



State Financial Services Division
Greg Gianforte, Governor
Misty Ann Giles, Director

DECLARATION IN SUPPORT OF REQUEST FOR CONFIDENTIALITY

RFP Number: _____

_____ (Declarant), representing _____ (Vendor), declare:

1. I am an attorney licensed to practice in the State of _____, representing the Vendor who is responding to a state solicitation, and have full authority from the Vendor to submit this declaration.
2. I am requesting certain information be classified as confidential because *(select all that apply. The bold items are for easy reference to the confidential claim spreadsheet)*:
 - The information is a **trade secret** as defined in Mont. Code Ann. §30-14-402(4). See Mont. Code Ann. §18-4-310(4)(a).
 - The information is necessary to maintain the security and integrity of **secure facilities or information systems** owned by the state. See §2-6-1002(1)(b), MCA.
 - The information involves **personal safety** as determined by the department. See §18-4-310(4)(b), MCA.
 - The information is designated as confidential by statute or by court order. See §2-6-1002(1)(b), MCA.
 - The information is protected under the Montana Constitution because an **individual privacy interest** clearly exceeds the merits of public disclosure. See Mont. Const. Art II §9, and §2-6-1002(1)(a), MCA.
3. I have read and am familiar with the applicable provisions of the Montana Constitution, Montana laws and regulations about management of public records and public information, the Montana Procurement Act, the Montana's Uniform Trade Secrets Act, and applicable case law.
4. I understand:
 - a. The State of Montana is required by both the Montana Constitution and its laws to permit the public to examine documents that are kept or maintained by the public agencies, other than those legitimately meeting the provisions of Montana Constitution, Mont. Code Ann. §§2-6-1001, *et seq.*, Montana Procurement Act §§18-4-401, *et seq.*, and Montana's Uniform Trade Secrets Act, Mont. Code Ann. §§ 30-14-401, *et seq.*
 - b. The State is required to review claims of confidentiality and determine whether the request should be granted or denied.

- c. All information received in response to a solicitation is available for public examination except for information that is protected by the Montana Constitution and laws.
 - d. For any information being withheld under a claim of confidentiality, the Vendor must submit:
 - A copy marked “Unredacted,” including all claimed confidential information, submitted separately from the remainder of the solicitation’s response, and
 - A redacted copy marked “Redacted” with the claimed information being clearly marked as redacted.
 - e. Cost or price is not confidential information and must be available to the public.
 - f. The claimed confidential information cannot be available from other non-confidential sources.
 - g. For the State to process this request, the following conditions must be met:
 - This declaration must be dated and signed by an attorney representing the vendor.
 - The information to be treated as confidential must be clearly marked and separated from the solicitation.
 - The Confidential Claim spreadsheet must be completed and attached to this declaration. The purpose of this spreadsheet is to allow the State to easily find, and review all claimed confidential information. Submit the attached information in the spreadsheet:
 - **Solicitation #:** The solicitation number
 - **Vendor:** The name of the vendor **requesting** information be kept confidential
 - **Response Document Title:** The response **document** name submitted with redacted information
 - **Confidential Type:** Select the **appropriate** type from the drop-down list
 - **Page #:** The page number on the document where the confidential information is found
 - **Publicly Available:** Select from the dropdown “Yes/No” to answer the question. Is this information available from other non-confidential sources? For example, the internet, another State’s procurement process, etc.
 - **Description of Claimed Confidential Information:** Briefly describe the information the Vendor is requesting to be kept confidential
 - **Rationale:** Specific detailed information as to how the appropriate legal standard is met and the reason the information must be classified as confidential. *Use additional paper, as necessary.*
5. I and the Vendor accept that, should the State determine that the explanation is incomplete, inadequate, or invalid, the submitted materials will be treated as any other document in the agency’s possession, insofar as its examination as a public record is concerned. I and the Vendor are solely responsible for the adequacy and sufficiency of the explanation. Once a proposal is opened, its contents cannot be returned to the Vendor if the Vendor disagrees with the State’s determination on the issue of confidentiality.
 6. If a member of the public requests to review the Vendor’s “Confidential Information,” the following process will be used:
 - a. State shall notify the Vendor in writing of the request for public information.
 - b. The Vendor shall have fourteen days from the date the State sent notice of the request for public information to review the request and notify the State if it opposes the release of the records.
 - c. The State will release the records if the vendor does not object to the release or fails to notify the State of its objection within the period specified in 6.b.
 - d. If the person seeking the information disagrees and seeks judicial review, the Vendor shall defend the suit at its cost.
 - e. If the State determines that the information is not exempt from disclosure, then the State shall provide Contractor written notice of its decision. Contractor shall have 30 days from the State’s written notice to seek appropriate judicial review before the State discloses the information.

7. I, on behalf of the Vendor, agree:

- a. Vendor, at its sole cost and expense, shall defend the State of Montana, and its employees, officers, officials, agents, and volunteers (collectively, Indemnitees) from and against all claims, allegations, lawsuits, or any other action (Claim or Claims) relating to the Vendor's claim of confidentiality.
- b. Vendor shall indemnify the Indemnitees against losses, liabilities, damages, judgments, settlements, penalties, fines, reasonable attorney/expert fees, expenses, and court costs, arising from the claims.
- c. Vendor acknowledges that under Montana law, the Montana Attorney General may participate in an action involving the state of Montana.
- d. If Vendor fails to comply with its defense obligations under this section, State may release the claimed confidential information. Vendor shall reimburse State for all costs to State resulting from settlements, judgments, losses, damages, liabilities, and penalties, fines, including but not limited to attorney fees, court costs, and the costs of investigation, discovery, and experts.
- e. Vendor may at any time withdraw its opposition to the open records request and permit the State to release the information.

I declare under penalty of perjury under the laws of the State of Montana that the foregoing and any information in any attachment in support of this declaration are true and correct. I understand a deliberate falsification in this declaration constitutes an offense of perjury as provided in Mont. Code Ann. §45-7-201 and is punishable as the offense of false swearing as provided in Mont. Code Ann. §45-7-202.

Date

Declarant's Signature

City, State of Signing

Person of Contact:

Name

Address

(_____) _____
Phone

Email



State Financial Services Division
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Misty Ann Giles, Director

CONFIDENTIAL CLAIMS

Solicitation Number _____

Vendor _____

For State Use Only

Response Document Title	Page Number	Publicly Available	Type	Brief Description of Claimed Confidential Information	Rationale	State Response	State Response Rationale
<i>Example Response to Scope of Services</i>	5	No	Trade secret	Data points for our predictive algorithm.		Confidential	We agree this is a trade secret.