

From: Graeme Cook <Graeme.Cook@gov.scot>

Sent: 17 January 2024 12:38

To: Redacted S38 (1)(b)

Cc: Nick Ford <Nick.Ford@gov.scot>; Nikki Archer <Nikki.Archer@gov.scot>; Redacted S38 (1)(b); Luke Mcbratney <Luke.Mcbratney@gov.scot>

Subject: 25 Fujitsu contracts - question from the First Minister - response by 1400 please

Redacted S38 (1)(b),

Rather than lose the previous lines, I've added the new ones to the existing ones. I've made the change you requested and re-ordered some of the lines and will send up at 1pm:

Fujitsu's role in Horizon is one of the issues which is being reviewed by Sir Wyn Williams's statutory Inquiry, instructed by the UK Government.

- We will carefully consider the outcome of the Inquiry and any implications it has for public contracts in Scotland.

Companies winning public contracts must meet legally binding standards before winning public contracts

- Fujitsu has one contract with the core Scottish Government
- The Scottish Government Electronic Counting contract for Local Government Elections was placed with Fujitsu following a robust due-diligence process
- The Electronic Counting contract will be re-tendered before the next Scotland-wide Local Government elections
- The contract was awarded to Fujitsu Services Limited in October 2020 to deliver electronic vote counting for the Scottish local government elections held on 5 May 2022, following an open procurement competition.
- The electronic counting of all votes cast at the local government elections took place successfully and as scheduled on 6 May 2022.
- The software that handles the processing and counting of votes is provided by a separate specialist election services company, as a sub-contractor of Fujitsu.
- Fujitsu provided the IT infrastructure and equipment required to operate the specialist software, along with Project Management and logistical services.
- The contract can be used by Councils until January 2027 to provide electronic vote counting services for Local Government by-elections.

- An open competition to invite tenders for the provision of electronic vote counting services for the 2027 Local Government elections and subsequent by-elections will take place in 2024/2025.
- There is a small number of other Fujitsu contracts in the wider Scottish public sector and those contract awards were subject to the same legally-binding standards

Excluding companies from public contracts can be done but it has a high evidential bar

- The grounds under which a company can be excluded from a public procurement process are laid out in regulations and decisions must be taken on a case-by-case basis by individual public bodies
- Those regulations are clear that exclusion grounds must be relevant and proportionate to the contract and that companies must be given the opportunity to 'self-cleanse'
- Bidders have a legal right to set out the "self-cleansing measures" they have taken to demonstrate their reliability, and why they should not be excluded, including paying compensation, co-operating with official investigations, and taking technical, organisational and personnel measures to prevent a recurrence.
- The combination of the restrictive nature of exclusion grounds, and the right to self-cleanse, means that a high bar applies to any decision to exclude a contractor

Exclusion grounds are time-limited

- Regardless of self-cleansing measures, companies may only be excluded on the basis of grave professional misconduct for a maximum of 3 years from "the date of the relevant event".
- The misconduct which is alleged of Fujitsu is said to have taken place more than three years ago, so any decision to exclude Fujitsu on that basis would need to be tied to a trigger within the last 3 years.
- It is possible that the ongoing public inquiry will provide a finding which could be relied upon, but that would need to be considered in detail when the findings are published.

From: Redacted S38 (1)(b)

Sent: 17 January 2024 12:27

To: Graeme Cook <Graeme.Cook@gov.scot>

Cc: Nick Ford <Nick.Ford@gov.scot>; Nikki Archer <Nikki.Archer@gov.scot>; Redacted S38 (1)(b)>; Luke Mcbratney <Luke.Mcbratney@gov.scot>

Subject: RE: Fujitsu contracts - question from the First Minister - response by 1400 please

Hi Graeme

Many thanks for this. **Redacted S38 (1)(b)** and I have reviewed and we are content. On very a tiny point, “election” in the third bullet should be “elections”, consistent with the second bullet.

Thanks

Redacted S38 (1)(b)



From: Graeme Cook <Graeme.Cook@gov.scot>

Sent: 17 January 2024 12:02

To: **Redacted S38 (1)(b)**

Cc: Nick Ford <Nick.Ford@gov.scot>; Nikki Archer <Nikki.Archer@gov.scot>; **Redacted S38 (1)(b)**

Subject: RE: Fujitsu contracts - question from the First Minister - response by 1400 please

Importance: High

Hi **Redacted S38 (1)(b)**,

We've been asked to contribute lines to the Fujitsu FMQ brief. Please would you take a look at the below and let me know of any changes you require ASAP?

Thanks in advance,
Graeme

Companies winning public contracts must meet legally binding standards before winning public contracts

- Fujitsu has one contract with the core Scottish Government
- **The Scottish Government Electronic Counting contract for Local Government Elections was placed with Fujitsu following a robust due-diligence process**
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- It is possible that the ongoing public inquiry will provide a finding which could be relied upon, but that

would need to be considered in detail when the findings are published.

From: Redacted S38 (1)(b)

Sent: 17 January 2024 11:18

To: Graeme Cook <Graeme.Cook@gov.scot>

Cc: First Minister FMQs <FirstMinisterFMQs@gov.scot>; FMPU : FMQ Team <DLMPOBFMPFMS@gov.scot>; Nick Ford <Nick.Ford@gov.scot>; Nikki Archer <Nikki.Archer@gov.scot>; **Redacted S38 (1)(b)**

Subject: RE: Fujitsu contracts - question from the First Minister - response by 1400 please

That would indeed – even send them on this chain and I will add in to the version **Redacted S38 (1)(b)** have sent

Best wishes

Redacted S38 (1)(b)

From: Graeme Cook <Graeme.Cook@gov.scot>

Sent: Wednesday, January 17, 2024 11:17 AM

To: **Redacted S38 (1)(b)**

Cc: First Minister FMQs <FirstMinisterFMQs@gov.scot>; FMPU : FMQ Team <DLMPOBFMPFMS@gov.scot>; Nick Ford <Nick.Ford@gov.scot>; Nikki Archer <Nikki.Archer@gov.scot>; **Redacted S38 (1)(b)**

Subject: RE: Fujitsu contracts - question from the First Minister - response by 1400 please

Hi **Redacted S38 (1)(b)**,

We've already contributed some lines to the Justice FQM brief on Post Office/Horizon – we can add a couple more about due-diligence and the (limited) powers to exclude potential bidders from public tenders.

Would that meet the FM's requirements?

Graeme

From: **Redacted S38 (1)(b)**

Sent: 17 January 2024 11:14

To: Graeme Cook <Graeme.Cook@gov.scot>

Cc: First Minister FMQs <FirstMinisterFMQs@gov.scot>; FMPU : FMQ Team <DLMPOBFMPFMS@gov.scot>

Subject: Fujitsu contracts - question from the First Minister - response by 1400 please

Hi Graeme

I am hoping you can help me and/or point me in the direction of some contacts. We had a chat with FM yesterday about this week's FMQs. One of the issues he was concerned about was the prospect of being asked about our Fujitsu contracts. We have useful lines cleared last week on the vote counting and social security contracts.

FM was keen to understand what safeguards there were in our procurement process in terms of guarding against suppliers who might be the subject of public inquiry or other legal proceedings. If possible he'd like some lines he can use on this.

Is this something you can help me with? If not can you direct me to a potential source for this?

Many thanks

Redacted S38 (1)(b)