not to release information must be based on real grounds that are connected to the specific case, and that the Public Body must substantiate the harmful consequences of disclosing the information. The Applicant argues in favour of accountability and transparency in government contracting, noting that the Government of Alberta Treasury Board publishes a "Blue Book" listing payments from departments to third parties where they are over \$10,000 in a fiscal year. In this case, the information at issue is not in the "Blue Book" because the RFP, and therefore the Affected Party's bid, was for a three-year period rather than a single fiscal year. The Applicant questions why the contract value/price here should not likewise be publicly available.

## **1. Commercial information**

[para 11] I find that the information at issue is the Affected Party's commercial information and therefore falls under section 16(1)(a)(ii) of the Act. As submitted by the Public Body, commercial information includes a contract price and information relating to the buying, selling or exchange of merchandise or services (Order 96-013 at para. 16).

[para 12] However, on review of all of the parties' submissions, I find that the information at issue does not meet the requirements of section 16(1)(b) or 16(1)(c).

## **2. Information supplied in confidence**

[para 13] Regarding the need for the information at issue to have been supplied in confidence, the Public Body submits that there is an understanding between it and bidders that the contract value is confidential; proposals are normally delivered in sealed envelopes; the standard practice of the Public Body in the RFP process is to consistently treat the contract price as confidential; the contract price is not publicly available; and proposals are not evaluated solely on dollar amounts but also on other established criteria.

[para 14] I take the last point to mean that the contract price is not made public because, unlike other times where the government may be requesting goods or services, the contract price in the context of an RFP is not the most important or determinative factor in awarding the contract. Elsewhere in its submissions, the Public Body cites Order F2002-002, which noted that when proposals are opened publicly, the contract prices are not announced because the proposals must be evaluated, based on the dollar amounts and other established criteria, before the contract is awarded (at para. 24).

[para 15] Order F2002-002 is not determinative of whether a contract value/price associated with a RFP is supplied in confidence. The fact that prices are not announced

at the “public opening” of proposals does not necessarily mean that they were supplied in confidence or intended to be confidential throughout the process. In Order F2002-002, it was found that the third party explicitly supplied certain information in confidence because the third party included a statement of confidentiality in its proposal (at para. 51). The present matter is also different from Order 97-013, cited by the Public Body, as that case involved an express statement regarding confidentiality in the RFP document (at paras. 23 and 24). Here, neither the Public Body nor the Affected Party has pointed to any similar statements regarding confidentiality in the RFP or resulting proposal. I do not see one in the copy of the RFP submitted in this inquiry, and an e-mail attached by the Public Body (under Tab 19 of its submissions) states that the proposal did not have a confidentiality clause.

[para 16] I also distinguish the matters in Orders F2002-002 and 97-013 because the applicants there had requested the entire proposal of a third party, not just the contract value/price. While certain business information in a proposal may have been supplied in confidence, it does not follow that everything contained in it was supplied in confidence. This is so, even if the proposal was given in a sealed envelope. While the provision and acceptance of a proposal in a sealed envelope may imply confidentiality of some of a third party’s business information, as occurred in Order 97-013 (at para. 25), it does not mean that everything in the sealed envelope is supplied and accepted on a confidential basis.

[para 17] Section 16(1)(b) of the Act requires a reasonable and objective expectation of confidentiality on the part of the supplier of the information in question. In deciding whether there was an expectation of confidentiality based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case, including whether the information was communicated to the public body on the basis that it was confidential and that it was to be kept confidential; treated consistently in a manner that indicates a concern for its protection from disclosure by the third party prior to being communicated to the public body; not otherwise disclosed or available from sources to which the public has access; and prepared for a purpose that would not entail disclosure (Order 99-018 at para. 37; Order F2005-011 at para. 19).

[para 18] I do not know how the contract value/price was treated, in terms of confidentiality, prior to its disclosure to the Public Body. However, the Affected Party says that its understanding was that its contract price would not be publicly available, effectively submitting that it was communicated to the public body on the basis that it was confidential and was to be kept confidential. In support, it cites excerpts from the RFP document, but I find that none of them demonstrate a reasonable and objective expectation of confidentiality.

