

**United States Department of Energy  
Office of Hearings and Appeals**

In the Matter of California-Arizona-Nevada )  
District Organization Contract )  
Compliance ) Case No.: FIA-12-0054  
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)  
Filing Date: September 14, 2012 )  
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Issued: September 27, 2012  
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**Decision and Order**  
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On September 14, 2012, California-Arizona-Nevada District Organization Contract Compliance (CANDO) filed an appeal from a final determination issued by the Loan Guarantee Program Office (LGPO) of the Department of Energy (DOE). In this determination, LGPO responded to a request for information (Request) filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. Pursuant to the Request, LGPO released four documents. One of the documents provided to CANDO, the Tonopah Document, described below, consisted of seven pages, of which information had been withheld in four of the pages. LGPO withheld the information pursuant to Exemption 4 of the FOIA. This Appeal, if granted, would require LGPO to release to CANDO a portion of the information withheld in the four pages.

**I. BACKGROUND**

On August 17, 2011, CANDO submitted a FOIA request (Request) for ten categories of documents related to a loan guarantee contract regarding the Crescent Dunes Solar Energy Project (Crescent Dunes<sup>1</sup>). One of the categories of requested documents (Category 5) asked for:

- 5. A copy of the Technical Information Section C-Part II, 2. Engineering and construction Plans, a copy of the list of engineering and design contractors and the construction contractors selected to perform the construction of the project....

Request at 1.

On August 15, 2012, LGPO issued a response (Response) to CANDO's request for documents. In its Response regarding Category 5, LGPO released, among other documents, a redacted copy of seven pages from a document entitled "Solar Reserve – Project Tonopah U.S. DOE Title XVII

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<sup>1</sup>This project is also known as the Tonopah Solar Energy Project.

Loan Guarantee Program – Part I Application” (Tonopah Document).<sup>2</sup> LGPO stated that information was withheld from these four pages pursuant to Exemption 4 of the FOIA.

On September 14, 2012, CANDO filed the present appeal contending that LGPO had improperly applied Exemption 4 to withhold “information concerning the engineering, design, and construction contractors and subcontractors”, which CANDO alleged was withheld from the four redacted pages of the Tonopah document. CANDO argues that release of that information cannot be a trade secret or confidential commercial or financial information especially since construction has begun on the project.

## II. ANALYSIS

The FOIA generally requires that records held by federal agencies be released to the public upon request. 5 U.S.C. § 552(a)(3). However, the FOIA lists nine exemptions that set forth the types of information that an agency may withhold. 5 U.S.C. § 552(b)(1)-(9); 10 C.F.R. § 1004.10(b)(1)-(9). Exemption 4 exempts from mandatory public disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4); 10 C.F.R. § 1004.10(b)(4).

In its present appeal, CANDO quoted LGPO’s description of the information that it withheld from the Tonopah document. CANDO then stated that it “has no quarrel with the assertion of the (b)(4) exemption as it applies to the specified information; the problem is that nowhere does DOE address the reasons for withholding engineering, design, and construction contractor and subcontractor information.” Appeal at 3-4.

We have obtained unredacted copies of the four pages where information was withheld. The redacted information does not contain the information that CANDO requests in its present appeal: “engineering, design, and construction contractor and subcontractor information.” In addition, the redacted information does not contain any “list of engineering and design contractors and the construction contractors selected to perform the construction of the project,” as requested by CANDO in its Request quoted above. As a result, the challenge CANDO raised in its appeal of LGPO’s determination regarding these four pages lacks a factual basis and will be denied. *See California-Arizona-Nevada District Organization Contract Compliance*, Case No. FIA-0004 (March 23, 2012).<sup>3</sup>

It Is Therefore Ordered That:

(1) The Appeal filed by California-Arizona-Nevada District Organization Contract Compliance, Case No. FIA-12-0054, is hereby denied.

(2) This is a final Order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B). Judicial review may be

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<sup>2</sup> Specifically, LGPO provided redacted versions of pages 45, 47, 49, and 51 of the Tonopah Document to CANDO.

<sup>3</sup> OHA FOIA decisions issued after November 19, 1996, may be accessed at <http://www.oha.doe.gov/foia1.asp>.

sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

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