

PART 2 – CONFIDENTIAL FACTS AND ADVICE

DMFD12

Title: Foundation Software – Acceptance of Tender

Information may have to be disclosed in the event of a request under the Freedom of Information Act 2000. In the event of a request for confidential facts and advice, please consult the Information Governance team for advice.

This information is not for publication until the stated date, because:

Appendices A and B of report LFC-0058 (attached) contains negotiated costs for a proposed key commercial partner of the London Fire Commissioner and their competitors' tendered prices, including product and cost breakdowns. Publishing that information would prejudice or harm the commercial interests of the tendering businesses and would risk prejudicing the London Fire Commissioner's negotiating position and inhibit the London Fire Commissioner's ability to secure value for money on behalf of the public.

Date at which Part 2 will cease to be confidential or when confidentiality should be reviewed:
15 October 2019

Legal recommendation on the grounds of keeping the information confidential:

In the event of any request for access to the information contained in this document and/or its appendices under section 1 of the Freedom of Information Act 2000 ("the **Act**"), it is considered that access can be denied on the basis that the disclosure of such information would prejudice:

- the commercial interest of the tendering parties for the Foundation Software contract with the London Fire Commissioner, including Phoenix Software Limited, the proposed successful tenderer, as it includes information provided during the tendering process; and
- the London Fire Commissioner's commercial interests as its release could have an adverse impact on the London Fire Commissioner's ability to secure best value when the various services are procured as planned,

and therefore, is covered by the exemption under section 43 of the Act.

Section 1 of the Act creates the general right of access, which provides that any person making a request for information to a public authority is entitled:

- to be informed in writing by the public authority whether it holds information of the description specified in the request; and
- if that is the case, to have that information communicated to him/her.

Part II of the Act contains a number of exemptions from disclosure for certain classes of information. Section 43 of the Act provides that information is exempt information if its disclosure under the Act would, or would be likely to prejudice the commercial interests of any person (including the public

authority holding it).

The paragraph above states that the information is considered commercially sensitive as its release could detrimentally affect (i) the commercial interest of the tendering parties and (ii) the ability of the London Fire Commissioner to negotiate the optimum terms when the various software are procured as planned which may impact upon the London Fire Commissioner's ability to achieve the best value for money.

The section 43 exemption is a qualified exemption and its use is therefore, subject to a public interest assessment.

Public Interest Assessment

At present, on balance, it is considered that the public interest is best served if the information is not disclosed at this point. Disclosure by the London Fire Commissioner would be likely to have a detrimental effect on the London Fire Commissioner's commercial interests and ability to achieve value for money.

The eligibility of the exemption should be reassessed in the event of an FOI request for this information as the level of sensitivity will change over time and different circumstances may alter the arguments in favour of non-disclosure.

Legal Adviser - I make the above recommendations that this information should be considered confidential at this time

Name: Robyn Lawrance

Date: 12/10/2018

Once this form is fully authorised, it should be circulated with Part 1.

Confidential decision and/or advice:

Appendix A and B of report LFC-0058