



Department of Energy

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

FREEDOM OF INFORMATION ACT/PRIVACY PROGRAM

September 20, 2018

In reply refer to: FOIA #BPA-2018-01190-F

Matthew Walk

(b) (6)

Dear Mr. Walk:

This communication is the Bonneville Power Administration's (BPA) final response to your request for agency records made under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). Your records request was received on June 4, 2018 and was formally acknowledged on June 8, 2018.

Request

Agency records regarding, "...the details of the re-compete rate submissions that the BPA preferred vendor ACT1 submitted to the BPA [Supplemental Labor Management Office (SLMO)] between April 1, 2018 and June 1, 2018 on my behalf... [F]or each separate submission: 1. Date of submission by ACT1 to the SLMO office [; and] 2. Rate submitted by ACT1 on my behalf [; and] 3. Any follow up information SLMO may have sent to ACT1 regarding the submissions ACT1 made on my behalf. This request is in regards to my re-compete [for the position of]: SOFTWARE DEVELOPER 3 Specialty: Reports & Analytics Developer Location: Portland, OR [;] Closes: Thursday, 4/12/2018 [;] JP#: 8463."

Response

BPA conducted electronic searches for responsive records in the following agency offices:

Supplemental Labor Management Office (SLMO)

Responsive records were gathered. BPA's Office of General Counsel (OGC) reviewed the responsive agency records and determined that those records contained third party information from The Act-1 Group, Inc. (Act-1). As directed by 5 U.S.C. § 552(b)(4) (Exemption 4), BPA contacted Act-1 to provide them with an opportunity to object to the release of their information contained in the agency records. Act-1 provided their objections and OGC reviewed and agreed with those objections. BPA is herein releasing 2 pages of responsive agency records, with redactions applied under Exemption 4. Additionally, OGC reviewed the responsive agency

records and determined that those records contained information protected from public release by 5 U.S.C. § 552(b)(3) (Exemption 3). An explanation of the applied exemptions follows.

Exemptions

The FOIA generally requires the release of all responsive government records upon request. However, the FOIA permits withholding certain limited information that falls under one or more of nine statutory exemptions (5 U.S.C. §§ 552(b)(1-9)).

Exemption 4

Exemption 4 to the FOIA protects “trade secrets and commercial or financial information obtained from a person and privileged and confidential” (5 U.S.C. § 552(b)(4)). The existence of Exemption 4 encourages businesses and other entities to voluntarily furnish useful commercial or financial information, and provides protection from competitive harm to submitters who are required to furnish information to the government.

Information is considered commercial or financial in nature if it relates to business or trade. Here, the Act-1 re-compete bid information is commercial in that it relates to a contract between BPA and Act-1. Information is “obtained from a person” when it has been provided to the government by an individual or a wide range of entities including corporations and state and foreign governments. Here, Act-1 provided the re-compete bid information.

Act-1 was required to provide this information to BPA by SLMO contracting requirements. When BPA exercises its authority to require information submissions, the information can be withheld under Exemption 4 when disclosure of the information would (1) impair the government’s ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the submitter.

Disclosure of bill rates and confidential bid information is likely to cause substantial harm to Act-1’s competitive position by allowing its competitors to determine mark-up rates and associated costs, and thereby allow them to undercut Act-1’s proposed rates during blind bidding processes for government contracts and staffing placements.

Bill rates provided to BPA and to other clients are based on Act-1’s pricing matrix, which is the product of a mathematical and business formula that includes such factors as the type of placement at issue, industry rates, historical profit and loss based upon such types of employment placements, and Act-1’s business history with a client. Act-1’s competitors may use its bill rates to determine the costs and pricing strategy associated with the staffing services that it offers, and thereby use that information to enable them to undercut Act-1’s future bids and therefore undermine the blind, competitive bidding process.

Here, a public disclosure of the Act-1 re-compete bid information would cause Act-1 future competitive harm in the personnel service providers’ market. BPA has determined that Act-1 has shown a likelihood of competitive harm. BPA finds that the information is confidential and

declines to evaluate whether disclosure would impair the future collection of information. BPA hereby withholds the bid information under Exemption 4.

