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**Protective Order**

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| **Matter of:** | Protestant (return for more) |
| **Case No.:** | Case No. |
| **Contracting Entity:** | Contracting Entity |
| **Date:** | Click here to enter a date. |

The State routinely receives documents in response to solicitations. While most documents in the State’s possession are subject to public disclosure, many of these documents contain commercial or financial information that is privileged and confidential. (S.C. Code Ann. §§ 11-35-410 and 30-4-30(a)). Consistent with the law and the State’s standard solicitation instructions, one or more offerors may identify some of those documents, or portions thereof, as exempt from public disclosure. (S.C. Code Ann. § 11-35-410(E) and S.C. Code Ann. Reg. 19-445.2030(4) and 19-445.2095(C)(2)) In some cases, information contained in those documents may also appear in documents created by the State. In order to facilitate a protest or other proceeding currently pending before it, Regulation 19-445.2200 authorizes the Chief Procurement Officer (“CPO”) to issue a protective order limiting disclosure of certain material and information submitted in the above-captioned protest. The protective order allows access to information without eroding any protection it may be due and without deciding whether such information is in fact exempt from public disclosure, while ensuring that no party obtaining access to protected material under the order will gain a competitive advantage as a result of the disclosure.

In order to facilitate the administrative review in this matter, I find that one or more persons may need to access to certain protected information. This order establishes procedures for seeking access to and for safeguarding such information. Material to which parties gain access under this protective order is to be used only for the subject protest proceedings, absent express prior authorization from the Chief Procurement Officer (CPO). Such authorization must be requested in writing, with notice to all parties.

1. This order does not (a) prohibit a public body from releasing information which the public body must release under applicable law, (b) require the release of any public record that a public body is prohibited from releasing by law, or (c) preclude a party from asserting any legally cognizable privilege to withhold any document or information. This order does not decide whether a document, or the information therein, is exempt from public disclosure by the State or entitled to any protections available under the law.
2. The following definitions apply to all parts of this order:
   1. "Covered Proceeding" means the protest or other proceeding currently pending before the CPO, as identified in the caption of this order, including all proceedings associated with the protest, *e.g*., supplemental/amended protests, and appeals.
   2. "Originator" means the entity from which the State originally acquired the information, as identified on Appendix A.
   3. "Protected Material" means all documents, and all information contained in the documents, identified in Appendix A, unless such information was independently available to the Qualified Person from a public or otherwise proper source prior to the information's release pursuant to this order.
   4. “Qualified Person” means a person who has signed an Application & Consent Form, if the Consent Form has been approved by the CPO. “Qualified Person” shall not include anyone who is involved in competitive decision-making for a party to the protest or who is employed by any firm that might gain a competitive advantage from access to the protected material disclosed.
3. Without waiving any applicable exemption from public disclosure, a state employee may disclose a single copy of Protected Material to a Qualified Person. In making such a disclosure pursuant to this order, a state employee should package the Protected Material as provided in Paragraph 8.
4. As provided by S.C. Code Ann. Reg. 19-445.2200, "[p]rotected information received by a person pursuant to a protective order issued under this regulation shall be released only pursuant to and in compliance with the protective order." Accordingly, Qualified Persons shall release Protected Material only pursuant to and in compliance with this order.
5. Qualified Persons shall not use or disclose Protected Material for any purpose other than preparing for and participating in the Covered Proceeding. Disclosure of Protected Material for any other purpose is prohibited. Except as necessary to prepare for or participate in the Covered Proceeding, Qualified Persons shall not duplicate the Protected Material.
6. Qualified Persons may disclose Protected Material only to the Originator, the Originator's legal counsel of record for the Covered Proceeding (not including in-house counsel), any Qualified Person, the CPO, the CPO's staff and legal counsel, members and staff of the Procurement Review Panel, or a judge of the South Carolina Circuit Court or appellate court, including court personnel. Qualified Persons may otherwise disclose Protected Material if mandated by law; however, prior to such disclosure, sufficient advanced notice shall be provided to the Originator in order to allow the Originator a reasonable opportunity to oppose such disclosure. Disclosure must be made consistent with the requirements of Paragraphs 7 and 8.
7. At all times, Qualified Persons shall take all necessary precautions to avoid the improper or inadvertent disclosure of Protected Material and to keep the Protected Material secure. Support and/or subordinate personnel of Qualified Persons shall not be permitted access to Protected Material absent individual application and approval.
8. Except at the time being viewed, Qualified Persons shall keep Protected Material in a sealed parcel bearing the following legend:

