

REF 252

Request for information relating to the contract National Police Air Service EC135T2 Mission System Upgrade:

1. Suppliers who applied for inclusion on the contract and were successful & not successful at the PQQ & ITT stages.
2. Contract values of each framework/contract (& any sub lots), year to date
3. Start date & duration of framework
4. Is there an extension clause in the framework(s)/contract(s) and, if so, the duration of the extension?
5. Has a decision been made yet on whether the framework(s)/contract(s) are being either extended **or** renewed?

The following information can be provided:

1. This was an open tender involving an ITT stage only (invitation to tender). A total of 54 suppliers expressed an interest and submissions were received from 6 suppliers. The successful supplier was Bond Helicopter Services (now known as Babcock Mission Critical Services Design and Completions Limited).

Details of unsuccessful suppliers cannot be provided because we consider that exemptions apply. Further information is given below.

- 2,3. The contract value and start date for this contract are available via:

<https://www.blpd.gov.uk/foi/foicontractview.aspx?contractid=24775>

- 4, 5. This contract is for one upgrade only.

EXEMPTIONS TO DISCLOSURE

Section 17 of the Freedom of Information Act 2000 (FOI Act) states that, where a public authority is relying on an exemption under the Act, the applicant must be given a notice which states the fact, specifies the exemption(s) relied upon and states why the exemptions apply.

We consider that the following exemptions apply to the request for details of the unsuccessful bidders for this contract:

S41 Information provided in confidence

S43 Commercial interests

S41 INFORMATION PROVIDED IN CONFIDENCE

S41 states that information is exempt information if it was obtained by the public authority from any other persons and the disclosure would constitute a breach of confidence actionable by that or any other person.

Although this exemption is absolute and does not require a public interest test under the Freedom of Information Act (FOI Act) it requires the public authority to conduct a public interest test on whether the common law duty of confidentiality can be overcome.

In considering whether disclosure would constitute an actionable breach of confidence the Office of the Police and Crime Commissioner (OPCC) has considered the following:

- Whether the information has the necessary quality of confidence
- Whether the information was imparted in circumstances requiring an obligation of confidence
- Whether disclosure would be detrimental to the confider

The information requested is the trading names of bidders for the contract. Only the trading name of the successful bidder is published, the names of unsuccessful bidders are not published. We have concluded that the names of unsuccessful bidders have the necessary quality of confidence.

The tender document includes a confidentiality clause stating that any documentation and information exchanged under the agreement should be treated as confidential between the Police and Crime Commissioner (PCC) and the contractor. Schedule L of the tender document further states that the identity of the other party to the tender should not be released to any other third party. We have concluded that the information which is requested (the names of unsuccessful bidders) was imparted in circumstances requiring an obligation of confidence.

Disclosure under the FOI Act is a disclosure 'to the World'. The OPCC is obliged to publish any information which is disclosed under the Act on its website and to provide this information on demand to any other person making a request. Disclosure of the trading names of unsuccessful bidders would identify that a bid had been submitted and had been unsuccessful which could cause commercial detriment to the bidder in terms of investor and consumer confidence.

The OPCC has considered whether there is a public interest defence for disclosure of the information requested and has concluded that the public interest in disclosure is not sufficient to outweigh the duty of confidence to the bidders. Whilst there is a public interest in demonstrating that the contract was managed appropriately and subject to competition thus securing value for money in terms of public expenditure this public interest is largely met by disclosure of the numbers of bidding organisations. We have concluded that there would be only a limited public interest defence in disclosing the information requested and, therefore, the duty of confidentiality cannot be overcome.

S43 COMMERCIAL INTERESTS

S43(2) states that information is exempt information if its disclosure would prejudice the commercial interests of any person (including the public authority holding it).

This exemption is subject to a prejudice and a public interest test.

In assessing prejudice a three step assessment has been made as follows:

- Identification of the applicable commercial interest
- Identification of the nature of the prejudice
- Identification of the likelihood of the prejudice

The applicable interest is the commercial interest of the Police and Crime Commissioner in being able to arrange competitive procurement processes. The PCC has a duty, under the Police Reform and Social Responsibility Act 2011, to maintain an efficient and effective police force and competitive procurement arrangements for high value contracts are essential to meet this duty.

The nature of the prejudice is harm to the ability of the PCC to hold future competitive procurement processes on the basis that disclosure of the names of unsuccessful bidders in this tender process, which involved a contractual obligation of confidentiality, would act as a deterrent to organisations who may wish to bid for future tenders with the PCC. If disclosure led to claims being made against the PCC for breach of a duty of confidence this would also act as a deterrent to future bidders. As a competitive procurement process is necessary in order to achieve value for money actions which undermine this will also impact on the PCC's ability to secure an efficient police service.

Disclosure of the names of unsuccessful bidders would be likely to prejudice the commercial interests of the PCC on the basis that disclosure is a disclosure to the World and not just to the requester and may, therefore, be reported and commented upon in trade publications.

The public interest test has been applied as follows:

The factors in favour of disclosure relate to a general principle of transparency and demonstration that the procurement process was effectively managed. However, as the numbers (but not names) of bidders is being released this interest is already met to a large degree.

The factors against disclosure relate to harm to the ability of the PCC to attract a suitable number of bidders for future contracts so as to enable a competitive process to take place in order to secure the most advantageous bid and the best value for money.

We have concluded that the factors in favour of disclosure are outweighed by those against disclosure in this case.