

Appendix E

Freedom of Information

Provision of ARCHITECT, ENGINEERING AND PROFESSIONAL SERVICES FOR UHI SHETLAND CAMPUS REDEVELOPMENT PROJECT PORT ARTHUR HOUSE

The University is subject to the Freedom of Information (Scotland) Act 2002 (hereby referred to as FOISA). This Act obliges all public bodies to provide and maintain a general right of access to information about all public contracts and procurement activity held by them, subject to certain conditions and exemptions. Therefore, all information submitted to The University may be subject to disclosure in response to a request for information made pursuant to FOISA.

Below is an overview of the main exemptions from disclosure, relevant to public sector procurement:

- Section 27 – Information Intended for Future Publication: This exemption applies if the public body, or anyone else, intends to publish the information within a period of 12 weeks from the date of the request for the information. The intention to publish within the 12 week period must have been held at the time the request was made.
- Section 33 - Commercial Interests and the Economy: (1) Trade secrets and (2) information likely to prejudice substantially the commercial interests of any person (including the public body, a bidder or competitor).
- Section 35 – Law Enforcement: Primarily relevant to public bodies with a law enforcement role, which includes both police forces and prison authorities, this exemption protects information where disclosure would damage policing or security arrangements.
- Section 36 – Confidentiality: This exemption states that if, by disclosing information, a public body would be subject to an actionable breach of confidence, the information should not be disclosed. By ‘actionable’, this means whether there is a reasonable prospect that a court of law would rule against the public body for releasing the information. However, a breach is not likely to be actionable if the public interest in disclosure outweighs the public interest in keeping the confidence.
- Section 38 – Personal Information: Provides an exemption from disclosing information if disclosure would breach any of the data protection principles as set out in the UK GDPR and the Data Protection Act 2018.
- Section 39 – Health, Safety and the Environment: Most likely to be relevant where the information requested is environmental information, the exemption is likely to be applicable in relatively rare situations, principally where disclosure could endanger the physical or mental safety of individuals.

All of these exemptions, other than sections 36 and 38 (with caveats), are qualified exemptions, i.e. subject to a public interest test.

Any procurement information that has an environmental element becomes exempt from the Act, but subject instead to the provisions of the Environmental Information (Scotland) Regulations 2004 (EIRs). The EIRs specify what type of information is likely to be covered, and includes information on:

- The state of elements of the environment and interaction between them.
- The state of human health and safety, conditions of human life, the food chain, cultural sites and built structures in as much as they are or may be affected by the state of the elements of the environment and interaction between them.
- Substances, energy, noise, radiation or waste affecting or likely to affect the state of the elements of the environment and interaction between them.
- Measures (including policies and plans) and activities affecting or likely to affect, or intended to protect the state of elements of the environment and the interaction between them.

Despite the previously listed exemptions from disclosure, it should be noted that even where bidders have indicated that information is commercially sensitive and / or confidential, The University (in its sole discretion) may determine that it is required to disclose or publish said information under FOISA / EIRS, particularly if such disclosure is pursuant to the Act's aims of promoting transparency, ensuring best value for money and protecting the relationship between public and private sectors.

If bidders consider that any information included in their submission is commercially sensitive and / or confidential, they should identify such information and explain what harm they believe may result from disclosure, as well as the time period applicable to that sensitivity, on the Sensitive Information Index (sample below). Please note that in the event of a tender containing no information the bidders considers sensitive or confidential, a signed and dated Nil Return will be required.

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Sensitive Information Index

Please list below:

- Any information included in this submission you consider to be commercially sensitive and / or confidential.
- Identify what harm you believe may result from disclosure.
- The duration of the period of sensitivity.

Please note that in the event of a tender containing no information considered to be sensitive or confidential, a signed and dated Nil Return will be required.

PAGE	SECTION	PARA	REASON	DURATION

Declaration:

I declare this is a full and complete index of the data deemed sensitive or confidential in this tender submission. I acknowledge that, while every effort will be made to protect sensitive or confidential information, The University may deem it necessary (after consultation) to provide such data to comply with the requirements of the Freedom of Information (Scotland) Act or the Environmental Information (Scotland) Regulations. I also acknowledge that The University will assume no liability in respect of any decisions made and / or information that may be disclosed either at the insistence of the Scottish Information Commissioner or otherwise.

Signed:

Name:

Position:

Date: