



## Department of Energy

Bonneville Power Administration  
P.O. Box 3621  
Portland, Oregon 97208-3621

PUBLIC AFFAIRS

December 6, 2011

In reply refer to: DK-7

Daniel C. Minutillo  
A Professional Law Corporation  
841 Blossom Hill Road, Suite 206  
P.O. Box 20698  
San Jose, CA 95160-20698

### **FOIA #BPA-2012-00330-F**

Dear Mr. Minutillo:

Thank you for your request for records that you made to the Bonneville Power Administration (BPA), under the Freedom of Information Act (FOIA), 5 U.S.C. 552. Your modified FOIA request letter was received in this office on Monday, December 5, 2011, and has been assigned a control number, BPA-2012-00330-F. Please use this number in any correspondence with the Agency about your request.

#### **You have requested the following:**

- Biomark's offer submitted to BPA in response to the PIT Tags solicitation which is the subject of the protest as attached, including, but not limited to business proposal/specifications, representations and certifications, signed offer and award form and related documents, and any other document included in Biomark's offer.
- Any document(s) containing the technical specifications of the Biomark PIT Tags provided to BPA regarding the awarded contract.
- The contract for PIT Tags between Biomark and BPA which is the subject of the protest as attached, and any addendum or attachment thereto.
- Any document containing any pricing information for the Biomark PIT Tags provided to BPA from Biomark regarding the awarded contract.
- Any document which waves any ISO requirement mentioned in the above mentioned solicitation.
- Any document regarding the subject procurement which mentions ISO requirements.
- Any and all document(s) containing technical specifications of the reader system used in the actual operation of the dam and in the testing protocol for sample transponders provided to BPA by offerors regarding the above mentioned solicitation, including, but not limited to, design documents, blueprints, parts lists, software specifications, and white papers.
- Any and all documentation or materials submitted by Biomark or other vendors referring to the glass encapsulation of PIT Tags and/or bio-compatibility thereof.

We have reviewed your letter and have determined that it addresses all of the criteria of a proper request under the FOIA, DOE, and BPA regulation that implements the FOIA at Title 10, Code of Federal Regulations, Part 1004. Your fee waiver has been denied.

The DOE has implemented this statutory standard for fee waivers or reduced fees in its FOIA regulation at 10 CFR 1004.9(a)(8). Although, you have requested a waiver of fees, you have not addressed the criteria established in that section. The regulation sets forth the following pertinent factors that are considered by the agency in applying the criteria:

- (1) The subject of the request: Whether the subject of the requested records concerns “the operations or activities of the government;”
- (2) The informative value of the information to be disclosed: Whether the disclosure is “likely to contribute” to an understanding of government operations or activities;
- (3) The contribution to an understanding by the general public of the subject likely to result from disclosure, taking into account your ability and intent to disseminate the information to the public in a form that can further the understanding of the subject matter;
- (4) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities;
- (5) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so
- (6) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.”

If you would like your request for a waiver to be considered, please provide additional information that addresses these factors to Laura M. Atterbury, FOIA/Privacy Act Specialist, 905 NE 11<sup>th</sup> Avenue, Portland, OR 97232. You should provide this information by Tuesday, December 13, 2011. If we do not hear from you by this date, we will consider your request for a waiver withdrawn and will continue to process your request.

In addition, if you would like the Department to begin processing of your request while a determination is being made, please provide an assurance to pay fees in the event your request for a waiver is denied.

Ms. Kristi Van Leuven, Contract Administrator, has been designated as the Authorizing Official for your FOIA request. Ms. Van Leuven has twenty (20) working days to respond to your request. The target due date for a response to you is Tuesday, January 3, 2012.

I appreciate the opportunity to assist you. Please contact Laura M. Atterbury, FOIA/Privacy Act Specialist at 503-230-7305 with any questions about this letter.

Sincerely,

*/s/ Christina J. Munro*

Christina J. Munro

Freedom of Information Act/Privacy Act Officer