

Our ref: FOI 752,875
Your ref:

Operations Directorate Services Team
Manager
9th Floor
The Cube
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25 August 2017

Thank you for your Freedom of Information (FOI) request dated 03 July 2017 asking for information relating to contracts.

In your email you asked for the following information:

You have give me Appendix A to annex 23. Is this in all areas. What is used in each area. What are defined costs. What is the third party claims overhead in each area. How much have they gone up.

On 31 July 2017 we advised you that we needed to extend the FOI time limit by approximately 20 working days, because some of the information requested must be considered under one of the FOI exemptions to which the public interest test applies. This extra time is needed in order to make a determination as to the public interest.

Taking each of your questions in turn:

You have give me Appendix A to annex 23. Is this in all areas? What is used in each area?

The strategic road network is maintained by a number of area teams – please see our network management map: <https://www.gov.uk/government/publications/roads-managed-by-the-highways-agency>

Currently the area teams work to two different contract types:

Areas 3, 4, 6, 8, 9, 10 & 13 are Asset Support contracts (ASC). All ASC contracts use Annex 23. The older ASC contracts do not use Appendix A to Annex 23.

Under Section 21 of the Act, we are not required to provide information, which is already reasonably accessible to you. Part of the information that you have requested has been made available through previous FOI responses. Annex 23 for Areas 2 (previous contract), 3, 9, 10 and 13 have been published via the following links:

- <https://www.gov.uk/government/publications/asset-support-contract-annexes-foi>
- <https://www.gov.uk/government/publications/area-13-third-party-charges-foi>
- <https://www.gov.uk/government/publications/asset-support-contract-foi>

I attach a copy of Annex 23 for Area 4. Areas 6 and 8 are using the same Annex 23 contract document as Area 9: <https://www.gov.uk/government/publications/asset-support-contract-foi>

Areas 1, 2, 7, 12 & 14 are now Asset Delivery contracts (AD). Under AD, claims are dealt with “in house”. We invoice out only what we have paid the service providers for the work and what we can evidence. Each area has a dedicated investigation team.

We also have DBFO routes (Design, Build, Finance & Operate) – All risks for the DBFO routes are transferred to the DBFO companies. They are responsible for processing all third party claims which includes identifying damage, issuing works orders, repairing damage, recording and totalling costs associated with claim, seeking details of those who caused damage and pursuing reimbursement of costs associated with the claim from appropriate person/insurance company/loss adjuster.

For more information on the DBFO contracts, please see the following link:

<http://webarchive.nationalarchives.gov.uk/20140603114609/http://www.highways.gov.uk/our-road-network/managing-our-roads/operating-our-network/how-we-manage-our-roads/private-finance-initiatives-design-build-finance-and-operate-dbfo/>

What are defined costs?

Defined Cost is defined as:

- the amount of payments due to subcontractors for work which is subcontracted (excluding work subcontracted to an Associated Company) without taking account of amounts deducted for:
 - payments to Others and
 - the supply of equipment, supplies and services included in the charge for overhead costs incurred within the Working Areas in the contract and
 - the cost of the components in Schedule 1 for other work.

provided that, where a unit rate in the schedule of rates in the Pricing Schedule is stated as zero or nil or left blank, the Defined Cost of providing the relevant parts of the Services is treated as being zero, less:

- the cost of preparing quotations for compensation events where the work affected forms part of the Lump Sum Duties and
- Disallowed Cost

Direct and Subcontract Fee Percentages are fixed for the duration of the contract and do not rise.

What is the third party claims overhead in each area. How much have they gone up?

The specific fee is commercially sensitive (please see exemption statement below), however it is included in each and every individual claim submitted, so all parties to the claim will have visibility. However we can confirm that the Third Party Fee Percentage is fixed for the period of the Contract.

Information relating to the above question is being withheld under the exemption in Section 43(1) and (2) of the Freedom of Information Act 2000 because information is exempt information if its disclosure under this Act would, or would be likely to prejudice the commercial interests of any person (including the public authority holding it).

In applying this exemption we have had to balance the public interest in withholding the information against the public interest in disclosure. Our arguments are set out below

- The procurement process must be seen to be fair and that commercial interests of the suppliers of services are not unduly prejudiced by the release of commercially sensitive information. It is important to maintain the confidence of our suppliers in order to achieve best value for the tax payer;
- The methodology outlined in the bid may be construed as a “trade secret” in that it is a strategy owned and developed by the consultant. If the methodology was made available to competitors in the market place it would undermine the commercial interests of the consultant when bidding for other contracts by reducing their competitive edge;
- To reveal the details of the bid, or audits of processes, would seriously undermine our ability to negotiate the best value for money for the public purse on future contracts as the rates and methodology are still current;
- The consultants object to the release of their bid information on the grounds that it contains commercially sensitive information in terms of a “trade secret” and rates; and such a release would be actionable.

If you are unhappy with the way we have handled your request you may ask for an internal review. Our internal review process is available at:

<https://www.gov.uk/government/organisations/highways-england/about/complaints-procedure>

If you require a print copy, please phone the Information Line on 0300 123 5000; or e-mail info@highwaysengland.co.uk. You should contact me if you wish to complain.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

If you have any queries about this letter, please contact me. Please remember to quote reference number 752,875 in any future communications.

Yours sincerely

Email: Ops_dst@highwaysengland.co.uk