[para 19] The fact that “[t]he evaluation team’s final scores will be recorded, but not published” does not mean that the contract value/price is intended to be confidential, as those two figures are not the same thing. Here, the final score given to a bidder appears to be a single aggregate number in the form of a “summary score” out of 100 (as indicated in the “Proposal Scoring Criteria” and “Project Administration Manual”

submitted by the Public Body). While project costs account for 25% of the final score, the project costs would not actually be ascertainable from the resulting final score.

[para 20] The Affected Party notes that the awarding of the contract “will be based solely on the evaluation criteria and scoring scheme”, and it points out that project cost was simply one criterion. I find that this has nothing to do with whether or not the contract value/price was intended to be confidential. Like the Public Body, the Affected Party appears to be saying that the contract price is not the most important factor, but this does not persuade me that it was intended to be kept confidential.

[para 21] Finally, the Affected Party points out that each bidder could request a debriefing, during which it would be given information pertaining to its own proposal in order to identify areas for improvement. It deduces that the debriefing is not intended to provide information pertaining to a competing proposal – which may be true – but the fact that a debriefing has a certain limited purpose does not necessarily mean that the contract value/price is intended to be confidential in all other contexts.

[para 22] In response to the arguments of the Public Body and Affected Party regarding confidentiality, the Applicant points out a sentence in the RFP’s covering letter that states: “All documents submitted by the Consultant shall be subject to the disclosure provisions of the *Freedom of Information and Protection of Privacy Act*.” Of course, this does not mean that information submitted in a proposal will necessarily be disclosed, but it does alert a bidder to the possibility that disclosure might occur. In my view, a sentence reminding bidders that the Public Body has disclosure obligations under the Act, combined with the lack of a confidentiality clause in the RFP and covering letter, effectively put the Affected Party on notice that its business information may, in fact, *not* be kept confidential.

[para 23] Indeed, I find that the Public Body did not consider the contract value/price in this case to be confidential. Even if dollar amounts are not announced prior to the evaluation of proposals, and the Public Body does not have the practice of automatically publishing the contract value/price associated with the successful bid, the Public Body contemplates disclosure of a contract value/price following a request to access information under the Act, as explained below. This detracts from an argument that there was an implicit understanding between the Public Body and Affected Party that the contract value/price was supplied in confidence.

[para 24] The Public Body submitted a copy of part of a document entitled *Managing Contracts under the FOIP Act* (March 2008). In that document, the Applicant notes that “Table 2 – Disclosure of Contracting Information” states that, in the case of “bids, proposals, tenders”, the “Bottom-line \$ amounts should be released”. The Applicant argues that the contract value/price in the proposal here is a bottom-line dollar amount, and I agree. I do not accept the Public Body’s argument that the information at issue is instead comparable to a “unit price”, which Table 2 says is to be withheld under section 16 (and 25) of the Act.

[para 25] The Public Body argues that the information at issue is comparable to a unit price because the information is a lump sum amount for a three-year contract. However, I fail to see how the overall value associated with a multi-faceted project having several components can be characterized as a unit price. “Unit” implies something more separate and discrete. On review of the RFP and its covering letter, I accept the arguments of the Applicant, who explains that unit price refers to a cost-per-unit or a specified unit rate, whereas the bids here were based on the total cost for providing a multitude of services. He specifically notes that the RFP requested a “grand total” or “total upset fee”. I find no unit price revealed in the overall contract value/price here, whether directly or indirectly.

[para 26] Because the Public Body’s own document contemplates release of the bottom-line dollar amount associated with an overall proposal, the contract value/price here was not accepted by the Public Body on a confidential basis and for a purpose that would not entail disclosure. In conjunction with the wording in the RFP covering letter that alerted the Affected Party to the possibility of disclosure, I find, in turn, that the contract value/price was not supplied in confidence. This is notwithstanding the fact that third parties normally submit proposals in sealed envelopes and the Public Body does not automatically make contract values/prices associated with RFPs available from sources to which the public has access.

[para 27] On consideration of the submissions of the parties and all of the relevant circumstances drawn to my attention, I find that the Affected Party did not have a reasonable and objective expectation of confidentiality when it supplied the information at issue. The contract value/price was therefore not supplied, explicitly or implicitly, in confidence under section 16(1)(b) of the Act.

