



Department of Energy

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

SHARED SERVICES

May 10, 2002

In reply refer to: CILR-4

Mr. John C. Joyce, P.E.
Siemens Power Transmission & Distribution, Inc.
FACTS and Power Quality Division
8430 SW Brookridge
Portland, OR 97225

Dear Mr. Joyce:

This letter responds to your Freedom of Information Act (FOIA) request dated April 22, 2002, and received by the Bonneville Power Administration (BPA) FOIA Officer on April 30, 2002. In your request, you ask for a copy of the BPA Contracting Officer's "Document of Award Decision" (DAD) on RFQ No. 2854 Series Capacitors for Eastern Washington Reinforcement Project.

Enclosed are the releasable portions of the document you requested. However, BPA has determined that some portions of this document should be withheld in whole or in part under exemptions available under 5 USC § 552(b)(4) (exemption 4) and 5 USC § 552(b)(5) (Exemption 5) of the FOIA. The portions of the document being withheld are more particularly described below.

Reasons for non-disclosure under Exemption 5

Exemption 5 protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." This exemption protects documents that would normally be privileged in the civil discovery context.

1. Numerical scores given to each offeror page 2 of DAD, under "Evaluation of Offers".
BPA asserts the deliberative process privilege for this information. This information is exempt from disclosure under exemption 5 of the FOIA because it is internal to BPA and is both predecisional and deliberative in nature. This information has not been disclosed outside the executive branch of the government and was prepared by an internal evaluation team comprised of BPA staff. The information is deliberative because it represents the evaluation team members' numerical expressions of opinion to aid the Contracting Officer concerning the strengths and weaknesses of each offerors' technical

proposal. These opinions are predecisional because the information was prepared prior to the contract award. The team members are not responsible for making the final decision on the contract award, but rather are responsible for providing their opinions and/or recommendations to the Contracting Officer who is the ultimate decision maker.

2. Attachment 2 – Risk Assessment referenced on page 2 of DAD, under heading “Business Review”. This is a one-page internal BPA e-mail to Jackie Long, BPA Contracting Officer, from Erik Westman, BPA Transmission Risk Manager, dated March 6, 2002. BPA asserts the deliberative process privilege for this e-mail. This information is exempt from disclosure under exemption 5 of the FOIA because it is internal to BPA and is both predecisional and deliberative in nature. This information was prepared by Mr. Westman at Ms. Long’s request and contains Mr. Westman’s evaluation and analysis of risk management issues associated with the offerors’ proposals. This information has not been disclosed outside the executive branch of the government. The information is deliberative because it represents Mr. Westman’s analysis, evaluation and opinions to the Contracting Officer. This information is predecisional because the information was prepared prior to the contract award. Mr. Westman was not responsible for making the final decision on the contract award, but rather was requested for providing his opinions and/or recommendations to the Contracting Officer who was the ultimate decision maker.

3. Attachment 3 – Credit Assessment referenced on page 2 of DAD, under heading “Business Review”. – This is a two-page internal BPA document to Jackie Long, BPA Contracting Officer, from Kevin Farleigh, BPA’s Financial Analyst, dated March 5, 2002. BPA asserts the deliberative process privilege for this document. This information is exempt from disclosure under exemption 5 of the FOIA because it is internal to BPA and is both predecisional and deliberative in nature. This information was prepared by Mr. Farleigh at Ms. Long’s request and contains Mr. Farleigh’s evaluation and analysis of credit risk issues associated with the offerors’ proposals. This information has not been disclosed outside the executive branch of the government. The information is deliberative because it represents Mr. Farleigh’s analysis, evaluation and opinions to the Contracting Officer. This information is predecisional because the information was prepared prior to the contract award. Mr. Farleigh was not responsible for making the final decision on the contract award, but rather was requested for providing his opinions and/or recommendations to the Contracting Officer who was the ultimate decision maker.

4. Attachment 4 – Legal Comments referenced on page 3 of DAD, under heading “Business Review”. BPA asserts the attorney-client privilege and the deliberative process privilege for this attachment, which is a 4-page document prepared by BPA staff attorney Ernest Estes. The attachment reveals confidential communications between a BPA attorney and its client on issues in which the client sought legal advice. The document identifies legal issues and provides advice based on Mr. Estes’ review of the offerors’ responses to BPA’s requests for offers. The document is also deliberative since the contracting officer

requested Mr. Estes' input prior to the contract award in order to consider his views as part of the decision making process.

BPA has determined that a discretionary release of the portions of document described above would not be in the public interest. The purpose of the deliberative process privilege is to protect the free flow of information within the government. The ability and willingness of BPA employees to make honest and open recommendations could be compromised if they knew that this information would be released. If employees were to become inhibited in their opinions and recommendations, the agency would be deprived of the benefit of open and candid opinions. Similarly, disclosure of the attorney comments would interfere with BPA's interests of ensuring that its legal counsel can provide frank and complete confidential advice to BPA staff.

Reasons for non-disclosure under Exemption 4

Exemption 4 documents include trade secrets or commercial or financial information that is privileged or confidential and submitted to BPA by another person.

1. Attachment 1 to DAD – Meeting minutes of conversations/discussions (referenced on page 2 of DAD, under Discussions/Negotiations). The BPA Contracting Officer evaluated the proposals, reviewed feedback from BPA's evaluation team, and tentatively settled on GE as the most promising offeror for the project¹. The Contracting Officer and her team then met with GE on March 12-13, 2002, to negotiate and clarify outstanding issues. This attachment is a 19-page document that memorializes negotiations related to the terms of the contract as well as GE's answers to BPA's request for clarifications. Enclosed are the releasable portions of this attachment. The redacted portions of these meeting minutes contain commercial confidential information obtained from GE that clarifies and expands on its technical and cost proposals. The information also contains information concerning GE's proposed subcontractors and names of key personnel. This information was submitted to BPA in confidence and is not readily available from public sources. Public disclosure of this type of information is likely to cause substantial competitive harm to GE because it would reveal information concerning how GE arrived at the information contained in its technical and cost proposals for the project and would reveal details about GE's negotiation and business strategies. Release of this type of information would give competitors an unfair advantage in future competitions.

If you are dissatisfied with this determination, you may appeal within 30 days from the date you receive this letter to the Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. The appeal must be in writing and both the envelope and letter must be clearly marked "Freedom of Information Act Appeal."

¹ Contract Number 8936, RFQ 2584.

You will receive an invoice under separate cover from BPA's accounting department for the cost of BPA's processing of this request.

Sincerely,

Elyse Pratt

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Gebe Tollefson
Freedom of Information Act Officer