



Ein cyf/Our ref ATISN 15321

Llywodraeth Cymru
Welsh Government

29 July 2021

Dear ,

Request for Information – ATISN 15321

I wrote to you on 15 July regarding your request for information.

Information requested

In relation to the Welsh Government's review of highway schemes across Wales, announced on 22 June 2021, the A40: Llanddewi Velfrey to Redstone Cross highway scheme, you asked:

1. When was the contract with Alun Griffiths Contractors Ltd. to construct the above highway scheme awarded/signed.
2. Who was responsible for awarding/signing the contract with Alun Griffiths Contractors Ltd. to construct the above highway schemes.
3. When was this person first aware of the intention to review highway schemes across Wales and/or was this person aware of this at the time they awarded/signed the contract for construction of the above highway schemes.
4. When will the Welsh Government publish the terms of reference for the review of highway schemes.
5. When will the Welsh Government announce the membership of the panel that will carry out the review of highway schemes.
6. Will the review of highway schemes consider individual schemes and recommend whether or not they should proceed, or be a more-general exercise with the output being a list of criteria rather than a list of specific schemes.
7. Will the public be able to engage with and/or be involved in the review of highway schemes.
8. Copies of the relevant contract(s) referred to in questions 1 and 2 with Alun Griffiths Contractors Ltd.



BUDDSODDWYR | **INVESTORS**
MEWN POBL | **IN PEOPLE**

Llywodraeth Cymru /
Welsh Government
Parc Cathays / Cathays Park
CF10 3NQ

FOI.EconomyandInfrastructure@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding .

Our Response

The Freedom of Information Act provides a right to ask for recorded information held at the time a request is made. It does not require an authority such as the Welsh Government to provide information, views or opinions where that information is not already recorded. This is confirmed by the Information Commissioner's guidance 'The Guide to Freedom of Information', page 7:

"The Act does not cover information that is in someone's head. If a member of the public asks for information, you only have to provide information you already have in recorded form. You do not have to create new information or find the answer to a question from staff who may happen to know it."

With the above in mind, I can confirm that the Welsh Government only holds some information caught by your request, for questions 1, 2 and 8. We do not hold any information on record for your remaining questions.

For question 1, the A40 contract between Welsh Ministers and Alun Griffiths (Contractors) Limited was formally executed under seal on behalf of the Welsh Ministers on Thursday 17, June 2021.

For question 2, agreement to progress the award of the construction contract was approved by the then Minister for Economy and Transport, Ken Skates MS, in March 2021. The authorisation was received at the same time as the then Minister made the decision to make the Compulsory Purchase Orders for the project and release the Inspector's reports and Minister's Decision letters.

For questions 4 to 7, whilst we are not obliged to provide you with information, we can advise that the Terms of Reference for the Roads Review will be published and the chair of the Roads Review Panel will be announced over the summer. The announcement of the Roads Review Panel members will follow a few weeks after the announcement of the chair. The Roads Review will make recommendations with regard to individual scheme and also make general recommendations on the circumstances in which it is acceptable to invest in roads. The Roads Review will be conducted by the Roads Review Panel only, comprising acknowledge experts in sustainable transport. The basis of the review however will be the new Wales Transport Strategy that was published in March and its priorities and ambitions. This document was subject to a wide consultation exercise.

The information you have requested under your final question (8), is exempt from disclosure under Regulation 12(4)(b), manifestly unreasonable of the Environmental Information Regulations. The reasons for applying this exception are set out in full at Annex A to this letter.

Guidance from the Information Commissioner states that when refusing a request for environmental information under Regulation 12(4)(b) on the grounds of cost, public authorities should provide the requester with appropriate advice and assistance. In this instance, however, given that you have requested a single, comprehensive and voluminous document, it may be less straightforward for you to narrow that part of your request. Given your request particularly focuses on the date the contract was awarded, I am content to release to you one part of the contract, namely the Form of

Agreement for the A40 Llanddewi Velfrey to Redstone Cross Improvements. This is appended at Annex B.

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

ATISN 15321 - Application of exceptions

The 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.

