

Legal Opinion: GMP-0107

Index: 7.350, 7.524

Subject: FOIA Appeal: Technical Evaluation Panel Records

August 5, 1992

Mr. Brian Van Holm, CPM  
Management Solutions  
8601 Dunwoody Place  
Suite 714  
Atlanta, Georgia 30350

Dear Mr. Van Holm:

This is in response to your Freedom of Information Act appeal dated June 8, 1992. You appeal the May 29, 1992 denial by Joseph Lynch, Manager, Buffalo Office, who withheld the five successful proposals for real estate asset management contracts under Exemption 4 and intra-office documents under Exemption 5.

Pursuant to Executive Order 12600, 3 C.F.R. 235, June 23, 1987 and Paragraph 3-3 of HUD Handbook 1327.1 REV-1, Freedom of Information Act, issued June, 1991, we have requested that our New York Regional Office notify the bidders of these proposals, affording them the opportunity to present their opinions on the confidential nature of their proposals. This action is necessary to determine whether there is redactable information in the proposals which can be released in response to your FOIA request. Upon receipt of their submissions, the Department will render a determination regarding your appeal for the five successful proposals. If appropriate, redactable information will be released to you. We will provide you a determination regarding this issue within the next thirty days.

Mr. Lynch's letter also denied the release of 15 copies of the Technical Evaluation Panel's (TEP's) scoring documents for Management Solutions and three copies of each of the TEP's scoring documents for the five successful proposals under Exemption 5, 5 U.S.C. Section 552(b)(5).

With regard to this information, I have determined that the denial of these documents was proper under Exemption 5. These documents are not final opinions, but represent internal agency advice and evaluations for the contracting officer in his or her decision-making process in awarding the contract. Accordingly, Exemption 5 was properly invoked withholding the predecisional opinions, recommendations and comments to protect the deliberative process of selecting the proposals. See *Audio Technical Services Ltd, v. Department of the Army*, 487 F. Supp. 779 (D.D.C. 1979); See also, *Orion Research Inc. v. Environmental Protection Agency*, 615 F.2d 551 (1st Cir. 1980).

I have also determined, pursuant to 24 C.F.R. Section 15.21, that the public interest to protect the agency's deliberative

process militates against disclosure of the above identified information.

You are advised that you have the right to judicial review of this determination under 5 U.S.C. Section 552(a)(4).

Very sincerely yours,

George Weidenfeller  
Deputy General Counsel (Operations)

cc: Yvette Magruder  
John Deller, 2G  
Joseph Lynch, 2.2S