

Corporate Resources

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The Information Management Service
Shire Hall
Westgate Street
GLOUCESTER
GL1 2TG

Please ask for ###

Telephone 01452
324000

Email managemyrequests@gloucestershire.gov.uk

Our ref: ###

Date: 03 February 2025

Dear ###,

I am pleased to provide a response to your request for information, received on **4 December 2024**.

Please provide a full unredacted copy of this contract - the contract between UBB (or its successor) and GCC for the provision of an Energy from Waste facility for the treatment of residual waste. This contract replaced the similar contract signed in February 2013. Please provide a copy of the contract currently in force, including unredacted schedules with pricing mechanisms etc.

I can confirm that the information you have requested is held by Gloucestershire County Council (GCC). By law, however, I am unable to give some of this to you. I have attached copies of the information that can be provided.

Where indicated in the attached contract documents, information is exempt under Regulation 12(3) as it constitutes personal data. Regulation 12(3) prevents us disclosing personal data about individuals, unless it is disclosed in accordance with both regulation 13 and the Data Protection Act.

The information is personal data as defined by the Data Protection Act 2018 (DPA). Release of this information to you would constitute a breach of Principle 1 of the DPA. Principle 1 states that personal data shall be processed (used) fairly and lawfully and, in particular, shall not be used unless at least one of the conditions in Schedule 2 of the DPA is met; in this case none of those conditions have been met. As the first condition of Regulation 13 ([2A\(a\)](#)) is

satisfied, the exception is [absolute](#) and we do not have to conduct a public interest test.

Where indicated within the attached contract documents, some information is also exempt from disclosure under Regulation 12(5)(e) of the Environmental Information Regulations (EIRs). That is because disclosure would prejudice or would be likely to prejudice the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest. Please see the table 1 below which details the application of exceptions across the contract.

Please note that where a document has been indicated as withheld this is because it is exempt in its entirety. Some elements of this information may be available from the Environment Agency. Publicly available information can be viewed here: [Access the public register for environmental information.](#)

To come within the terms of the exception it must be shown that:

(1) The information in question is “commercial or industrial”;

We are satisfied that the information to which the exception has been applied contains commercial or industrial information. The requested information contains information on the following:

- Project Internal Rate of Return (IRR), details on the return rate of investment.
- Technical and design details of the facility.
- Names of third party companies and commercial deal information.
- Details of assets and equipment at the site.
- Details of contingency planning/plans.
- Financial calculation details regarding the site and expected returns.
- Payment and bank details.

This is plainly information relating to:

- ‘the purchase of goods or services from private contractors, including information submitted during the tendering process by bidders, information about the resulting contract, and information about your own purchasing position’ and;
- ‘information about methods of manufacture’
 - Source: [How do we determine if the information is commercial or industrial in nature? | ICO](#)

(2) The information is subject to confidentiality provided by law:

(In order to be subject to confidentiality provided by law the information must (a) have the necessary quality of confidence and (b) be imparted in circumstances importing an obligation of confidence); there are several questions to answer to ascertain whether this information is confidential, but firstly please consider:

There is an inherent duty of confidentiality when information is submitted to councils in a contract. The Public Contracts Regulations (PCR) 2006 required

that where a contractor/bidder obtains information as part of a procurement process, we should accede to reasonable requests from the contractor that information passed to ourselves as part of the procurement process is treated as confidential. Regulation 43 of the PCR states that:

‘43(1) Subject to the provisions of these Regulations, a contracting authority shall not disclose information forwarded to it by an economic operator [in this case FCC] which the economic operator has reasonably designated as confidential.’

Whilst information that has been mutually agreed within a contract would not be covered by Regulation 43 of the PCR, the commercial and industrial information outlined above relates to technical details and specifications, that are concerning FCC’s capabilities and operating processes rather than mutually agreed contractual obligations; these mutually agreed elements have been provided previously and are included in the attached documents.

As aforementioned, to ascertain whether the information has the necessary quality of confidence the Information Commissioner considers that it can be helpful to ask a number of questions. These include:

i) Is the information trivial?

It has been concluded that this information is not trivial. It includes information which could potentially be used by competitors to their own advantage, and to the disadvantage of the contractor. Elements that have been redacted within the contract would disclose a package of information brought together using the skills and experience of the contractor over time, which would be advantageous to other businesses in the area and undermine FCC’s ability to operate competitively.

ii) Is the information already available by other means/has it passed into the public domain?

There is a considerable amount of information about this contract already in the public domain.

Supplementary information about this contract, and redacted copies of the contract can be found on our [Energy from Waste](#) pages and [disclosure log](#) on our website. As part of this request, we have reviewed the contents of the contract that has already been published on our website to ensure that the exceptions applied at the time of the publication (in 2017) still apply, and where appropriate we have provided additional information.

Javelin Park (FCC) also publishes a range of figures on their [website](#).

The exempted information encompasses aspects that are unique to FCC and as such these elements are not available by other means and have not been passed into the public domain.

