



## Department of Energy

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

FREEDOM OF INFORMATION ACT/PRIVACY PROGRAM

April 12, 2024

In reply refer to: FOIA #BPA-2024-00299-F

**SENT VIA EMAIL ONLY TO:** [jfriedman@esassoc.com](mailto:jfriedman@esassoc.com)

Jonathan Friedman  
Environmental Science Associates

Dear Mr. Friedman,

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 request was received on November 3, 2023, and formally acknowledged on November 21, 2023.

### Request

"Copies of all proposals (and related information) submitted to the Bonneville Power Administration (BPA) for its Secondary Capacity Model (SCM) contract currently in effect that was awarded to HDR, Power Engineers, and Henkels & McCoy. I am specifically requesting the following:

- Submitted proposals for the contract from HDR, Power Engineers, and Henkels & McCoy.
- All submitted proposals for the contract from all other firms or teams that were awarded the contract, if any exist.
- All submitted proposals for the contract from firms or teams not awarded the contract.
- All scoring records (including all written commentary on how scoring decisions were made) from BPA's review of all proposals for the contract.
- All additional written information by BPA staff (or those not directly working for BPA who may have been involved in the selection process, if there are any) regarding firms or teams that submitted proposals for the contract.
- All other documents not referenced above that are connected to BPA's decisions for contract award selection."

### Clarification

Following email exchanges with the agency's FOIA office personnel, on November 7, 2023, you amended your original request as follows:

"Copies of the cover page of each proposal submitted for the Secondary Capacity Model (SCM) contract. This includes both the winning and losing proposals [and] a list of the firms/teams that submitted proposals, including the prime and subconsultants on each team."

**Response**

BPA searched for and gathered eight pages of records responsive to your FOIA request from the agency's Contracts and Strategic Sourcing office. Records collected belong to Burns & McDonnell, Henkels & McCoy, and Quanta. BPA is withholding all records under 5 U.S.C. § 552(b)(3) (Exemption 3). A more detailed explanation of the applied exemptions also follows.

**Explanation of Withholdings and Exemptions**

The FOIA generally requires the release of all agency records upon request. However, the FOIA permits or requires withholding certain limited information that falls under one or more of nine statutory exemptions (5 U.S.C. §§ 552(b)(1-9)). Further, section (b) of the FOIA, which contains the FOIA's nine statutory exemptions, also directs agencies to publicly release any reasonably segregable, non-exempt information that is contained in those records.

**Exemption 3**

Exemption 3 permits or requires withholding of material under the non-disclosure provisions of other federal statutes. A statute may qualify for use along with Exemption 3 if that statute "requires that the matters be withheld" or "establishes particular criteria for withholding" (5 U.S.C. § 552(b)(3)). In this case, 41 U.S.C. § 4702 requires withholding of specific contract information, including all records that you requested. Therefore, BPA is withholding that information under Exemption 3 and 41 U.S.C. § 4702. Specific details on the application of Exemption 3 to the records you seek follows.

**41 U.S.C. § 4702**

BPA is required by Exemption 3 and 41 U.S.C. § 4702 to withhold the unsuccessful bidder submittal records, but, under certain circumstances, not the awarded submittal records. To note, 41 U.S.C. § 4702 exists as a prohibition on the public release of proposal-submittal information that otherwise might be responsive to a FOIA request. That is, BPA is required by Exemption 3 and 41 U.S.C. § 4702 to withhold both (1) unsuccessful bidder submittal records and (2) the awarded submittal records if the awarded bidders' submittal information was not incorporated into the awarded contracts. The successful submitter's cover page was not incorporated into the awarded contract, so that record is subject to Exemption 3 and is being withheld. We note that FOIA does not permit a discretionary release of information otherwise protected by Exemption 3.

**Fees**

There are no fees associated with processing your FOIA request.

**Certification**

Pursuant to 10 C.F.R. § 1004.7(b)(2), I am the individual responsible for the records search and exemption determinations and the records release described above. Your FOIA request BPA-2024-00299-F is now closed with all responsive agency records provided.

**Appeal**

Note that the records release certified above is final. Pursuant to 10 C.F.R. § 1004.8, you may appeal the adequacy of the records search, and the completeness of this final records release, within 90 calendar days from the date of this communication. 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 by e-mail to [OHA.filings@hq.doe.gov](mailto:OHA.filings@hq.doe.gov), including the phrase "Freedom of Information Appeal" in the subject line. (The Office of Hearings and Appeals prefers to receive appeals by email.) The appeal must contain all 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.

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](mailto:ogis@nara.gov)  
Phone: 202-741-5770  
Toll-free: 1-877-684-6448  
Fax: 202-741-5769

Questions about this communication or the status of your FOIA request may be directed to FOIA Program Lead Jason E. Taylor at [jetaylor@bpa.gov](mailto:jetaylor@bpa.gov) or 503-230-3537.

Sincerely,

Candice Palen  
Freedom of Information/Privacy Act Officer