

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

In the Matter of One Source	)		
Equipment Rentals, Inc.	)		
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Filing Date: May 18, 2020	)	Case No.:	FIA-20-0028
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Issued: June 8, 2020

**Decision and Order**

On May 18, 2020, One Source Equipment Rentals, Inc. (Appellant) appealed a determination letter issued by the United States Department of Energy’s (DOE) National Nuclear Security Administration (NNSA) regarding Request No. FOIA 20-00046-AG. In that determination, the NNSA responded to Appellant’s request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE regulations codified at 10 C.F.R. Part 1004, in which Appellant sought payment bonds associated with two purchase orders at the Y-12 National Security Complex. The NNSA conducted a search and located no responsive documents. Determination Letter (February 19, 2020). The Appellant challenged the adequacy of the search.<sup>1</sup> As explained below, we deny Appellant’s appeal.

**I. Background**

On December 11, 2019, the Appellant submitted a FOIA request for the following records:

A copy of the payment bond provided by your contractor, Consolidated Nuclear Security, LLC on the Y-12 National Security Complex project at 765 Perimeter Road, K-1065D, Oak Ridge, TN.

Determination Letter at 1 (February 19, 2020). On January 16, 2020, the Appellant clarified its FOIA request with NNSA by requesting copies of the payment bonds associated with two purchase orders identified by a string of alphanumeric characters. *Id.* NNSA contacted Consolidated Nuclear Security, LLC (CNS), the Management and Operating contractor for the Y-12 National Security Complex, to search for responsive records. CNS in turn referred the request to Bechtel National, Inc. (BNI), the contractor contracted by CNS to complete the construction project with which the purchase orders identified by the Appellant were associated. E-mail from CNS to OHA (June 2, 2020).

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<sup>1</sup> The Appellant also sought to expand the scope of its FOIA request by requesting in its appeal that the NNSA provide documentation of existing alternatives to payment bonds, *i.e.*, alternative payment protections for suppliers of labor and materials for the prime contract. However, it is well settled that an appellant is not permitted to expand the scope of a FOIA request on appeal. *See Anatoly Blavovskiy*, OHA Case No. FIA-18-0036 (2018); *Donna Deedy*, OHA Case No. FIA-14-0001 at 3 (2014). Therefore, we decline to review this portion of the appeal.

BNI performed a keyword search of its electronic procurement database using the purchase order numbers provided by the Appellant. *Id.*<sup>2</sup> BNI's search located the database entries and procurement documents associated with the purchase orders, but no payment bonds related to these purchase orders were stored in the database. *Id.* As there were no payment bonds stored in BNI's electronic procurement database in connection with the purchase orders identified by the Appellant, and because BNI determined that payment bonds were not required for the type of procurement made through the purchase orders, BNI reported that the requested records did not exist. *Id.*

In its Determination Letter to the Appellant, NNSA informed the Appellant that it had not located the requested payment bonds and that payment bonds were not required for the procurements made through the purchase orders. Determination Letter at 1. On May 18, 2020, the Office of Hearings and Appeals (OHA) received the Appellant's appeal. The Appellant alleged that NNSA failed to conduct an adequate search for the payment bonds and requested information concerning alternative forms of security associated with the purchase orders if they existed. Appeal at 1. *Id.*

## II. Analysis

The FOIA requires agencies to make publicly available records that are reasonably described in a written request, so long as those records are not exempt from disclosure. 5 U.S.C. §§ 552(a)(3)(A), (b). In responding to a FOIA request, an agency need not conduct an exhaustive search of each of its record systems; rather, it need only conduct a reasonable search of "all systems 'that are likely to turn up the information requested.'" *Ryan v. FBI*, 113 F. Supp. 3d 356, 362 (D.D.C. 2015) (quoting *Oglesby v. U.S. Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)). The reasonableness of a search depends on the facts of each case. *Coffey v. Bureau of Land Mgmt.*, 249 F. Supp. 3d 488, 496 (D.D.C. 2017) (citing *Weisberg v. DOJ*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)).

A lack of responsive records does not necessarily indicate that a search was unreasonable. Indeed, a search's adequacy is "determined not by the fruits of the search, but by the appropriateness of [its] methods." *Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003). We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., American Oversight*, OHA Case No. FIA-19-0010 (2019).

### A. Adequacy of BNI's Search

In this case, the only information that the Appellant provided to the NNSA to guide its search for the requested payment bonds was purchase order numbers. The Appellant confirmed that the purchase order numbers used by BNI to conduct the search were correct. *See* NNSA e-mail at Attachment 4; *see also* Appeal at 1. BNI's search of its electronic procurement database using the purchase order numbers as keywords located pertinent database entries and electronic copies of the purchase orders, but not the requested payment bonds. According to BNI, if any payment bonds

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<sup>2</sup> One of the contracting records identified by BNI differed by two alphanumeric characters, out of nineteen total characters, from the purchase order number provided by the Appellant. Determination Letter at 1. In the appeal, the Appellant adopted the purchase order numbers used by BNI in identifying the records covered by the appeal. Appeal at 1. Accordingly, we infer that the discrepancy was the result of a typographical error in the Appellant's FOIA request and that BNI located the database entries associated with the purchase orders the Appellant intended to identify in its FOIA request.

had ever been issued in association with the aforementioned purchase orders, then they would have also been stored in BNI's procurement system in the same location as the purchase orders. *Id.*

Given the description of BNI's search, we find that its search was reasonably calculated to discover responsive documents. Since BNI was the lead contractor on the Y-12 construction project at issue, it was most likely to possess knowledge of where in its system responsive documents may have existed. BNI searched its procurement system, the most likely location in which the payment bonds might have been stored, using the only information provided by the Appellant for its keyword searches. Accordingly, we conclude that BNI conducted a search reasonably calculated to uncover the documents sought by the Appellant, and that the search was therefore adequate.

### **III. Order**

It is hereby ordered that the appeal filed by One Source Equipment Rentals, Inc., on May 18, 2020, No. FIA-20-0028, is denied.

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 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.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect the right to pursue litigation. OGIS may be contacted in any of the following ways:

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