



Ref: EIR2022-020

██████████ via request-876285-7a211240@whatdotheyknow.com

26th July 2022

Dear ██████████

Further to our letter of 6th July 2022 regarding your request for the following information:

Please can you confirm what form of NEC contract Costain are using to work on Project Mensa, for example, NEC 3 or 4, and what option, i.e. A, B, C, D, E?

Your request has been considered under the Environmental Information Regulations 2004 (EIR). The information requested is 'environmental information' as it meets the definition set out in regulation 2(1)(c) of the EIR. This covers "measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in [2(1)](a) and (b)". As such it must be considered for disclosure under the terms of the EIR rather than the Freedom of Information Act 2000.

We can confirm that the Atomic Weapons Establishment (AWE) holds all of the information you have requested.

However, we are withholding the information under Regulation 12(5)(e) of the EIR. This provides that information can be withheld where its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest. This is a qualified exception and as such we have had to balance the public interest in withholding the information against the public interest in disclosure and have applied a presumption in favour of releasing the information.

The Public Interest Test (PIT) has been completed and, on balance, it is our view that the public interest in maintaining the exception in regulation 12(5)(e) outweighs the public interest in disclosure. We understand this response may cause frustration but it aims to ensure - as recognised in the guidance - that our responsibilities under the EIR do not distract from our other statutory functions as a public authority.

Regulation 12(2) specifically states that a public authority shall apply a presumption in favour of disclosure, as there is public interest in promoting openness and transparency. We recognise that there is public interest in AWE's commercial arrangements being made available to public scrutiny in order to fulfil the EIR's requirement to be accountable for public spending. However, AWE believes that there is a stronger public interest in ensuring the authority is able to operate effectively and in a fair environment, that there is a level playing field for all parties and that there is fair competition for public sector purchases and contracts.

Releasing the requested information would undermine AWE's ability to do this and consequently limit our bargaining powers in future tendering processes. Making our pricing/payment arrangements with Costain public would allow other competitors to submit more informed tender bids in the future, which would



reduce the number of favourable choices available and mean that AWE would not be able to achieve best value for public money. It may also increase the possibility of artificially formulated proposals solely designed to outperform their rivals that may not be sustainable in practice. The organisations then potentially awarded activity may not provide the most efficient and effective service in practice and as a result, will probably not provide the best value for money.

AWE's contractual arrangements are subject to strict ongoing confidentiality obligations which would be breached by complying with this request. As such, AWE are not permitted to disclose them to anyone other than those specific functions specified in the contract.

AWE has considered all the relevant factors in the public interest test and has reached the conclusion that the benefit to the public in applying the exception outweighs the public interest in releasing the information requested, as a result of the prejudices and losses that would potentially affect AWE. AWE considers that it is not in the public interest to do anything to undermine the competitive nature of the procurement process, and the disclosure of key information, as has been requested, could have that effect. AWE believes that the consequences of releasing the information are serious and the likelihood of this occurring is high. As such, the information requested is being withheld in full.

Please remember to quote the reference number above in any future communications. If you have any queries regarding the content of this letter, please contact this office in the first instance.

If you are unhappy with the way your request has been handled you have a right to request an internal review within 40 days of receiving this letter, by writing to information.requests@awe.co.uk or our postal address: Information Requests Team, AWE Aldermaston, Reading, RG7 4PR. If you are still unhappy after an internal review has been completed, under the provisions of Section 50 of the Freedom of Information Act 2000 you have the right to take your complaint to the Information Commissioner's Office. Please note the Commissioner will generally not consider a complaint until you have exhausted AWE's internal complaints process.

Yours sincerely,

AWE Information Requests Team