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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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JCS

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 AMERICAN SMALL BUSINESS LEAGUE

CV 12 2953

13 Plaintiff,

COMPLAINT FOR INJUNCTIVE
RELIEF

14 v.

FREEDOM OF INFORMATION ACT
(5 U.S.C. 552 (a)(3)(A))

15 DEPARTMENT OF DEFENSE
16 Defendant.

17 COMPLAINT FOR INJUNCTIVE RELIEF

18
19 1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552,
20 ("FOIA") for injunctive and other appropriate relief to compel the disclosure and release of
21 documents improperly withheld from Plaintiff by the National Aeronautics and Space
22 Administration.

23 JURISDICTION AND VENUE

24
25 2. This court has both subject matter jurisdiction over this action and personal
26 jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction
27 over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. §
28 552(a)(4)(B).

GUTIERREZ & ASSOCIATES
244 CALIFORNIA STREET, SUITE 300
SAN FRANCISCO, CALIFORNIA 94111

THE PARTIES

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2 3. Plaintiff is the American Small Business League (“ASBL”), an organization
3 incorporated in California which has its principal place of business in Sonoma County,
4 California. ASBL is a national organization established to research and focus public attention
5 on emerging small business issues and to otherwise promote the interests of small businesses.
6 ASBL’s activities include the review of evolving federal and state government policy and
7 procedures to determine possible impact on small business.

8 4. Defendant Department of Defense (hereinafter “DOD”) is an “agency” within the
9 meaning of 5 U.S.C. § 552 (f).

10 **PLAINTIFF’S FOIA REQUEST AND THE DOD’S RESPONSE**

11 5. On or about March 22, 2010 pursuant to the Freedom of Information Act
12 (“FOIA”), ASBL requested records from DOD consisting of:

13 The Individual Subcontracting Report (ISR/SF 2940 for the contract with
14 PID NS3DIDVPIID N0003910D0010 to HP Enterprise Services LLC
15 DUNS 077817617, as well as the most recent Summary Subcontracting
16 Report (SSR/SF 295)for HP Enterprise Services LLC, DUNS 077817617

17 A copy of ASBL’s FOIA request is attached as Exhibit A.

18 6. On July 19, 2010 DOD’s denied ASBL’s FOIA request, stating:

19 Ms. Linda B. Oliver, Deputy Director, Office of Small Business Programs,
20 determined this information should be withheld from release because it applies to
21 information such as trade secrets and commercial and financial information
22 obtained from a person on a privileged of confidential basis which, if released
23 would result in competitive harm to the company; or would impair the
24 government from obtaining like information in the future; or would affect overall
25 program effectiveness. Consequentially, this information is denied pursuant to 5
26 U.S.C § 552(b)(4).

27 A copy of DOD’s response is attached as Exhibit B

28 7. On July 28, 2011, ASBL appealed DOD’s denial of its FOIA request, pointing
out that the information contained in ISR and SSR forms, which are submitted to measure
compliance with the Small Business Act and regulations promulgated there under, contain
public information. A copy of ASBL’s appeal is attached hereto as Exhibit C.

GUTIERREZ & ASSOCIATES
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SAN FRANCISCO, CALIFORNIA 94111

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8. DOD did not respond to the appeal.

9. On October 7, 2011, ASBL sent another appeal to DOD, requesting a response. DOD did not respond to ASBL's appeal in the time allowed by FOIA, nor has it responded at all.

10. ASBL has a right of access to the documents requested pursuant to 5 U.S.C. § 552 (a)(3), and there is no legal basis for DOD's denial of such access. Accordingly, ASBL seeks an order from this court compelling DOD to provide the requested information.

CAUSE OF ACTION

**Violation of the Freedom of Information Act
for Wrongful Withholding of Agency Records**

11. DOD has wrongfully withheld documents requested by ASBL.

12. ASBL has exhausted the administrative remedies with respect to DOD's wrongful withholding of the requested documents.

13. ASBL is entitled to injunctive relief and an order from this Court compelling an immediate release and disclosure of the requested documents.

PRAYER FOR RELIEF

WHEREFORE, ASBL prays that this Court:

- A. Issue an order compelling DOD to disclose all responsive documents in their entirety;
- B. Provide for expeditious proceedings in this action;
- C. Award ASBL its costs and reasonable attorneys' fees incurred in this action; and
- D. Grant such other relief as the Court may deem just and proper.

