



May 18, 2000

**FOIA REQUEST**

FOIA/PA  
U.S. Nuclear Regulatory Commission  
Washington DC 20555-0001

Casefile: 2000-008A  
Date Recd: 5-24-00  
Action Off: Pool  
Related Case: (2000-0210)

RE: Response To Freedom Of Information Act (FOIA)/Privacy Act (PA) Request  
FOIA/PA 2000-0120-  
-0210

My original request pertaining to RS-HR-00-281 was:

- copy of the award contract
- copy of the awarded contractor proposal
- number of bidders and the bidders' name, address, telephone number

According to the response I am denied the copy of the contractor proposal due to statute 41 U.S.C., Section 253(b), subsection (m)(1), prohibits the disclosure of contractor proposals in the possession and control of an executive agency to any person under section 552 of Title 5, U.S.C. (the FOIA), except when incorporated into the contract between the agency and the submitter of the proposal.

Please bear with me. I do not have a legal background and I am trying to understand the federal FOIA process. It seems to me that the whole purpose of the FOIA is to provide a way for individuals to understand how government arrives at the decisions it makes.

As I understand it, FOIA/PA was established in 1974 with the indentation of giving citizens the right to request or see records held by federal agencies. But it appears that there are numerous exemptions. I have not been able to find the list of all these exemptions. When I speak to different attorneys in the representative agency FOIA offices, I receive different information. There does not seem to be any consistency in FOIA practices.

With above brief explanation, I am again requesting a copy of the awarded contractor technical and cost proposals.

- The proposal/contract, RS-HR-00-281, requests services in the form of training for supervisory and management, organizational development, human behavior and managerial programs for technical and professional employees.

There are no trade secrets, commercial or financial information, or other confidential information in the requirements to comply with the proposal/contract that would adversely impede any organization from successfully doing business if their proposal was made public.

Any information, such as social security number(s), would be blackened out. Unless an organization has something to hide, why under this proposal/contract [RS-HR-00-281] requirements, would there be objects to full disclosure.

In addition, nothing contained in the proposal/contract requirements would be a threat to or a security risk to the United States of America or to the Nuclear Regulatory Commission.

- The states of California, Arizona, and Nevada had no problem releasing proposals under their disclosure of records process. These states have not suffered any negative repercussions nor have the contractors who participate in the bidding and contracting process. In fact, it is the states who benefit because there is honest competition and no one can say there is favoritism because all documents are made public.

This open disclosure of records process also benefits the contractors who can improve their processes and in return share their improvements with the respective state agency. Again, the state government agencies benefit.

- The reluctance of the federal government to release proposals that are not a risk or threat to security only adds credence to the rumor that contractors are chosen ahead of time, that contracts are given to select contractors in return for favors, and that "price" and "best value" are only political verbiage.

- Any contractor or vendor who does business with the government, where national security or patients are not involved, automatically is aware that everything they do is up to scrutiny because they have chosen to work with the government. If a business or organization objects, then they do not need to participate. No one forces a business or an organization to work for the government. All decisions and the reasons for the decisions made by government agencies should be made available to the public.

- It appears that the exemption to withhold proposals is only an excuse to withhold information about how decisions are made. The policy of not disclosing technical and cost proposals clouds and covers up what information/data was actually used to arrive at a decision. It allows federal agency to play favoritism because there is no way to compare what was proposed to what actually gets done or to compare what others proposed to what was chosen.

I do not think the "spirit" of the FOIA/PA was intended to inhibit healthy competition in government and prevent the government from obtaining the "best value." To continue to withhold public disclosure of how contractors propose to do business with the government does not provide the "best value."

If you need additional information, please call me at (858)625-9049

Thank you for your consideration.

Sincerely,

  
Luisa Deal, ED.S.



# RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST

2000-0210

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RESPONSE TYPE  FINAL  PARTIAL

REQUESTER

Luisa Deal

DATE

MAY 01 2000

## PART I. -- INFORMATION RELEASED

No additional agency records subject to the request have been located.

Requested records are available through another public distribution program. See Comments section.

APPENDICES **A** Agency records subject to the request that are identified in the listed appendices are already available for public inspection and copying at the NRC Public Document Room.

APPENDICES **B** Agency records subject to the request that are identified in the listed appendices are being made available for public inspection and copying at the NRC Public Document Room.

Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 2120 L Street, NW, Washington, DC.

