

DEPARTMENT OF ADMINISTRATION
STATE FINANCIAL SERVICES DIVISION
STATE PROCUREMENT BUREAU

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HELENA, MONTANA 59620-0135

AFFIDAVIT FOR TRADE SECRET CONFIDENTIALITY

STATE OF Colorado)
)ss.
County of Denver)

Charles K. Sweeney II (Affiant), being first duly sworn under oath, and representing
MAXIMUS Human Services, Inc. (hereafter "Vendor"), hereby deposes and says that:

1. I am an attorney licensed to practice in the State of Colorado, representing the Vendor referenced in this matter, and have full authority from the Vendor to submit this affidavit and accept the responsibilities stated herein.

2. I am aware that the Vendor is submitting a proposal to the State of Montana (State) for RFP # DPHHS-RFP-2018-0127JT. Public agencies in Montana are required by Montana law 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's Uniform Trade Secrets Act, Mont. Code Ann. §§ 30-14-401, *et seq.*, and that the State is required to review claims of trade secret confidentiality.

3. I have read and am familiar with the provisions of Montana's Uniform Trade Secrets Act, am familiar with the case law interpreting it, and understand that all information received in response to this RFP will be available for public examination except for:

- (a) trade secrets meeting the requirements of the Act; and
- (b) matters involving individual safety as determined by the State.

4. I am aware that in order for the Vendor to claim confidential material, this affidavit must be fully completed and submitted to the State, and the following conditions must be met by the Vendor:

- (a) information to be withheld under a claim of confidentiality must be clearly marked and separated from the rest of the proposal;
- (b) the proposal may not contain trade secret matter in the cost or price; and
- (c) the Vendor's explanation of the validity of this trade secret claim is attached to this affidavit.

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 of the issue of trade secret confidentiality.

6. I, on behalf of the Vendor, warrant that the Vendor will be solely responsible for all legal costs and fees associated with any defense by the State of the Vendor's claim for trade secret protection in the event of an open records request from another party which the Vendor chooses to oppose. The Vendor will either totally assume all responsibility for the opposition of the request, and all liability and costs of any such defense, thereby defending, protecting, indemnifying and saving harmless the State, or the Vendor will immediately withdraw its opposition to the open records request and permit the State to release the documents for examination. The State will inform the Vendor in writing of any open records request that is made, and the Vendor will have three working days from receipt of the notice to notify the State in writing whether the Vendor opposes the request or not. Failure to provide that notice in writing will waive the claim of trade secret confidentiality, and allow the State to treat the documents as a public record.

Documents that, in the opinion of the State, do not meet all the requirements of the above will be available for public inspection, including any copyrighted materials.

Charles K. Sweeney II
Affiant's Signature

Signed and sworn to before me on November 1, 2017 (date) by

Charles K. Sweeney II, Vice President - Contracts (Affiant's name).

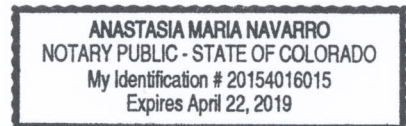
Anastasia Navarro

Notary Public for the State of

Colorado

My Commission Expires:

April 22, 2019



Affidavit for Trade Secret Confidentiality

Affidavit for Trade Secret Confidentiality, 4(c)

4. I am aware that in order for the Vendor to claim confidential material, this affidavit must be fully completed and submitted to the State, and the following conditions must be met by the Vendor:

(c) the Vendor's explanation of the validity of this trade secret claim is attached to this affidavit.

RFP Section 2.3.1 Public Information

Subject to exceptions provided by Montana law, all information received in response to this RFP, including copyrighted material, is public information. Proposals will be made available for public viewing and copying shortly after the proposal due date and time. The exceptions to this requirement are: (1) bona fide trade secrets meeting the requirements of the Uniform Trade Secrets Act, Title 30, chapter 14, part 4, MCA, that have been properly marked, separated, and documented; (2) matters involving individual safety as determined by the State; and (3) other constitutional protections. See 18-4-304, MCA.

