



Department of Energy

Office of Science
Chicago Office
9800 South Cass Avenue
Argonne, Illinois 60439

APR 15 2010

Ms. Joyce Anderson
Skirmont
450 Hammond Avenue
Elgin, IL 60120

Dear Ms. Anderson:

SUBJECT: U.S. DEPARTMENT OF ENERGY (DOE) FREEDOM OF INFORMATION ACT (FOIA) REQUEST NO. #CH-2010-01185-F

I am the authorizing official responsible for making the determination required by Section 1004.5(b) of DOE regulations found at 10 CFR Part 1004, implementing the FOIA, 5 U.S.C. 552. This letter is in final response to your subject FOIA request.

In your FOIA request you were seeking "Backflow prevention certification records. How many devices and the dollar amounts of the bids on the work from 2009." In your e-mail of April 2, 2010, you clarified your request to the following items: 1) Any one record that reflects the number of backflow preventer devices located at Fermilab; 2) Any one record that reflects backflow prevention certification for each backflow preventer device at Fermilab; and 3) Any one record that reflects the dollar amounts of all bids on the backflow prevention work from 2009.

In response to your request, be advised that we conducted a search of our office and the Fermi Site Office and located no responsive records. We also requested that Fermi Research Alliance, LLC (FRA), the DOE contractor that operates Fermi National Accelerator Laboratory (FNAL), conduct a search for responsive records. With respect to #1 and #2 of your clarified request FRA provided us with all agency, i.e., government-owned records in their possession that are responsive to your request. With respect to #3 of your request, such records would be contractor-owned, not agency-owned records, and therefore not subject to FOIA.

Be advised that only agency records maintained by the federal government are subject to FOIA. "Agency records" have been defined as documents which are either generated or acquired by an agency, and are under agency control at the time of FOIA request submission. See *Department of Justice v. Tax Analysts*, 492 U.S. 136, 144-45 (1989). Under Contract Number DE-AC02-07CH11359 between DOE and FRA for the management and operation of FNAL, specifically Clause I.91(b)(3), records related to any procurement action by FRA for FNAL (e.g., the bid amounts for backflow prevention work you are requesting), are specifically set out as contractor-owned records. Any such records that are in FNAL's possession and not in the possession and control of DOE at the time of a FOIA request submission are not Government



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property, i.e., are not agency records subject to the FOIA. Only the records that are the property of the Government are subject to public availability. See *H&J Tool & Die Co.*, 27 DOE ¶ 80,255 (2000); 10 C.F.R. 1004.3(e)(1). Accordingly, the enclosed records are the only agency records responsive to your request, and this response represents our full release of responsive records.

You are categorized as a "Commercial Use" requester, and as such related costs for search, review, and duplication of records are applicable under FOIA. However, we are not charging a duplication fee because the records are being provided to you electronically. Per your agreement to pay the estimate of \$217.21 for search (FNAL employee search - 4 hours at \$50/hr.) and review (attorney FOIA releasability review \$51.63/hr. x 1/3 hour = \$17.21), please forward your check made payable to the U.S. Department of Energy in the amount of \$217.21 to:

Miriam Legan
Freedom of Information Act Officer
U.S. Department of Energy
Office of Science – Chicago Office
9800 S. Cass Ave., Bldg. 201
Argonne, IL 60439

If you have questions regarding this response, please contact me at (630) 252-2041 or via e-mail at miriam.legan@ch.doe.gov, or Attorney Megan Mikhail at (630) 252-2036 or via e-mail at megan.mikhail@ch.doe.gov.

Sincerely,



Miriam R. Legan
Freedom of Information Act Officer

Enclosures:
As Stated