Dated: June 6, 2012

GUTIERREZ & ASSOCIATES

By: 
ROBERT E. BELSHAW
Attorneys for Plaintiff

GUTIERREZ & ASSOCIATES
244 CALIFORNIA STREET, SUITE 300
SAN FRANCISCO, CALIFORNIA 94111

Exhibit A

American

**small
business**

L e a g u e

98% of all U.S. firms have less than 100 employees

March 22, 2010

Chief, Freedom of Information
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

Re: Freedom of Information Act Request

Dear FOIA Officer:

This is a request under the Freedom of Information Act. I request that a copy of documents containing the following information be provided to me:

- The Individual Subcontracting Report (ISR/SF 294) for the contract with PIID NS3D, IDVPIID N0003910D0010 to HP Enterprise Services LLC, DUNS 077817617, as well as the most recent Summary Subcontracting Report (SSR/SF 295) for HP Enterprise Services LLC, DUNS 077817617.

In order to help to determine my status for purposes of determining the applicability of any fees, you should know that I am the Director of Government Affairs for a small business advocacy group and am seeking information for use in our group's research and not for commercial use.

The American Small Business League is willing to pay fees for this request up to a maximum of \$200.00. If you estimate that the fees will exceed this limit, please inform me first.

I have included a telephone number at which I can be contacted during the hours of 8 a.m. to 5 p.m. Pacific, if necessary to discuss any aspect of my request.



Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Baron". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kevin Baron
Director of Government Affairs
American Small Business League
3910 Cypress Dr.
Petaluma CA, 94954
(707) 789-9575

Exhibit B



**DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

JUL 19 2011

Ref: 11-F-0765

Mr. Kevin Baron
American Small Business League
3910 Cypress Drive
Petaluma, CA 94954

Dear Mr. Baron:

This responds to your March 22, 2010, Freedom of Information Act request. You requested the individual subcontracting report (ISR/SF 294) for the contract with PIID NS3D, IDVDPIID N0003910D0010 to HP Enterprise Service LLC, DUNS 077817617, as well as the most recent Summary Subcontracting Report (SSR/SF 295) for HP Enterprise Services LLC, DUNS 077817617.

Ms. Linda B. Oliver, Deputy Director, Office of Small Business Programs, determined this information should be withheld from release because it applies to information such as trade secrets and commercial and financial information obtained from a person on a privileged or confidential basis which, if released, would result in competitive harm to the company; or would impair the government from obtaining like information in the future; or would affect overall program effectiveness. Consequently, this information is denied pursuant to 5 U.S.C. § 552 (b)(4).

If you are not satisfied with this action, you may appeal to the appellate authority, the Director of Administration and Management, Office of the Secretary of Defense, by writing directly to the Defense Freedom of Information Policy Office, Attn: Mr. James P. Hogan, 1155 Defense Pentagon, Washington, DC 20301-1155. Your appeal should be postmarked within 60 calendar days of the date of this letter, should cite case number 11-F-0765, and should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

Nicholas J. Cormier

for

Paul J. Jacobsmeyer
Chief

B

Exhibit C

American

small
business

League

98% of all U.S. firms have less than 100 employees

July 28, 2011

Chief, Freedom of Information
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

Re: Freedom of Information Act Appeal
Re: Case Number 11-F-0765

Dear FOIA Officer:

This is an appeal under the Freedom of Information Act. On March 22, 2011, American Small Business League Director of Government Affairs, Kevin Baron, requested that a copy of documents containing the following information be provided:

- The Individual Subcontracting Report (ISR/SF 294) for the contract with PIID NS3D, IDVPIID N0003910D0010 to HP Enterprise Services LLC, DUNS 077817617, as well as the most recent Summary Subcontracting Report (SSR/SF 295) for HP Enterprise Services LLC, DUNS 077817617.

I have taken over all FOIA correspondence for Mr. Baron. On April 14, 2011, we received an interim response, enclosed with this letter, from the Department of Defense which assigned our request the case number 11-F-0765. The letter further extended the normal 20 day statutory response time due to unusual circumstances.

On July 19, 2011, we received a letter from Mr. Paul J. Jacobsmeyer and Nick Cormier, copy enclosed, informing us that our request was denied. In the letter Mr. Jacobsmeyer explains that the information is being withheld under FOIA exemption (b)(4).

I am appealing this decision and request that the copies of the documents be provided in full. It is my understanding that these subcontracting reports contain public information that does not fall within any FOIA exemption.

110 KB



If necessary to discuss any aspect of my request, I would prefer all communication to be in written format, either via email, to rnolan@asbl.com, fax to 707-789-9580, or via letter.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Reilly Nolan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Reilly Nolan, Public Relations Specialist
American Small Business League
3910 Cypress Dr.
Petaluma CA, 94954
(707) 789-9575

C'