

28 February 2023

Dear

**ATISN 17106 – Assessment of On-Shore Wind & Solar Potential in Wales  
Tenders 2018**

**Information requested**

Thank you for your request which I received on 31 January 2023. Following our response to ATISN 17015 you requested:

- Could I also ask please the name of the other company which submitted a tender & could you send me a copy of both tenders please.

**Our response**

The name of the company that submitted a tender was AECOM.

A copy of the Arup tender is attached.

I have decided that the some of the additional information requested regarding copies of both tenders, is exempt from disclosure under section(s) 43(2) and 40(2) of the Freedom of Information Act and is therefore withheld. The reasons for applying these exceptions are set out in full at Annex A 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
A copy of the full AECOM tender	Section 43(2) of the Freedom of Information Act (FOIA) sets out an exemption in relation to Commercial Interests.  Section 40(2) – Personal Data

This Annex sets out the reasons for the engagement of the sections of the Freedom of Information Act and our subsequent consideration of the Public Interest Test.

### Engagement of section 43(2) Commercial Interests and 40(2) Personal Data of the Freedom of Information Act

The Welsh Government believes that the release of a copy of the full bid received from AECOM for this tender submission should be exempt from disclosure to avoid prejudice of the commercial position of an organisation as doing so would provide an unfair advantage to competitors in both the immediate and longer-term.

For this reason, we believe that sections 43(2) and 40(2) are engaged.

### Public Interest Test

In order to satisfy the public interest test in relation to section 43(2) and section 40(2) 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 and recognises there is a legitimate interest in being able to identify individuals involved in any discussions.

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 Welsh Government believes that releasing the full tender submission received should be exempt from disclosure to avoid prejudice of the commercial position of the organisation as doing so would provide an unfair advantage to competitors in both the immediate and longer-term.

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.

The Welsh Government is of the view that it is not necessary to disclose the personal information caught by your request - we do not believe it is necessary to disclose the personal data to understand the information.

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

Release of the information makes it likely that the bidder 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.

As it has been concluded it is not necessary to disclose the personal information caught by the request, there is no requirement to balance the rights and interests of those individuals against the rights, under FOIA, of the requester.