RFP Section 2.3.2 Procurement Officer Review of Proposals

Upon opening the proposals in response to this RFP, the procurement officer will review the proposals for information that meets the exceptions in Section 2.3.1, providing the following conditions have been met:

- Confidential information (including any provided in electronic media) is clearly marked and separated from the rest of the proposal.
- The proposal does not contain confidential material in the cost or price section.
- An affidavit from the Offeror's legal counsel attesting to and explaining the validity of the trade secret claim as set out in Title 30, chapter 14, part 4, MCA, is attached to each proposal containing trade secrets. Counsel must use the State of Montana "Affidavit for Trade Secret Confidentiality" form in requesting the trade secret claim. This affidavit form is available on SFSD website at: <http://vendorresources.mt.gov/VendorForms> or by calling (406) 444-2575.

Information separated out under this process will be available for review only by the procurement officer, the evaluator/evaluation committee members, and limited other designees. Offerors shall pay all of its legal costs and related fees and expenses associated with defending a claim for confidentiality should another party submit a "right to know" (open records) request.

We are claiming exceptions to RFP 2.3.1 – Public Information and we have met the following conditions:

- Confidential Information is clearly marked and separated from the rest of our proposal.
- Our proposal does not contain confidential material in the cost or price section.
- An affidavit from the MAXIMUS legal counsel attesting to and explaining the validity of the trade secret claim as set out in Title 30, chapter 14, part 4, MCA, is attached to our proposal containing trade secrets.

MAXIMUS is claiming trade secret protection under the Montana Uniform Trade Secrets Act, Mont. Code Ann. §§ 30-14-401, et seq. for the following elements of information include in its proposal in response to State of Montana (State) for RFP # DPHHS-RFP-2018-0127JT:

- Graphic depictions of the MAXIMUS approach, systems, solutions, hardware, and software
- MAXIMUS Technical Specifications for Hardware and Software
- Screen shots of the MAXIMUS software application
- Details of our solution timelines and scheduling
- Staffing approach and staff biographies – organizational charts, resumes, staff names
- All similar items of our subcontractors

In making its claim for protection, MAXIMUS has relied on a review of the Montana's Uniform Trade Secrets Act (the "Act") and various Montana court cases (principally, *Great Falls Tribune v. Mont. Pub. Serv. Comm.*, 319 Mont. 38, 82 P.3d 876 (2003)), and administrative opinions.

The Act defines a "trade secret" as "information or computer software, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- a) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and
- b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." See, Mont. Code Ann. §§ 30-14-402 (4).

The administrative opinions we have reviewed set up a five factor test:

1. The claimed trade secret material is information
2. The information is in fact secret.
3. The secret information is subject to efforts reasonable under the circumstances to maintain its secrecy.
4. The secret information is not readily ascertainable by proper means.
5. The information derives independent economic value from its secrecy, or that competitive advantage is derived from its secrecy.

See, e.g., Department of Public Service Regulation before the Public Service Commission of the State of Montana, Regulatory Division Docket No. N2014.4.45, August 25, 2014.

The information MAXIMUS is seeking to protect from disclosure is related to its business of providing services to state agencies for various government health and human services programs including, Medicare and its proprietary business processes and software, forms, templates, organizations, and personnel.

1. *The claimed trade secret material is information.* The materials are in the form of the written proposal and related materials submitted to the State and are in the form of information provided to the State.
2. *The information is in fact secret.* As required by the Act, MAXIMUS takes reasonable efforts to keep this information secret. Our offices and facilities require badged access only by authorized employees, contractors, vendors, and visitors. Our information networks implement comprehensive physical, administrative, and electronic safeguards to prevent unauthorized access to information, data, and software. These safeguards include but are not limited to, access controls, background checks, passwords, badges, encryption, cameras, and similar safeguards. We seek protection for our confidential information and trade secrets under a variety of legal agreements, using confidentiality clauses, non-disclosure clauses, limited licenses that prohibit copying or disclosure, and other appropriate provisions and documents.
3. *The secret information is subject to efforts reasonable under the circumstances to maintain its secrecy.* See above at 2.

4. *The secret information is not readily ascertainable by proper means.* See above at 2.
5. *The information derives independent economic value from its secrecy, or that competitive advantage is derived from its secrecy.* The markets in which MAXIMUS does business are very competitive and MAXIMUS is very successful in those markets, in large part due to our trade secret information. The highly competitive nature of these markets is self-evident in the number of vendors who have expressed interest in the State's own RFP. The MAXIMUS trade secret information was developed at great expense over many years. Our processes, forms, templates, graphics, software, and personnel allow us to offer our customer enhanced values at lower costs. A competitor who gains access to such trade secret information would gain a significant competitive price and value advantage without having to incur those costs.