

Thursday 6th June 2023

Request under The Freedom Of Information (Scotland) Act 2002

Thank you for your Freedom of Information request dated 25 June 2023, in which you requested the following:

1. Copy of successful tender.
2. Final pricing of successful bidder.
3. Expiry date of the awarded contract.
4. Approximate date that the tender will be reissued towards the end of the current contract period.
5. How many bidders submitted responses.
6. Name of all bidders who submitted responses.
7. Rank of all bidders who submitted responses.

We have considered your requests, and can respond as follows:

1. Information withheld as it falls in scope of the exemption in section 33(1)(b) of the Freedom of Information (Scotland) Act 2002: *"Disclosure would (or would be likely to) prejudice substantially the commercial interests of any person or organisation"*.
2. Information withheld as it falls in scope of the exemption in section 33(1)(b) of the Freedom of Information (Scotland) Act 2002: *"Disclosure would (or would be likely to) prejudice substantially the commercial interests of any person or organisation"*.
3. 30 April 2025
4. January 2025
5. Two
6. Factory73 Ltd; Storm ID Ltd
7. 1st Factory73 Ltd;
2nd Storm ID Ltd

The reason we have applied the exemption and withheld information for points 1 and 2 are as follows:

- The company that submitted the successful tender is likely to have their commercial interests substantially prejudiced by release of the tender documents as well as the final pricing.
- If released, information within the successful tender document and disclosure of the final pricing would offer a significant advantage to competitor companies. This could offer an

advantage to competitors, by allowing them to undercut pricing in future to replicate their approach to a similar brief.

- Information in the tender documents is not already publicly available.
- Passage of time is a key factor in the release of tender documents. Given this tender process was less than six months ago, we are of the view that prices, service delivery methods and market conditions have not changed significantly in this period. It is our view that there therefore remains a risk disclosure of this information would likely result in significant prejudice.

We have also applied the public interest test in this case. Please see below for the competing arguments identified within the public interest test exercise:

Why the public interest would be served by disclosing the information:

- Disclosure may contribute to ensuring effective oversight of expenditure of public funds and that the public obtain value for money but in our view, disclosure of the documents requested is unlikely to serve this purpose.

Why the public interest would be served by maintaining the exemption:

- Passage of time is a key consideration. Given the tender was awarded on 28 March 2023, we do not consider prices, service delivery methods and market conditions have changed significantly in this period. It is our view that there therefore remains a risk disclosure of this information would likely result in significant prejudice.
- Disclosure would not enhance scrutiny of decision-making processes and thereby improve accountability and participation, instead disclosure would result in a disadvantage for the company who successfully tendered for this contract. Release of the successful tender document and final pricing would make the tendering process less fair in future and offer an advantage for competitors.
- Disclosure would not contribute to ensuring effective oversight of expenditure of public funds and that the public obtain value for money. VisitScotland's procurement policy is publicly available on visitscotland.org and the award criteria for this tender is publicly available through [Public Contracts Scotland](#). These documents contribute to ensuring effective oversight. VisitScotland does not believe that disclosure of the successful tender and final pricing requested would contribute to ensuring effective oversight of expenditure of public funds and that the public obtain value for money.

Due to the outcome of this balancing exercise, we have judged that in all circumstances of the case, the public interest in maintaining the exemption outweighs that in disclosure of the information.

We hope this information is helpful to you. If, however, you are not satisfied with our response or the manner in which we have dealt with your application, you may in the first instance contact our Chief Executive, Malcolm Roughead, whose contact details are set out below:

Mr Malcolm Roughead
Chief Executive
VisitScotland
Ocean Point One
94 Ocean Drive
Edinburgh, EH6 6JH
Telephone: 0131 472 2201
Fax: 0131 472 2223
E-mail: malcolm.roughead@visitscotland.com

If you wish to request a review of your application under either the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004, your request should be submitted to us in writing, or another permanent format (for example e-mail or voice recording), and be received by us within 40 days of the date of this letter. Any request for a review should also set out, in as much detail as possible, the reasons why you are not satisfied with our response or the manner in which we have dealt with your application.

If you are still not satisfied with our handling of your application after we have responded to your request for a review, you have a right to apply to the Scottish Information Commissioner for a decision on whether we have dealt with your request in accordance with the Act.

The Scottish Information Commissioner may be contacted at:

Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS
Telephone: 01334 464610
Fax: 01334 464611
E-mail: enquiries@itspublicknowledge.info

You also have the right to appeal to the Court of Session in Scotland on a point of law concerning our response.