



## Department of Energy

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

PUBLIC AFFAIRS

October 28, 2011

In reply refer to: DK-7

Mr. Mark Rosencrantz  
Ball Janik  
818 Stewart Street, Suite 1110  
Seattle, Washington 98101

### **RE: FOIA #BPA-2011-01336-F**

Dear Mr. Rosencrantz:

This is BPA's final response to your request for agency records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You submitted a June 15, 2011, FOIA request for numerous records concerning BPA's RFO No. 00001887.

As detailed in a phone conversation of July 26, 2011, with BPA FOIA Specialist, Cheri Benson, BPA grouped your 15 individual requests into three categories of related records. They are:

1. WSI's proposal and all correspondence about that proposal;<sup>1</sup>
2. All records and correspondence between BPA and the bidders, whether as a group or individually;<sup>2</sup> and

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<sup>1</sup> This group of records includes your requests for:

- Wackenhut Services, Inc.'s ("WSI") proposal for RFO No. 00001887.
- All correspondence between WSI and Bonneville Power Administration ("BPA") relating in any way to RFO No. 00001887.

<sup>2</sup> This group of records includes your requests for:

- All documents in any way relating to any correspondence between BPA and RAMS, WSI and/or other bidders concerning what information should be included in bidder proposals.
- All documents in any way relating to any correspondence to RAMS, WSI and/or other bidders concerning how information should be formatted, packaged and/or adjusted in bidder proposals.
- All documents BPA received from and/or sent to WSI concerning WSI's proposal for RFO No. 00001887, regardless of whether the documents were sent and/or received before or after WSI submitted its proposal.
- All documents relating in any way to verbal communications BPA had with RAMS and/or any other bidder, regardless of whether such communications occurred before and/or after the deadline for submitting bids.

Due to the size of the responsive documents they cannot be posted. To obtain a copy please contact the BPA FOIA Office at 503-230-7305.

3. All records about the scoring, analysis, comparisons, and summaries used to evaluate each bidder.<sup>3</sup>

I address BPA's response to your requests below.

### 1. WSI Proposal and Correspondence

BPA denies in part, and grants in part, these requests. Exemption 3 of FOIA requires the withholding of information that is prohibited from disclosure by another federal statute. 5 USC 552(b)(3) 41 USC 253b(m) prohibits an agency from disclosing under FOIA a proposal that is in the possession or control of the agency, unless that proposal is set forth or incorporated by reference in a contract between the agency and the contractor. Therefore, BPA cannot release the WSI proposal, or any correspondence with WSI that discusses or clarifies that proposal.

BPA is releasing all other responsive records and correspondence, but only to the extent those records do not discuss or contain information about WSI's proposal. WSI had no objection to the release of these records under Exemption 4.

### 2. Records and Correspondence with all Bidders

BPA is releasing all records and correspondence that BPA or the Contracting Officer sent to all of the bidders, as well as any communications with the individual bidders that do not discuss or clarify a bidder's proposal. BPA has redacted any record or communication with an individual bidder, including RAMS, that discusses or clarifies that bidder's proposal, pursuant to the prohibition on disclosure in 41 USC 253(b)(m).

### 3. BPA Evaluation records

These requests directly implicate another Exemption 3 statute. 41 USC 423, the Procurement Integrity Act, forbids the release of "source selection information" before the award of an agency

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<sup>3</sup> This group of records includes your requests for:

- All documents showing the final scoring for any and/or all bidder(s) on the "management and technical" and/or pricing factors.
- All documents relating in any way to any summaries of RAM's proposal for RFO No. 00001887.
- All documents relating in any way to any comparisons of RAM's proposal with the proposals of any other bidders for RFO No. 00001887
- All documents relating in any way to any summaries of WSI's proposal for RFO No. 00001887.
- All documents relating in any way to any comparisons of WSI's proposal with the proposals of any other bidders for RFO No. 00001887.
- All documents in any way related to any and all price-technical trade off analysis.
- All documents regarding any internal BPA correspondence regarding WSI's and/or RAMS' proposals.
- All documents BPA received from and/or sent to its contractor financial analyst.
- All documents BPA used to evaluate "other direct costs."

procurement contract. Source selection information includes, among other things, “information prepared for use by a Federal agency for the purpose of evaluating a bid or proposal, if that information has not been previously made available to the public or disclosed publicly.”

All of the responsive records to these requests are source selection information records. Since that information has not been disclosed publicly, and because there has been no formal contract award, BPA cannot release the records.

If you are dissatisfied with this determination, you may make an appeal within thirty (30) days of receipt of this letter to the Director of Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585. Both the envelope and the letter must be clearly marked “Freedom of Information Act Appeal.”

Please contact Cheri Benson, FOIA/Privacy Act Specialist, at (503) 230-7305 with any questions.

Sincerely,

*/S/Christina J. Munro*

Christina J. Munro

Freedom of Information Act/Privacy Act Officer

Enclosure: Responsive Documents