

FOIA Appeal: Cost Proposal

Legal Opinion: GMP-0078

Index: 7.340, 7.523

Subject: FOIA Appeal: Cost Proposal

May 14, 1992

Mr. John O. Reich
Dungaree Realty, Inc.
8795 Ralston Road, #102
Arvada, Colorado 80002

Dear Mr. Reich:

This is in response to your August 27, 1991 Freedom of Information Act (FOIA) appeal. You request administrative review of the August 20, 1991 partial denial by Michael R. Chitwood, Regional Administrator, Denver Regional Office. Mr. Chitwood withheld portions of the line item pricing and associated data from the cost proposal submitted by Republic Management, Inc. in response to Solicitation No. S02-91-101 for a Multifamily Project Management Contract.

I have determined to affirm the initial denial.

Exemption 4 of FOIA, 5 U.S.C. 552(b)(4), exempts from mandatory disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Information may be withheld under Exemption 4 if disclosure of the information is likely to cause substantial harm to the competitive position of the person from whom the information was obtained. National Parks and Conservation Association v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974).

The information withheld by the Denver Office contains a detailed description of the bidder's income statement and the bidder's cost elements and assumptions used to estimate a bid price for the contract. Courts have recognized the competitive harm to a submitter by release of the above described information. See BDM Corp. v. Small Business Administration, Civ. No. 80-1180 (D.D.C. May 20, 1981) 2 GDS Para. 81,189, at 81,495. "Cost and labor data . . . are commercial information which if released would cause substantial competitive harm to a bidder's competitive position." See also, Fidell v. United States Coast Guard, Civ. No. 80-2291 (D.D.C. March 3, 1981) 2 GDS Para. 81,144, at 81,386. Disclosure of data in a bid proposal "reveals details about a bidder's structure and allocation of resources . . . which could be quite useful to competitors. The particularity of the information would allow competitors to estimate a bidder's costs and profits and perhaps undercut its future bids."

Further, this contract is covered by the Federal Acquisition Regulations, 48 C.F.R. Chapter 1. Section 15.1003(b) of the

regulations provides that the debriefing of unsuccessful offerors shall not include point-by-point comparisons with other offerors' proposals nor reveal the relative merits or technical standing of competitors.

Accordingly, I have determined that the withheld information is confidential commercial and financial information and that Exemption 4 is a proper basis for its being withheld. I have also determined, pursuant to HUD's regulations at 24 C.F.R.

15.21, that the public interest in protecting confidential commercial and financial information militates against release of the withheld information.

You are advised that you have the right to judicial review of this determination under 5 U.S.C. 552(a)(4).

Very sincerely yours,

C.H. Albright, Jr.
Principal Deputy General Counsel

cc: Yvette Magruder
Michal Stover, 8G