

From: [Foi Enquiries](#)
To: [REDACTED]
Subject: FOI-16-1204 - ACC Contract with Mitie
Date: 15 November 2016 15:56:01
Attachments: [Further Information - Right to Review & Appeal.pdf](#)

Dear [REDACTED]

Please accept our sincere apologies for the delay in responding to your information request of 13 September 2016. Aberdeen City Council (ACC) has completed the necessary search for the information requested.

Please could you provide me with the following information with regards to your contracts for services with Mitie;

1. What is the start date?

The start date of the contract for Boiler Plant Maintenance was 1 August 2004.

2. What is the end date?

The end date stated in the contract documents was 31 March 2007.

3. Provide the original tender documents.

The tender documents are commercially sensitive.

ACC is unable to provide you with information on **the original tender documents** as it is exempt from disclosure. In order to comply with its obligations under the terms of Section 16 of the FOISA, ACC hereby gives notice that we are refusing your request under the terms of Section 33(1)(b) – Commercial Interests - of the FOISA.

In making this decision ACC considered the following points:

1. Do commercial interests exist in relation to the information?

Yes, commercial interests exist in the information. The information requested is pricing in the context of commercial trading activity. The pricing is still current and is contained in a contract that was concluded pursuant to a competitive tender exercise. The contract is scheduled for re-tendering.

Whose commercial interests will be damaged by the release of the information?

The pricing information engages the commercial interests of both the Council and Mitie.

What is the nature of those interests?

The contract pricing discloses basic detailed unit prices ACC are willing to pay for the services and the prices Mitie are prepared to provide them at. The pricing is current and, as the contract will be re-tendered soon, that pricing will be a good indicator of what might be considered as a yardstick for a winning bid. The information will also be highly useful to competitors in looking to target other customers using this pricing information to help them undercut pricing with them too.

Please describe how disclosure of the requested information would cause the level of harm

required for this exemption? In what way will this harm occur?

If the information is disclosed, the ability of the Council to drive out value for money in future tender exercises will be substantially prejudiced (because potential tenderers will price to beat the incumbent's pricing and not necessarily with their lowest bid). Additionally, Mitie's commercial interests will be damaged as competitors will know their current pricing and Mitie will not know theirs, so there will not be a level playing field on any re-tender. Additionally, if Mitie's pricing with the Council is disclosed, Mitie's other customers may learn of it (as the information will enter the public domain) and Mitie will not be able to maintain their prices with them if they know the prices agreed with the Council

What evidence can you provide for this harm?

The detailed pricing information being sought is very detailed and will be used in financial modelling and is designed to understand the pricing of services in order to confer advantage on the person seeking the information. The pricing is current – and not historic – so its disclosure will be extremely harmful to the commercial interests of both the Council and Mitie.

How likely is it that this harm will happen?

Very likely. The Council's ability to conduct a blind re-tender which offers the optimal outcome in terms of competitive outcome will be irrevocably impaired and Mitie's ability to compete on a level playing field will also be severely hampered because details of core unit pricing will be in the public domain and known by competitors.

ACC recognises that there is a public interest in being open and transparent about its negotiations with third parties. However, ACC is of the view that in this case, the public interest lies in withholding the information as disclosure would prejudice ACC's commercial relationships and future contractual negotiations with third parties and after considering all the circumstances of the case, the public interest is best met by applying Section 33(1)(b) at this time.

4. What is your annual spend?

Annual Spend is approx. £235K

5. What is your total spend?

Total Spend is approx. £2.96M

6. Provide the original agreement documents.

There are no agreement documents only the returned tender document and the letter of acceptance. The tender document is commercially sensitive.

A specification document has been drawn up for the renewal of this contract and the project will be advertised in Public Contracts Scotland and OJEU by the end of the year.

ACC is unable to provide you with information on **the original agreement documents** as it is not held by ACC. In order to comply with its obligations under the terms of Section 17 of the FOISA, ACC hereby gives notice that this information is not held by it.

We hope this helps with your request.

Yours sincerely,

Grant Webster
Information Compliance Officer

INFORMATION ABOUT THE HANDLING OF YOUR REQUEST

ACC handled your request for information in accordance with the provisions of the Freedom of Information (Scotland) Act 2002. Please refer to the attached PDF for more information about your rights under FOISA.

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