APPENDICES **B** Agency records subject to the request are enclosed.

Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.

We are continuing to process your request.

See Comments.

## PART I.A -- FEES

AMOUNT \* You will be billed by NRC for the amount listed.

None. Minimum fee threshold not met.

\$ You will receive a refund for the amount listed.

Fees waived.

\* See comments for details

## PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

No agency records subject to the request have been located.

Certain information in the requested records is being withheld from disclosure pursuant to the exemptions described in and for the reasons stated in Part II.

This determination may be appealed within 30 days by writing to the FOIA/PA Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Clearly state on the envelope and in the letter that it is a "FOIA/PA Appeal."

## PART I.C COMMENTS (Use attached Comments continuation page if required)

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Carol Ann Reed *Carol Ann Reed*

RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST

2000-0210

MAY 01 2000

PART II.A -- APPLICABLE EXEMPTIONS

APPENDICES

C

Records subject to the request that are described in the enclosed Appendices are being withheld in their entirety or in part under the Exemption No.(s) of the PA and/or the FOIA as indicated below (5 U.S.C. 552a and/or 5 U.S.C. 552(b)).

Exemption 1: The withheld information is properly classified pursuant to Executive Order 12958.

Exemption 2: The withheld information relates solely to the internal personnel rules and procedures of NRC.

Exemption 3: The withheld information is specifically exempted from public disclosure by statute indicated.

Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).

Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).

41 U.S.C., Section 253(b), subsection (m)(1), prohibits the disclosure of contractor proposals in the possession and control of an executive agency to any person under section 552 of Title 5, U.S.C. (the FOIA), except when incorporated into the contract between the agency and the submitter of the proposal.

Exemption 4: The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated.

The information is considered to be confidential business (proprietary) information.

The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.790(d)(1).

The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.790(d)(2).

Exemption 5: The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. Applicable privileges:

Deliberative process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.

Attorney work-product privilege. (Documents prepared by an attorney in contemplation of litigation)

Attorney-client privilege. (Confidential communications between an attorney and his/her client)

Exemption 6: The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.

Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.

(A) Disclosure could reasonably be expected to interfere with an enforcement proceeding (e.g., it would reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrongdoing or a violation of NRC requirements from investigators).

(C) Disclosure would constitute an unwarranted invasion of personal privacy.

(D) The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.

(E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.

(F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.

OTHER (Specify)

PART II.B -- DENYING OFFICIALS

Pursuant to 10 CFR 9.25(g), 9.25(h), and/or 9.65(b) of the U.S. Nuclear Regulatory Commission regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The person responsible for the denial are those officials identified below as denying officials and the FOIA/PA Officer for any denials that may be appealed to the Executive Director for Operations (EDO).

Table with 4 columns: DENYING OFFICIAL, TITLE/OFFICE, RECORDS DENIED, APPELLATE OFFICIAL (EDO, SECY, IG). Row 1: Michael L. Springer, Director, Office of Administration, Appendix C, SECY (checked).

Appeal must be made in writing within 30 days of receipt of this response. Appeals should be mailed to the FOIA/Privacy Act Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, for action by the appropriate appellate official(s). You should clearly state on the envelope and letter that it is a "FOIA/PA Appeal."

**APPENDIX C  
RECORDS BEING WITHHELD IN THEIR ENTIRETY**

<b><u>NO.</u></b>	<b><u>DATE</u></b>	<b><u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u></b>
1.	12/8/99	Solicitation Package, RS-HR-00-281, Professional Managerial, and Organizational Development Program submitted by Resolution Dynamics, Inc. Technical and Cost Proposal (279 pages) <b>EX. 3</b>



April 18, 2000

**FOI/PA REQUEST**

Case No:	<u>2000-0210</u>
Date Recd:	<u>4-19-00</u>
Action Off:	<u>Paul</u>
Related Case:	_____

FOIA PA Officer  
US NRC  
Washington DC 20555

RE: FOIA for Sol. RS-HR-00-281

Please send me the following information pertaining to RS-HR-00-281:

- copy of the award contract with name of contractor and award amount
- copy of awarded contractor proposal
- number of bidders and the bidders' name, address, phone number

Address to:  
Luisa Deal  
Training Support Network  
P.O. Box 207  
La Jolla CA 92038-0207

I can be reached at (858) 625-9049.

Thank you for your consideration.

Sincerely,

Luisa Deal, PhD  
President