**ANNEX A**

**FOI DOF/2023-0489**

**Request received on 18/12/2024.**

1. A copy of the NICS Internal Audit Manual along with any amendments made since 01/05/2022.
2. The number of assignments allocated to date under contract ID 3794362 - DoF - Provision of Internal Audit Services
3. The number of assignments offered, in the first instance, to the first and subsequently second named suppliers on the framework.
4. The total number of days allocated to date under this framework.
5. Details of any contract management training undertaken by the contract manager
6. Details of any returns / reports made in respect of this framework.

**Clarification was received on 26/03/2024 rewording the request as below.**

1. A copy of the NICS Internal Audit Manual along with any amendments made since 01/05/2022.
2. The number of firms engaged to date under contract ID 3794362 - DoF - Provision of Internal Audit Services.
3. The number of assignments not offered, in the first instance, to the first named suppliers on the framework and the reasons for this.
4. Details of any contract management training undertaken by the contract manager.
5. Details of any summary returns / reports made in respect of the operation of this framework e.g. no. of days used, number of firms used, etc.
6. Copies of any assurances that the contract was operating as intended.

**DoF response**

I can confirm the department holds the information requested however some information has been withheld under FOI exemptions, further details are provided below.

1. The information requested is withheld under Section 43(2) (Commercial Interests) of the Freedom of Information Act (FOIA) as the disclosure of this information under the Act would or would be likely to prejudice the commercial interests of the department.

   Section 43 (2) (Commercial Interests) of the FOIA states that “Information is exempt if its disclosure under this Act, 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 exemption and is subject to a public interest test (please see – Annex B attached).

2. The department can confirm that five firms were engaged under contract ID 3794362 DOF - Provision of Internal Audit Services.

3. The Department did not offer assignments under this contract, we have offered days. The first named supplier was asked first about the number of days that they could provide us with.

4. The information you have requested is being withheld because it is exempt under section 40(2) of the Freedom of Information Act. Section 40(2) exempts personal information from disclosure if that information relates to someone other than the applicant, and if disclosure of that information would, amongst other things, contravene one of the data protection principles of the Data Protection Act.

   In this case, I believe disclosure would contravene the first data protection principle, which provides that personal data must be processed lawfully and fairly.

   Having considered all the information contained within the Legitimate Interest Test – lawful, fairness and transparency test (attached as a separate document – Annex C), the department has established that, on balance, there is no lawful basis for the disclosure of third party personal data falling within the scope of the request of which the requester is not the data subject and where it relates to a small number of individuals who could be identified. Making an unrestricted disclosure of personal data for private interests could constitute a disproportionate and unwarranted level of interference with the individuals' rights and freedoms – particularly their right to privacy and family life under the Human Rights Act 1998.

5. The information requested is withheld under Section 43(2) (Commercial Interests) of the Freedom of Information Act (FOIA) as the disclosure of this information under the Act would or would be likely to prejudice the commercial interests of the department.

   Section 43 (2) (Commercial Interests) of the FOIA states that "Information is exempt if its disclosure under this Act, 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 exemption and is subject to a public interest test (please see – Annex B attached).

6. The information requested is withheld under Section 43(2) (Commercial Interests) of the Freedom of Information Act (FOIA) as the disclosure of this information under the Act would or would be likely to prejudice the commercial interests of the department.

   Section 43 (2) (Commercial Interests) of the FOIA states that "Information is exempt if its disclosure under this Act, 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 exemption and is subject to a public interest test (please see – Annex B attached).

**Annex B**

| **PUBLIC INTEREST TEST** | | | |
|---|---|---|---|
| Request Ref: | DOF/2023-0489 | | |
| Request summary: | Internal Audit Manual | | |
| Information details: | Exemption applied | Disclosure | Non-disclosure |
| | | (Please complete both columns to show all factors have been considered) | |
| 1. Internal Audit Manual | S43(2) | • To show compliance with the FOI Act by disclosing information held by the Department as a Public Authority.<br><br>• There is a general public interest in the accountability, openness, and transparency of government, and to promote public understanding. | • The NICS Internal Audit Manual details the Internal Audit policies and procedures that apply within all NICS Internal Audit departments. Organisations responding to tender competitions are required to detail how they apply their policies and procedures to internal audit assignments. Releasing the NICS policies and procedures to the world at large allows organisations to plagiarise the NICS Internal Audit Manual to ensure that their approach aligns with the NICS. This will impact the Department's ability to effectively assess tender response and determining value for money.<br><br>• The disclosure of this information is likely to undermine the NICS Internal Audit Service's ability to successfully compete for future tender competitions. |

