

Legal Opinion: GMP-0084

Index: 7.340, 7.523
Subject: FOIA Appeal: Contract Proposal

June 15, 1992

Mr. Jack W. Williams
Western Nevada Realty
11339 South Virginia Street
Post Office Box 18345
Reno, Nevada 89511

Dear Mr. Williams:

This is in response to your Freedom of Information Act (FOIA) appeal dated August 20, 1990. You request review of the denial by Andrew D. Whitten, Jr., Contracting Officer, Reno Office, for a copy of the successful proposal pertaining to Solicitation #006-90-125. The proposal was withheld under Exemption 4 of the FOIA.

I have decided 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 have either of the following effects: "(1) to impair the Government's ability to obtain necessary information in the future; or (2) 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).

Release of the contractor's proposal would permit competitors to gain "valuable insight into the operational strengths and weaknesses of the supplier of the information." National Parks and Conservation Association v. Kleppe, 547 F.2d 673, 684 (D.C. Cir. 1976). Courts have recognized the competitive harm to a submitter by release of the above described information. See, e.g., Timken Co. v. United States Customs Service, 531 F. Supp. 194 (D.D.C. 1981) (protecting financial and commercial information on pricing and marketing); BDM Corp. v. SBA, 2 GDS 81,189 (D.D.C. 1981) (protecting technical and commercial data and information on performance, cost, and equipment).

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
Beverly Agee, 9G