



North East Procurement Organisation
Guildhall
Quayside
Newcastle upon Tyne
NE1 3AF
Telephone: 0191 433 5949
Email: governance@nepo.org

Dave Orr (sent by email)

15th January 2021

Dear Mr Orr,

Freedom of Information Request.

I refer to your request of ***Freedom of Information request - Copy of your contract with Bloom.***

Your initial request was:

Dear North East Procurement Organisation,

The ICO Guidance on Outsourcing and Freedom of Information requests contains the following advice:

"18. It's important to establish an objective reason for deciding whether certain information is held by a contractor on behalf of a public authority. The primary source that we would consider is the contract between the authority and the contractor. As this defines the relationship between, and the responsibilities of, the two parties, it provides an objective, evidence-based approach to resolving the issue. We recommend that public authorities should refer to the contract if they need to resolve an issue as to what information is held on their behalf. While it is unlikely that the contract will define explicitly what is held on behalf of the authority, it may indicate, for example:

- what information the contractor is required to provide to the authority for reporting and monitoring purposes,
- what information the authority has the right to see, and whether there are any conditions on that access, or
- what happens to information that is in the contractor's possession at the termination of the contract eg whether it remains with the contractor or reverts to the authority.

19. Clauses containing indications such as these can be of help in

establishing what is held on behalf of the public authority. "

Q1. Please supply a copy of the contract[s] between NEPO and Bloom for the services provided?

Q2. What information is Bloom required to provide NEPO with for reporting and monitoring purposes?

Q3a. What information held by Bloom does NEPO have a right to see?

Q3b. What conditions (if any) apply to NEPO access to information held by Bloom?

Q4. On termination of the NEPO contract with Bloom does information remain with Bloom or does it revert to NEPO?

Yours faithfully,
Dave Orr

NEPO's response:

Thankyou for your Freedom of Information request received **19th November 2020**, and your clarification dated **16th December 2020**, confirming NEPRO(2) as the contract in question.

Please find response to the questions asked below:

Q1. Please supply a copy of the contract[s] between NEPO and Bloom for the services provided?

Please find attached to this response a copy of the NEPRO(2) Framework Agreement between NEPO and Bloom Procurement Services Ltd.

In respect of the disclosure of the Framework Agreement, some of the information contained within the document we are unable to provide, as it is exempt from disclosure under the following sections of the of the Freedom of Information Act 2000.

- Section 40(1) of the Freedom of Information Act 2000.
- Section 43(1) of the Freedom of Information Act 2000.
- Section 43(2) of the Freedom of Information Act 2000.

Section 40(1) – of the Freedom of Information Act 2000 (the Act) provides that:

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject”

Section 43(1) of the Freedom of Information Act 2000 (the Act) provides that:

“Information is exempt information if it constitutes a trade secret.”

Section 43(2) of the Freedom of Information Act 2000 (the Act) provides that:

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)”.

In this instance, we believe that disclosure of the information requested would, or would be likely to, prejudice the commercial interests of the North East Procurement Organisation (NEPO) and its members. We also have reason to believe that disclosure of this information would prejudice the commercial interests of our suppliers who deliver the agreement and other live contracts we have in our Collaborative procurement work programme.

NEPO and its members would be likely to suffer prejudice to its commercial interests if the withheld information were to be disclosed as it would result in it losing the confidence of its suppliers and bidders if such commercially sensitive information were subsequently disclosed.

The reason that we believe the exemptions apply is that the information disclosed would possibly allow those who access the information to gain an unfair advantage over current live contracts and would harm the relationships NEPO holds with its suppliers.

This exemption is subject to the public interest test.

Public Interest Test

There is an inherent public interest in ensuring that the NEPO receives value for money in procuring works, goods and services. This is because NEPO has a duty to its clients to provide a high delivery of services that achieve the best possible price for works, goods and services contracts. This in turn ensures that public money is used to best effect.

We recognise that transparency in procurement is important in enabling the public to hold public sector organisations to account for the spending of public money. However, in this case, we believe that the balance of public interest lies in favour of maintaining the exemption, as disclosure of commercially sensitive material would harm NEPOs ability to operate effectively and work in confidence with its suppliers.

As a result, we are refusing part of your request under

- Section 40(1) of the Freedom of Information Act 2000.
- Section 43(1) of the Freedom of Information Act 2000.

- Section 43(2) of the Freedom of Information Act 2000.

You have the right to request an internal review of our decision to apply this exemption.

Q2. What information is Bloom required to provide NEPO with for reporting and monitoring purposes?

Under the NEPRO(2) Framework Agreement, Bloom Procurement Services Ltd is required to provide NEPO with Key Performance Indicator information and Management Information relating to the activity under the Framework Agreement.

NEPO contractually has the ability to monitor the performance on the Neutral Vendor against all of the specified KPIs within the Framework Agreement. However these measures are one element of what is used to identify and monitor the performance of a contract or supplier, in cases where a supplier or contract is performing well, all of these mechanisms may not be fully deployed or required to be reported during the lifetime of the contract term.

