

FOIA Appeal: Contractor's Bid Proposal

Legal Opinion: GMP-0076

Index: 7.340, 7.523

Subject: FOIA Appeal: Contractor's Bid Proposal

April 27, 1992

Mrs. R. H. Beech
Renmar
148 Cypress Drive
Pittsburgh, Pennsylvania 15241

Dear Mrs. Beech:

This responds to your letter of February 26, 1991 appealing the partial denial of your Freedom of Information Act (FOIA) request of January 12, 1991. The request of January 12, 1991, and subsequent telephone conversations with Robert K. Osterman, Deputy Manager, Orlando Office, was for the bid proposal of E. S. Clark Management Company (ESC). ESC was the successful offeror on the contract for Management Broker Services in Brevard, Okeechobee, St. Lucie, and Indian River Counties. By letter to you dated February 20, 1991, M. Jeanette Porter, Manager, furnished you with the bid proposal. The following portions of the proposal were deleted under Exemption 4:

Part I - Section 2, Paragraph K
Section 3, Paragraphs B, C, and D
Section 4

Part II - Pages II.2, 28, 29, and 30

I have decided to reverse, in part, and affirm, in part, the denial of these sections of the bid proposal. I am instructing our Orlando Office to furnish you with a copy of Section 2, Paragraph K and Section 3, Paragraph B.

The other sections at issue contain a detailed description of the structure and the customers of ESC. This information is confidential commercial information that could cause substantial harm to their competitive position in future projects. Therefore, this information is protected from disclosure under Exemption 4.

Exemption 4 of the 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." 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 Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974).

Accordingly, we have determined that this information is confidential commercial information which may be withheld under Exemption 4. See also Charles River Park "A", Inc. v. Department of Housing and Urban Development, 519 F.2d 935 (D.C. Cir. 1975). I have decided to affirm the initial denial of the remaining sections which were not furnished pursuant to Exemption 4 of the FOIA.

I have also determined, pursuant to 24 C.F.R. 15.21, that the public interest in protecting confidential commercial information militates against disclosure of the withheld sections of the bid proposal.

You have a right to a 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
Ray Buday, 4G
M. Jeanette Porter, 4.11S