



Llywodraeth Cymru
Welsh Government

Parc Cathays/Cathays Park
Caerdydd/Cardiff
CF10 3NQ

28 May 2021

Dear

ATISN 15114 – Brocastle highways and infrastructure works tender

Information requested

Thank you for your request which I received on 04 May 2021. You asked for:

1. Copies of the pre-qualification questionnaires submitted by those shortlisted to tender.
2. The scores attributed to the above firm's pre-qualification questionnaire.
3. Copies of the technical / qualitative submission elements submitted by those shortlisted to tender.

Our response

A copy of the information I have decided to release is enclosed.

I have decided that some of the information described in the enclosed list is exempt from disclosure under sections 40(2), 41(2) and 43 of the Freedom of Information Act and is therefore withheld. The reasons for applying these exemptions are set out in full at Annex 1 to this letter.

Next steps

If you are dissatisfied with the Welsh Government's handling of your request, you can ask for an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to the Welsh Government's Freedom of Information Officer at:

Information Rights Unit,
Welsh Government,
Cathays Park,
Cardiff,
CF10 3NQ

or Email: Freedom.ofinformation@gov.wales

Please remember to quote the ATISN reference number above.

You also 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.

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely

Annex 1

Application of exemptions/exceptions

The Freedom of information Act/Environmental Information Regulations provide a right for anyone to ask a public authority to make requested information available to the wider public. As the release of requested information is to the world, not just the requester, public authorities need to consider the effects of making the information freely available to everybody. Any personal interest the requester has for accessing the information cannot override those wider considerations.

I have decided to withhold the following information:

Information being withheld	Section number and exemption name
Copies of the pre-qualification questionnaires submitted by those shortlisted to tender.	Section 41(2) of the FOIA, Information Provided in Confidence and Section 43, Commercial Interests
The names of the bidders against the scores attributed to the above firm's pre-qualification questionnaire.	Section 43 of the FOIA, Commercial Interests
Copies of the technical / qualitative submission elements submitted by those shortlisted to tender.	Section 40(2), Personal Information, Section 41(2) of the FOIA, Information Provided in Confidence and Section 43, Commercial Interests

This Annex sets out the reasons for the engagement of sections 40(2), 41(2) and 43 of the Freedom of Information Act and our subsequent consideration of the Public Interest Test.

Section 40(2) – Personal Information

This exemption applies to names and personal information of individuals in the released information. The Welsh Government believes that the personal information of 3rd parties is involved in this request, namely the names contained within the PQQ and technical submissions, such as in CVs and therefore should be exempt from disclosure.

Under Section 40(2) of the FOIA, personal data is exempt from release if disclosure if:

(2) Any information to which a request for information relates is also exempt information if—

*(a) it constitutes personal data which **[F1 does]** not fall within subsection (1), and*

*(b) **[F2 the first, second or third]** condition below is satisfied.*

The withheld information amounts to the personal data of individuals who submitted their information as part of a restricted confidential PQQ and tendering process and who would therefore have the reasonable expectation that their personal data would be kept confidential and not released into the public domain in this context.

Thus, we believe release of this information contrary to their reasonable expectation would be unfair. For that reason, the information is being withheld under section 40(2) of the Freedom of Information Act. This is an absolute exemption and not subject to the public interest tests.

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Section 41(2) – Information Provided in Confidence

The Welsh Government believes that the information of 3rd parties is involved in this request, specifically the innovative strategies and approaches to delivering the contract and should be exempt from disclosure.

Both the PQQ and technical tender submissions provided by the bidders for the Brocastle Highways and Infrastructure Works scheme contains innovative strategies and approaches to delivering the work. Also information concerning budgets from clients (regarding previous work the company has done) was provided. This information was provided in confidence for the context of the PQQ and tender.

Releasing this information to the public may prejudice the bidders in securing future work opportunities as other interested parties may use this information in their bids or current work. It could also prejudice the bidders' relationships with their clients if the client's information, that was provided in confidence, should be released to the public.

For that reason, the information is being withheld under section 41(2) of the Freedom of Information Act. This is an absolute exemption and not subject to the public interest tests.

Section 43 – Commercial Interests

The Welsh Government believes that the information of 3rd parties is involved in this request, specifically the innovative strategies and approaches to delivering the contract and should be exempt from disclosure.

The PQQ and technical tender submissions provided by the bidders for the Brocastle Highways and Infrastructure Works scheme contain innovative strategies and approaches to delivering the work. Also information concerning budgets from clients (regarding previous work the company has done) were provided to help inform on the bidders' experience with similar work. This information was provided in context of the PQQ and tender.

Releasing this information to the public may damage the bidders' commercial interests in current work and future tendering opportunities if other potential bidders could access this information.

Releasing the PQQ scores awarded with the names of the bidders attached to the public may damage the bidders' commercial interests in current work and future tendering opportunities if other organisations were able to see how the bidder performed on the Brocastle Highways and Infrastructure Works scheme.

Public Interest Test

In order to satisfy the public interest test in relation to the exemptions, it is necessary to conclude that the public interest arguments in favour of withholding the information are sufficient to *outweigh* the public interest arguments in favour of release.

Public interest arguments in favour of disclosure

I accept that as part of the Wales Procurement Policy Statement there is a public interest in openness and transparency in the procurement process. There is also a public interest in how public money is to be, or has been, used to ensure that Government gets the best value from the public purse.

I also accept that anyone bidding on public contracts does so with the knowledge that this is done within an open regime that must be open to public scrutiny.

Public interest arguments in favour of withholding

The PQQ and technical tender submissions provided by the bidders for the Brocastle Highways and Infrastructure Works scheme contain innovative strategies and approaches to delivering the work. Also information concerning budgets from clients (regarding previous work the company has done) were provided to help inform on the bidder's experience with similar work. This information was provided in context of the PQQ and tender.

Releasing this information to the public may damage the company's commercial interests in current work and future tendering opportunities if other potential bidders could access this information.

Information on insurance levels were provided as part of the tender process. Releasing this information could cause commercial damage as it reveals who the bidder is insured with and the limits of cover.

Balance of public interest test

Nevertheless the release of the information, as noted below, does make it likely that the bidders would suffer commercial loss, as they would be placed at a commercial disadvantage for future bids if their innovative strategies, approaches to delivering the work, budgets, and insurance information were understood by competitors, where similar information from competitors is not similarly placed in the public domain.

- Copies of the pre-qualification questionnaires submitted by those shortlisted to tender.
- Copies of the technical / qualitative submission elements submitted by those shortlisted to tender.

The release of the PQQ scores awarded with the names of the bidders attached, makes it likely that bidders would suffer commercial loss, in current work and future tendering opportunities, if other organisations were able to see how the bidder performed on the Brocastle Highways and Infrastructure Works scheme, particularly where similar information from competitors is not similarly placed in the public domain.

As it is likely the bidders would suffer commercial loss from release of this information, it is not, on balance, in the public interest that it should be released and so I am withholding it.