

26 August 2024

Dear

**Complaint in respect of ATISN 19735 - Specification for a Biodiversity White Paper Consultation tender**

I am writing to update you with the outcome of my investigation of your complaint in relation to the Freedom of Information request response you received on July 29<sup>th</sup> regarding the subject noted.

I can confirm that following review I uphold the original decision that the information described in your original request is exempt from disclosure under section 43(2) of the Freedom of Information Act and should therefore be withheld

This conclusion has been reached following a review of a number of documents and processes, namely

- The procurement process for the Biodiversity White Paper Consultation
- The overarching procurement framework within which the process was undertaken.
- The specification for the contract issued by the Welsh Government
- The bidder response received and accompanying representations.

The review was framed around the four areas of challenge that you highlighted within your complaint of August 1.

I further examined the argument in relation to public interest, with a focus on your observations in relation to transparency in procurement and the subject matter, Bio-Diversity.

The Public Contracts Regulations (PCR) (2015) set out the legislative framework through which public procurement should be undertaken. With an emphasis on ensuring fairness, openness and transparency they set out a number of provisions that Contracting Authority's must adhere to. PCR 2015 provision 33 sets out that contracting authorities can conclude framework agreements provided the terms of provision 33 are adhered to. Having examined the overarching framework through which the mini competition for the bio-diversity white paper was undertaken I can confirm the framework, and the mini competition adhere to legislative requirements, satisfying associated transparency requirements in that regard.

Bio-Diversity is a matter of public interest. However, examination of the specification for the work note the importance of the consultation being undertaken with both a range of organisations and also the public. A report will be published at the end of the exercise. In addition, the contract in question is seeking a contractor to support a number of consultation actions, rather than give advice on Bio-Diversity matters themselves.

While your request did ask for the redaction of commercially sensitive and personal information, you noted that other information should be disclosed as it does not compromise commercial interest. Having reviewed both the bid received from the successful bidder, and their representations, I would agree with their summation that their whole bid is commercially sensitive.

In addition to the commercial and personal element, the bid contains ways of working, estimates of days for tasks, description of quantitative and qualitative approaches all of which are at the heart of the commercial delivery of a research company.

It would in my opinion be unfair on the bidder and be in conflict therefore with the principles of openness, transparency and fairness set out in the PCR 2015.

The mini competition for this work was as noted undertaken through an overarching pre-procured framework. As such there was no question raised as to Commercial Sensitivity of bids as part of that mini competition. These are considered, on a case-by-case basis as your request has been.

The presence of a confident competitive market for public sector contracts is vital for the effective delivery of goods, services and works to the citizens of Wales. Should companies fear damage and commercial loss from a tendering process they and others would likely withdraw from future bidding opportunities. This would have a direct impact on public sector delivery of goods, works and services. For this reason the public interest test favours withholding the information.

I have considered your complaint in accordance with the procedure outlined in the Welsh Government's Practical Guide for Making Requests for Information which is available by post on request or via the internet at: [\[Requesting information from the Welsh Government \[HTML\] | GOV.WALES\]](#)

If you remain dissatisfied with this response you have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at:

Information Commissioner's Office,  
Wycliffe House,  
Water Lane,  
Wilmslow,  
Cheshire,  
SK9 5AF.

Yours sincerely

Head of Commercial Delivery and Capability