**PUBLIC INTEREST DECISION:** After weighing up the competing public interest considerations, we consider it is reasonable in all the circumstances that the information held should be withheld from disclosure under exemption S43(2) commercial interests and that the public interest in maintaining the exemption outweighs the public interest in disclosure.

Signed: T McCavigan Date: 10/4/24

**Annex B**

| **PUBLIC INTEREST TEST** | | | |
|---|---|---|---|
| Request Ref: | DOF/2023-0489 | | |
| Request summary: | Summary returns/reports and assurance | | |
| Information details: | Exemption applied | Disclosure | Non-disclosure |
| | | (Please complete both columns to show all factors have been considered) | |
| 5.Details of any summary returns / reports made in respect of the operation of this framework e.g. no. of days used, number of firms used, etc.<br><br>6.Copies of any assurances that the contract was operating as intended.<br><br>(This information is held in a business case extension document) | S43(2) | • To show compliance with the FOI Act by disclosing information held by the Department as a Public Authority.<br><br>• There is a general public interest in the accountability, openness, and transparency of government, and to promote public understanding. | i. The record contains details of future procurement plans. The disclosure of this is likely to impact the Department's commercial interests for future public sector tender competitions.<br><br>ii. The record contains performance information about contractors. There is a risk that tenderers could be discouraged from competing for future competitions if information identified as being commercially sensitive is released, thereby reducing the competitive market for the Department.<br><br>iii. The record contains information of the costs agreed with contractors. Disclosure of this information is likely to compromise the Department's ability to achieve value for money during future tender competitions.<br><br>iv. There is a public interest in ensuring that private sector companies can compete on an equitable basis for public sector contracts, and the disclosure of commercially sensitive information could compromise the ability of companies to do so.<br><br>v. There is a risk that tenderers could be discouraged from competing for future competitions if information identified as being commercially sensitive is released, thereby reducing the competitive market for the Department. |

**PUBLIC INTEREST DECISION:** After weighing up the competing public interest considerations, we consider it is reasonable in all the circumstances that the information held should be withheld from disclosure under exemption S43(2) commercial interests and that the public interest in maintaining the exemption outweighs the public interest in disclosure.

Signed: Tracey McCavigan Date: 10/04/24

**Annex C**

## LAWFULNESS, FAIRNESS AND TRANSPARENCY TEST

## Application of FOI exemption Section 40(2)

## DOF/2023-0489

A Lawfulness, Fairness and Transparency Test must be carried out by the Department of Finance when considering disclosure of third-party personal data which falls within the scope of an FOI or EIR request.

### FOI / EIR request

Details of any contract management training undertaken by the contract manager.

### Consideration of the personal data falling within the scope of the request

Guidance from the Information Commissioner's office states that personal data only includes information relating to natural persons who:

- can be identified or who are identifiable, directly from the information in question; or
- who can be indirectly identified from that information in combination with other information.

### Description of personal data/issue(s) under consideration:

The information requested is in relation to one specific individual who can be directly and indirectly identified from the information in question. The training record / qualifications of the contract manager falls under the ICO guidance of personal data.

### Lawfulness

Do either of the two lawful basis below, which allow for the disclosure of personal data, apply? **No.**

- ☐ **Consent:** This applies when the data subject(s) clear consent exists, allowing the department to disclose personal data falling within the scope of this request.

- ☐ **Legitimate interests:** This applies when disclosure is necessary for the department's legitimate interests or the legitimate interests of a third party that overrides the data subject(s) rights and freedoms, particularly their right to privacy.

**Conclusion**

Having considered all the information contained within the Lawfulness, Fairness and Transparency Test, the department has established that, on balance, there is no lawful basis for the disclosure of third-party personal data falling within the scope of the request (of which the requester is not the data subject).