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February 27, 2024

VIA EMAIL

Kim White
Public Records Officer/Technology Consultant
Mississippi Department of Information Technology Services
3771 Eastwood Drive
Jackson, Mississippi 39211
Kim.White@its.ms.gov
Open.Records@its.ms.gov

VIA EMAIL

David Gilbert
Public Records Requests
Gainwell Technologies, LLC
5615 High Point Drive
Irving, Texas 75038
PublicRecordsRequests@Gainwelltechnologies.com

Re: Notice of Intent to Seek Protective Order – RFP No. 4243

Dear All:

FEI.com, Inc. d/b/a FEI Systems received notice on February 20, 2024 from the Mississippi Department of Information Technology Services (“ITS”) that Gainwell Technologies (“Gainwell”) submitted a request to obtain records maintained by ITS related to RFP No. 4243 (the “RFP”). This firm has been retained by FEI Systems to respond to this request. Specifically, Gainwell requested “for all bidders: technical and cost proposal – BAFO Documents – Evaluation Documents – Presentations and/or Videos.” A copy of the ITS Notification Memorandum describing Gainwell’s request is attached.

FEI Systems submitted a bid in response to the RFP. Therefore, its information is subject to Gainwell’s request. FEI Systems has reviewed Gainwell’s request and determined that the information Gainwell seeks includes FEI Systems’ trade secret, confidential, and proprietary information, including without limitation sensitive financial and costs information, information regarding its internal policies and procedures, and technical, personnel and staffing information

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(collectively, the "Confidential Information"). The Confidential Information is exempt from the Mississippi Public Records Act of 1983 and should not be disclosed by ITS. *See, Miss. Code Ann.* §§ 25-61-9(1) and 79-23-1.

Given the confidential and proprietary nature of the Confidential Information, FEI Systems hereby gives notice to ITS and Gainwell that, within 14 days of the date of this letter, it intends to seek a protective order from the Hinds County Chancery Court preventing the disclosure of its Confidential Information unless the request for Confidential Information is withdrawn or modified.

Pursuant to *Miss. Code Ann* §§ 25-61-9(7), FEI Systems respectfully requests that ITS publish this notice on the Mississippi Procurement Portal as soon as possible.

Sincerely,


John P. Sneed

JPS/mmk

cc: Charles E. Cowan

enclosure



Mississippi Department of
Information Technology Services

3771 Eastwood Drive
Jackson, MS 39211-6381
Phone: 601-432-8000
Fax: 601-713-6380
www.its.ms.gov

David C. Johnson, Executive Director

Third Party Notification Memorandum

To: Martina Wood, Chief Operating Officer, FEI.com, Inc. dba FEI Systems
From: David C. Johnson
CC: David Gilbert, Gainwell Technologies
ITS Project File Number: 48173
Date: February 15, 2024
Subject: Request for Records Furnished by Third Parties Containing Trade Secrets or Confidential Commercial or Financial Information under the Mississippi Public Records Act

Contact Name: Kim White, ITS Public Records Officer
Contact Phone Number: 601-432-8211
Contact E-Mail Address: Kim.White@its.ms.gov

COPY SENT VIA EMAIL; ORIGINAL SENT VIA UNITED STATES POSTAL SERVICE

ITS has received a request from a third party for copies of information you previously submitted to ITS.

Party requesting your information: Gainwell Technologies, 5615 High Point Drive,
Irving, TX 75038

A copy of the request is enclosed for your review.

In accordance with Miss. Code Ann. § 25-61-9(1), "records furnished to public bodies by third parties which contain trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction under this chapter until notice to third parties has been given, but the records shall be released no later than twenty-one (21) days from the date the third parties are given notice by the public body unless the third parties have filed in chancery court a petition seeking a protective order on or before the expiration of the twenty-one-day time period. Any party seeking the protective order shall give notice to the party requesting the information in accordance with the Mississippi Rules of Civil Procedure."

Further, Miss. Code Ann. § 25-61-9(7) also requires that "any party seeking a protective order for a procurement contract awarded by state agencies shall give notice to and provide the reasons for the protective order to the party requesting the information in accordance with the Mississippi Rules of Civil Procedure. The notice and reasons for the protective order **must** be posted on the Mississippi procurement portal for a minimum of seven (7) days **before** filing the petition seeking the protective order in chancery court." (Emphasis added).

In accordance with ITS's Public Records Policy, you must provide ITS with 14 days' notice of the petition for protective order, including the reasons for the petition, prior to filing your petition in

Chancery Court.

