



DOIA 1617-0946

27 March 2017

AJ
fyi-request-5298-b0606d7a@requests.fyi.org.nz

Dear AJ

Thank you for your request of 28 January 2017, transferred to the Ministry of Business, Innovation and Employment (the Ministry) from the New Zealand Fire Service Commission on 13 February 2017. You requested, under the Official Information Act 1982 (the Act), the following information:

I would expect to see the section of the original contract (or the contract in its entirety) that states that the IP and software still belongs to the supplier and not the NZ Fire Service Commission.

Your request related to the New Zealand Fire Service Commission's engagement of a provider from the All-of-Government (AoG) Design Services contract. The AoG Design Services' master services agreement, under which the engagement was entered into (through a design services order), is negotiated and managed by New Zealand Government Procurement; a business unit of the Ministry.

The master services agreement provides the framework terms and conditions which govern design service orders agreed between a government agency and provider. The master services agreement includes intellectual property clauses relevant to the New Zealand Fire Service Commission's engagement and your request.

We include the intellectual property clauses from the original services agreement that was released as part of the procurement for AoG Design Services in 2014. The contract commenced in December 2014.

14. Intellectual Property

14.1 Intellectual Property owned by the Provider

- (a) *The CoE acknowledges that all Intellectual Property rights held by the Provider before the Commencement Date remain the Provider's sole and exclusive property (**Provider IP**).*
- (b) *To the extent that a Participating Agency needs to use any of the Provider IP to receive the full benefit of the Services, the Provider grants to the CoE, for the benefit of all Participating Agencies, a royalty-free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt and modify during the Term any Provider IP provided to a Participating Agency by or on behalf of the Provider.*

14.2 **Intellectual Property owned by the Participating Agencies**

- (a) *The Provider acknowledges that each Participating Agency or its licensor has, and continues to have, sole and exclusive ownership of all Intellectual Property rights in all of the Client Information together with all adaptations and modifications of such Client Information (**Pre-contract Participating Agency IP**).*
- (b) *All Intellectual Property created or developed by the Provider or its employees or Subcontractors in performing the Services and developing the Documentation will be owned by the Participating Agency that issued the Design Services Order for those Services from the date the Intellectual Property is created or developed (**Post-contract Participating Agency IP** and, together with the Pre-contract Participating Agency IP, the **Participating Agency IP**).*
- (c) *If the Provider (or any of its Subcontractors) has under any Law any right in or claim to any of the Participating Agency IP or holds any of the Participating Agency IP, the Provider (by itself and for its Subcontractors):*
 - (i) *assigns to the Participating Agency all of its rights, title and interest in and to that Participating Agency IP from the date it was created or developed; and*
 - (ii) *waives all right of lien or similar rights as may now or later be claimed in that Participating Agency IP; and*
 - (iii) *waives all of its moral rights under Part 4 of the Copyright Act 1994 in that Participating Agency IP,*

and the Provider will sign all documents and do all acts and things that are necessary to give effect to this clause 14.2(c).
- (d) *To the extent that the Provider needs to use any of the Participating Agency's IP for the purpose of performing its obligations under this Agreement, the CoE will use its reasonable endeavours to procure the grant by the Participating Agency to the Provider, subject to any written direction given by the CoE or the Participating Agency, of a royalty-free, non-exclusive, non-transferable licence to use and store that Participating Agency's IP for the sole purpose of performing its obligations under this Agreement during the Term.*

14.3 **Intellectual Property owned by third parties**

- (a) *To the extent that the Provider needs to use any Intellectual Property held or owned by a third party (**Third Party IP**) in performing the Services under a Design Services Order issued by a Participating Agency, the Provider will use its best endeavours to obtain the fullest rights of use and licence of that Third Party IP (on terms and at a cost to be agreed with the Participating Agency) as are necessary for the performance of those Services for the benefit of the Participating Agency.*
- (b) *The CoE acknowledges that the Provider may have limited ability to obtain rights and/or a licence to use any Third Party IP and, where the Provider, using its best endeavours, cannot obtain appropriate rights and/or a licence for a Participating Agency to use that Third Party IP, the warranty in clause 12.2(d) applies.*

You have the right to seek an investigation and review by the Ombudsman of our response to your request. Information about how to make a complaint is available at: www.ombudsman.parliament.nz or freephone: 0800 802 602.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Ivil', with a small mark below the end of the signature.

John Ivil
General Manager
NZ Government Procurement & Property