

Dear

**ATISN 19735 - Specification for a Biodiversity White Paper Consultation tender**

**Information requested**

Thank you for your request which I received on 9 July 2024. You asked for:

Please can I request the tender submission of the highest scoring bidder (minus any commercially sensitive information and personal data) for the following contract:

Contract Name: Specification for a Biodiversity White Paper Consultation Project  
Contract Number: FC081/2023/2024

Issued Under the terms and conditions of Communications & Marketing Framework F228-2022-2023 Lot 6.

**Our response**

I have decided that the information described above is exempt from disclosure under section 43(2) 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](mailto: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
Tender submission of the highest scoring bidder.	Section 43 (2) Commercial Interests.

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

### Engagement of section 43 (2) (Commercial Interests) of the Freedom of Information Act.

The tender submission provided by the bidder contains strategies and approaches to writing the bid and delivering the work. The commercial response of the tender submission provided by the bidder contains information concerning project staff, budgets and hourly/daily rates.

Releasing this information to the public would be likely to damage the bidders' commercial interests in current work and future tendering opportunities if other potential bidders could access this information. The requested information contains commercial and business information that is a business asset and not in the public domain.

Putting this into the public domain would allow competitors access to this business information, putting the bidders at commercial disadvantage which would be likely to lead to commercial loss, as they would be unable to undertake competitive bids on an equal footing. Release under FOI is release to the world, and the published information would therefore be expected to lead to such losses.

For this reason, Section 43 (2) is engaged.

### Public Interest Test

In order to satisfy the public interest test in relation to the section 43 (2) exemption, 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**

Welsh Government acknowledges the public interest in openness and transparency that release of the information would engender. 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 under Section 43 (2)**

It is not in the public interest that companies tendering for contracts should suffer commercial loss as a result. Release of this information would be likely to cause such commercial loss, which will damage the companies themselves and trust in the tender process.

### **Balance of public interest test**

Release of the information makes 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. This constitutes commercial business information that is a business asset.

An equally strong countervailing public interest in disclosure would be required to make it in the public interest that bidders be put at risk of commercial loss. Although we have identified some public interest in disclosure, there is no specific or sufficiently strong countervailing interest to allow bidders to suffer such loss, so the balance of public interest lies with withholding this information.