### **3. Harm to competitive position, interference with negotiating position or undue financial loss**

[para 28] Because I find that the information at issue was not supplied in confidence – and therefore that section 16(1) of the Act does not apply – it is not strictly necessary for me to decide whether disclosure of the information could reasonably be expected to result in one of the outcomes under section 16(1)(c). However, I will nonetheless address the last criterion for withholding information under section 16.

[para 29] The Public Body and Affected Party argue that disclosure of the contract value/price will harm the Affected Party’s competitive position or interfere with its negotiating position under section 16(1)(c)(i). The Public Body further argues that disclosure of the information at issue will result in undue financial loss to the Affected Party under section 16(1)(c)(iii), although it appears to do so on the basis that financial loss would be the result of the harm to the Affected Party’s competitive position and the interference with its negotiating position. In other words, the Public Body’s arguments in respect of sections 16(1)(c)(i) and (iii) are essentially one and the same.

[para 30] I note that a background e-mail attached to the Public Body's submissions (under Tab 19) briefly refers to section 16(1)(c)(ii), but the Public Body did not actually argue that the section applied in its main submissions. I do not find that section 16(1)(c)(ii) applies in any event, as third parties have a strong business and financial interest in submitting proposals, with all of the requested information, in response to government RFPs. The possibility that a contract value/price may be disclosed to others will therefore not result in similar information no longer being supplied to public bodies.

[para 31] The Public Body submits that similar contracts for a similar scope of work will go out for a competitive RFP after the present contract has expired, and that disclosing the contract value would allow competitors to prepare a proposal to underbid the Affected Party. While the Applicant did not present a proposal for the project that was awarded to the Affected Party, the Public Body says that it considers the Applicant to be a competitor. The Affected Party submits that its ability to offer an efficient and competitive price is intricately linked to its project approach, methodology and experience and that disclosure of any detailed information from its proposal, including price, could affect its competitive position in subsequent RFPs.

[para 32] In response, the Applicant argues that the RFP here related to a multi-faceted project with many complex components, making it impossible for a competitor to derive the cost of any of the various components simply by knowing the total contract value. The Applicant accordingly submits that knowledge of the information at issue would not enable a competitor to underbid on future projects.

[para 33] I agree with the position of the Applicant. Very little, if anything, can be deduced from the contract value/price here so as to harm the competitive position of the Affected Party, interfere with its negotiating position, or cause it undue financial loss. In the "Project Description" submitted by the Applicant, there are a variety of tasks associated with the Road Network Update, such as obtaining information from municipalities, collecting field data, presenting detailed documentation annually, and delivering data and reports by specific deadlines. There are four phases to the three-year project, being the identification of data sources, detection of changes to the road network, collection and compilation of changes, and creation of a monthly update file. In turn, the cost estimate for each phase consists of various disbursements, expenses, sub-consultant fees and hourly rates.

[para 34] Because the contract value/price reflects a total amount for various tasks, phases and sub-costs, I find that a person knowing the total contract value/price would not be able to ascertain the cost that the Affected Party attributes to any particular component. Moreover, even if the Public Body issues another RFP for the same scope of work for another three-year period, cost is only one criterion (worth 25%) in awarding the contract, and the market will have changed so as to influence the pricing for the various components leading up to the overall value of a future contract. In other words, even assuming a virtually identical RFP in the future, I find it unlikely that knowledge of the contract value/price associated with the current project will enable a competitor to underbid the Affected Party three years later.



[para 35] The Public Body cites Ontario Order P-1553, in which it was concluded that disclosure of a “pricing summary” could reasonably be expected to prejudice significantly the competitive position of various bidders (at p. 3 or para. 14). It argues that the total value of the contract here is also to be considered a pricing summary because “the bid for this RFP is a dollar value; the bid is not comprised of various components with dollar values bid on the various components”.

[para 36] I disagree that the information at issue in this inquiry is a pricing summary and find that the conclusions in Ontario Order P-1553 may be distinguished. A summary, although a synopsis, sets out more information than the single overall figure here. In Ontario Order P-1553 (at p. 2 or para. 12), the pricing summaries were for what appear to have been six bidders and the information was spread over four pages consisting of “explicit cost calculations based upon the rates supplied by each bidder” for the provision of carrier services between a Liquor Control Board of Ontario warehouse and retail store. The information there was different than the information at issue in this inquiry, in that disclosure could apparently enable a competitor to deduce a pricing structure or pricing policy. It was also in relation to services that were more limited in scope. Here, the information at issue is an overall contract amount to provide services for a large and multi-faceted project and therefore reveals no pricing structure or policy.

