

ORIGINAL

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
BID PROTEST

FILED**JUL 24 2013****U.S. COURT OF
FEDERAL CLAIMS**

AMAZON WEB SERVICES, INC.)
Plaintiff,)
v.)
THE UNITED STATES OF AMERICA)
Defendant.)

Case No. 13-506 C

**PLAINTIFF'S MOTION FOR LEAVE TO FILE COMPLAINT
UNDER SEAL AND MOTION FOR PROTECTIVE ORDER**

Plaintiff Amazon Web Services ("AWS"), by its undersigned counsel, hereby moves this Court, pursuant to Appendix C paragraph 4 of the Rules of the United States Court of Federal Claims ("RCFC App. C") , for leave to file its Bid Protest Complaint under seal. In support of this motion, AWS states that the Complaint contains confidential or proprietary source selection and proposal information not appropriate for release to the public. Some of this information is subject to a protective order issued by the United States Government Accountability Office ("GAO") in connection with prior GAO protests of IBM-U.S. Federal, docketed as B-407073.3, *et al.* AWS has notified GAO of the instant action. A copy of the GAO protective order is attached as Exhibit A.

In addition, pursuant to RCFC App. C. paragraphs 16-17, AWS hereby moves this Court to issue a Protective Order covering the proceedings in this bid protest matter (including, but not limited to, the documents filed under seal). The proceedings in this matter will involve sensitive agency source selection information and proprietary offeror proposal information. Maintaining the integrity of both the source selection process and the offerors' protected information requires that the Court issue a Protective Order covering the proceedings.

WHEREFORE, AWS respectfully requests that the Court grant Plaintiff's Motion for Leave to File Complaint Under Seal and Motion for Protective Order. A proposed Order Granting Plaintiff's Motions and a proposed Protective Order (taken verbatim from RCFC Form 8) are attached. In the event that the Court should deny these Motions, AWS respectfully requests that the Court grant it leave to withdraw its filings until such time as further arrangements can be made with the affected parties.

Dated: July 24, 2013

Respectfully submitted,

ARNOLD & PORTER LLP



Craig A. Holman
555 Twelfth Street, N.W.
Washington, D.C. 20004
Tel: 202-942-5722
Fax: 202-942-5999

Of Counsel:

Kara L. Daniels
Lauren J. Schlanger
Steffen Jacobsen
Arnold & Porter LLP
555 Twelfth Street, N.W.
Washington, D.C. 20004

*Counsel of Record for Plaintiff
Amazon Web Services, Inc.*

EXHIBIT A

UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE
OFFICE OF THE GENERAL COUNSEL
PROCUREMENT LAW DIVISION
Washington, D.C. 20548

Matter of: IBM-U S Federal

File: B-407073.3

Agency: Central Intelligence Agency

PROTECTIVE ORDER

This protective order limits disclosure of certain material and information submitted in the above-captioned protest, so that no party obtaining access to protected material under this order will gain a competitive advantage as a result of the disclosure.

1. This protective order applies to all material that is identified by any party as protected, unless the Government Accountability Office (GAO) specifically provides otherwise. Protected material includes information whether on paper or in any electronic format. This protective order applies to all proceedings associated with the protest, *e.g.*, supplemental/amended protests, requests for reconsideration, and claims for costs.
2. Protected material of any kind may be provided only to GAO and to individuals authorized by this protective order. The first page of each document containing protected material is to be clearly marked as follows:

**PROTECTED MATERIAL
TO BE DISCLOSED ONLY IN ACCORDANCE WITH
GOVERNMENT ACCOUNTABILITY OFFICE PROTECTIVE ORDER**

The party claiming protection must clearly identify the specific portion of the material for which it is claiming protection. Wherever such protection is claimed for a protest pleading, the party filing the pleading shall submit a proposed redacted version for public release when the protected version is filed.

3. Only individuals who are admitted under this protective order by GAO, and support staff (paralegal, clerical, and administrative personnel) who are employed or supervised by individuals admitted under this order, and who are not involved in competitive decision making for a party to the protest or for any firm that might gain a competitive advantage from access to the protected material disclosed under this

order, shall have access to information covered by this order. Individuals admitted under this protective order shall advise such support staff, prior to providing them access to protected material, of their obligations under this order.

