



National Audit Office

The UK's independent public spending
watchdog

Switchboard +44 (0)20 7798 7000

Direct Line +44 (0)20 7798 7264

Email

Reference FOI-1666

Date 25 October 2023

Dear

ADAPTIVE LEARNING TECHNOLOGY FOR E-LEARNING CONTRACT

Thank you for your request of 5 October 2023 for information about the National Audit Office's (NAO) Adaptive Learning Technology for eLearning Contract. Your specific request is reproduced at **Annex A**.

Your request has been handled under the terms of the Freedom of Information Act 2000 (FOIA). The FOIA provides a legal right of access to recorded information held by a public authority, but it is subject to certain exemptions that may apply. Whilst we hold some information in scope of your request, we consider it to be exempt from disclosure under Section 43 (commercial interests) of the FOIA.

Details of the Section 43 exemption, how it applies to your request, and our consideration of the public interest test can be found at **Annex B**.

Further information about this contract will be publicly available once this procurement is complete. We will be publishing a Contract Award Notice within 30 days of the contract being awarded. This will be available in the Contracts Finder [database](#), which can be searched by authority name and filtered by various criteria.

I am sorry we are not able to share the information that you have requested on this occasion. **Annex C** sets out the steps you may wish to take if you are not satisfied with the way we have handled your request for information under the FOIA.

Yours sincerely,

NAO FOI Team

Annex A

Request for information about NAO Adaptive Learning Technology for eLearning Contract:

I am writing to you under the Freedom of Information Act 2000 to request the following information for the Project - GB-London: CPT_23_19 ITT Adaptive Learning Technology for eLearning, Notice Reference - BIP798327565

- 1. Copy of successful tender (by removing confidential information)*
- 2. Scoring table of all bidders, split by scores awarded for each question of bid.*
- 3. Approximate date that the tender will be reissued towards the end of the current contract period.*
- 4. How many bidders submitted responses?*
- 5. Name of all bidders who submitted responses.*
- 6. Rank of all bidders who submitted responses I would prefer to receive the information electronically.*

Annex B

Section 43 – Freedom of Information Act 2000 - commercial interests

Section 43 of the Freedom of Information Act 2000 (FOIA) provides that:

- (1) Information is exempt information if it constitutes a trade secret.*
- (2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).*
- (3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).*

The exemption applies because:

We have applied this exemption to the information we hold in scope of your request, namely the number and names of bidders that submitted responses, and our scoring and ranking of the bids.

We have considered the prejudice to both the National Audit Office (NAO) and suppliers if we were to release this information before the contract has been awarded. There is a risk that release of this information while the procurement process is ongoing would prejudice the NAO's ability to negotiate in a commercial environment and obtain the best contract. In addition, disclosing sensitive information about our scoring and ranking of the bids may well cause suppliers to decline to bid for future NAO contracts (because they do not trust the confidentiality of the process). This may prove detrimental to the NAO in achieving adequate competition in tenders published in the future as it may cast doubt on the ability of the NAO to protect commercial sensitive information and/or conduct a tender exercise objectively.

In turn this would reduce the NAO's ability to obtain value for money and may result in a less advantageous outcome for the taxpayer. Therefore, we have concluded the release of the information would prejudice the commercial interests of the NAO and suppliers, and that Section 43(2) (commercial interests) of the FOIA is engaged.

Reasons why the public interest in maintaining the exclusion outweighs the public interest in disclosing the information:

Having concluded the Section 43(2) (commercial interests) exemption of the FOIA is engaged we have considered the balance of the public interest. We recognise that there is a public interest in organisations operating with openness and transparency. There is also a public interest in the awarding of contracts involving public money.

However, this needs to be weighed against the public interest in ensuring fairness of competition. This could be undermined by the release of sensitive information during the procurement which could affect that process. There is also a public interest in ensuring that the NAO's reputation is such that it can conduct successful and effective procurement exercises, with the best possible bids submitted for evaluation.

In conclusion we believe that maintaining the exemption outweighs the public interest in disclosing information.

Annex C

Statement of Policy

Our policy is to respond to requests made under the Freedom of Information Act 2000 as helpfully and promptly as possible, having regard to the principles set out in the Act. I therefore hope you are happy with the way we have handled your request. If you are not, then you should take the following steps.

In the first instance, within 40 working days, write to the National Audit Office Freedom of Information (FOI) Team at FOI.requests@nao.org.uk or by post to:

FOI Team, Green 2, National Audit Office, 157-197 Buckingham Palace Road, London, SW1W 9SP.

The Head of FOI will arrange a review, which will be conducted by a senior member of staff who was not involved in decisions relating to your original request. Once the review has been completed, we will write informing you of the outcome. 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 primary way of escalating your concerns to the Information Commissioner is at: www.ico.org.uk/foicomplaints. Alternatively, you can contact the ICO at [Contact us | ICO](#) or Information Commissioner's Office Wycliffe House Water Lane Wilmslow Cheshire SK9 5AF.