APPENDIX—Continued

[Petitions instituted between 06/23/2003 and 06/27/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
52,130	Sherwin Williams Powder Plant (Wkrs)	Harrisburg, PA	06/24/2003	06/23/2003
52,131	Motorola (Comp)	Schaumburg, IL	06/24/2003	06/24/2003
52,132	Pennsylvania House, Inc. (Comp)	Monroe, NC	06/24/2003	06/23/2003
52,133	Auburn Machinery, Inc. (Comp)	Lewiston, ME	06/25/2003	06/16/2003
52,134	Trico Products Corporation (Comp)	Buffalo, NY	06/25/2003	06/12/2003
52,135	Vulcan Forging (UAW)	Dearborn, MI	06/25/2003	06/23/2003
52,136	Fairchild Semiconductor (Comp)	S. Portland, ME	06/25/2003	06/09/2003
52,137	Computer Science Corp. (Wkrs)	San Diego, CA	06/25/2003	06/04/2003
52,138	Agere Systems (Wkrs)	Breinigsville, PA	06/25/2003	06/21/2003
52,139	Discovery Plastics, Inc. (OR)	Albany, OR	06/25/2003	06/24/2003
52,140	North American Battery Company (Wkrs)	San Diego, CA	06/26/2003	06/17/2003
52,141	Broyhill Furniture (Comp)	Marion, NC	06/26/2003	06/15/2003
52,142	Covington Needleworks (Comp)	Mt. Olive, MS	06/26/2003	06/13/2003
52,143	Larimer and Norton, Inc.	Galeton, PA	06/26/2003	06/19/2003
52,144	Homecrest Industries, Inc. (MN)	Wadena, MN	06/26/2003	06/25/2003
52,145	Phillips Elmet (Wkrs)	Lewistown, ME	06/26/2003	06/11/2003
52,146	Bruce Furniture Industries(Comp)	Bruce, MS	06/26/2003	06/06/2003
52,147	Furniture Makers Supply (Comp)	Martinsville, VA	06/26/2003	06/12/2003
52,148	Coho Resources, Inc. (Wkrs)	Dallas, TX	06/26/2002	06/18/2003
52,149	GE–OEC Medical Systems (Wkrs)	Warsaw, IN	06/26/2003	06/25/2003
52,150	Honeywell (Comp)	Milpitas, CA	06/26/2003	06/18/2003
52,151	Portland General Electric Company (Comp)	Rainier, OR	06/26/2003	06/25/2003
52,152	Multilayer Technology, Inc. (Wkrs)	Roseville, MN	06/26/2003	06/25/2003
52,153	Target Director (Wkrs)	St. Paul, MN	06/26/2003	06/25/2003
52,154	Aviant Group (Wrks)	Mount Clemens, MI	06/26/2003	04/11/2003
52,155	SFO Apparel (Wkrs)	San Francisco, CA	06/26/2003	06/13/2003
52,156	DeLong Sportswear, Inc. (Comp)	Crowell, TX	06/26/2003	06/25/2003
52,157	Trombetta Camdel Corp. (WI)	Menomonee Falls, WI	06/26/2003	06/25/2003
52,158	CDI Corp. Northwest (OR)	Corvallis, OR	06/27/2003	06/26/2003
52,159	Milford Fabricating (MI)	Detroit, MI	06/27/2003	06/20/2003
52,160	AT&T (CA)	Pleasanton, CA	06/27/2003	06/18/2003
52,161	Progressive Screen Engraving, Inc. (Comp)	Wadesboro, NC	06/27/2003	06/26/2003
52,162	Oilgear Company (The)(Wkrs)	Longview, TX	06/27/2003	06/26/2003
52,163	General Mills, Inc. (Comp)	Mebane, NC	06/27/2003	06/26/2003
52,164	Castrol Industrial North America, Inc. (MN)	Duluth, MN	06/27/2003	06/25/2003
52,165	Endar Corporation (Comp)	Temecula, CA	06/27/2003	06/19/2003
52,166	Chas Komar and Sons (Comp)	McAlester, OK	06/27/2003	06/19/2003
52,167	General Mills, Inc. (Wkrs)	Hazelwood, MO	06/27/2003	06/21/2003
52,168	TRW Automotive (Comp)	Queen Creek, AZ	06/27/2003	06/25/2003
52,169	Allsteek, Inc. (Comp)	Milan, TN	06/27/2003	06/18/2003
52,170	Hill-Rom (Comp)	Batesville, IN	06/27/2003	06/25/2003
52,171	Read-Rite Corporation (Ca)	Fremont, CA	06/27/2003	06/19/2003

[FR Doc. 03–18548 Filed 7–21–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,953]

WM Jette And Sons, Inc., Providence, RI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 5, 2003 in response to a worker petition which was filed by a company official on behalf of workers at WM Jette and Sons, Inc., Providence, Rhode Island (TA–W–51,953).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 9th day of July 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18555 Filed 7–21–03; 8:45 am]

BILLING CODE 4510–30–P

LEGAL SERVICES CORPORATION

Freedom of Information Policy—Grant Application Materials and Exemption 4

AGENCY: Legal Services Corporation.