4. Each party included under this protective order shall receive up to 3 copies of the protected material (the original constitutes one copy), and shall not further duplicate that material, except as incidental to its incorporation into a submission to GAO or as otherwise agreed to by the parties with GAO's concurrence. For purpose of this provision, a "party" refers to the entity of record. Therefore, multiple attorneys or law firms representing a single party must determine among them how to allocate the maximum of 3 copies among the individuals admitted to the protective order. Each duplication of electronic media (e.g., CD Rom), whether in electronic or hard copy form, constitutes a single copy. E-mail transmissions to multiple recipients should be counted as generating one copy for the sender and one for each recipient.

5. When any party sends or receives documents in connection with this protest that are not designated as protected, including proposed redacted versions of protected documents, the party shall refrain from releasing the documents to anyone not admitted under this protective order, including clients, until the end of the second working day following receipt of the documents by all parties. This practice permits parties to identify documents that should have been marked protected before the documents are disclosed to individuals not admitted under this protective order.

6. Each individual covered under this protective order shall take all precautions necessary to prevent disclosure of protected material. In addition to physically and electronically securing, safeguarding, and restricting access to the protected material in one's possession, these precautions include, but are not limited to, sending and receiving protected material using physical and electronic methods that are within the control of individuals authorized by this protective order or that otherwise restrict access to protected material to individuals authorized by this protective order. Protected material may be sent using electronic mail unless objected to by any party in this protest. The confidentiality of protected material shall be maintained in perpetuity.

7. Within 60 days after the disposition of the protest(s) (or if a request for reconsideration or a claim for costs is filed, 60 days after the disposition of those matters), all protected material furnished to individuals admitted under this protective order, including all electronically transmitted material and copies of such material, with the exception of a single copy of a protected decision or letter issued by our Office, shall be: (1) returned to the party that produced them; or (2) with the prior written agreement of the party that produced the protected material, destroyed and certified as destroyed to the party that produced them; or (3) with the prior written agreement of the party that produced the protected material, retained under the terms of this order for such period as may be agreed. Within the same 60-day

period, protected pleadings (including copies in archival files and computer backup files) and written and electronic transcripts of protest conferences and hearings shall be destroyed, and the destruction certified to GAO and the other parties, unless the parties agree otherwise. In the absence of such agreement and for good cause shown, the period for retention of the protected material under this paragraph may be extended by order of GAO. Any individual retaining material received under this protective order (except for the single copy of a protected decision or letter issued by our Office) beyond the 60-day period without the authorization of GAO or the prior written agreement of the party that produced the material is in violation of this order. The terms of this protective order (except those terms regarding the return or destruction of protected material) shall apply indefinitely to the single copy of the protected decision or letter issued by our Office that is retained by a party admitted under this order.

8. Material to which parties gain access under this protective order is to be used only for the subject protest proceedings, absent express prior authorization from the GAO. Protected material obtained under this protective order may be used, however, in a bid protest filed with the United States Court of Federal Claims, without GAO's prior authorization, provided that the information is filed under seal with the Court, that the Court is informed of GAO's protective order, and that the Court is requested to issue its own protective order to cover the protected material. In addition, GAO must be notified when suit is filed with the Court. Use of material protected under the GAO protective order will be governed by the protective order issued by the Court.

9. Any violation of the terms of this protective order may result in the imposition of such sanctions as GAO deems appropriate, including but not limited to dismissal of the protest, referral of the violation to appropriate bar associations or other disciplinary bodies, and restricting the practice of counsel before GAO. A party whose protected information is improperly disclosed shall be entitled to all remedies under law or equity, including breach of contract.



Frank Maguire
Senior Attorney

March 4, 2013

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
BID PROTEST**

AMAZON WEB SERVICES, INC.)
)
Plaintiff,)
)
v.)
)
THE UNITED STATES OF AMERICA)
)
Defendant.)

Case No. _____

**ORDER GRANTING PLAINTIFF'S MOTION TO FILE
COMPLAINT UNDER SEAL AND FOR PROTECTIVE ORDER**

This matter having come before the Court on Plaintiff's Motion for Leave to File Complaint and Supporting Documents Under Seal and for Protective Order and the Court being fully apprised of the premises and having considered any opposition thereto, it is this ___ day of July 2013 by the United States Court of Federal Claims:

ORDERED that the Motion for Leave to File Complaint under Seal is GRANTED;

ORDERED that said pleadings shall be held under seal;

ORDERED that the Motion for Protective Order is GRANTED; and

FURTHER ORDERED that the attached Protective Order shall cover all protected material filed in this matter including the pleadings and supporting documents sealed by this Order.

