

FOIA Appeal: Names and Proposed Bid Amounts

Legal Opinion: GMP-0064

Index: 7.340, 7.523

Subject: FOIA Appeal: Names and Proposed Bid Amounts

March 25, 1992

Mr. Dennis Cotner
OPMI/CMI Property Management
6701 North Broadway, Suite 325
Oklahoma City, Oklahoma 73116

Dear Mr. Cotner:

This is in response to your December 16, 1991, Freedom of Information Act (FOIA) appeal regarding the denial of information by Susan J. Ferrell, Freedom of Information Officer, Oklahoma City Office. On December 10, 1991, Ms. Ferrell denied your request for the names of the unsuccessful offerors and the offerors' bid amounts for occupied and vacant apartments pursuant to HUD contract number C656P91BA001. The information was denied under Exemption 4.

I have determined to affirm, in part, and reverse, in part, the initial denial.

The names of the unsuccessful offerors are not confidential commercial or financial information within the meaning of Exemption 4. I have determined that disclosure of this information would not cause substantial competitive harm to the offerors. Therefore, I am releasing this information. Pursuant to this determination, I am directing the Oklahoma City Office to make the names of the unsuccessful offerors available to you within fifteen (15) days of this decision.

However, I have determined to affirm the denial of the unsuccessful offerors' bid amounts. Disclosure of this information could reveal the pricing strategies or provide insight for estimating and undercutting the offerors' future bids. See *Raytheon Co. v. Department of the Navy*, Civil No. 89-2481, slip op. at 2-3 (D.D.C. Dec. 22, 1989). In *Raytheon*, the court held that unsuccessful offerors have a different expectation of confidentiality than successful offerors and disclosure of the submitter's bottom-line prices would cause it to suffer competitive harm by enabling competitors to deduce its pricing strategy. Therefore this information is exempt from disclosure under Exemption 4.

Exemption 4, 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." The courts have interpreted Exemption 4 as protecting confidential

commercial or financial information the disclosure of which is likely to: (1) impair the Government's ability to obtain necessary information in the future or (2) cause substantial harm to the competitive position of the entity from whom the

information was received. National Parks and Conservation Association v. Morton, 498 F.2d 765, 770 D.C. Cir. 1974).

I have also determined, pursuant to 24 C.F.R. 15.21, that the public interest in protecting confidential commercial and financial information militates against release of the above-described information.

Please be 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
William J. Daley, Regional Counsel
Clarence Wilson, Chief Counsel, Oklahoma City