



**BY EMAIL ONLY**

22 June 2016

### **Request for Information**

Thank you for your email received by the Homes and Communities Agency (HCA) on 25 May 2016 requesting the following information:

*I write to you in relation to a contract you awarded.*

**Contract title: Hydrock Contracting Ltd**

**Award notice: <https://www.contractsfinder.service.gov.uk/Notice/0f0c0786-7797-41b5-9c08-14c1c1cd42c6>**

**Publication date of the award: 10/02/2014**

#### **Information Requested**

*In accordance with s.1 of the Act, which provides a general right of access to information held by public authorities, I wish to receive the following information:*

***A copy of the list of bidders at PQQ and/or tender stage (company names) and the tender stage scorecard for all bidders (including winner)***

Your request has been considered under both Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR), which is an alternative access to information regime. EIR is similar to FOIA, but where the information relates to environmental information. We have provided you with a summary of the EIR legislation to aid your understanding below:

#### **EIR Summary**

The Environmental Information Regulations 2004 provide public access to environmental information held by public authorities.

The Regulations do this in two ways:

- Public authorities must make environmental information available proactively;
- Members of the public are entitled to request environmental information from public authorities.

The Regulations cover any recorded information held by public authorities in England, Wales and Northern Ireland.

The Regulations apply only to the environmental information held by public authorities. The Freedom of Information Act gives people access to most other types of information held by public authorities.

An extract from the legislation is also provided to further assist in your understanding of why this access regime was used:

“environmental information’ has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material on—

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements.”

More information on the Regulations, including the full text of Regulation 2(1), can be found at the Information Commissioner’s website [here](#).

All requests received under FOIA or EIR are dealt with as applicant blind and motive blind. We must consider the implications of disclosure of information to the world at large and not to the individual requestor regardless of what their intention is.

We can confirm that we hold a [summary sheet of the PQQ process and the tender scoring which we have provided to you](#); however the price scoring, quality scoring and overall scores of the unsuccessful bidders have been withheld under Section 43(2) of FOIA. The price submitted by the unsuccessful bidders has been withheld under Regulation 12(5)(e) of the EIR. A summary of Regulation 12(5)(e) and Section 43(2) are provided below, along with the relevant Public Interest test arguments.

### **Regulation 12(5)(e) - Confidentiality of Commercial or Industrial Information**

Regulation 12(5)(e) states:

12.—(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect—

(e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

To refuse environmental information under the exception in regulation 12(5)(e), public authorities need to establish that:

- the information does not relate to emissions;
- the information is commercial or industrial in nature;
- it is confidential under either the common law of confidence, contract, or a statutory bar;
- the confidentiality is protecting a legitimate economic interest;
- the confidentiality will be adversely affected by disclosure; and

- the public interest in maintaining the exception outweighs the public interest in disclosing the information.

All exceptions within EIR are subject to a Public Interest test to weigh the balance of disclosure versus non-disclosure.

#### **Public Interest Test – Factors in favour of disclosure**

The HCA recognises that there is a legitimate public interest in the disclosure of official information held by any public authority. Disclosure helps promote the principles of transparency and accountability, which are central to the effective operation of information access legislation.

We also understand that there is a legitimate public interest in the way in which public authorities make decisions, especially where those decisions impact upon the places in which people live and work, and the way in which we interact with the private sector.

Finally, we appreciate that in order for the public to be appropriately equipped to challenge the decisions and activities of public authorities and demand greater accountability and better value for money for the public purse, they need to be properly informed. The disclosure of information under the statutory regime can go a long way to helping promote this empowerment.

#### **Public Interest Test – Factors in favour of non-disclosure**

The interests of the third parties would be harmed by the disclosure of the redacted information as release would give their competitors an unfair and unreciprocated advantage by gaining knowledge of their financial information. This could then be used in future transactions in order to obtain an advantage over them by using this knowledge to inform their negotiations accordingly.

The bid price was submitted to the HCA with the understanding that it was sensitive information and disclosure would discourage third parties from submitting bids. This would have a harmful effect on the Agency as we would not opportunity to appointment the best developer or achieve value for money.

#### **Section 43(2) – Prejudice to commercial interests**

Section 43(2) of the Act permits a public authority to withhold information where disclosure “would, or would be likely to, prejudice the commercial interests of any party”, including the public authority holding the information. We have identified certain information which, if released, could have the potential to prejudice the commercial interests of HCA, its panel partners and unsuccessful bidders.

#### **Public Interest Test – Factors in favour of disclosure**

To avoid repetition the factors in favour of disclosure are the same as above, although we would also add for the information consider under Section 43(2) that there is a legitimate public interest in ensuring that public authorities are operating effectively and in line with their organisational objectives, and that they are obtaining the maximum value for money for the public purse.

### **Public Interest Test – Factors in favour of non-disclosure**

As no public money has been invested in the unsuccessful bidders there is a weaker public interest in favour of disclosure.

Disclosing this information would harm the HCA's ability to score fairly and without prejudice. It would allow those submitting tenders to be aware of how we score and what we look for which would give them an unfair advantage. This would also mean that it would give any future bidders a commercial advantage over other third parties who had not seen the information.

Further, disclosure of why a bidder was unsuccessful at each stage would also harm their commercial advantage in the market as, should they submit a similar tender for works elsewhere, those scoring them could be influenced by how they fared in this bid.

Ultimately disclosure of this information, considering the above, would not allow for achieving best value for money now or in the future which is not in the public interest

Taking into consideration all of the above, we have determined that the public interest in favour of withholding the specified information falls in line of non-disclosure at this time. We would stress that the public interest is continually changing and that whilst we are unable to release this information at this time, we may be able to reconsider its disclosure in the future.

If you have any questions regarding this response or any further queries you can contact us at the following addresses and quote your unique reference number found at the top of this letter:

**Email:** [mail@homesandcommunities.co.uk](mailto:mail@homesandcommunities.co.uk)

**Mail:** Information Access Officer  
Homes and Communities Agency  
Fry Building  
2 Marsham Street  
London  
SW1P 4DF

If you are unhappy with the way Homes and Communities Agency has handled your request you may ask for an internal review. You should contact

Head of Legal Services  
Homes and Communities Agency  
Fry Building  
2 Marsham Street  
London  
SW1P 4DF

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

Homes and Communities Agency  
Fry Building, 2 Marsham Street, London, SW1P 4DF

0300 1234 500  
[homesandcommunities.co.uk](http://homesandcommunities.co.uk)

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF  
Online: <https://ico.org.uk/concerns/getting/>

Yours sincerely

Naomi McMaster  
Information Access Officer  
Homes and Communities Agency