ACTION: Notice of policy change.

SUMMARY: The Legal Services Corporation (LSC) is subject to the Freedom of Information Act (FOIA). Under FOIA and LSC regulations, a requested record may be withheld from disclosure if, inter alia, the record contains trade secrets or commercial or financial information obtained from a person and is privileged or confidential. In the past, LSC policy has been to routinely withhold application materials submitted to LSC as part of the competitive bidding process from public disclosure pursuant to this exemption. For the reasons set forth below, LSC has decided that documents submitted by applicants as part of grant applications (the Proposal Narrative (parts 1 & 2) on original grant applications and the Application Narrative (parts A & B) for grant renewal applications) are generally not entitled to protection from disclosure in response to FOIA requests

after grants have been awarded for a given application period.

EFFECTIVE DATE: This policy became effective on July 9, 2003.

FOR FURTHER INFORMATION CONTACT: Dawn M. Browning, Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007–3522; 202/295–1626 (phone); 202/337–6519 (fax); *dbrowning@lsc.gov.*

SUPPLEMENTARY INFORMATION: The Legal Services Corporation (LSC) is not a ''department, agency, or instrumentality of the Federal Government.'' 42 U.S.C. 2996(d). LSC is, however, by the terms of its organic legislation, subject to the Freedom of Information Act (FOIA). Id. LSC has issued regulations [1] governing its basic FOIA procedures. See 45 CFR part 1602.

Under FOIA and LSC regulations, a requested record may be withheld from disclosure if, inter alia, the record contains trade secrets or commercial or financial information obtained from a person and is privileged or confidential. *See* 5 U.S.C. 552(b)(4); 45 CFR 1602.9(a)(3). In the past, LSC policy has been to routinely withhold grant application materials submitted in connection with the competitive bidding process pursuant to this exemption. For the reasons set forth below, LSC has decided that documents submitted by applicants as part of grant applications (the Proposal Narrative (parts 1 & 2) on original grant applications and the Application Narrative (parts A & B) for grant renewal applications) are generally not entitled to protection from disclosure in response to FOIA requests after grants have been awarded for a given application period. LSC will continue to review each request for this information on a case by case basis to ascertain whether there is anything extraordinary in a given narrative which merits withholding and will continue to provide persons and organizations whose applications have been requested opportunity to seek protection from disclosure of some or all of the documents requested upon an individualized showing of competitive harm. However, LSC's general policy will be to release this information.

It should be noted that, since this policy change is not a ''rule, regulation, guideline or instruction,'' LSC is not required by law to publish this policy notice or seek public comment. LSC is choosing to publish this interpretive policy statement in the **Federal Register** (and has also posted it on the LSC website at *http:;www.lsc.gov*) in furtherance of LSC's interest in and policy of conducting its business in a fair and open manner.[2] LSC invites interested parties to submit written comments on this matter.

Exemption 4 of FOIA is codified at 5 U.S.C. 552(b)(4) and provides that the requirement for disclosure of most public documents ''does not apply to matters that are * * * trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' According to FOIA case law, documents submitted to LSC for competitive bidding qualify as ''commercial or financial information obtained from a person.'' [3] With that threshold met, the relevant analysis upon receipt of a request for competitive grant application documents is whether the information sought is ''privileged or confidential.''

In evaluating Exemption 4 cases, the D.C. Circuit Court has established two tests for determining whether documents are ''privileged or confidential,'' identifying one test as applicable to documents which are submitted to the relevant agency pursuant to a requirement, and another test for documents which are voluntarily submitted to the relevant agency.[4] Although ''required information'' and ''voluntary information'' were never explicitly defined in the cases which articulated these tests, the Department of Justice (DOJ) has concluded that a submitter's voluntary participation in an activity—such as seeking a government contract or applying for a grant or loan—does not govern whether any submission made in connection with that activity is ''voluntary.'' DOJ has recommended that in examining the nature of a submitter's participation in an activity, agencies should focus on whether submission of the relevant information was required of those who chose to participate.