Alternatively, if areas of the contract are underperforming or supplier performance issues are raised, NEPO has the ability to fully deploy all of the reporting mechanisms assigned and agreed within the Framework Agreement.

NEPO understands and recognises the additional costs associated with reporting for suppliers, including the increase in manhours and resource needed to develop and maintain these performance records, therefore for each contract NEPO applies a logical and proportionate approach to the monitoring of supplier activity against the KPIs into the Framework Agreements.

Under the NEPRO(2) Framework Agreement the following KPIs are available:

- SPS Projects delivery against budget.
- Evidence of any savings achieved through SPS Projects.
- SPS Provider day rates.
- SPS Projects delivery against timescales.
- Scope creep avoidance.
- Volume of SME's engaged/successful.
- Volume of local SME's engaged/successful.
- Contracting Authorities Local Suppliers/SMEs used.
- Post SPS Project Contracting Authority satisfaction.
- Time taken to pay SPS Providers upon receipt of invoice.
- On time Management Information.
- Accredited SPS Provider audit.
- Adherence to agreed process for Accreditation.
- Adherence to agreed process for Engagement and Appointment.
- Framework usage by North East Contracting Authorities.
- Volume of SPS Projects advertised via the NEPO Portal.

- IR35 mitigation

Under the NEPRO(2) Framework Agreement Bloom Procurement Services Ltd may also be required to provide the following Management information for reporting and monitoring purposes:

- Contracting Authority name.
- SPS Providers invited to participate in engagement process.
- Appointed SPS Provider.
- Engagement Process evaluation information.
- Project title.
- Call-Off Contract agreed date.
- SPS Project start date.
- SPS Project end date.
- Planned SPS Project duration.
- Planned SPS Project budget.
- Actual SPS Project cost.
- SPS Project savings.

Q3a. What information held by Bloom does NEPO have a right to see?

As above NEPO has a right to request any KPIs and Management Information reasonably held relating to the activity under the NEPRO(2) Framework Agreement.

As NEPO is subject to the requirements of the FOIA and the Environmental Information Regulations, NEPO has the right to request information from the Neutral Vendor in the form that NEPO reasonably requires to support with such request.

The Neutral Vendor may make representations to NEPO as to whether or not, or on what basis, information requested should be disclosed and whether further information should reasonably be provided in order to identify and locate the information requested. Any information deemed to be commercially sensitive to either parties' commercial interests will not be applicable to the FOIA.

Q3b. What conditions (if any) apply to NEPO access to information held by Bloom?

NEPO will be subject to conditions agreed within the Framework Contract, such as disclosure of information to the public would constitute a breach of confidence or the information may be deemed commercially sensitive. If such information is deemed commercially sensitive and would harm any parties' commercial interests, then this information would be excluded from NEPOs requests to access.

The following information is deemed to be commercially sensitive and NEPO does not have rights to access:

- The identity or any information in respect of any Appointed SPS Provider or the terms of or any parties action or omission in respect of any SPS Sub-Contract
- Any information in respect of any Contracting Authority or the terms of or any parties action or omission in respect of any Call-Off Contract or Work Order, other than the identity of any Contracting Authority
- Any details of Intellectual Property Rights, databases, know how or other information provided by the Neutral Vendor to NEPO or any Contracting Authority whether in respect of the Neutral Vendor, any Appointed SPS Provider or in respect of any other party
- Any details of Intellectual Property Rights, databases, know how or other information ascertained by NEPO or any Contracting Authority whether in respect of the Neutral Vendor, any Appointed SPS Provider or in respect of any other party as a result of being a party to this Agreement or the Call-Off Contract
- Any details relating to the performance of the Neutral Vendors or any Appointed SPS Provider under this Agreement, any Call-Off Contract or Work Order, including in respect of Key Performance Indicators to the extent that such information goes beyond the reporting requirements of the Neutral Vendor under this Agreement or any Call-Off Contract

Q4. On termination of the NEPO contract with Bloom does information remain with Bloom or does it revert to NEPO?

Excluding any KPI and Management Information, upon expiry or termination of the NEPRO(2) Agreement, the information held by either party, shall return to the other party the originals and any copies of any documents or materials in its possession or control (including those stored electronically) which contain or record any of the confidential information of the other party or which have been provided to it by another party and, no party shall be under any further obligation to the other party.

RIGHT TO REVIEW

You may apply to the Managing Director, Guildhall, Quayside, Newcastle upon Tyne, NE13AF, for an internal review of the decision. This will be a fresh consideration of your request by a more senior officer. If you wish to request a review must do this in writing within 40 days of receipt of this letter.

Following the internal review if you are still unhappy you have a right of appeal to the Information Commissioner as specified below.

You may apply under Section 50 of the Act to the Information Commissioner at the address given below

Information Commissioner, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

For a decision whether, in any specified respect, a request for information made by you to the Department/office has been dealt with in accordance with the requirements of Part 1 of the Act.

The Information Commissioner shall consider the matter fully and make a fresh decision.

Yours Sincerely

North East Procurement Organisation Governance Team.