



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE MATERIEL COMMAND
WRIGHT-PATTERSON AIR FORCE BASE, OHIO

PKOI 64-10
Par 14 & 15
Paul
Apr 99

22 Jun 98.

MEMORANDUM FOR WR-ALC/JAN (Bryant Durham)

FROM: HQ AFMC/JAQ

BY TELEFAX

SUBJECT: FOIA Withholding and SF Forms 1409/1410

1. Following our discussion earlier on this issue, OC-ALC faxed for our review samples of SF Forms 1409 and 1410. (These forms are titled, "Abstract of Offers," and list the Names of Offerors and Contract Line Item (CLIN) prices submitted to the Air Force in response to Solicitations for Supplies or Services.) With reference to the SF Forms 1409/1410, we are responding to a question raised regarding the disclosure of unsuccessful offerors' information contained on these forms--and whether these abstracts are to be withheld under the new statute, 10 U.S.C. §2305(g), which provides that a proposal in the possession or control of DOD that is not incorporated by reference in a contract may not be made available to any person under 5 U.S.C. §552. With respect to SF Forms 1409/1410, offerors' names, bottom line prices and unit prices may be released, subject to submitter notification to unsuccessful offerors.
2. On 2 Feb 98, we issued coordinated guidance that unsuccessful offerors' proposals, as well as abstracts generated by the government as a result of competitive RFPs containing information from those unsuccessful proposals, should be withheld from release under 10 U.S.C. §2305(g). However, a distinction is to be made between the offerors' names, bottom line price and unit price information and other information generated by the government from unsuccessful offerors' proposals as a result of competitive RFPs. That distinction is based on DOD regulation 5400.7-R, which applies to Military Departments and provides:
 - a. The term "proposal" in 10 U.S.C. 2305(g) does not include an offeror's name;
 - b. The term "proposal" in 10 U.S.C. 2305(g) does not include an offeror's total price or unit prices when set forth in a record other than the proposal itself;
 - c. Submitter notice, and analysis as appropriate, are required for exemption (b)(4) matters that are not specifically incorporated by reference in the contract.
3. I raised concerns to DOD and DOJ that submitter notice for SF Form 1409/1410s (which may contain upwards to 20 offeror's names and unit prices) is no less burdensome now than it was before 10 U.S.C. 2305(g) was enacted; I have been advised that there is no way around the submitter notice requirement, but that we may want to word the notice in such a way as to indicate that offerors names, total prices and unit prices are not considered "confidential" by the Government--as indicated by the above DOD Regulation.
4. If this response generates any additional questions, please feel free to call me at DSN 787-7418.

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