19-445.2200. Administrative Review Protective Orders.

A. At the request of any party or on its own initiative, the appropriate chief procurement officer or the Procurement Review Panel may issue a protective order controlling the treatment of protected information for purposes of a protest or other proceeding currently pending before it. Such information may include any information exempt from public disclosure by law, such as information exempt from disclosure under Sections 11-35-410 and 30-4-40. The protective order shall establish procedures for application for access to protected information and for identification and safeguarding of that information. Because a protective order serves to facilitate the pursuit of a protest or other administrative proceeding by a protester through counsel, it is the responsibility of protester’s counsel to request that a protective order be issued and to submit timely applications for admission under that order. Protected 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.

B. A protective order may not prohibit a public body from releasing information which the public body must release under applicable law. A protective order may not require the release of any public record that a public body is prohibited from releasing by law. Issuance of a protective order does not preclude a party from asserting any legally cognizable privilege to withhold any document or information.

C. Before being permitted to view any protected information, counsel and any consultants retained by counsel who will review or utilize any protected information must file an application for access in accordance with the conditions of the protective order. To be entitled to access, an applicant must establish that the applicant is not involved in competitive decision-making for any firm that could gain a competitive advantage from access to the protected information and that there will be no significant risk of inadvertent disclosure of protected information. A consultant will not be permitted access to protected information if he or she is employed by a party to the action or is working under a contract to a party. Objections to granting an applicant access to protected information must be in writing and filed within two business days after the person receives a copy of the application for access.

D. Any violation of the terms of a protective order may result in the imposition of such sanctions as the CPO or Procurement Review Panel, as applicable, deems appropriate, including referral to appropriate bar associations or other disciplinary bodies and restricting the individual’s practice before the CPO or Panel. A business aggrieved by violation of a protective order may seek enforcement of such order in any available judicial or administrative forum.

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