(3) Such confidentiality is provided to protect “a legitimate economic interest”

The contract contains information provided by the contractor as to how it intended to carry out the contract and provide the specified services. The information that has been redacted provides a detailed overview of the way the contractor approaches such contracts and the details of the equipment and assets in place at the site. The contractor states that disclosure could provide information on its methods of business which may be of advantage to its direct competitors, thereby negating its ability to develop a commercial advantage when tendering for other contracts. We accept that the legitimate economic interests of the contractor could be adversely affected by the disclosure of this information.

There is an agreement that the confidential information agreed in the contract would be confidential to both parties (in that each party agreed to hold the information in confidence and could not therefore disclose it as each would owe the other a duty of confidence to protect their respective economic interests). Therefore, we can consider FCC’s own economic interests in addition to those of the Council. The Council feels that confidentiality is required to protect its position as purchaser. Disclosing this information would be likely to affect the Council’s ability to negotiate best value and to effectively procure services in the future.

(4) The disclosure of the information would adversely affect such confidentiality.

Detailed information on the equipment, designs and contingency planning used by FCC could be studied and adopted by competitors within the sphere of waste management.

In addition, release of the IRR would provide insight into FCC’s operating practices.

Disclosure would be likely to disadvantage the contractor’s ability to tender for other public or private commercial contracts if competitors use this information for their own benefits and to better their own commercial interests.

Table 1: Summary of Exceptions*

Contract Document	Published in full	Redactions applied	Withheld	Exception applied
Main Project Agreement		X		EIR 12.5(e)
Schedule 1 Definitions		X		EIR 12.5(e)
Schedule 2 Output	X			

Specification				
Schedule 3 Part 1 WDP 1 Planning and permitting	X			
Schedule 3 Part 1 WDP 2A Design and Design Management	X			
Schedule 3: Part 1 WDP 2B Technology		X		EIR 12.5(e)
Schedule 3: Part 1 WDP 2B Technology – App 1 Waste Flow Model				
Schedule 3 Part 1 WDP 3 Works	X			
Schedule 3 Part 1 WDP 4 Commissioning	X			
Schedule 3 Part 1 WDP 5A Environmental Sustainable Works	X			
Schedule 3 Part 1 WDP 5B Works H&S	X			
Schedule 3 Part 2 MS 1 Mobilisation	X			
Schedule 3 Part 2 MS 2A Operational Interface	X			
Schedule 3 Part 2 MS 2B Waste Reception	X			
Schedule 3 Part 2 MS 2C Waste Treatment	X			
Schedule 3: Part 2 MS 2D Third Party Waste		X		EIR 12.5(e)
Schedule 3 Part 2 MS 2E Environment and Sustainability	X			
Schedule 3 Part 2 MS 2F Maintenance	X			
Schedule 3: Part 2 MS 2F Maintenance - App 1 Assets		X		EIR 12.5(e)
Schedule 3: Part 2 MS 2F Maintenance - App 2 Lifecycle of Major Equipment		X		EIR 12.5(e)
Schedule 3: Part 2 MS 2G Contingency Plan		X		EIR 12.5(e)
Schedule 3 Part 2 MS			X	

2G Contingency Plan – Appendices 1-- 11				
Schedule 3: Part 2 MS 3 Markets for Products		X		EIR 12.5(e)
Schedule 3 Part 2 MS 3 Markets for Products – Appendices 1 - 3			X	
Schedule 3 Part 2 MS 4 Transport	X			
Schedule 3 Part 2 MS 5ABC Contract Management and MIS	X			
Schedule 3 Part 2 MS 5D Personnel	X			
Schedule 3: Part 2 MS5E Contract Communications		X		EIR 12(3)
Schedule 3 Part 2 MS 6 Health and Safety	X			
Schedule 3 Part 2 MS 7 Stakeholder Management and Communications	X			
Schedule 3 Part 2 MS 7 Stakeholder Management and Communications - App 1 Stakeholder Engagement Protocol	X			
Schedule 3: Part 2 MS 7 Stakeholder Management and Communications - App 2 Media Protocol		X		EIR 12 (3)
Schedule 3 Part 2 MS 8 Handback Requirements	X			
Schedule 3 Part 3 Construction Programme	X			
Schedule 3 Part 3 Overall Works Plan (Construction Programme Commentary)	X			
Schedule 4 Payment Mechanism		X		EIR 12.5(e)
Schedule 5 Ancillary	X			

