

# **EXHIBIT 5**

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IRS Appeals  
Attention: FOIA Appeals  
M/Stop 55202  
5045 E. Butler Ave  
Fresno, CA 93727-5136

February 27, 2013

**RE: Appeal of partial denial of FOIA request to Dep't of Treasury ["DoT"]**

Dear IRS Appeals,

I'm appealing from the portion of the decision contained in the attached letter of February 22, 2013 which came from DoT, Disclosure Manager, HQ Disclosure Program Operations and FOIA, by Bertrand Tzeng, and which says "[w]e are withholding 12 pages in part under FOIA exemption (b)(4)." Attached is the letter decision being appealed from. Also attached is the original FOIA request dated January 21, 2013. Information for the appeal is as follows:

1. My name is Michael E. Geltner. My address is in letterhead above.

2. The requested records sought by this appeal are any documents or statements submitted by any party to the Department of Treasury for the purpose of obtaining novation of the referenced contract from Thacher Proffitt and Wood LLP to Sonnenschein Nath and Rosenthal LLP. The partial denial cites to exemption (b)(4), but this exemption should not apply, as the documents sought should not contain either trade secrets or commercial or financial information which is confidential.

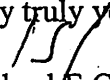
The background is that the Thacher firm was the DoT contractor, and the contract was then novated to the Sonnenchein firm. Under the applicable Federal Acquisition Regulations, such a novation must be preceded by a submission seeking the novation. See 48 C.F.R. 1200(a), setting out procedures for "Recognition of a successor in interest to Government contracts when contractor assets are transferred" and 1203 (a), setting procedures for novation requests and stating that, "If a contractor wishes the Government to recognize a successor in interest to its contracts or name change, the contractor must submit a written request to the responsible contracting officer." It is this written submission requesting or supporting novation of this contract that I'm seeking. Such a submission would have no reason to contain any trade secrets or confidential financial or commercial information, as the sole purpose of the regulations on successors in interest

and novation of contracts is simply to determine whether the proposed new contractor is in fact a legitimate, legal successor in interest to the original contractor.<sup>1</sup>

For those reasons, neither trade secrets nor confidential commercial or financial information would be germane to a novation submission, so I find it hard to believe the withheld information is privileged under exemption (b)(4).

Please call or email if any additional information is needed to process this FOIA appeal.

Very truly yours,

  
Michael/E Geltner

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<sup>1</sup> Under federal law, a federal contractor may not assign or transfer its contracts to another party. Federal Anti-Assignment Act, 41 U.S.C. §6305 (formerly §15). By regulations, the federal government treats novation to a legal successor in interest as permissible, because, the successor in interest is for all practical purposes the same party as its predecessor. 48 C.F.R. 42.1204(a). *See generally, Raytheon Co. v. United States*, 105 Fed. Cl. 236, 254-6 (2012) (explaining that, other than the novation process, “[g]enerally speaking, the Anti-Assignment Act, 41 U.S.C. §15 [now 6305] prohibits the transfer of a government contract.”).