United States Court of Federal Claims Judge

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
BID PROTEST**

AMAZON WEB SERVICES, INC.)
)
 Plaintiff,) Case No. _____
)
 v.)
)
 THE UNITED STATES OF AMERICA)
)
 Defendant.)

PROTECTIVE ORDER

The court finds that certain information likely to be disclosed orally or in writing during the course of this litigation may be competition-sensitive or otherwise protectable and that entry of a Protective Order is necessary to safeguard the confidentiality of that information. Accordingly, the parties shall comply with the terms and conditions of this Protective Order.

I.

1. **Protected Information Defined.** “Protected information” as used in this order means information that must be protected to safeguard the competitive process, including source selection information, proprietary information, and confidential information contained in:
 - (a) any document (e.g., a pleading, motion, brief, notice, or discovery request or response) produced, filed, or served by a party to this litigation; or
 - (b) any deposition, sealed testimony or argument, declaration, or affidavit taken or provided during this litigation.
2. **Restrictions on the Use of Protected Information.** Protected information may be used solely for the purposes of this litigation and may not be given, shown, made available, discussed, or otherwise conveyed in any form except as provided herein or as otherwise required by federal statutory law.

II.

3. **Individuals Permitted Access to Protected Information.** Except as provided in paragraphs 7 and 8 below, the only individuals who may be given access to protected information are counsel for a party and independent consultants and experts assisting such counsel in connection with this litigation.
4. **Applying for Access to Protected Information.** An individual seeking access to protected information pursuant to Appendix C, Section VI of this court’s rules must read this Protective Order; must complete the appropriate application form (Form 9—“Application for Access to Information Under Protective Order by Outside or Inside Counsel,” or Form 10—“Application for Access to Information Under Protective Order by Expert Consultant or

Witness"); and must file the executed application with the court.

5. Objecting to an Application for Admission. Any objection to an application for access must be filed with the court within two (2) business days of the objecting party's receipt of the application.
6. Receiving Access to Protected Information. If no objections have been filed by the close of the second business day after the other parties have received the application, the applicant will be granted access to protected information without further action by the court. If any party files an objection to an application, access will only be granted by court order.
7. Access to Protected Information by Court, Department of Justice, and Agency Personnel. Personnel of the court, the procuring agency, and the Department of Justice are automatically subject to the terms of this Protective Order and are entitled to access to protected information without further action.
8. Access to Protected Information by Support Personnel. Paralegal, clerical, and administrative support personnel assisting any counsel who has been admitted under this Protective Order may be given access to protected information by such counsel if those personnel have first been informed by counsel of the obligations imposed by this Protective Order.

III.

9. Identifying Protected Information. Protected information may be provided only to the court and to individuals admitted under this Protective Order and must be identified as follows:
 - (a) if provided in electronic form, the subject line of the electronic transmission shall read "**CONTAINS PROTECTED INFORMATION**"; or
 - (b) if provided in paper form, the document must be sealed in a parcel containing the legend "**PROTECTED INFORMATION ENCLOSED**" conspicuously marked on the outside.

The first page of each document containing protected information, including courtesy copies for use by the judge, must contain a banner stating "**Protected Information to Be Disclosed Only in Accordance With the U.S. Court of Federal Claims Protective Order**" and the portions of any document containing protected information must be clearly identified.

10. Filing Protected Information. Pursuant to this order, a document containing protected information may be filed electronically under the court's electronic case filing system using the appropriate activity listed in the "**SEALED**" documents menu. If filed in paper form, a document containing protected information must be sealed in the manner prescribed in paragraph 9(b) and must include as an attachment to the front of the parcel a copy of the certificate of service identifying the document being filed.
11. Protecting Documents Not Previously Sealed. If a party determines that a previously produced or filed document contains protected information, the party may give notice in writing to the court and the other parties that the document is to be treated as protected, and thereafter the designated document must be treated in accordance with this Protective

Order.

IV.

