



Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

September 9, 2014

CERTIFIED MAIL

Mr. Jake St. Arnold
Visionary Integration Professionals
1421 Prince Street #210
Alexandria, Virginia 22314

Dear Mr. St. Arnold:

FREEDOM OF INFORMATION ACT REQUEST (FOI 2014-01694)

This letter is in response to your electronic Freedom of Information Act (FOIA) request requesting the competitor's bids and evaluation materials in response to Request for Quote No. DE-SOL-0006812, for the Mission Oriented Business Integrated Services.

Regarding your request for a copy of the bids, we will first address the successful offeror's bid. Under the provisions of the FOIA, documents held in government files will be disclosed to the public upon request, with nine specific exemptions. One of those, Exemption 3, incorporates into the FOIA other laws that restrict the availability of information. To qualify under this exemption, a statute must require that information be withheld in such a manner as to leave no discretion to the agency. The Defense Authorization Act of 1997, Public Law 104-201, is such a statute. This statute prohibits the release of contractor proposals unless the proposal is set forth or incorporated by reference in the contract. In this case, this proposal is neither set forth nor incorporated by reference in the contract. Therefore, your request is denied.

For the unsuccessful bids submitted by the other offerors, this information is also not releasable under the Defense Authorization Act of 1997. This statute prohibits the release of unsuccessful proposals or bids. Therefore, your request is denied.

In your request, you also asked for copies of the evaluation materials. Your request was assigned to the U.S. Department of Energy, Procurement Division, the office most likely to have responsive documents. We conducted a thorough search and the following documents were located: 1) "Source Selection Decision For GSA Request for Quote (RFQ) DE-SOL-0006812 MOBIS (SINs 874-6)" and 2) "Selection Panel Evaluation of Quotes Submitted In Response to Request for Quotation (RFQ) DE-SOL-0006812 MOBIS (SIN 874-6)."

Certain deletions have been made in both documents pursuant to Exemptions 3, 4, 5 and 6 of the FOIA.

As stated above, Exemption 3 incorporates into the FOIA other laws that restrict the availability of information. To qualify under this exemption, a statute must require that information be withheld in such a manner as to leave no discretion to the agency. The Defense Authorization Act of 1997, Public Law 104-201, is such a statute. This statute prohibits the release of unsuccessful proposals. In both documents, we have deleted the names of the unsuccessful offerors and any information provided by them, including detailed price and financial information, work performance, organizational and work structures. This information was provided in the unsuccessful offerors proposals and therefore must be withheld.

In addition, The Defense Authorization Act of 1997, also prohibits the release of contractor proposal information unless the information is set forth or incorporated by reference in the contract. In the documents, we have also deleted information provided by the successful offeror, Federal Acquisition Consultants, Inc., that was neither set forth nor incorporated by reference in the contract. This information includes detailed price and financial information, proposed organizational and work breakdown structures. All information that was provided by Federal Acquisition Consultants, Inc., and included in its contact with the U.S. Department of Energy, Richland Operations Office (RL) remains.

Exemption 4 of the FOIA was meant to protect the disclosure of confidential business information. If the documents you are requesting were released in their entirety, your company could gain insight into Federal Acquisitions Consultants, Inc., business practices and pricing strategies which are unique to them and have been developed at their expense. The result of such a release would place them at a competitive disadvantage by giving their competitors insight into how they do business.

In interpreting the FOIA, courts have held that information may be withheld if disclosure would be likely to impair the government's ability to obtain similar information in the future. If specific pricing information, work breakdown structures, management strategies, allocation of costs, confidential business information and trade secrets were released to competitors, it would clearly impair the government's ability to obtain the most favorable terms in future procurements because companies would be less willing to risk disclosure of their information.

Exemption 5 exempts from disclosure “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...” Exemption 5 incorporates the deliberative process privilege that protects advice, recommendations, and opinions that are part of the process by which agency decisions and policies are formulated.

The factors that are weighed to determine whether documents are protected by the deliberative process privilege include: (1) whether the documents are “deliberative” (i.e., whether it reflects the give-and-take of a consultative process); (2) whether the documents are so candid or personal in nature that public disclosure would stifle honest and frank communication in the future; and (3) whether the documents are recommendatory of what will become a final document.

Below is a listing of the categories of information that has been withheld from both documents pursuant to Exemption 5:

- 1) Opinions of the source selection members reflected in numerical scores, and adjectival ratings.
- 2) Analysis and written comments of the source selection members regarding each proposal, including the strengths and weaknesses.
- 3) Detailed recommendations, including summaries and evaluations of submitters’ detailed price information that were provided to the source selection officials for decision and were based upon expressed opinions on legal and policy matters.

These categories consist of proposed recommendations, consultations and positions presented in the preparation of agency policy by the members of the source selection. Therefore, this information has been deleted. Material determined to be exempt from mandatory disclosure may be released if disclosure is determined to be in the public interest. Release of the deleted information would cause a chilling effect upon the agency as it would impact the ability and willingness of government employees to make open and honest recommendations concerning similar matters. If employees were inhibited in providing frank and honest recommendations, the agency would be deprived of the benefit of their open opinions. This would stifle the free exchange of ideas and opinions which is essential to the sound and correct functioning of government programs and operations. We have determined the public interest is best served by non-disclosure because disclosure of this information would harm the government’s ability to effectively award contracts.

We have also deleted the names and titles of the source selection members pursuant to Exemption 6 of the FOIA. This information has been deleted from the enclosed documents. Exemption 6 provides that an agency may protect from disclosure all personal information if its disclosure would constitute a clearly unwarranted invasion of privacy by subjecting the individuals to unwanted communications, harassment, intimidation, retaliation, or other substantial privacy invasions by interested parties.

In invoking Exemption 6 we considered 1) whether a significant privacy interest would be invaded by disclosure of information, 2) whether release of the information would further the public interest by shedding light on the operations or activities of the government, and 3) whether in balancing the private interest against the public interest, disclosure would constitute a clearly unwarranted invasion of privacy. We have determined that the public interest in the identity of the individuals whose names appear in the documents does not outweigh the individuals' privacy interests. In addition, disclosure of the identities of the source selection members may likely discourage future, candid participation in the procurement process.

All releasable information in the documents has been segregated and is being provided to you. The undersigned individual is responsible for this determination. You have the right to appeal to the Office of Hearings and Appeals, as provided in 10 CFR 1004.8, for our fee waiver determination. Any such appeal shall be made in writing to the following address: Director, Office of Hearings and Appeals (HG-1), U.S. Department of Energy, L'Enfant Plaza Building, 1000 Independence Avenue SW, Washington, D.C. 20585-1615, and shall be filed within 30 days after receipt of this letter. Should you choose to appeal, please provide this office with a copy of your letter.

For the purpose of assessment of fees, you have been categorized under the DOE regulation at Title 10, Code of Federal Regulations (CFR), Section 1004.9(b)(1), as a "commerical" requester. Requesters in this category are charged fees for all reasonable search, review and duplication costs.

Costs incurred for your request are as follows:

Reproduction – 18 pages @ \$.05/page	\$.90
Review time –2 hours @ \$47.16/hour		<u>94.32</u>
	Total \$	95.22

Your check should be made payable to the U.S. Department of Energy and forwarded to my attention at: DOE, P.O. Box 550, Richland, Washington 99352.

Mr. St. Arnold

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September 9, 2014

If you have any questions regarding your request, please contact me at our address above or on (509) 376-6288.

Sincerely,

-Original Signed By-

Dorothy Riehle
Freedom of Information Officer
Office of Communications
and External Affairs

OCE:DCR

Enclosures