

**Public Interest Test**

<b>Request for FOI 101343 Information</b>	
<b>FOIA Exemption S.40 (1) &amp; (2) – Commercial Interests</b>	
<b><i>Factors supporting disclosure</i></b>	<b><i>Factors supporting non-disclosure</i></b>
<ul style="list-style-type: none"> <li>• There is a clear public interest in the work of government being closely examined to encourage the discharging of public functions in the most efficient and effective way;</li> <li>• There is an important public interest in the work of public bodies being transparent and open to scrutiny to increase diligence and to protect the public purse;</li> <li>• There is a public interest in disclosing information about transparency in the spending of public money and that public bodies are getting value for money when entering into contracts;</li> </ul>	<ul style="list-style-type: none"> <li>• 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;</li> <li>• The pricing aspects outlined in the existing contract may be construed as a “trade secret” in that it is a strategy owned and developed by the contractors. If the pricing was made available to competitors in the market place it would undermine the commercial interests of the contractors when bidding for other contracts by reducing their competitive edge;</li> <li>• To reveal the details of the cost 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;</li> <li>• The contractors 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.</li> <li>• The contractor adopts a unique approach to the build-up of its rates prices and percentages which gives it a competitive advantage in the marketplace and allows it to provide a high-quality service to the Highways England at a highly competitive price. The release of the information would enable others to take advantage of the accumulated know-how and skill of the contractor which currently gives it a commercial advantage. This would undoubtedly prejudice its competitive position in future tender competitions. The public disclosure of this and other information would make available to competitors commercially sensitive information and, as a result, would undermine and prejudice the contractor’s financial status by undermining its ability to win future tenders and future negotiations in respect of such fees.</li> </ul>
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**Conclusion: there are compelling arguments which support withholding the information which outweigh those supporting release.**

**PIT Members:**

**Date of PIT: 9/9/2020**