



Department of Energy

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

JAN 20 2010

Mr. John Polich, P.E.
Gabriel Environmental Services
1421 N. Elston Avenue
Chicago, IL 60622

Dear Mr. Polich:

**SUBJECT: U.S. DEPARTMENT OF ENERGY (DOE) FREEDOM OF INFORMATION ACT
(FOIA) REQUEST NO. CH-2010-00811-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 received by Fermi National Accelerator Laboratory (FNAL) this date and subsequently transferred to this office for processing.

In your original FOIA request you were seeking "a copy of the abstract of all bids for [#RFP-ESH-205465-TRP], and a copy of the winning bidder's bid."

In response to your request, be advised that we have conducted a search of our office and DOE's Fermi Site Office at the FNAL site and have located no responsive records. We also requested that Fermi Research Alliance, LLC (FRA), the DOE contractor that operates FNAL, conduct a search for responsive records. FRA conducted a search and responded stating that the records they located are 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.91 of Contract Number DE-AC02-07CH11359 between DOE and FRA for the management and operation of FNAL, records related to any procurement action by FRA for FNAL are contractor-owned records. Therefore, any records that are in FNAL's possession and 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.



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With respect to your subject FOIA request, 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 the 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 me at (630) 252-2041 or via e-mail at miriam.legan@ch.doe.gov.

Sincerely,

A handwritten signature in black ink that reads "Miriam R. Legan". The signature is written in a cursive style with a large, stylized initial "M".

Miriam R. Legan
FOIA Officer