Robert Swisher - NOAA Federal

From:	Robert Swisher - NOAA Federal
Sent:	Monday, February 26, 2018 3:34 PM
To:	Mark Graff - NOAA Affiliate; Lola Stith - NOAA Affiliate
Subject:	Fwd: Freedom of Information Act Appeal - DOC-NOAA-2018-000571
Attachments:	FAL DOC-NOAA-2018-000571.pdf; FOIA Request NOAA Coastal Geospatial.docx; SF330.pdf

FYA…

---------- Forwarded message ----------
From: **John Palatiello** <john@jmpa.us>
Date: Mon, Feb 26, 2018 at 2:40 PM
Subject: Freedom of Information Act Appeal - DOC-NOAA-2018-000571
To: FOIAAppeals@doc.gov
Cc: shem.s.yusuf@noaa.gov, robert.swisher@noaa.gov

Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875
14th and Constitution Avenue, N.W.
Washington, D.C. 20230

Re: Freedom of Information Act Appeal - DOC-NOAA-2018-000571

Dear Sir or Madam:

This is to appeal the determination of my Freedom of Information Act request. My original request, and the NOAA determination, are attached.

There is an error of fact in this determination. In its determination letter, the following is stated: "Please note that NOAA does not keep track of sub-contractors, only Prime contractors."

1. In Solicitation NCNP0000-15-00223, NOAA requested that competing firms submit a Standard Form 330. Item C of SF 330 (copy attached) requires the prime contractor to provide information on subcontractors. Therefore, NOAA has information on subcontractors. I am requesting the SF 330 of each of the prime contractors, which included their subcontractor data.

2. Solicitation NCNP0000-15-00223 was conducted pursuant to part 36.6 of the Federal Acquisition Regulation (FAR). Section 36.606 of the FAR includes the following: "(e) Because selection of firms is based upon qualifications, the extent of any subcontracting is an important negotiation topic. The clause prescribed at 44.204(b), Subcontractors and Outside Associates and Consultants (Architect-Engineer Services) (see 52.244-4), limits a firm's subcontracting to firms agreed upon during negotiations.

3. The FAR also provides: "3. (b) The contracting officer may insert the clause at 52.244-4, Subcontracts and Outside Associates and Consultants (Architect-Engineer Services), in architect-engineer contracts.

4. The FAR also provides: "52.244-4 -- Subcontractors and Outside Associates and Consultants (Architect-Engineer Services).

As prescribed in 44.204(b), insert the following clause:

Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)(Aug 1998)

Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor shall obtain the Contracting Officer's written consent before making any substitution for these subcontractors, associates, or consultants."

Therefore, NOAA has information on subcontractors in each prime contractor's original SF 330, as well as and substitutions approved by the Contracting Officer. We hereby appeal NOAA's determinate and request that information.

Sincerely,

--
John M. Palatiello, President
John M. Palatiello & Associates, Inc.
1856 Old Reston Avenue, Suite 205
Reston, VA 20190
(703) 787-6665
www.jmpa.us

--
Rob Swisher
Director, Governance and Portfolio Division
NOAA OCIO
W-301-628-5755
(b)(6) [redacted]