



Department of Energy

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

FREEDOM OF INFORMATION ACT/PRIVACY PROGRAM

August 28, 2018

In reply refer to: BPA-FOIA-2017-01755-F

Jennifer Baer
Epic Land Solutions, Inc.
2601 Airport Drive, Suite 115
Torrance, California 90505
jbaer@epicland.com

Dear Ms. Baer:

This communication is the Bonneville Power Administration's (BPA) final response to your records request made under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). Your records request was received by BPA on September 12, 2017 and formally acknowledged on September 19, 2017.

Request

"...all materials submitted by all companies responding to BPA's REQUEST FOR OFFERS NO. 3783, Professional Realty Support Services, issued October 17, 2016. Initial responses were due via e-mail on November 14, 2016, but the deadline was extended to December 23, 2016 by Amendment 2. Revised business proposals were requested by Amendment 5 and were due via e-mail by April 3, 2017. Epic requests: 1. All documents submitted in response to these deadlines. 2. All scoring materials compiled by BPA's review panel in evaluation of the responses."

Response

In accord with the FOIA requirements, BPA conducted electronic searches of records in the following agency offices: Construction Acquisition Team, Contracts & Strategic Sourcing, and Supply Chain Services. The Services Acquisition Team provided the agency's records set responsive to your request. BPA's Office of General Counsel (OGC) reviewed that agency record set and determined that an exemption analysis was necessary prior to a release. That analysis is now complete.

BPA is herein releasing 59 pages of agency records with the following noted redactions: 16 of the 59 pages will have redactions applied under 5 U.S.C. § 552(b)(3) (Exemption 3); 1 page of the 59 pages will have redactions applied under 5 U.S.C. § 552(b)(4) (Exemption 4); and 52 of the 59 pages will have redactions applied under 5 U.S.C. § 552(b)(5) (Exemption 5). An explanation of applied redactions 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 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)). Agencies are prohibited from disclosing contract proposals under 41 U.S.C. § 4702. Section 4702 does permit disclosure, however, to the extent that “a proposal . . . is set forth or incorporated by reference in a contract” (41 USC 4702(c)). Therefore, all losing proposals are exempt from disclosure, and only the parts of the winning proposal that BPA incorporated into the contract may be subject to disclosure.

Exemption 4

BPA only incorporated the following information into the contract from the winning proposal by Cornerstone:

1. Pricing (from Schedule of Prices) into Clause 22-51;
2. One project manager’s identity (from Tasks per Labor Category) into Clause 23-1 “Key Personnel;” and
3. The columns of required experience, education, and tasks (from Tasks per Labor Category), into the Statement of Work (SOW).

After an independent analysis, BPA finds that most of the incorporated information is protected by Exemption 4. BPA finds that only the following information must be disclosed under Exemption 4:

1. Base Performance Period billing rates
2. Experience and education levels for labor categories.

That information was publicly released in response to FOIA request BPA-2017-01395-F - Bunkers/Universal - RFO 3783 Proposals. That public information was shared with you via email communication from this office on July 31, 2018.

Exemption 5

The FOIA Exemption 5 deliberative process privilege protects records evincing the deliberative or decision-making processes of government agencies. Records protected under this privilege must be both pre-decisional and deliberative. A record is pre-decisional if it is generated before the adoption of an agency policy. A record is deliberative if it reflects the give-and-take of the consultative process, either by assessing the merits of a particular viewpoint, or by articulating the process used by the agency to formulate a decision. Information withheld here under

Exemption 5 includes billing rates, percentage comparison differences, and evaluation comments.

While responding to your FOIA request, and in reviewing the responsive agency records for potential redactions under Exemption 5, BPA has been at all times mindful of the Memorandum for Heads of Executive Departments and Agencies Concerning the FOIA, 74 Fed. Reg. 51879 (Oct. 8, 2009). That memo directs all Federal agencies to adopt a presumption in favor of disclosure, and permits discretionary release of records that might otherwise be protected under Exemption 5. BPA has considered and declined the discretionary release of certain information in the responsive records set.

Fee

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

Certification

Your FOIA request BPA-2017-01755-F is now closed. Pursuant to 10 C.F.R. § 1004.7(b)(2), I am the individual responsible for the exemption determinations described above.

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 or at 503-230-7621.

Sincerely,



Rachel L. Hull
Freedom of Information/Privacy Act Officer

Responsive records accompany this communication