

## GUARD YOUR PROPRIETARY INFORMATION CAREFULLY

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A recent GAO decision on a protest that alleged that the agency improperly released the protester's proprietary information is a case study on the contractor's failing to guard its proprietary information carefully. *Centerra Integrated Facilities Servs., LLC*, B-417963, Dec. 17, 2019. The protester had failed to object to the release of its proprietary information in a prior Freedom of Information Act ("FOIA") request.

Bonneville Power Administration sought integrated facilities management services at its facilities located throughout the Pacific Northwest. As part of the Request for Offers ("RFO"), the agency included a chart that listed all of the facilities management personnel providing services at all locations throughout the agency enterprise. The list included 32 individuals that were Centerra employees, with their names, basis of pay, a brief description of their duties and their work location. Centerra protested that this information was proprietary to the firm and that the release of the information would cause it competitive harm in its effort to win the solicited requirement.

The GAO noted that it has recognized the right of a company to protect its proprietary data from improper release in a solicitation, however, the record must show:

1. That the information is proprietary in nature; that it was submitted to the government in confidence; that its development involved significant time and expense; and that it included material or concepts that could not be independently obtained from publicly available literature or common knowledge; and
2. That the protester will be competitively prejudiced by the release of the information.

The GAO further noted that release of information concerning the number of personnel performing an incumbent contract is not improper, nor is the release of other information improper if the information was compiled from government-prepared contract information.

GAO denied the protest because of Centerra's earlier inconsistent actions, as follows:

- Nine of the 32 individuals included in the RFO were identified as key employees under the predecessor contract performed by Centerra (and their names and positions were also given)
- On a previous FOIA request in July 2016, Centerra initially objected to the agency's proposed release of the names and positions of these individuals, claiming the information was proprietary. However, in a subsequent letter in May 2017, Centerra specifically *withdrew* its objection to the release of this information.
- The remaining 23 Centerra employees are low-level, unskilled employees, and Centerra could not explain how release of information on those 23 employees could possibly confer a competitive advantage on any competitor,

GAO noted that Centerra's predecessor contract was confined to performing facilities management services, primarily at the headquarters building in Oregon. The current solicitation was for a much broader effort that included comprehensive management services for 2.7 million square feet of facilities across Oregon, Washington, Idaho, Montana and California. In addition to the vastly enlarged scale of the new contract, the agency was soliciting enhanced as well as additional services. GAO concluded that there could not be any realistic competitive advantage gained by release of the alleged proprietary information, and denied the protest.

Takeaway. First, if someone submits a FOIA for what you consider to be information that is proprietary to your company, you should object, and continue to object to its release. Do not withdraw your objection. Rather, consider a reverse-FOIA action in District Court to protect your proprietary information.

Second, if the proprietary information is from a materially different contract, the GAO is likely to find that there is no competitive advantage from its release, and deny the protest on those grounds.

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