



Department of Energy

Brookhaven Site Office

P.O. Box 5000

Upton, New York 11973

MAY 13 2010

Mr. Christopher F. Burger
Stevens & Brand LLP
US Bank Tower
900 Massachusetts Street, Suite 500
P.O. Box 189
Lawrence, KS 66044-0189

Dear Mr. Burger:

SUBJECT: U.S. DEPARTMENT OF ENERGY (DOE) FREEDOM OF INFORMATION ACT
(FOIA) REQUEST NO. CH-2010-01406-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. We are in receipt of your subject FOIA request, which has been controlled by the subject FOIA request number. In your request you are seeking copies of "all the quotes, requests for bids, bids, purchase orders and other related documents" regarding "Brookhaven National Laboratory Purchase Order No: BNL-0000079570, Purchase Order Date: 10/23/2003, business transaction with Atipa Technologies, 4921 Legends Drive, Lawrence, Kansas 66049 and/or its parent company, Microtech, Inc." This letter is the final response to your subject FOIA request.

In response to your request, be advised that we conducted a search of our office and have located no responsive records. We also requested that Brookhaven Science Associates LLC (BSA), the DOE contractor that operates Brookhaven National Laboratory (BNL), conduct a search for responsive records. BSA conducted a search and responded stating that any responsive records would be contractor-owned, not agency-owned records.

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 Clause I.111 of Contract Number DE-AC02-98CH10886 between DOE and BSA for the management and operation of BNL, records related to any procurement action by BSA for BNL are contractor-owned records (see full copy of DOE/BSA contract at <http://www.bnl.gov/prime/mods/pdf/mod-m253-entire-contract-20100105.pdf>). Therefore, any records that are in BNL's possession that are not in the possession and control of DOE are specifically contractor-owned records not subject to the FOIA. See *H & J Tool & Die Co.*, 27 DOE ¶ 80,255 (2000). Accordingly, DOE has no records responsive to your request.

Mr. Burger

- 2 -

MAY 13 2010

You are advised of your right to appeal the adequacy of our search for your requested information within 30 days of receipt of this letter by writing to:

Director, Office of Hearings and Appeals
United States Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585.

Both the request and envelope should be clearly marked "Freedom of Information Appeal." Judicial review will be available thereafter in the district in which your concern is located or has its principal place of business, where the records are located, or in the District of Columbia.

You have been categorized as a "Commercial Use" requester, and as such, you are subject to fee assessment for search time and duplication costs. However, because fees associated with this request are not substantial enough to meet the \$15.00 minimum threshold under FOIA, we are not assessing fees for this request.

If you have any questions regarding this response, please contact DOE FOIA Officer Miriam Legan, at (630) 252-2041 or via e-mail at miriam.legan@ch.doe.gov.

Sincerely,



Michael D. Holland
Site Manager

cc: M. Legan, SC-CH