

## **THE COUNCIL OF THE CITY OF STOKE-ON-TRENT**

### **GENERAL GUIDANCE TO CONTRACTORS AND TENDERERS ON ACCESS TO INFORMATION ABOUT OR ARISING UNDER CONTRACTS**

#### **1. Introduction**

- 1.1 All information relating to any tender made to the authority or any contract to which the authority is party, including information arising under the contract or about its performance, will be covered by the Freedom of Information Act 2000 (the act) from January 2005 (or the date of implementation if different). The authority will be under a legal obligation to disclose such information if requested unless an exemption applies. The legal obligation to respond to a request for information falls on the authority. The authority must determine whether an exemption applies to information and whether the request should be refused. The authority may also be subject to disclosure obligations under other legislation or codes of practice. This Guidance sets out the approach of the authority to the disclosure of information about contracts.

Generally, the authority will not enter into any contract, which purports to restrict the disclosure of information by it under the Act.

#### **2. General Rules on Disclosure**

- 2.1 The authority has determined that, in the absence of special circumstances:

The Invitation to Tender (ITT) will always be available under the Act to those who enquire.

Responses to tenders will be held in confidence until award of the contract.

- 2.2 Any person tendering for or entering into a contract with the authority must, as part of the tender process, inform the authority of information which it regards as being eligible for a claim for exemption from disclosure by the authority under the Act. Such information will be called reserved information. The ultimate decision as to whether a claim for an exemption applies will rest with the Council.

Information about all tenders will be made available under the Act to those who enquire unless, as part of the tender process, the tenderer has notified the authority that it regards any of the information supplied with the tender as falling within the categories indicated below (reserved information). Such notification must be made on a schedule as set out below.

- 2.3 The authority will make information about the global pricing of the bid available under the Act after award of the contract.

### 3. **Reserved Information**

- 3.1 If the contractor wishes to reserve any information from disclosure under the Act he must put forward (propose) any information or classes of information which it is wished to have (reserved information) reserved and the grounds of the exemption which relate to the information which may be one or more of the following:-

- That the information constitutes a trade secret and is eligible for exemption under section 43(1).
- That the disclosure of the information would prejudice the commercial interest of any person (section 43(2)).
- That the information will be disclosed by the contractor to the authority and that the nature of the information, or the circumstances in which it is imparted or the circumstances are otherwise such as to justify the acceptance by the authority of an obligation of confidence in respect of it (section 41(1)).
- That the information is personal data or otherwise relates to the private life of any individual, which is appropriate for protection (section 40).
- Any other specific exemption under the act.

- 3.2 Information, which is proposed by the contractor to be reserved information, will be contained in a separate schedule to the contract. The schedule will list the class or category of information or the information itself and specify which exemptions under the Act apply to each specified class category or specific information. In each case the schedule shall indicate when it is likely that the information can be made available under the Act or if the information is unlikely ever to be made so available, that this is the case. When the council receives a request under the Act to disclose the information proposed by the contractor to be reserved the Council will at that point in time determine whether or not any of the specified exemptions apply. At this point, the contractor will be notified of the Council's decision in relation to whether or not the reserved information will be disclosed.

Where such information is exempt under the rules governing commercial matters, (section 43(2)), then unless special circumstances apply, it will not be withheld under the Act for more than seven years after completion of the contract works.

- 3.3 Information relating to the overall value, performance or completion of the contract will not be accepted as reserved information. The authority may however withhold access to such information under the Act in appropriate cases. The decision as to whether to withhold information shall be for the authority alone to determine. It shall have no obligation to consult the contractor.
- 3.4 Information relating to contract records and administration will not be accepted as reserved information. The authority may however withhold access to such information under the Act in appropriate cases. The decision as to whether to withhold information shall be for the authority alone to determine. It shall have no obligation to consult the contractor.
- 3.5 The tenderer may designate unit prices or more detailed pricing information as reserved information.
- 3.6 The authority will make information available under the Act from 5 years after award of the contract, in the absence of specific agreement to the contrary. In the event that the authority receives a request for such information before the expiry of the 5-year period, which it considers it may be appropriate to provide it will, wherever possible, notify the tenderer and take account of any representations made by the tenderer within 7 days of receipt of the notice by the tender.

#### **4. Handling requests for information and notice to those affected**

- 4.1 Other than as set out above the authority shall have no obligation to consult the contractor where any request for information, whether under the Act or otherwise, touches or concerns the contract.

#### **5. Information about the provision of the service, which is the subject matter of the contract, which arises in the course of performance of the contract**

- 5.1 The authority will have obligations to respond to the act and other requests for information and the contract will include appropriate terms requiring the contractor to supply such information as requested by the authority.

Any enquiries about this policy and its application is available from  
Corporate Procurement