[para 37] I also distinguish B.C. Order 03-33, which the Public Body cites in support of its view that disclosure of the information at issue would harm the competitive position of the Affected Party, interfere with its negotiating position, or cause it undue financial loss. This is again because B.C. Order 03-33 (at para. 40) involved more detailed information in the form of portions of an RFP that apparently consisted of “information respecting service offerings, pricing and strategic project approach” and “specific terms and conditions” in relation to credit card payment-processing services. Again, the information was not as general as it is here. The conclusions regarding a reasonable expectation of harm in Order 97-013 (at para. 31) and Order F2002-002 (at para. 55) may likewise be distinguished, as the records at issue in those cases consisted of large portions of a third party’s successful proposal, which contained much more extensive commercial, financial or technical information.

[para 38] Given all of the foregoing, I find that disclosure of the contract value/price associated with the RFP in this inquiry cannot reasonably be expected to harm the Affected Party’s competitive position, interfere with its negotiating position, or cause it undue financial loss.

#### **4. Conclusion under section 16**

[para 39] The contract value/price requested by the Applicant fails to meet two of the requirements in order to withhold it under section 16 of the Act. It was not supplied, explicitly or implicitly, in confidence under section 16(1)(b), and its disclosure cannot reasonably be expected to bring about one of the outcomes set out under section 16(1)(c). I conclude that the information at issue does not fall under section 16(1) and that the Public Body therefore cannot withhold it under that section.

**B. Did the Public Body properly apply section 25 of the Act (disclosure harmful to economic interests of a public body) to the information at issue?**

[para 40] The Public Body specifically applied sections 25(1)(c)(ii) and 25(1)(c)(iii) of the Act in this case. The discretionary exceptions to disclosure under those sections read as follows:

*25(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to harm the economic interest of a public body or the Government of Alberta or the ability of the Government to manage the economy, including the following information:*

...

*(c) information the disclosure of which could reasonably be expected to*

...

*(ii) prejudice the competitive position of, or*

*(iii) interfere with contractual or other negotiations of,*

*the Government of Alberta or a public body;*

[para 41] Under section 71(1) of the Act, the Public Body has the burden of proving that the Applicant has no right of access to information withheld under section 25.

[para 42] The Public Body submits that disclosure of the contract value/price would interfere with negotiations of the Public Body when additional RFPs for the National Road Network Update are issued for a competitive bidding process. It says that there are a limited number of companies qualified to bid on these RFPs, and that future bids should not be influenced by the current contract value/price. It argues that disclosure of the information at issue would impact the integrity and fairness of the RFP process.

[para 43] The Applicant argues that the Public Body has not outlined specific harms to its interests, and that release of the information at issue could actually improve the competitive process and ensure better value for the government on future projects. In response to the latter argument, the Public Body submits that RFPs are evaluated on established criteria and that bidders should provide their proposals based on their ability to meet them, not based on a third party's bid.

[para 44] In order to properly apply section 25(1)(c)(ii) or (iii) of the Act, the Public Body must establish a reasonable expectation of harm in that (1) there must be a clear cause and effect relationship between the disclosure and harm; (2) the disclosure must cause harm and not simply interference or inconvenience; and (3) the likelihood of harm must be genuine and conceivable (Order 98-005 at para. 56; Order 2001-025 at para. 48). The evidence must demonstrate a probability of harm from disclosure and not just a well-

intentioned but unjustifiably cautious approach to the avoidance of any risk whatsoever because of the sensitivity of the matters at issue (Order 98-005 at para. 57; Order 2001-025 at para. 48).

## **1. Prejudice to competitive position**

[para 45] The Public Body cites Order 97-005, which stated that, in the case of prejudice to competitive position, a public body must have a reasonable expectation that disclosure of the information in question is capable of being used by an existing or potential competitor to reduce the public body's or the government's share of a market (at para. 24). However, this matter has nothing to do with the Public Body's ability to compete for a share of the market. In the context of a future RFP, the Public Body would be the party creating the market for a project, not trying to get a share of it. It would be the third party bidders that would be competing for a share of the market.

