



Swansea University  
Prifysgol Abertawe

## Freedom of Information Request 159/21-22

*Response Date: 11/04/2022*

I would be most grateful if you would provide me, under the Freedom of Information Act, details in respect to the contract below.

**Marketing and Recruitment Services in India:**

<https://eur03.safelinks.protection.outlook.com/?url=http%3A%2F%2Fted.europa.eu%2Fudl%3Furi%3DTEED%3ANOTICE%3A384799-2018%3ATEXT%3AEN%3AHTML&data=04%7C01%7Cfoi%40swansea.ac.uk%7C18c6e078ac11492a52bf08da01b1ca4f%7Cbbcab52e9fbe43d6a2f39f66c43df268%7C0%7C0%7C637824160505699123%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%3D%7C3000&data=B1qG8y4muQwPBDH%2BTFuVXiRpQr2v0yLoUGhEbPKnpQ8%3D&reserved=0>

The details we require are:

1. What are the contractual performance KPI's for this contract?
2. Suppliers who applied for inclusion on each framework/contract and were successful & not successful at the PQQ & ITT stages
3. Actual spend on this contract/framework (and any sub lots), from the start of the contract to the current date
4. Start date & duration of framework/contract?
5. Could you please provide a copy of the service/product specification given to all bidders for when this contract was last advertised?
6. Is there an extension clause in the framework(s)/contract(s) and, if so, the duration of the extension?
7. Has a decision been made yet on whether the framework(s)/contract(s) are being either extended or renewed?
8. Who is the senior officer (outside of procurement) responsible for this contract?

### RESPONSE

#### Question 1

The University can provide the attached document in response to this question.

#### Question 2

Successful supplier: UK India Business Council

The University is not obliged to provide you with details of the unsuccessful suppliers.

Section 17 of the Freedom of Information Act 2000 requires Swansea University, when refusing to provide such information (because the information is exempt), to provide the applicant with a notice which:

- (a) states the fact,



- (b) specifies the exemption in question and
- (c) states (if it would not otherwise be apparent) why the exemption applies.

In relation to your particular request, the following exemptions apply:

### **Section 43(2) – Commercial Interests**

Section 43(2) refers to information being exempt from disclosure if its disclosure would or would be likely to; prejudice the commercial interests of any person (including the public authority holding it).

Section 43(2) is a qualified and prejudice based exemption therefore the legislators accept that there may be harm if released. The authority has to consider and describe the harm that would occur if the information were released and carry out a public interest test.

The 'public interest' is not however, what the public may find interesting, there must be some tangible benefit to the community in such disclosure. Ultimately, it must be something which serves the interests of the public. It is a requirement to identify all the factors which serve these interests and also those which do not, only then can a decision be made.

### **Overall Harm**

Disclosing the names of the unsuccessful suppliers may bring them commercial harm and could affect them when bidding for future tender opportunities. The University must retain commercial confidence or third-party bidders, and the release of this information may jeopardise this confidence.

### **Public Interest Considerations**

#### **Factors Favouring Disclosure**

There is a requirement to provide to the general public a better understanding of how public funds are spent. One of the underlying principles of the Act is the need for openness and transparency. In this case, there is a public interest in establishing that the University has undertaken a fair and thorough tender process.

#### **Factors Favouring Non-Disclosure**

Swansea University has a duty to protect the sensitive commercial information it holds about any company it has dealings with. Disclosing the names of unsuccessful suppliers may cause damage to their reputation, affecting their competitive position in their respective markets and could affect the confidence that their customers and suppliers may have in them. Additionally, disclosure would be likely to deter potential bidders for future contracts from competing and sharing commercially sensitive information with the University, which would negatively impact upon the quality and quantity of the University's supplier base.

### **Balance Test**

In this case, there is a public interest in the use of public funds which needs to be weighed against the damage that would occur to the commercial interests of the third parties. If the University was to release the requested information, the commercial interests of the third parties may be compromised. Therefore, on balance, the factors favouring non-disclosure outweigh the factors favouring disclosure.

As such, the public interest favours non-disclosure of the information at this time. Therefore, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

This letter represents a refusal notice for this part of your request.



Question 3

Spend: £329,510

Question 4

Contract start date: 19<sup>th</sup> March 2019.  
Duration: up to 4 years.

Question 5

The University can provide the attached document in response to this question.

Questions 6 and 7

There are two 1 year extension options (1+1). The contract has been renewed for another year.

Question 8

The University is not obliged to provide you with details of the individual responsible for the contract.

Section 17 of the Freedom of Information Act 2000 requires Swansea University, when refusing to provide such information (because the information is exempt), to provide the applicant with a notice which:

- (d) states the fact,
- (e) specifies the exemption in question and
- (f) states (if it would not otherwise be apparent) why the exemption applies.

In relation to your particular request, the following exemptions apply:

**Section 40(2) – Personal Information**

Section 40(2) is an absolute class exemption and therefore the University is not required to consider the public interest in disclosure.

The Data Protection Act covers processing of personal data about a living individual. Personal data means data which relate to a living individual who can be identified-

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller or any other person in respect of the individual.

Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus, or impacts upon them in any way. Individuals will have a reasonable expectation that the disclosure of their details would be considered as unfair, therefore would contravene the first data protection principle which requires that personal data is processed fairly and lawfully. Section 40(2) of the Freedom of Information Act, by virtue of section 40(3)(a)(i) provides an exemption to the right of access to information where disclosure would breach any of the data protection principles.

This letter represents a refusal notice for this part of your request.

**END OF RESPONSE**