We have decided to withhold the following information:

- A copy of our contract with Alun Griffiths Contractors Ltd. for the A40: Llanddewi Velfrey to Redstone Cross highway scheme.

This Annex sets out the reasons for the engagement of Regulation 12(4)(b), manifestly unreasonable of the Environmental Information Regulations and our subsequent consideration of the Public Interest Test.

Engagement of Regulation 12(4)(b), manifestly unreasonable of the EIRs

I have concluded that your request is both voluminous and complex and will be very time consuming to deal with it. Under the EIRs, there is no appropriate costs limit above which public authorities are not required to deal with requests for information. However, Reg 12(4)(b), manifestly unreasonable request, can apply if the cost or burden of dealing with a request is too great. This position was confirmed in the Upper Tribunal case of *Craven v The Information Commissioner and the Department of Energy and Climate Change* [2012] UKUT442 (AAC).

“Taking the position under the EIR first, it must be right that a public authority is entitled to refuse a single extremely burdensome request under regulation 12(4)(b) as “manifestly unreasonable”, purely on the basis that the cost of compliance would be too great (assuming, of course, it is also satisfied that the public interest test favours maintaining the exception). The absence of any provision in the EIR equivalent to section 12 of FOIA makes such a conclusion inescapable.”

The volume of the contract you have requested is significant. It is in excess of 2,000 pages in total and contains a mixture of complex environmentally sensitive information including restricted information relating to the locations of European Protected Species, commercially sensitive information including commercially sensitive rates and outputs, matters of staff confidentiality including staff names and qualifications, matters relating to landowners included within the Compulsory Purchase Orders for the two schemes and confidential and privileged legal matters with parties other than Alun Griffiths (Contractors) Limited.

Public Interest Test

Reg 12(4)(b) is subject to the public interest test. I have given consideration to the public interest in disclosing the information. The Welsh Government recognises the general public interest in openness and transparency and that releasing the contract may help the public gain a better understanding of the project in question and decisions made to improve the highway in question. The Welsh Government also

recognises the public has an interest in how their money is to be, or has been, used to ensure Government gets the best value from the public purse. Indeed, it is because of this general public interest that we proactively publish information on our website at <https://gov.wales/a40-llanddewi-velfrey-penblewin-overview> and at <https://gov.wales/a40-penblewin-redstone-cross-improvements-overview>.

Given the complexity and volume of the contract, it would be necessary for a senior Welsh Government official to trawl through the document page by page to check and determine what parts were appropriate for release into the public domain and what were not. It is very likely that much of the information should be withheld from disclosure under other EIR Regulations to withhold information. This task would likely take a significant amount of time, at least 40 working hours. The Welsh Government is of the view that it would not be in the public interest to divert such senior resources away from their existing duties to undertake such a task.

The Welsh Government therefore considers the balance of the public interest lies in favour of refusing your request. This is because it is believed your request would place a substantial and unreasonable burden on Welsh Government resources which are already stretched and on balance, it is considered the public interest would be better served by not deploying our resources in undertaking core work. As part of these considerations we have applied the statutory presumption in favour of disclosure under Reg12(2) of the Regulations but our view is that the significant burden this request would impose outweighs the public interest in releasing this information.

Your request is therefore refused under Reg 12(4)(b) – manifestly unreasonable, of the EIRs, for the reasons outlined above.

**Trafnidiaeth
Transport**

**A40 Llanddewi Velfrey to Redstone
Cross Improvements
May 2021**



**Llywodraeth Cymru
Welsh Government**

www.cymru.gov.uk

**NEC4 Engineering and Construction Contract
Option C**

for

Key Stage 6 Design and Build Contract

Volume 1A

Form of Agreement

THIS AGREEMENT IS MADE AS A DEED on the 17TH day of JUNE 2021

BETWEEN

- 1 **THE WELSH MINISTERS** whose principal place of business is at Crown Buildings, Cathays Park, Cardiff CF10 3NQ (“the *Client*”, which expression shall include its successors in the exercise of its statutory functions, successors in title and permitted assignees);

AND

- 2 **ALUN GRIFFITHS (CONTRACTORS) LIMITED** a company incorporated in and in accordance with the laws of **ENGLAND & WALES** with registered number **01493003** whose registered office is at **WATERWAYS HOUSE, MERTHYR ROAD, LLANFOIST, ABERGAVENNY, MONMOUTHSHIRE, NP7 9PE** (“the *Contractor*”).