[para 46] In its submissions on the application of section 25 of the Act, the Public Body refers to a particular e-mail (under Tab 19). However, the discussion there relates to section 16 and competition between third parties responding to a RFP, not the competitive position of the Public Body or Government of Alberta.

[para 47] In short, the Public Body's arguments under section 25(1)(c)(ii) (prejudice to *its* competitive position) appear really to be arguments under section 16(1)(c)(i) (harm to a *third party's* competitive position), which I found above not to apply. The Public Body has failed to satisfy me that disclosure of the contract value/price at issue would prejudice its competitive position, or that of the Government of Alberta.

## **2. Interference with contractual or other negotiations**

[para 48] The Public Body cites Order 98-005 for the propositions that (1) to interfere with contractual or other negotiations means to obstruct or make much more difficult the negotiation of a contract between a public body and a third party, and (2) the expectation of interference with negotiations as a result of disclosure must be reasonable and the negotiations have to be specific, not simply possible negotiations of a general kind in the future (at paras. 59 to 62). While the Public Body indicates that it intends to issue a similar RFP in the future, I fail to see how disclosure of the current contract value/price will obstruct or make difficult its negotiation of a future contract.

[para 49] The Public Body may mean that bidders will know what it might be willing to pay. However, where there is a RFP, the bidders are nonetheless competing with one another so as to push down the price. Further, I note from the covering letter for the RFP for the current project that the Public Body reserves the right to negotiate changes in the technical or financial content of a successful proposal. The "Project Administration Manual" submitted by the Public Body states that a contract is drawn up only when negotiations with the preferred bidder are successfully completed, and that if negotiations become too onerous or unproductive, the Public Body may exercise its right to negotiate with the second rated bidder. Therefore, even if disclosure of the

information at issue might possibly influence future bids received by the Public Body, the Public Body still has the opportunity to negotiate a more favourable contract with the successful bidder, and even negotiate with a different bidder altogether. I find that there would be no interference with its contractual or other negotiations, or those of the Government of Alberta.

[para 50] As for the Public Body's submission that knowledge of one bid may cause a competing proposal to be based on something other than established criteria, it does not sufficiently explain how this would affect the Public Body's negotiations. Regardless of the content of a proposal, the Public Body would still be in a position to evaluate whether or not the established criteria have been met, and award the contract as it sees fit.

[para 51] The Public Body cites Order 2001-025, in which it was found that disclosure of financial information in a contractual agreement could reasonably be expected to harm the economic interest of a public body (at paras. 50 and 51). The public body there had argued that disclosure would interfere with the government's negotiation of "funding agreements" with numerous external organizations. However, the Public Body in this inquiry does not explain how the funding agreements and financial information discussed in Order 2001-025 are comparable to a contract following a RFP and the information at issue here. My own review of Order 2001-025 does not assist.

[para 52] The harm test set out above – specifically in relation to economic harm to a public body under section 25(1)(c) of the Act – and the requirement for an evidentiary foundation for assertions of harm were upheld in *Qualicare Health Service Corporation v. Alberta (Office of the Information and Privacy Commissioner)*, 2006 ABQB 515 (at paras. 6, 55, 59 and 60). The submissions made by the Public Body have not met the test or the evidentiary requirements.

### **3. Conclusion under section 25**

[para 53] Disclosure of the contract value/price at issue in this inquiry cannot reasonably be expected to prejudice the competitive position of the Public Body or Government of Alberta, or interfere with their contractual or other negotiations. As the information at issue does not fall under section 25(1)(c)(ii) or 25(1)(c)(iii) of the Act, I conclude that the Public Body did not have the discretion to withhold it in reliance on those sections.

## **V. ORDER**

[para 54] I make this Order under section 72 of the Act.

[para 55] As the contract value/price requested by the Applicant was not properly withheld by the Public Body under section 16 or 25 of the Act, I order the Public Body to give the Applicant access to that information under section 72(2)(a).

[para 56] I further order the Public Body to notify me in writing, within 50 days of being given a copy of this Order, that it has complied with the Order.

Wade Riordan Raaflaub  
Adjudicator