

Handling Confidential Information in Vendor Proposals

General

With the exception of information granted Confidential status, information, documentation and other materials regarding **bids** shall be available for public viewing after the time of opening. Information, documentation and other materials regarding **proposals** shall be available for public viewing after the award has been made.

Documentation and correspondence created during the course of bid or proposal review, evaluation, presentation and negotiation shall be included in the bid or proposal file created by the Purchasing Services buyer. Correspondence from the Office of the General Counsel, which is protected by Attorney/Client Privilege, may be omitted from the file, but should be kept in separate (electronic is suggested) file for future reference with a note in the bid folder that the Office of the General Counsel correspondence file exists. Alternatively, the attorney correspondence can be placed in a sealed brown Kraft envelope in the bid folder marked "Attorney Correspondence" and labeled with the "Confidential" label. If attorney-client correspondence is the only thing in the file that is Confidential (no confidential vendor information), the label should be applied only to the brown envelope, not to the entire bid folder.

Identifying Vendor Trade Secret Information

Vendors are given instructions in the RFP for identifying and submitting Trade Secret information as part of proposal. However, if they do not correctly follow instructions for indicating Confidential Information, or if they indicate in any way that any part of their proposal is confidential, Purchasing will still follow these procedures for protecting confidential information.

Handling Confidential Trade Secret Information BEFORE Award

The following procedures shall apply in handling Confidential information in Purchasing before award:

- Buyers and departmental evaluation teams are responsible for identifying any "Confidential" or "Trade Secret" notations on vendor proposals. Support staff should also watch for any Confidential or Trade Secret notation on **bids** or **proposals** and advise the buyer immediately.

At the public bid opening, support staff who open **bids** must: (1) review bids for confidential notations. (2) If there is information marked confidential, decline to allow interested parties to view the **bid**. (3) Refer opened bids to the buyer to review the basis for confidential status.

If any part of any bid or proposal is accepted by the buyer as confidential, the whole file is considered confidential. Requests to see the folder must be directed to the Office of Records & Information Management.

Buyer should review all **proposals** prior to referring them to the department for evaluation so as to call the evaluation team's attention to any confidential information in the proposals.

- Confidential or Trade Secret information may appear in a variety of ways, not always consistent with our instructions. Watch for these:
 - 1) Fax cover pages that have a Confidential or Trade Secret statement on the bottom.
 - 2) RFPs with a Confidential or Trade Secret note embedded in the document footers or headers.
 - 3) RFPs that include introduction letters identifying any Confidential information.
 - 4) E-mails from vendors that state the information is Confidential.
- If the Buyer observes that a vendor appears to have made a blanket declaration of "Confidentiality" of the entire bid or proposal or has marked their prices "Confidential," or has otherwise invoked Confidentiality where it appears to be unreasonable or in error, or is not accompanied by a statement of the legal basis for considering the information Trade Secret under the Minnesota Government Data Practices Act, the Buyer should call the vendor immediately upon receipt of the proposal or as soon as noticed and ask to have the Confidentiality designation removed or modified, or a statement of legal basis submitted to Purchasing. The vendor's permission to remove the confidentiality designation should be received *in writing*. It is advisable to address confidentiality issues as soon as proposals are received, before referring proposals to the evaluation team.

- The Buyer will refer proposals to the department for evaluation with the Evaluation Team Instructions Letter. The letter will advise the team that they must protect the entire proposal as confidential until the award is made, and that they must protect information marked "Confidential" even after award.

Handling Confidential/Trade Secret Information AFTER Award is Made

Bid/Proposal folders with Confidential information will be identified on the front cover with a label that reads:

CONFIDENTIAL

One or more vendors has requested Confidential status and handling for certain information in this file. Anyone requesting to view this file must write to Susan McKinney, Records and Information Management, 502 Morrill Hall, Minneapolis, MN 55455 or E-mail: mckin018@tc.umn.edu

Support staff who open bids/proposals should paper clip the label to the folder if confidential information is noted. When the bids/proposals are delivered to the Buyer, the Buyer will also perform a review to determine if the label is needed. The Buyer will apply the label as appropriate.

Requests to see Bid/RFP folders labeled "Confidential" must be made to Susan McKinney – not the Buyer. The buyer will forward the request to Susan McKinney. She will contact the requestor and schedule a time for the information to be viewed. She will contact Purchasing Files Section (4-2319) to coordinate her preview if necessary and to schedule her and the requestor for the review of the file in Purchasing.

It is possible that Susan McKinney, upon reviewing the file in Purchasing, might request copies of materials in the folder and strike out confidential portions, which then can be used for public view. In most cases, the requestor will be charged for the copy cost. If a redacted copy is made, Purchasing will have 2 folders of the same bid/proposal, one with original documents including Confidential materials and the other for public view, excluding Confidential materials (called a "redacted" copy). The folders are filed side by side and cross reference each other. The Confidential file is identified by the Confidential label. In this case, persons or firms who request to view the proposal file are given the redacted file.

Files will maintain a log for the records that are sent to Susan McKinney.. The log consists of "RFP/Bid number", "date sent" and "date received" columns. Where the RFP/Bid folder(s) is returned, record the return date before filing back and the "out-Card" removed.

Bid/Proposal folder(s) not labeled CONFIDENTIAL may be viewed in Purchasing Services. Before allowing a file to be viewed, however, Files staff should check the folder to see if there is a brown Kraft envelope labeled "Confidential". This contains privileged attorney-client communication. Files staff must remove the brown envelope from the file before allowing it to be viewed, and replace it after viewing and before refiling. It is not necessary to involve Records & Information Management when there is no vendor information which is confidential.

Handling Award Documents with Confidential Information

If the award letter, award notice, or purchase order refers to the vendor's proposal as an attachment, and there is Confidential information in the bid/proposal, the Purchasing Assistant will apply the Confidential label to the top page of the original award document and all copies.

Requests to view award documents with Confidential information also need the approval of Records & Information Management.