

8.4.9 *Inclusion of disclosure provisions in contracts.*

8.4.10 The terms and conditions of a contract should contain disclosure provisions regarding information provided during the competition phase, but may also be expanded to include the disclosing of information by the contractor. Although not strictly a consideration under this Code (as it only applies to public authorities), it is sensible to tackle all these issues under a single 'disclosure of information' (or similar) provision. Such provisions will be particularly relevant where the contractor is designated a 'public authority' for the purposes of the particular contract by an order made under FOISA. Authorities should also notify contractors whose contracts involve environmental functions, responsibilities or services that they may themselves be directly subject to EIRs in relation to those contracts.

8.4.11 It is recommended that a provision is included in the contract to the effect that the authority will aim to consult the contractor on any request for information which has been identified as being sensitive. (As described above in 8.4, where exemptions are being applied on the basis that release would harm a third party, the authority must have evidence from the third party that this is the case.)

8.4.12 As regards information identified by either party as sensitive, authorities may consider including that information in an annex which also sets out the reasons for sensitivity and the period of sensitivity. This will facilitate disclosure of the remainder of the contract should a request for information be received or if it is being published proactively.

8.4.13 As already indicated, there must be transparency in the use of public funds. In particular, contracts must reflect the fact that the public have the right to know the financial implications of PFI/PPP contracts (and other contracts entered into by the public sector at public expense), for example how much money is being spent, with whom, for what purpose and over what period.