



Department of Energy

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

FREEDOM OF INFORMATION ACT/PRIVACY PROGRAM

June 4, 2024

In reply refer to: FOIA #BPA-2024-01498-F

SENT VIA EMAIL ONLY TO: katie.morrison@lewisbuilds.com;
brittany.woltering@lewisbuilds.com

Katie Morrison
Business Development Coordinator
Lease Crutcher Lewis
550 SW 12th Avenue
Portland, OR 97205

Dear Ms. Morrison,

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 March 21, 2024 and formally acknowledged on April 17, 2024.

Request

"I work at Lease Crutcher Lewis and in 2020 we participated in the RFP for the BPA Ross Complex. We are actively working at advancing our abilities and skills in design-build projects to better present in the market. As part of that effort, I am reviewing our past design-build RFP participation and am seeking information to help us get a better understanding of where and how we compared with our competitors. If you are able, could you please share the following with me:

1. The competing companies for the Ross Complex.
2. Who won the project.
3. The Competitors proposals and scorecards."

Response

BPA searched for and gathered 312 pages of records from the agency's Contracts and Strategic Sourcing office. Records collected belong to winning bidder Mortenson Construction, the Hoffman Construction Company, Skanska USA Building Inc., and Lease Crutcher Lewis. BPA is herein withholding:

- 290 pages of records under 5 U.S.C. § 552(b)(3) (Exemption 3)
- 22 pages of records under 5 U.S.C. § 552(b)(5) (Exemption 5)

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.

41 U.S.C. § 4702

Exemption 3 and 41 U.S.C. § 4702 requires BPA to withhold information submitted by unsuccessful bidders, even when that information is responsive to a FOIA request. Further, Exemption 3 and 41 U.S.C. § 4702 requires BPA to withhold information submitted by a successful bidder unless the proposal is incorporated into the awarded contract. The winning proposal was not incorporated into Mortenson Construction's contract, and is therefore withheld. The law does not permit a discretionary release of these materials.

Exemption 5

Exemption 5 protects "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" (5 U.S.C. § 552(b)(5)). In plain language, the exemption protects privileged records. The FOIA's Exemption 5 deliberative process privilege protects records showing 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. In this case, BPA relies on Exemption 5 to protect the internal evaluation records responsive to your request. These records, in their entirety, reflect the agency's pre-decisional and deliberative processes in awarding contracts. BPA has considered and declined a discretionary release of some pre-decisional and deliberative information in the responsive records set because disclosure of the records would harm the interests protected and encouraged by Exemption 5.

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-2024-01498-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, 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
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 or 503-230-3537.

Sincerely,

Candice Palen
Freedom of Information/Privacy Act Officer