

Submitting Confidential Information and Redacted Offers

SUBMITTING CONFIDENTIAL INFORMATION

A. For every document Offeror submits in response to or with regard to a solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (a) a trade secret, as defined in SC Code Section 30-4-40(a)(1), or (b) privileged & confidential, as that phrase is used in SC Code Section 11-35-410.

1. For every document Offeror submits in response to or with regard to a solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by SC Code Section 39-8-20 of the Trade Secrets Act.
2. For every document Offeror submits in response to or with regard to a solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by SC Code Section 11-35-1810.

B. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark the entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected! If the response or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page.

C. By submitting a response to a solicitation or request, Offeror agrees

1. to the public disclosure of every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED",
2. that any information not marked, as required by these instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and
3. that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure.

D. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these instructions, as being either "CONFIDENTIAL" or "TRADE SECRET" or "PROTECTED". By submitting a response, Offeror agrees to defend, indemnify and hold harmless the State of South Carolina, its officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from the State withholding information that Offeror marked as "CONFIDENTIAL" or "TRADE SECRET" or "PROTECTED".

SUBMITTING REDACTED OFFERS:

A. If an offer includes any information that is marked as “CONFIDENTIAL” or “TRADE SECRET” or “PROTECTED” in accordance with the section above, “Submitting Confidential Information”, Offeror must also submit one complete copy of the offer from which they have removed or concealed such information (the redacted copy). The redacted copy should

1. reflect the same pagination as the original,
2. show the empty space from which information was redacted, and
3. be submitted on magnetic media.

B. Except for the information removed or concealed, the redacted copy must be identical to the original offer, and the Procurement Officer must be able to view, search, copy and print the redacted copy without a password.