

ANNEX B

REASONS FOR NOT PROVIDING INFORMATION

Exceptions under regulations 10(4)(a) (information not held), 10(5) (e) (confidentiality of commercial or industrial information) and 11(2) (personal information of a third party) of the EIRs apply to some of the information you have requested.

- Regulation 10(4)(a) - The Scottish Government does not have the information requested relating to milestone 6 because Caledonian Maritime Assets Limited (CMAL) were the procuring authority for the contract to build Hull 801 and Hull 802 and as such all evidence from FMEL, to release milestone payments, was provided to CMAL not the Scottish Government. Under the terms of the exception at regulation 10(4)(a) of the EIRs (information not held), the Scottish Government is not required to provide information which it does not have.
- As mentioned in the Audit Scotland report FMEL and CMAL confirmed to Audit Scotland that stringent checks were in place prior to CMAL signing milestone certificates and making milestone payments to FMEL.
- Regulation 10(5) (e) – the confidentiality of commercial or industrial information where such confidentiality is provided for by law to protect a legitimate economic interest.
- An exception under regulation 10(5) (e) (confidentiality of commercial or industrial information) of the EIRs applies to some of the information you have requested. This exception applies because disclosure of this particular information would, or would likely to, prejudice substantially the confidentiality of commercial information provided by Caledonian Maritime Assets Limited (CMAL) and thus cause substantial harm to their commercial interests and to the unsuccessful bidders involved in the NEWBUILDCON procurement process.
- This exception is subject to the ‘public interest test’. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exception. We have found that, on balance, the public interest lies in favour of upholding the exception. We recognise that there is a public interest in disclosing information as part of open and transparent and accountable government, and to inform public debate. However, there is a greater public interest in protecting the commercial interests of companies when substantial harm can be made to their commercial interests.
- Regulation 11(2) – To the extent that environmental information requested includes personal data of which the applicant is not the data subject and in relation to which either the first or second condition set out in paragraphs (3) and (4) is satisfied, a Scottish public authority shall not make the personal data available.

- An exception under regulation 11(2) of the EISRs (personal information of a third party) applies to some of the information requested because it is personal data of a third party and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and in section 34(1) of the Data Protection Act 2018. This exception is not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exception.