

CRS Ref: 770,527

Jacob Smith

request-572465-ef37f090@whatdotheyknow.com

Rizwana Khan

Highways England

8 City House

Sweet Street, Leeds
LS11 9AT

13 June 2019

Dear Mr Smith

I refer to

- your email of 1st May;
- our response dated 9 May; and
- your supplementary email dated 15 May.

In your latest email you have asked the following questions:

What's this mean? Instead such claims are calculated using the contractual mechanism of Defined Costs incurred.

We consider that this question has been addressed previously. For the avoidance of doubt, we confirm that the Asset Support Contract contains the mechanism to produce a Defined Cost. The model Conditions of Contract for Highways England Asset Support Contracts (ASC) is publicly available online (https://webarchive.nationalarchives.gov.uk/20140603121903/http://assets.highways.gov.uk/about-us/procurement-asset-support-contract/ASC_Model_Conditions_of_Contract.pdf).

The term 'Defined Cost' refers to a definition in the contract which can be found in clause 11 at point (27). The Defined Cost is calculated in accordance with the definition. The contract does not contain a schedule of Defined Costs as the mechanism sets out how the Defined Cost is calculated.

"Why are there no rates schedules?"

The Asset Support Contract operates a target price with a pain/gain share is used by Highways England for most scheme work. The target price mechanism is not used for Green Claim repairs following challenge by insurers who were not prepared to accept any pain/gain approach in their payment of claims for damage repairs from negligent drivers.

There are rates contained in the contract i.e. the Pricing Schedule that are used for determining the target cost as part of this pain/gain share mechanism. The Pricing

Schedule, including Appendices A, B and C, contain the rates tendered by the provider. These rates are exempt from disclosure as the conditions under section 43 of the Freedom of Information Act 2000 are met. This was recently upheld by the First Tier Tribunal in an appeal against the Information Commissioners decision (reference EA/2018/0104).

As stated in our previous response there are no rates contained in the contract, or held by Highways England, that are used in the calculation of the repair costs for damage caused by third parties to the strategic road network.

The majority of TP repair works are involved in an emergency response which is determined by the nature, scale and urgency of the incident and repair, and consequently the repair costs are a bespoke calculation related to need.

Such unplanned work tends to be far less efficient than planned repair work (for which in our Asset Support Contracts there is a contractual Schedule of Rates) and hence will be costlier. The Schedules of Rates specified in the ASCs are not used to work out the Defined Cost, or for assessing the reasonable cost, of repair in respect of such TP claims.

"How'd you get a rate? What calculation? Give me examples."

Please see our response to your first question. Please see an example attached - this document is for illustrative purposes only and has been prepared solely in response to this request.

"You told me costs were different in 6 8 and 9. How so and what's the difference with what you get charged?"

It is not clear what this statement refers to. The contract for area 9 is publicly available <https://data.gov.uk/data/contracts-finder-archive/contract/1238249>. The costs in areas 6, 8 and 9 are determined under this contract. The other areas have separate contracts and the costs are determined in accordance with the relevant contracts. You have been provided with access to some of our contracts in response to other requests you have made. If there are any other contracts that you require access to then we can provide access if you identify them.

If you are unhappy with the way we have handled your current request you may ask for an internal review within two months of the date of this response. Our internal review process is available at:

<https://www.gov.uk/government/organisations/highways-england/about/complaints-procedure> If you require a print copy, please phone the Information Line on 0300 123 5000; or e-mail info@highwaysengland.co.uk. You should contact me if you wish to complain.

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 Information Commissioner can be contacted at:

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Yours sincerely

Rizwana Khan