



Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

April 11, 2013

CERTIFIED MAIL

Mr. Ryan Henry
Law Offices of Ryan Henry, P.L.L.C.
1380 Pantheon Way, Suite 215
San Antonio, Texas 78232

Dear Mr. Henry:

FREEDOM OF INFORMATION ACT REQUEST (FOI 2013-00782)

This letter is in response to your electronic Freedom of Information Act (FOIA) request that you sent to the Department of Energy (DOE), Richland Operations Office (RL) requesting documents relating to the jobs performed by Dritherm International, Inc., from January 1, 1995, to present, including all correspondence, contracts, specifications, details of the job, and any failures that occurred.

In response to your request, we have conducted a search of DOE's Office of River Protection and RL records and did not locate responsive documents. We also requested that all Hanford Site DOE contractors conduct a search for responsive documents. Bechtel National Inc. (BNI) responded by stating that pursuant to Clause I.118 "Access To And Ownership of Records" of its prime contract with DOE, DE-AC27-01RV14136, records related to any procurement action by the contractor are contractor-owned, not agency-owned records. The other prime contractors did not locate responsive documents.

A copy of the Ownership of Records Clause is available at:

<http://www.hanford.gov/files.cfm/WTP%20Contract%20Section%20I%20-%20Conformed%20Thru%20262.pdf>

"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). Records that are in BNI's possession and not in the possession and control of DOE, and which have been maintained by the contractor as part of its subcontractor procurement system, are specifically contractor-owned records not subject to the FOIA. *See H & J Tool & Die Co.*, 27 DOE ¶ 80,255 (2000); DEAR 970.5204-3. Accordingly, we agree with BNI's reliance upon Clause I.118 of the BNI contract that the responsive requested procurement-related records are contractor-owned records not subject to the FOIA. Accordingly, DOE does not have records responsive to your request.

Mr. Ryan Henry

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The undersigned individual is responsible for this determination. You have the right to appeal to the Office of Hearings and Appeals, as provided in 10 CFR 1004.8, for any information denied to you in this letter. Any such appeal shall be made in writing to the following address: Director, Office of Hearings and Appeals (HG-1), U.S. Department of Energy, L'Enfant Plaza Building, 1000 Independence Avenue SW, Washington, D.C. 20585-1615, and shall be filed within 30 days after receipt of this letter. Should you choose to appeal, please provide this office with a copy of your letter.

If you have any questions regarding your request, please contact me at our address above or on (509) 376-6288.

Sincerely,

-Original Signed By-

Dorothy Riehle
Freedom of Information Act Officer
Office of Communications
and External Affairs

OCE:DCR