



University of East Anglia

Information Compliance (ITCS)

The Library
University of East Anglia
Norwich Research Park
Norwich NR4 7TJ
United Kingdom

Email: foi@uea.ac.uk
Tel: +44 (0) 1603 593 523
Web: <http://www.uea.ac.uk>

[Redacted]

15 March 2019

Dear [Redacted]

Freedom of Information Act 2000 – Information request (ref: FOI_19-057)

We have now considered your request of 15 February 2019, as clarified on 15 and 25 February, for the following information:

*‘PURCON776 Estates Division Capital and Minor Works Consultant Register
Dear University of East Anglia,*

Please can you forward a copy of a successful bid from Lots 1-4 for the above named contract, which was awarded 08/02/19.

Our response is in the accompanying documents:

- FOI_19-057 Appendix A_Allies & Morrison
- FOI_19-057 Appendix B_Apex
- FOI_19-057 Appendix C_Architype
- FOI_19-057 Appendix C_Clear Consulting
- FOI_19-057 Appendix E_Johns Slater & Haward

Five bids fell within scope of the request, and given the volume of bid documents held, we have provided each bid within a separate appendix.

On this occasion, it is not possible to provide all the requested information. The Act contains a number of exemptions that allow public authorities to withhold certain information from release. We have applied the following exemptions to part of your request.

Exemption	Reason
s.40(2), Personal information	Disclosure of some of the requested information would be contrary to the requirements of the General Data Protection Regulation
s.41(1), Information obtained in confidence	Release of some of the requested information would constitute an actionable breach of confidence by UEA

s.43(2), Prejudice to commercial interests

Disclosure of information would be likely to prejudice the commercial interests of a person as defined by the Act

Exemption explanation – s.40(2)

In line with s.40(2) of the Act we have removed certain personal data from each of the bid submissions.

We believe that information identifying individuals associated with the bidder, and noted within each bid in relation to projects demonstrating relevant experience, constitutes personal data, as defined by Article 4(1) of the General Data Protection Regulation (GDPR).

We believe that disclosure of the personal information would be contrary to the requirements of Article 5(1)(a) of the GDPR; namely that information must be processed lawfully, fairly and in a transparent manner in relation to the data subject. These individuals would have no expectation that this information would be made publicly available, and we have not identified a lawful basis that would allow or require us to disclose this information.

Where information has been removed from the accompanying file in accordance with s.40(2), we have replaced the text with a black rectangle.

Exemption explanation – s.41(1)

We believe that s.41(1) exempts the release of some of the requested information because it was obtained in confidence from a third party, namely the companies submitting the bid documents within scope of this request. The disclosure of the information to the public would constitute a breach of confidence by the University that would be actionable by these companies.

We consider this information to be given to us in confidence because of the nature of the information exempted, the expectations of confidentiality on the part of both the bidders and UEA in relation to the information, the treatment to date of the information by UEA and the bidding companies, and direct evidence from the relevant companies regarding the effect of release of such information.

All the information exempted has been identified by the relevant organisation as being commercially sensitive and prejudicial to their interests if released. It is not in the public domain, and both the organisations submitting bids and the University have treated this information as confidential. Additionally, the fact that the organisations have, in correspondence with us, identified such information as commercially prejudicial if released is clear evidence that there is an expectation on their part that this information would be treated as confidential.

We are aware that the common law duty of confidence contains an inherent public interest test, which must be considered in order to decide if the information is exempt. Confidential information should be withheld unless the public interest in disclosure outweighs the public interest in maintaining the duty of confidence. Having applied this test, we see no advantage to the public in receiving the requested information. We consider that disclosure would undermine the principle of confidentiality, and that this far outweighs any benefit that the disclosure would present for the public.

Exemption explanation - s.43(2)

The s.43(2) exemption applies to certain information submitted by four of the five firms submitting bids. Apex has not identified any of the information they submitted as being prejudicial to their interests if released. However, Allies & Morrison, Architype, Clear Consulting and Johns Salter & Haward have each stated that they believe public release of certain information submitted within their bids would be likely to prejudice their commercial interests.

The information in each case consists primarily of data within Sections 4, 6 and 8 of the Selection Questionnaire, which is, in effect, the bid submitted. The section 4 information consists of financial forecasts that are not currently in the public domain, section 6 material relates to the technical and professional ability of the submitter of the bid and section 8 material includes details of staff turnover, staff training, and descriptions of relevant experience.

The provision of engineering services to the HE sector is undoubtedly a commercial activity which is conducted in a competitive environment, as evidenced by the number of lots under bid and the number of bidders.

It is our position that the information outlined above is commercially sensitive. Disclosure of this information would be likely to reveal information about the skills, competencies, bid submission strategies and content. In this competitive environment, this type of information is important in distinguishing competitors and, as such, is of great value to competitors.

Having established this information is commercially sensitive, we also maintain that disclosure would be likely to damage to the commercial interests of the bidders. Under FOI, release to one requester can be considered as release to the world. It is our position that release of this information would, in effect, provide these firms' competitors with information that they have developed to secure progress with UEA in this particular bidding process.

Use of such information by competitors would put these bidders at a distinct disadvantage in any tendering process. In effect, we would be revealing information that has been found by the University to be superior to their competitors. This would allow these competitors to employ the same strategy in future bids. As noted above, we have consulted with all the affected firms and all but one has indicated that the release of the exempted information would detrimentally impact their competitiveness in this market.

Given the competitive nature of the market in question, and the commercial sensitivity of the information, we are confident that there is a strong possibility that this information would be used, and that the prejudice would occur.

The application of this exemption requires an examination of the public interest in disclosure as opposed to that in non-disclosure. We acknowledge there is a public interest in any tendering process by the Higher Education sector where the value of contracts is so significant, and that the release of the requested information may provide a 'window' into this area. By providing the requested information we may help the public in understanding the way in which public expenditure is decided, to further both the transparency and accountability of public authority activities.

However, there is also a clear public interest in ensuring there is fair competition for public sector contracts, and in protecting the ability of institutions to compete on a level playing field. Any distortion of the tendering process has the potential effect of raising costs to the public sector, which would not be in the public interest.

Revealing such detail within the bid submissions will not lead to improved or more numerous bids being submitted in the future. Indeed, we believe it will have the opposite effect as firms will be likely to be much less open and comprehensive in the information they submit. On balance, therefore, we believe the public interest lies in maintaining in the exemption.

We hope this information will meet your requirements, however if you are not satisfied you have the right of appeal. If you wish to appeal, please set out in writing your reasons for appealing and send to the above address. You must appeal within 40 working days of the date of this letter. In line with section 5.3 of the Freedom of Information Code of Practice, we are not obliged to accept internal reviews after this date.

You also have a subsequent right of appeal to the Information Commissioner's Office. Further information is available on their website:

https://ico.org.uk/Global/contact_us, or by telephone on 0303 123 1113.

Please note that any material over which UEA has copyright is released on the understanding that you will comply with all relevant copyright rules regarding reproduction and/or transmission of the information provided.

Please quote our reference given at the head of this letter in all correspondence.

Yours sincerely

Dave Palmer
Information Compliance Manager
University of East Anglia