Documents and Finance Agreements				
Schedule 6 Contractor Warranted Data	X			
Schedule 7 Part 1 Headlease	X			
Schedule 7 Part 2 Certificate of Title	X			
Schedule 7 Part 3 Site Plan	X			
Schedule 7 Part 4 Administrative Area	X			
Schedule 8 Key Dates	X			
Schedule 9 Review Procedure	X			
Schedule 10 Insurance	X			
Schedule 11 Tests	X			
Schedule 12 Independent Certifier Deed of Appointment		X		EIR 12 (3)
Schedule 13	NOT USED (not present in either version of the contract)			
Schedule 14 Waste Law List	X			
Schedule 15 Best Value and Continuous Improvement	X			
Schedule 16 Refinancing	X			
Schedule 17 Compensation on Termination		X		EIR 12.5(e)
Schedule 18 Liaison Procedure	X			
Schedule 19 Revision of Base Case		X		EIR 12.5(e)
Schedule 20 Employment and Pensions	X			
Schedule 21 Change Protocol	X			
Schedule 22 Dispute Resolution Procedure	X			
Schedule 23 Commercially Sensitive Information	X			
Schedule 24 Direct Agreement	X			

Schedule 25 Collateral Warranties	X			
Schedule 26 Planning	X			
Schedule 27 Approach to Permit Risk	X			
Schedule 28 Relevant Discharge Terms	X			
Schedule 29 Basic Design Proposal	X			
Schedule 30 Outline Substitute Waste Plan	X			
Schedule 31 Waste Acceptance Protocol	X			
Schedule 32 WCA Composition Protection	X			
Schedule 33 Power Offtake Agreements	X			

An exception in regulation 12(5) can only be relied upon if the public interest in maintaining the exception outweighs that in disclosure of the information in question. The matters which were considered in applying the public interest test are as follows:

Factors in favour of disclosure

- The council accepts that there is a public interest in disclosing information where to do so would help determine whether the council is acting appropriately.
- The information relates to a very large public sector infrastructure project which will have consequences over many years.
- Public concerns have been expressed about value for money and the Energy from Waste technology chosen by the council.
- There is a strong public interest in all council projects which impact upon the environment.
- The disclosure of information regarding this issue would enhance public knowledge of the subject, providing information that may better inform public debate. The release of this information would assist in providing accountability of the council with regards to providing our services and the cost effectiveness of council decision making.
- Release of this information would maintain the council's adherence to the presumption in favour of disclosure approach for environmental information.

Factors in favour of withholding

- The substantial harm identified carries significant weight in favour of maintaining the exception. Disclosing this information would be likely to

affect the Council's ability to negotiate best value for money and to effectively procure services in the future.

- There is a public interest in preventing other companies in the waste management business from having access to the exempt information. Not only would this be contrary to the general public interest in maintaining commercial confidences, but it would provide competitors with an unfair commercial advantage and would discourage commercial organisations from sharing information with public authorities in the future.
- Disclosure of the information under consideration in this case would not make any significant contribution to public knowledge on those issues, particularly in light of the information that has already been put into the public domain; the incremental contribution to public knowledge represented by the redacted information is negligible.
 - The version of the contract being provided in response to this EIR request includes additional information that was exempt from disclosure when the same contract was reviewed for release in 2017. This previously redacted information has now been provided on the basis that, as the facility has now been built and is in operation, these elements are no longer considered commercially sensitive.
- To protect the duty of confidentiality owed by the council to FCC.
- Releasing details relating to FCC's specific design and technical specifications would give an advantage to their immediate competitors. FCC offer tours of the site and provide information on their website about the facilities' capabilities which would satisfy the public interest in being informed about these operational elements. Please see the following links for more information
 - Energy from Waste – [Visitor Centre](#)
 - Energy from Waste - [Performance Data](#)

Balance test:

It is considered that the greater public interest therefore lies in not providing the information at this time. In coming to that conclusion, the public interest in providing the information has been carefully weighed against any prejudice to the public interest that might arise from withholding the information; in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information. It is notable in this case that a large amount of information relating to this infrastructure project's development, performance, and output is already in the public domain. The exempt information is limited and relates only to information which would impact upon FCC's ability to operate competitively within the market. Previously exempt information that was sensitive at the outset of the project has now been included in the contract attached.

This response therefore acts as a refusal notice under regulation 14 of the Environmental Information Regulations.

To provide advice and assistance in line with Regulation 9 of the EIR please see the additional information provided below:

Information has already been published detailing the money generated and money/energy from waste that is generated because of this project. Please see the below links for more information:

[The Council's Medium Term Financial Strategy \(MTFS\)2024-25 to 27-28 MTFS](#) – specifically pages: 10, 20, 68, 109, 115.

[Environment and Quality pages](#) on the FCC, Energy from Waste website.

Search 'Javelin Park' on GCC's [Disclosure log](#)

If you are unhappy with my response, you can complain or ask for a review of your request by writing to us within 40 working days of receiving this response. The full procedure is on our website <https://www.gloucestershire.gov.uk/council-and-democracy/access-to-information/access-council-information/>. This should be addressed to:

Shire Hall
Westgate Street
Gloucester
GL1 2TG
managemyrequests@gloucestershire.gov.uk

We would like to hear your views on our service. If you'd like to tell us how we did, you can complete our feedback form online at <http://www.gloucestershire.gov.uk/foifedback>

I will now close your request as of this date.

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