



Department of Energy
National Nuclear Security Administration
Office of the General Counsel
P.O. Box 5400
Albuquerque, NM 87185-5400



September 20, 2021

SENT VIA EMAIL

Tomclements329@cs.com

Mr. Tom Clements
Savannah River Site Watch
1112 Florence Street
Columbia, South Carolina 29201

Dear Mr. Clements:

This letter is the final response to your November 19, 2020, Freedom of Information Act (FOIA) request. You requested the following information:

- “1. Any current contracts between the National Nuclear Security Administration and WesDyne International LLC and/or Westinghouse Government Services LLC or any other private entity concerning manufacture of Tritium-Producing Burnable Absorber Rods for NNSA.
2. Any reports in 2018, 2019 or 2020 produced for NNSA by WesDyne International and/or Westinghouse Government Services or other contractor about the status of TPBAR production at the facility in Columbia, South Carolina.”

On May 11, 2021, you narrowed the scope of your request to reflect the following:

- “1. Introduction section to the contract clearly stating the parties involved in the contract and the overall goal of the contract. In part, I am seeking the contract language that clearly names all involved parties, including such entities as "contractor," "fuel vendor," "Designer of Record," and the US Government entity (DOE/NNSA) that is party to the contract;
2. The entire Section C;
3. Section or language which mentions annual or periodic reporting requirements about TPBAR fabrication and supply by WesDyne/Westinghouse to the NNSA and/or TVA;
4. Pages or pages indicating who signed the contract and for which party and dates of signing.”

Your request was received in this office on December 7, 2020. We contacted the NNSA's Office of Acquisition and Project Management (NA-APM) about your request. NA-APM asked their Systems and Acquisition Tools Team to perform a search for responsive records. The team performed electronic searches of their Integrated Data Warehouse/I-Portal, and the federal contract writing system, Strategic Integrated Procurement Enterprise System (STRIPES) and were unable to locate any responsive documents.

We also contacted the Office of Tritium and Domestic Uranium Enrichment (NA-192) about your request. NA-192 asked the Contracts Coordinator to conduct a search for responsive records. The Contracts Coordinator was able to locate three (3) responsive documents. An explanation regarding the releasability of each document and to which part of the request the document is applicable is provided below. Justifications for document withholdings are also below.

Responsive Documents

The following documents are responsive to Items 1, 2 and 4.

- Document 1: Section C from DE-AC02-00DP00229
- Document 2: Signature Page from DE-AC02-00DP00229

Responsive Document

The following document is responsive to Item 3.

- Document 3: Reporting Requirement Checklist

Document 1 is being provided in its entirety. **Document 2** is being provided with deletions pursuant to 5 USC § 552(b)(4) and (b)(6) (Exemptions 4 and 6 of the FOIA.) **Document 3** is being provided with deletions pursuant to 5 USC § 552(b)(6) (Exemption 6 of the FOIA).

Exemption 4

Exemption 4 of the FOIA protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential. This exemption is intended to protect the interests of both the government and submitters of information. The very existence of Exemption 4 encourages submitters to voluntarily furnish useful commercial or financial information to the government and provides the government with an assurance that required submissions will be reliable. The exemption also affords protection to those submitters who are required to furnish commercial or financial information to the government for safeguarding them from the competitive disadvantages that could result from disclosure. The exemption covers two distinct categories of information in federal records: (1) trade secrets; and (2) information that is (a) commercial or financial, and (b) obtained from a person, and (c) privileged or confidential.

The information being withheld pursuant to Exemption 4 is confidential financial information related to the overall price of the contract. Release of the aforementioned information could provide current and future competitors with insight into the company's costing strategy. The company does not release this information to the public and customarily keeps the information confidential. Furthermore, release of this information could cause substantial harm to the competitive and financial position of the company by providing a competitive advantage to rival companies in the work arena who may compete for this contract in the future. Moreover, the company customarily and actually treats the information as private, and therefore it is considered confidential information for purposes of Exemption 4.

Exemption 6

Exemption 6 permits the withholding of “personnel and medical files and similar files” when the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.” The purpose of Exemption 6 is to protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information. To determine whether disclosure would constitute a clearly unwarranted invasion of personal privacy, the public interest in disclosure, if any, must be balanced against the privacy interests that would be invaded by disclosure of the information. In this case the names and signature of contractor employees have been withheld. Release of this information pertaining to those contractor employees will cause inevitable harassment and unwarranted invasion of personal privacy for those individuals and could cause unwarranted scrutiny by person or entities harboring political or philosophical or other objections to the mission related to Tritium and Domestic Uranium enrichment. In addition, release of this information would not shed light on the operations of the federal government. Since its release will not reveal anything of significance to the public, the interest in protecting against the invasion of privacy that would result to the individuals in question, far outweighs the public interest in such disclosure.

It is widely held that federal employees have no expectation of privacy regarding their names, titles, and duty stations. See 5 CFR § 293.311; Core v. United States Postal Serv., 730 F.2d 946, 948 (4th Cir. 1984); National W. Life Ins. Co. v. United States, 512 Supp. 454, 461 (N.D. Tex. 1980). Therefore, the disclosure of such information about federal employees would involve little or no invasion of privacy. Contractor employees, however, are not federal employees. Rather, they are private individuals. The Supreme Court has long found privacy interest in the names of private individuals significant enough to warrant protection from disclosure under Exemption 6.

Pursuant to 10 CFR § 1004.7(b)(2), I am the individual responsible for the withholding of information pursuant to Exemptions 4 and 6 of the FOIA.

You may appeal our withholding of information pursuant to 10 CFR § 1004.8(a). Such an appeal must be made in writing within 90 calendar days after receipt of this letter, addressed to the Director, Office of Hearings and Appeals, HG-1, U.S. Department of Energy, 1000 Independence Avenue SW, L’Enfant building, Washington, DC 20585. Your appeal must contain a concise statement of the grounds for the appeal and a description of the relief sought. Please submit a copy of this letter with the appeal. Please clearly mark both the envelope and the letter “Freedom of Information Appeal.” You may also submit your appeal by email (preferred method) to OHA.filings@hq.doe.gov, including the phrase “Freedom of Information Appeal” in the subject line. Thereafter, judicial review will be available to you in the District of Columbia or in the district where (1) you reside, (2) you have your principal place of business, or (3) the Department’s records are situated.

You may also contact me, NNSA’s FOIA Public Liaison, Office of the General Counsel, at 1-866-747-5994 or by mail to Department of Energy, National Nuclear Security Administration, Office of the General Counsel, PO Box 5400, Albuquerque, NM 87185, for further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of

Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov, telephone at (202) 741-5770; toll free at 1-877-684-6448; or facsimile at (202) 741-5769.

There are no fees chargeable to you for processing your request. If you have any questions, please contact Ms. Donna Del Rio by e-mail at donna.delrio@nnsa.doe.gov, or write to the address above. Please reference Control Number FOIA 21-00055-DD in your communication.

Sincerely,

Christina H. Hamblen
FOIA Officer

Enclosures