**PROTECTED MATERIAL**

**TO BE DISCLOSED ONLY IN ACCORDANCE WITH**

**CHIEF PROCUREMENT OFFICER PROTECTIVE ORDER**

1. Request for approval as a Qualified Person shall be made by submitting a signed Application & Consent Form to the CPO. A copy of a completed Application & Consent Form, exactly as submitted to the CPO, must be transmitted and received by the Originator (or the Originator's attorney of record in the Covered Proceeding, if applicable) prior to its submission to the CPO.
2. Special Restrictions: If Originator objects to the CPO's approval of any applicant, desires to restrict a Qualified Person from accessing specific Protected Material, or seeks special restrictions regarding a specific Qualified Person, the Originator must provide written notice to the CPO and the Qualified Person by the close of the second day following receipt of the application. The applicant and the Originator must promptly confer and attempt to resolve any dispute over access to Protected Material on an informal basis before filing a motion with the CPO. If the dispute cannot be resolved informally, either party may file a motion with the CPO. Either party may also file a motion if the other party does not respond within twenty-four hours to a request to resolve the dispute. A motion must describe in detail the frequency and methods of communication attempted or utilized (telephonic and/or in-person conferences are encouraged) together with the intermediate measures, including selected redaction, explored by the parties and explain why such measures do not resolve the dispute.
3. No later than ten days after the expiration of any appeal period regarding a final order that concludes a Covered Proceeding, all Qualified Persons shall destroy all copies of Protected Material and documents containing protected information. Upon written request by the Originator, Qualified Persons shall certify to the Originator in writing that the Qualified Person has complied with the requirement this paragraph. Such certification shall be provided within ten days of receipt of the written request. Notwithstanding the foregoing, an attorney of record to the Covered Proceeding (not including in-house counsel) may retain memoranda, pleadings, testimony, discovery, or other documents containing Protected Material to the extent reasonably necessary to maintain a file of the Covered Proceeding or to comply with requirements imposed by other governmental agencies or court orders; provided that any Protected Material must be secured as required by this order.
4. By signing a Consent Form, a person (a) agrees to be bound by and to comply with the protective order, (b) acknowledges the Originator's concerns regarding the potential harm to Originator by an improper disclosure of Protected Material, and (c) consents to the jurisdiction and enforcement of this order by the CPO, the Procurement Review Panel, the South Carolina Circuit Court, and/or any other court of competent jurisdiction, including without limitation enforcement by issuance of an injunction. Any violation of the terms of this order may result in the imposition of such sanctions as the CPO deems appropriate, including but not limited to referral of the violation to appropriate bar associations or other disciplinary bodies. Any business aggrieved by violation of this order may also seek enforcement of such order or resulting damages in any available judicial or administrative forum.

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| For the Materials Management Office |  |  |
| John St. C. White  Chief Procurement Officer |  | Date |

**Appendix A**

**List of Protected Information**

Instructions: (1) Identify every separate document individually. Provide sufficient information to reference the document unambiguously. For example, regarding an excerpt from a proposal, identify the offeror, the solicitation number, the proposal's date, the relevant section (if applicable), page number, and paragraph numbers (if applicable). Regarding an email or memo, identify the date, subject line, author, and recipient. Regarding a CD-ROM or DVD, also identify the name, date, time, file type, and file size of every computer file. (2) For all documents listed, identify the total number of pages constituting the referenced item. (3) For all documents listed, identify the Originator of the Protected Information. For example, the Originator of a proposal would be the offeror that submitted the proposal. For an email written by the procurement officer, or for a file memo regarding responsiveness, the Originator would be the offeror whose protected information was reprinted in the email or memo. (4) Do not leave blank lines on this list of protected information.

The following items are Protected Information:

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