RECITALS

- A In response to the *Client's* invitation to tender, the *Contractor* has submitted a tender to provide the design, construction and the aftercare of the A40 Llanddewi Velfrey to Redstone Cross Improvement Scheme in accordance with the Scope.
- B The *Client* has examined the *Contractor's* tender and now wishes to appoint the *Contractor* on the terms of this Agreement.

OPERATIVE PROVISIONS:

1 Definitions and interpretation

- 1.1 In this Agreement (including the Recitals):
- 1.1.1 any term used within initial capital letters has the meaning given to it in the *conditions of contract*; and
 - 1.1.2 any italicised term has the meaning given to it in the Contract Data.

2 Contract documents

- 2.1 The following documents form the contract between the Parties:
- 2.1.1 this Agreement (Volume 1A);
 - 2.1.2 the *conditions of contract* in the form of the NEC4 Engineering and Construction Contract June 2017 (with amendments October 2020), incorporating Option C, dispute resolution Option W2 and secondary options X2, X4, X5, X7, X9, X11, X15, X16, X18, Y(UK)1, Y(UK)2 and Y(UK)3 all as amended or supplemented by Option Z (*additional conditions of contract*);
 - 2.1.3 the Contract Data part one (contained within Volume 1B) and any documents referenced therein;
 - 2.1.4 the Contract Data part two (contained within Volume 1B) and any documents referenced therein;
 - 2.1.5 the Scope (Volume 2A, Volume 2B, Volume 2C, Volume 2D and Volume 2E);
 - 2.1.6 the Site Information (Volume 3); and
 - 2.1.7 the Schedule of Cost Components of the NEC4 Engineering and Construction Contract June 2017 (with amendments October 2020).

3 Agreement

- 3.1 The *Contractor* will Provide the Works and will carry out its other duties in relation to the contract in accordance with the *conditions of contract* and other contract documents specified in clause 2.
- 3.2 The *Client* will pay to the *Contractor* the amounts due under and in accordance with the provisions of the contract.
- 3.3 The contract is the complete and entire agreement between the *Client* and the *Contractor* in relation to the works and supersedes any previous agreement between the Parties in relation to the works. Insofar as the *Contractor* has carried out any part of the works before the date of this Agreement, the obligations and liabilities of the *Contractor* under the contract shall take effect in all respects as if

this Agreement had been dated prior to the carrying out of that part of the *works* by the *Contractor*.

4 Priority of documents

- 4.1 The several documents forming part of the contract are to be taken as mutually explanatory of one another.
- 4.2 If there is any ambiguity or inconsistency in or between the documents comprising the contract, the priority of the documents is in accordance with the following sequence:
 - 4.2.1 this Agreement (Volume 1A);
 - 4.2.2 the completed Contract Data part one (including the *additional conditions of contract*) (contained within Volume 1B);
 - 4.2.3 the *conditions of contract*;
 - 4.2.4 the *Scope* (Volume 2A, Volume 2B, Volume 2C, Volume 2D and Volume 2E);
 - 4.2.5 the completed Contract Data part two (contained within Volume 1B);
 - 4.2.6 any other document forming part of the contract.

In witness whereof the Parties hereto have caused their respective seals and / or signatures to be hereunto affixed the day and year first above written

EXECUTED AS A DEED by applying the seal of the Welsh Ministers.



The application of the seal of the Welsh Ministers is AUTHENTICATED by

[Redacted signature]

who is duly authorised for that purpose by the Director of Legal Services by authority of the Welsh Ministers under section 90(2) of the Government of Wales Act 2006.

Signed:

[Redacted signature]

EXECUTED AS A DEED BY ALUN GRIFFITHS (CONTRACTORS) LIMITED:

[Redacted signature]

(signed)

MARTIN EVANS

(Name of Director)

[Redacted signature]

(signed)

ANTHONY MORRIS

(Name of Director or Company Secretary)