Pursuant to Miss. Code Ann. § 25-61-9(1) and the ITS Public Records Policy **you are hereby given notice**, that unless you file a petition seeking a protective order in accordance with Miss. Code Ann. § 25-61-9 and the ITS Public Records Policy, which includes filing the petition for protective order on or before **twenty-one days from the date of delivery of this notice as established by the United States Postal Service's records**; the information specified on the attached request **will be released** to the party requesting the information as required by law. ITS must also receive a copy of your filed petition for a protective order by the 21-day deadline.

You may review the ITS Public Records Policy and associated guidelines adopted in compliance with this act in Section 019-010 of the ITS Procurement Handbook, available at:

<https://www.its.ms.gov/sites/default/files/ProcurementPDFs/ISS%20Procurement%20Manual.pdf>

If you do not wish to file a petition seeking a protective order to prevent the release of the requested information, please sign below and return this memo via email to: open.records@its.ms.gov

Your signing and returning this memo gives ITS permission to release your information prior to the above deadline.

Printed Name

Signature

Date

PLEASE NOTE:

- (1) Mississippi Accountability and Transparency Act of 2008 (MATA) and Confidential Information:** The following language is included in each ITS contract, within the contract articles titled "Transparency" and "Confidential Information" and generally provides:

TRANSPARENCY – "In accordance with the Mississippi Accountability and Transparency Act of 2008, § 27-104-151, et seq., of the Mississippi Code of 1972, as Amended, the American Accountability and Transparency Act of 2009 (P.L. 111-5), where applicable, and § 31-7-13 of the Mississippi Code of 1972, as amended, where applicable, a fully executed copy of this Agreement and any subsequent amendments and change orders shall be posted to the State of Mississippi's accountability website at: <https://www.transparency.mississippi.gov/>. Prior to ITS posting the Agreement and any subsequent amendments and change orders to the website, any attached exhibits which contain trade secrets or other proprietary information and are labeled as "confidential" will be redacted by ITS. Notwithstanding the preceding, however, it is understood and agreed that pursuant to § 25-61-9(7) of the Mississippi Code of 1972, as amended, the contract provisions specifying the commodities purchased or the services provided; the price to be paid; and the term of this Agreement shall not be deemed a trade secret or confidential commercial or financial information and shall thus not be redacted."

CONFIDENTIAL INFORMATION – "With the exception of any attached

exhibits which are labeled as "confidential", the parties understand and agree that this Agreement, including any amendments and/or change orders thereto, does not constitute confidential information, and may be reproduced and distributed by the State without notification to vendor. ITS will provide third party notice to vendor of any requests received by ITS for any such confidential exhibits so as to allow vendor the opportunity to protect the information by court order as outlined in ITS Public Records Procedures.

The parties understand and agree that pursuant to § 25-61-9(7) of the Mississippi Code of 1972, as amended, the contract provisions specifying the commodities purchased or the services provided; the price to be paid; and the term of this Agreement shall not be deemed confidential information."

As stated above, with the exception of any contract exhibits labeled as "confidential" at the time of contract execution, contracts executed between the state of Mississippi and a Contractor and any subsequent amendments and change orders shall be posted to the Internet in compliance with MATA and may be reproduced and distributed by the state without notification to vendor, and the contract provisions specifying the commodities purchased or the services provided; the price to be paid; and the term of the contract shall not be deemed a trade secret or confidential commercial or financial information and shall be available for examination, copying or reproduction. ITS will, as stated in the contract provisions set forth above, provide third party notice to vendor of requests received by ITS for any contract exhibits properly labeled as "confidential", so as to allow vendor the opportunity to protect the information by court order as outlined in the ITS Public Records Policy. Contractors are directed to review the above applicable provisions within the ITS contract.

- (2) It is the responsibility of **FEI.com, Inc. dba FEI Systems** to notify any sub-contractors, that may have jointly participated in submitting a response to ITS, that confidential information has been requested.

Any questions related to this notice should be directed to Kim White at 601-432-8211 or via e-mail at open.records@its.ms.gov.

Enclosure

Request Type:

Custom Open Records Request - \$70

RFP Code:

4243

Description:

Gainwell Technologies is requesting the following information for all bidders concerning RFP 4243 - Interoperability, Data Lake, and APIs (IDA): • Technical and cost proposal • BAFO Documents • Evaluation Documents • Presentations and/or videos

First Name:

David

Last**Name:**

Gilbert

Company:

Gainwell Technologies

Address:

5615 High Point Drive

Address 2:**City:**

Irving

State:

TX

Zip:

75038

Phone:

617-212-2649

Fax:

N/A

Email:

PublicRecordsRequests@gainwelltechnologies.com

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