

London Highways Alliance Contract – Refusal Notice

We have redacted schedules of rates from the Contract as we consider that the following exemptions apply to it.

Section 43 (Prejudicial to commercial interests), subsection (2)

- Information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

In addressing the commercial interests and the prejudice that would or would be likely to occur the council has consulted with Conway Aecom Ltd, and has asked them to explain and justify what prejudice could be caused, how and how likely this would be.

The council is relying upon the lower threshold of likelihood that disclosure 'would be likely' to have a prejudicial effect. The party whose commercial interests would, or would be likely to be prejudiced if the withheld information was disclosed is the Conway Aecom Ltd.

The harm that would be likely to be caused to Conway Aecom Ltd is that they would be likely to lose business and therefore income. This would include ongoing and future negotiations related to this agreement and bids and negotiations Conway Aecom Ltd are involved in for similar contracts.

Their pricing structures would be widely known, allowing plagiarism by competitors who are competing for business from other local authorities. This would be likely to lead to Conway Aecom Ltd being unsuccessful in obtaining tenders or losing business to competitors. This loss of business would be harmful to their commercial interests. The link between the disclosure and harm is that knowledge of the information would allow competitors an advantage over Conway Aecom Ltd in pricing tenders which would be likely to lead to Conway Aecom Ltd being unsuccessful in gaining business.

The Public Interest Test

Factors in favour of disclosure

1. It is in the public interest for the Council to be open and transparent, especially with regard to a unique and wide-ranging contract such as this.
2. There is a general public interest in facilitating the accountability of public authorities for decisions they take, and also allow individuals to understand decisions made by public authorities and how public money is spent.
3. The council has a fiduciary duty to its residents to spend council money properly.

Factors in favour of withholding

1. It is not in the public interest for the council to disclose information that would be likely to damage the commercial interests of a company, as this could lead to financial problems for the company and or loss of jobs, which is not in the public interest.

2. It is not in the public interest for commercially sensitive information about one company to be released, when the same category of information relating to others companies is not so released, thus putting one company at a commercial disadvantage.

3. It is not in the public interest for information to be released which could negatively influence ongoing and future negotiations associated with this contract, as this would be likely to have an adverse effect on value for money for the council and by extension the people of Barnet.

4. The withholding of the exempt sections will not negatively affect accountability, as the council has full and proper mechanisms in place for this, and there are sufficient statutory methods for the public to be involved in ensuring accountability, for example the Overview and Scrutiny process, councillors involvement, and the Audit Commission Act process.