Exemption 3

Exemption 3 permits withholding of records under the non-disclosure provisions of other Federal statutes. A statute may qualify under Exemption 3 if it, “requires that the matters be withheld” or “establishes particular criteria for withholding” (5 U.S.C. § 552(b)(3)). In this case, the Procurement Integrity Act (PIA), 41 U.S.C. §§ 2101-07 prohibits the release of source selection and contractor bid or proposal information. The PIA is implemented at Federal Acquisition Regulation (FAR) Part 3.104. “Except as provided by law, a person [...] shall not knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates” (41 U.S.C. § 2102(a)(1)). Therefore, BPA is withholding the requested information under Exemption 3 and the PIA.

Fee

There are no FOIA fees applicable to the fulfillment of your request for BPA records.

Certification

Pursuant to 10 C.F.R. § 1004.7(b)(2), I am the individual responsible for the records release and determinations described above. Your FOIA request BPA-2017-01190-F is now closed with all available agency records provided.

Appeal

This decision, as well as the adequacy of the search, may be appealed within 90 calendar days from your receipt of this letter pursuant to 10 C.F.R. § 1004.8. Appeals should be addressed to:

Director, Office of Hearings and Appeals,
HG-1, L’Enfant Plaza
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585-1615

The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being made. You may also submit your appeal to OHA.filings@hq.doe.gov, including the phrase “Freedom of Information Appeal” in the subject line. The appeal must contain all of the elements required by 10 C.F.R. § 1004.8, including a copy of the determination letter. Thereafter, judicial review will be available to you in the Federal District Court either: 1) in the district where you reside; 2) where you have your principal place of business; 3) where DOE’s records are situated; or 4) in the District of Columbia.

You may contact BPA's FOIA Public Liaison, Jason Taylor, at the address at the letter header for any further assistance and to discuss any aspect of your request. Additionally, you may contact

the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
E-mail: ogis@nara.gov
Phone: 202-741-5770
Toll-free: 1-877-684-6448
Fax: 202-741-5769

Questions about this communication may be directed to James King, CorSource Technology Group LLC, at jjking@bpa.gov and 503.230.7621.

Sincerely,



Rachel L. Hull
Freedom of Information/Privacy Act Officer

Responsive records attached

Chat



My Company Supplier

Chat with: Act 1 Group

Couron, Elissa-SLMO

04/16/2018 11:35 AM

BPA

Thank you for resubmitting Matthew Walk at your best and final offer. Due to the rate being over the max bill rate, SLMO will not shortlist this submission. Thank you, Elissa

Edit RMV – SLMO Use Only

Couron, Elissa-SLMO

04/13/2018 02:20 PM

BPA

Your candidate Matthew Walk was submitted over the maximum bill rate. You have until 04/16 at 2:00pm to resubmit your candidate with your best and final offer. Please withdraw and re-submit the candidate; do not edit the submission. Please notify Elissa Couron via email when the candidate has been resubmitted or if you elect not to resubmit the candidate.

OFFICIAL USE ONLY - Information contained herein is proprietary and confidential and access should be limited to BPA personnel on a need to know basis only. This information is not intended for dissemination.

Requisition BPAJP00008463

Software Developer (IT) 3

Period: 05/28/2018 to 06/01/2019 Status: Closed Service Type: Temp

Actions ▾

Summary Details **Job Seekers (8)** Rate Details Rules Distribution Supplier Rates Interviews Approvals / Audit Trail Related



Job Seekers

Submitted	Name	Flags	Status	Supplier	Site	ST Rate ▲	UOM
<input type="checkbox"/>	<input type="text" value="Enter Criteria"/>		<input type="text" value="All"/>	<input type="text" value="act"/>	<input type="text" value="Enter Criteria"/>		
<input type="checkbox"/>	04/16/2018 09:09 AM Walk, Matthew		Submitted	Act 1 Group	Portland		(b) (4), (b) (3), (A)
Rejected/Withdrawn Job Seekers							
<input type="checkbox"/>	04/12/2018 12:43 PM Walk, Matthew		Withdrawn	Act 1 Group	Portland		