Pursuant to the DOJ guidelines and other federal case law, including federal case law from the District of Columbia,[5] it is clear that the information submitted to LSC by applicants for competitive LSC grants would be considered ''required'' information, because recipients' receipt of grants is contingent upon the provision of the relevant information to LSC. Consequently, a determination of whether this information is ''privileged or confidential'' would involve the analysis for ''required information'' which was first articulated in the case of *National Parks & Conservation Ass'n* v. *Morton,* 498 F.2d 765 (D.C. Cir. 1974), and reiterated in the case of *Critical Mass Energy Project* v. *NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992). According to this test, ''commercial or financial

[1] LSC is authorized by Congress to issue regulations as necessary to carry out its mission. *See* 42 U.S.C. 2996(e). Since LSC is not a Federal agency, however, LSC is not subject to the requirements of the Administrative Procedures Act, which governs the rulemaking activities of Federal agencies. Rather, LSC is required to ''afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations, and guidelines, and it shall publish in the **Federal Register** at least 30 days prior to their effective date all its rules, regulations, guidelines and instructions.'' 42 U.S.C. 2999(g).

[2] LSC originally published a notice regarding this change in policy on April 17, 2001 (66 FR 19798) and invited the public to comment prior to effectuation of the change. LSC received one comment opposing the change. The commenter expressed concern that disclosure of the proposal narrative after the close of competition will cause competitive harm by allowing persons to, essentially, copy a successful grant application for later LSC competitions or other grants. For the reasons discussed above, however, LSC believes that the type of information found in the grant narratives does not rise to the level of detail or specificity required by the Exemption 4 case law, such that it is not legally defensible under the FOIA case law for LSC to maintain a presumption against disclosure of proposal narratives. To guard against harm in specific cases, however, as discussed above, LSC will continue to make Exemption 4 determinations related to proposal narratives on a case-by-case basis, allowing submitters the opportunity to explain why their respective proposal narratives should not be released in response to a FOIA request. In fact, the submitter's rights process has recently been formally codified into the Corporation's FOIA regulations. See 68 FR 7433 (Feb. 14, 2003).

[3] The Court of Appeals for D.C. has held that ''commercial'' and ''financial'' should be given their ''ordinary meanings.'' *Public Citizen Health Research Group* v. *FDA,* 704, F.2d 1280, 1290 (DC Cir. 1983) (citing *Washington Post Co.* v. *HHS*, 690 F.2d 252, 266 (D.C. Cir. 1982)). Examples of documents which have been accepted as ''commercial or financial information'' include business sales statistics; research data; technical designs; customer and supplier lists; profit and loss data; overhead and operating costs; and information on financial conditions. See *Landfair* v. *United States Dep't of the Army,* 645 F. Supp. 325, 327 (D.D.C. 1986). The term ''person'' has been interpreted to include a wide range of entities, including private organizations such as grantees. See *e.g. Nadler* v. *FDIC,* 92 F.3d 93, 95 (2d Cir. 1996) (term 'person' includes ''an individual, partnership, corporation, association, or public or private organization other than an agency.'')

[4] *See National Parks & Conservation Ass'n* v. *Morton,* 498 F.2d 765 (D.C. Cir. 1974) (articulating test which is now applied to documents submitted pursuant to a requirement), and *Critical Mass Energy Project* v. *NRC,* 975 F.2d 871, 879 (D.C. Cir. 1992) (creating new test to be applied to documents submitted voluntarily).

[5] See, *e.g. Martin Marietta Corp.* v. *Dalton,* 974, F. Supp. 37, 39 (D.D.C. 1997); *McDonnell Douglas Corp.* v. *NASA,* 981 F. Supp. 12, 15 (D.D.C. 1997); *McDonnell Douglas Corp.* v. *NASA,* 895 F. Supp. 319, 325–26 (D.D.C. 1995); *Chemical Waste Management Inc.* v. *Leary,* 1995 WL 115894 (D.D.C. Feb. 28, 1995); *TRIFID Corp.* v. *National Imagery & Mapping Agency,* 10 F. Supp. 2d 1087, 1098–1101 (E.D. Mo. 1998); and *Source One Management* v. *U.S. Dept. of Interior,* No. 92–Z–2101, transcript at 6 (D. Colo. Nov. 10, 1993) (all holding that information submitted in application for government contract was ''required'' information).

matter is 'confidential' for purposes of Exemption 4 if disclosure of the information is likely to have either of the following effects: (1) To impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive process.''

Because of the large amount of money LSC distributes and the substantial reliance of many programs on LSC funds for continuation, it is unlikely that the release of the narratives of applicants in response to FOIA requests will impair LSC's ability to receive applications in the future.[6] Therefore, the next step of the analysis is whether the release of this information would ''cause substantial harm to the competitive process.''