12. Redacting Protected Documents For the Public Record.

- (a) Initial Redactions. After filing a document containing protected information in accordance with paragraph 10, or after later sealing a document pursuant to paragraph 11, a party must promptly serve on the other parties a proposed redacted version marked "**Proposed Redacted Version**" in the upper right-hand corner of the first page with the claimed protected information deleted.
- (b) Additional Redactions. If a party seeks to include additional redactions, it must advise the filing party of its proposed redactions within two (2) business days after receipt of the proposed redacted version, or such other time as agreed upon by the parties. The filing party must then provide the other parties with a second redacted version of the document clearly marked "**Agreed-Upon Redacted Version**" in the upper right-hand corner of the page with the additional information deleted.
- (c) Final Version. At the expiration of the period noted in (b) above, or after an agreement between the parties has been reached regarding additional redactions, the filing party must file with the court the final redacted version of the document clearly marked "**Redacted Version**" in the upper right-hand corner of the first page. This document will be available to the public.
- (d) Objecting to Redactions. Any party at any time may object to another party's designation of certain information as protected. If the parties are unable to reach an agreement regarding redactions, the objecting party may submit the matter to the court for resolution. Until the court resolves the matter, the disputed information must be treated as protected.

V.

- 13. Copying Protected Information. No party, other than the United States, may for its own use make more than three (3) copies of a protected document received from another party, except with the consent of all other parties. A party may make additional copies of such documents, however, for filing with the court, service on the parties, or use in discovery and may also incorporate limited amounts of protected information into its own documents or pleadings. All copies of such documents must be clearly labeled in the manner required by paragraph 9.
- 14. Waiving Protection of Information. A party may at any time waive the protection of this order with respect to any information it has designated as protected by advising the court and the other parties in writing and identifying with specificity the information to which this Protective Order will no longer apply.
- 15. Safeguarding Protected Information. Any individual admitted under this Protective Order must take all necessary precautions to prevent disclosure of protected information, including but not limited to physically securing, safeguarding, and restricting access to the protected information.

16. Breach of the Protective Order. If a party discovers any breach of any provision of this Protective Order, the party must promptly report the breach to the other parties and immediately take appropriate action to cure the violation and retrieve any protected information that may have been disclosed to individuals not admitted under this Protective Order. The parties must reasonably cooperate in determining the reasons for any such breach.
17. Seeking Relief From the Protective Order. Nothing contained in this order shall preclude a party from seeking relief from this Protective Order through the filing of an appropriate motion with the court setting forth the basis for the relief sought.

VI.

18. Maintaining Filed Documents Under Seal. The court will maintain properly marked protected documents under seal throughout this litigation.
19. Retaining Protected Information After the Termination of Litigation. Upon conclusion of this action (including any appeals and remands), the original version of the administrative record and any other materials that have been filed with the court under seal will be retained by the court pursuant to RCFC 77.3(c). Copies of such materials may be returned by the court to the filing parties for disposition in accordance with paragraph 20 of this Protective Order.
20. Disposing of Protected Information. Within thirty (30) days after the conclusion of this action (including any appeals and remands), each party must destroy all protected information received pursuant to this litigation and certify in writing to each other party that such destruction has occurred or must return the protected information to the parties from which the information was received. With respect to protected electronically stored information (ESI) stored on counsel's computer network(s), destruction of such ESI for purposes of compliance with this paragraph shall be complete when counsel takes reasonable steps to delete all such ESI from the active email system (such as, but not limited to, the "Inbox," "Sent Items," and "Deleted Items" folders) of admitted counsel and of any personnel who received or sent emails with protected information while working under the direction and supervision of such counsel, and by deleting any protected ESI from databases under counsel's control. Compliance with this paragraph does not require counsel to search for and remove ESI from any computer network back-up tapes, disaster recovery systems, or archival systems. Each party may retain one copy of such documents, except when the retention of additional copies is required by federal law or regulation, provided those documents are properly marked and secured.

IT IS SO ORDERED.

United States Court of Federal Claims Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of July 2013, I caused a true and correct copy of the foregoing Motion to File Complaint Under Seal and Motion for Protective Order to be served on:

Steven M. Mager
Senior Trial Counsel
Department of Justice
1100 L Street, N.W.
Washington, D.C. 20530
steven.mager@usdoj.gov
(by hand and electronic delivery)

Arthur L. Passar
Attorney, Contract Law Division
Office of General Counsel
Central Intelligence Agency
Washington, D.C. 20505
arthulp@ucia.gov
(by electronic delivery)



Craig A. Holman