

Confidential Information, Trade Secrets, and Proprietary Information

The state is responsible for protecting confidential information.

Proposals submitted in response to RFPs may contain trade secrets and/or privileged or confidential commercial (processes and techniques) or financial information (cost breakdown, profit, and indirect cost rates) which the proposer (or his subcontractor) does not want used or disclosed for any purpose other than evaluation of the proposal.

The State of Louisiana assumes no liability for disclosure or use of unmarked data and may use or disclose such data for any purpose.

However, the State reserves the right to make any proposal, including proprietary information contained therein, available to OSP personnel, the Office of the Governor, or other state agencies or organizations for the sole purpose of assisting the State in its evaluation of the proposal. The State shall require said individuals to protect the confidentiality of any specifically identified proprietary information or privileged business information obtained as a result of their participation in these evaluations. Each committee member and any other person that attends oral presentations or is involved in the evaluation is required to sign a statement of “no conflict of interest and confidentiality”. See Exhibit 7 for example letter.

Section 1.6 of the RFP boilerplate reads as follows:

The designation of certain information as trade secrets and/or privileged or confidential proprietary information shall only apply to the technical portion of your proposal. Your cost proposal will not be considered confidential under any circumstance. Any proposal marked as confidential or proprietary in its entirety may be rejected without further consideration or recourse.

For the purposes of this procurement, the provisions of the Louisiana Public Records Act (La. R.S. 44.1 et. seq.) will be in effect. Pursuant to this Act, all proceedings, records, contracts, and other public documents relating to this procurement shall be open to public inspection. Proposers are reminded that while trade secrets and other proprietary information they submit in conjunction with this procurement may not be subject to public disclosure, protections must be claimed by the proposer at the time of submission of its Technical Proposal. Proposers should refer to the Louisiana Public Records Act for further clarification.

The proposer must clearly designate the part of the proposal that contains a trade secret and/or privileged or confidential proprietary information as “confidential” in order to claim protection, if any, from disclosure. The proposer shall mark the cover sheet of the proposal with the following legend, specifying the specific section(s) of his proposal sought to be restricted in accordance with the conditions of the legend:

“The data contained in pages _____ of the proposal have been submitted in confidence and contain trade secrets and/or privileged or confidential information and such data shall only be disclosed for evaluation purposes, provided that if a contract is awarded to this Proposer as a result of or in connection with the submission of this proposal, the State of Louisiana shall have the right to use or disclose the data therein to the extent provided in the contract. This restriction does not limit the State of Louisiana’s right to use or disclose data obtained from any source, including the proposer, without restrictions.”

Further, to protect such data, each page containing such data shall be specifically identified and marked “CONFIDENTIAL”.

Proposers must be prepared to defend the reasons why the material should be held confidential. If a competing proposer or other person seeks review or copies of another proposer's confidential data, the state will notify the owner of the asserted data of the request. If the owner of the asserted data does not want the information disclosed, it must agree to indemnify the state and hold the state harmless against all actions or court proceedings that may ensue (including attorney's fees), which seek to order the state to disclose the information. If the owner of the asserted data refuses to indemnify and hold the state harmless, the state may disclose the information.

The State reserves the right to make any proposal, including proprietary information contained therein, available to OSP personnel, the Office of the Governor, or other state agencies or organizations for the sole purpose of assisting the State in its evaluation of the proposal. The State shall require said individuals to protect the confidentiality of any specifically identified proprietary information or privileged business information obtained as a result of their participation in these evaluations.

If your proposal contains confidential information, you should also submit a redacted copy along with your proposal. If you do not submit the redacted copy, you will be required to submit this copy within 48 hours of notification from the Office of State Procurement. When submitting your redacted copy, you should clearly mark the cover as such - “REDACTED COPY” - to avoid having this copy reviewed by an evaluation committee member. The redacted copy should also state which sections or information has been removed.”

Once it is determined that information is confidential or if a restraining order is issued, only the redacted copy is to be made available for public inspection. It may be necessary to alter a complete proposal if it is determined that some information is public and other information is to be held confidential. In the later case, the portions determined to be confidential are to be removed, sealed in an envelope marked

confidential, maintained in the file, and unavailable for public inspection. The copy provided for public inspection should indicate the sections/pages that have been removed.

If a public records request is received, Exhibit 19 is the appropriate letter to send to the company whose proposal is sought to be reviewed. It is suggested that a separate folder be maintained in the RFPO file that contains correspondence related to public records requests.