In the case of *National Parks and Conservation Ass'n* v. *Kleepe,* 547 F.2d 673 (1973), the U.S. Court of Appeals for the DC Circuit articulated general examples of situations that might constitute ''substantial competitive harm.'' One such example would be a situation in which information disclosed pursuant to FOIA would be useful to a competitor in devising means to improve its competitive position at the expense of the business whose information was being released.[7] The court noted that in this circumstance, such disclosure would reveal that business' secrets without providing it with similar access to the books and records of its competitor.[8] ''This competitive disadvantage is fundamentally unfair and would be likely to cause harm to the (business) basic position.'' [9] The court went on to state that:

''the likelihood of substantial harm to (the applicant's) competitive positions * * * (is) virtually axiomatic * * * (where) disclosure would provide competitors with valuable insights into the operational strengths and weaknesses of (an applicant), while the (competitors) could continue in the customary manner of 'playing their cards close to their chest.' ''[10]

Because LSC only intends to release information provided in the narrative of the applications after grants have been awarded for a given application period, LSC does not believe the release will cause ''substantial competitive harm'' to applicants as defined above in most cases.

Although federal courts have identified the disclosure of various types of documents to constitute ''substantial competitive harm,'' the LSC application narratives which LSC proposes to release do not reach the level of detail and specificity of the kinds of documents for which release has been held to constitute this harm. The documents which have been identified by courts as properly cognizable under the competitive harm prong of the National Parks test include: Detailed financial information such as an organization's assets, liabilities, and net worth; a company's actual costs, break-even calculations, profits and profit rates; data describing an organization's workforce which would reveal labor expenses, profit margins and competitive vulnerability; a company's selling prices, purchase activity and freight charges; a company's purchase records, including prices paid for advertising; technical and commercial data; information constituting the ''bread and butter'' of a manufacturing company; currently unannounced and future products, proprietary technical information, pricing strategy and subcontractor information; raw research data used to support a pharmaceutical drug's safety and effectiveness information regarding an unapproved application to market the drug in a different manner, and sales and distribution data of a drug manufacturer; and technical proposals which are submitted, or could be used, in conjunction with offers on government contracts.[11]

Based on the foregoing analysis, LSC no longer considers it appropriate under FOIA to routinely withhold the information contained in the Proposal Narrative or Application Narrative of LSC competitive grant applications once the grant decisions for a given application period have been made. While, as noted above, LSC will continue to review each request for such documents on a case by case basis and will continue to provide persons and organizations whose applications have been requested the opportunity to seek protection from disclosure some or all of the documents requested, LSC anticipates that it will release this information in most cases.

LSC reserves the right to further amend this policy in the future, as appropriate.

Victor M. Fortuno,

General Counsel and Vice President for Legal Affairs.

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BILLING CODE 7050–01–P

[6] Courts have generally given substantial deference to agency determinations about whether such disclosures would impair the relevant agency's ability to receive applications in the future, noting that (1) Agencies have an incentive not to release information which will impair their ability to receive future applications, and (2) government contracting involves millions of dollars and the release of application information is unlikely to dissuade all potential applicants. *See e.g. Martin Marietta Corp.* v. *Dalton,* 974 F. Supp. 37, 39–40 (D.D.C. 1997); *McDonnell Douglas Corp.* v. *NASA,* 981 F. Supp. 12, 15 (1997); *C.C. Distributors* v. *Kinzinger,* 1995 WL 405445, *4 (D.D.C. 1995); *McDonnell Douglas Corp.* v. *NASA,* 895 F. Supp. 319 (1995); and *Racal-Milgo Gov't Systems, Inc.* v. *Small Business Admin.,* 559 F. Supp. 4, 6 (D.D.C. 1981).

[7] *National Parks and Conservation Ass'n v. Kleepe,* 547 F.2d 673, 678, note 18 (1973).

[8] Id.

[9] Id.

[10] Id. at page 684.

[11] Freedom of Information Act Guide & Privacy Act Overview, U.S. Department of Justice Office of Information and Privacy, May 2000 Edition, pages 208–09.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–081]

National Environmental Policy Act; Mars Exploration Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of intent to conduct scoping and to prepare a Tier 1 environmental impact statement for the Mars Exploration Program.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA's policy and procedures (14 CFR part 1216, subpart 1216.3), NASA intends to conduct scoping and to prepare a Tier 1 Environmental Impact Statement (EIS) for the Mars Exploration Program (MEP). NASA proposes a coordinated MEP that would use robotic orbital, surface, and atmospheric missions to gather scientific data on the Martian environment and that would continue planning for a potential return of Martian surface samples to Earth. Included in the program would be U.S. missions, which may or may not include foreign participation, and foreign missions with U.S. participation. The proposed MEP would include missions where the use of radioisotope heater units and radioisotope power systems are contemplated. One or more of the MEP missions may propose returning samples from the surface of Mars or its atmosphere.

The MEP would be a science-driven, technology-enabled effort to characterize and understand Mars, including its environment, climate and geological history, and biological potential. Utilizing an exploration strategy generally known as ''Follow the Water'', scientific and engineering