

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CITIZENS FOR RESPONSIBILITY AND ETHICS
IN WASHINGTON,

Plaintiff,

v.

UNITED STATES GENERAL SERVICES
ADMINISTRATION,

Defendant.

Civil Action No. 18-377 (CRC)

DECLARATION OF JOEL T. BERELSON

I, Joel Berelson, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

INTRODUCTION

1. I am an employee of the Public Buildings Service (PBS) of the U.S. General Services Administration (“GSA”) headquartered at 1800 F Street, NW, Washington, D.C. I serve as a Contracting Officer within PBS, which acquires real property interests on behalf of the federal government through new construction and leasing, and acts as a caretaker for federal properties across the country. I have held this position for 29 years.

2. I was a signatory for the Findings and Determination (“F&D”) document which was provided in response to Plaintiff Citizens for Responsibility and Ethics in Washington’s (“CREW”) FOIA request, which was assigned tracking number GSA-2017-001369 and is at issue in the instant case.

3. I am aware that the Court has raised the following “question regarding the suitability of the deliberative-process privilege: did the [F&D] containing the redactions qualify as predicisional?” In posing that question, the Court further noted that the document’s title and date

(namely, the date that the procurement was cancelled), “strongly suggested it was not.” *See* Dec. 17, 2018 Memorandum Opinion and Order (Dkt. No. 23) at 16.

4. I aver that the redacted information in the F&D is indeed predecisional because the FBI Headquarters Consolidation project remains a live procurement action. The redacted information is not stale – it represents the most current valuation of a very important asset within GSA’s inventory and continues to be relied upon as GSA considers and engages in its forthcoming plans for this asset. As the Court in *Casad vs. HHS*, 301 F. 3d 1247, 1252 (10 Circ. 2002) states, “Thus so long as a document is generated as part of a such a continuing process of agency decisionmaking, Exemption 5 can be applicable.” I aver that the redacted portions of the F&D have been generated as part of GSA’s continued analysis and processes regarding the future FBI Headquarters Project. While the F&D represented the then- cancellation of the original procurement, premature release of the redacted information therein may cause substantial harm to the agency’s bargaining position with any potentially successful offerors to the agency’s future plans for the FBI Headquarters Project.

5. As GSA intends to reinitiate its procurement action to fulfill this requirement, the agency is constrained such that releasing the redacted information would be commercially disadvantageous to the government prior to the completion of this procurement. Moreover, while engaging in planning and analysis regarding a future procurement, such as is the case here with the FBI Headquarters Consolidation Project, it is a consistent GSA practice not to release appraisal information based on the guidance promulgated via Title 41 of the Code of Federal Regulations (CFR) at subpart 102-75.320 (which flows from more general statutory authority found in 40 U.S. Code (§§ 121, 521-523, 541-559) providing that appraisals, appraisal reports, appraisal analyses, and other pre-decisional appraisal documents are confidential and can only be

used by authorized Government personnel who can substantiate the need to know this information. Further, under the Procurement Integrity Act - 41 U.S.C. 2101, *et seq.*, as promulgated by 48 CFR 3.104-4 (entitled "3.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information,") - although I am authorized to disclose the offerors' bid/proposal information relating to a Federal agency procurement after it has been canceled by the Federal agency, I am not permitted to release such information if the Federal agency plans to resume the procurement, which I aver is GSA's intent with respect to the FBI headquarters procurement in this instance. GSA followed the aforementioned guidance in redacting the applicable portions of the F&D as GSA continues its procurement planning for the FBI Headquarters project accordingly.

CONCLUSION

6. As detailed above, notwithstanding its title and date, the F&D is not a final agency decision. Rather, it is predecisional and, consequently, subject to the deliberative process privilege. The redacted information in the F&D currently remains necessary and vital to the agency's deliberative process with respect to its procurement planning for the FBI Headquarters Consolidation Project.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 14th day of February, 2019, in Washington, D.C.


Joel T. Berelson
Contracting Officer
U.S. General Services Administration