

129—11.11(8B) Protective orders.

11.11(1) General rule/purpose. To facilitate the fair and objective evaluation of proposals and cost-effective administration of vendor appeal processes, information and materials of or related to procurement processes or awards will not be released or otherwise available for public inspection prior to the issuance of the notice of intent to award or final disposition of any vendor appeal taken in accordance with this chapter, whichever occurs later. By submitting materials, documents, or information to the office as part of a competitive selection process or other award process, the vendor agrees and consents to the purchasing entity's distribution of such materials, documents, or information to third parties, including other vendors that may be the submitting vendor's competitors, as part of an appeal process, including, subject to the entry of a protective order in accordance with this rule, materials, documents, or information comprised, in whole or in part, of confidential or proprietary information. For purposes of any materials, documents, or information disclosed as part of a vendor appeal, parties are only entitled to materials, documents, or information comprised, in whole or in part, of confidential or proprietary information after a protective order has been entered in accordance with this rule. By filing a notice of appeal in accordance with rule 129—11.3(8B) or a written justification in accordance with rule 129—11.4(8B), the appellant or the awardee, as applicable, agrees and consents to the entry of a protective order in substantially the same form as set forth in this rule as a condition precedent to receiving any documents or information containing or comprised of, in whole or in part, confidential or proprietary information related to the appeal. In the absence of a protective order, parties will only receive public, redacted copies of materials or information.

11.11(2) How issued. In order to facilitate the exchange of information and materials as is necessary to facilitate an efficient and effective appeal process, the purchasing entity may enter a protective order(s) on its own motion or on the request of any party seeking access to confidential or proprietary information. The purchasing entity generally will not issue a protective order where an appellant is not represented by counsel, in which case the parties will only receive a public, redacted copy(ies) of information and materials.

11.11(3) Form of protective order. Protective orders entered in accordance with this rule shall be issued in substantially the following form and shall establish procedures for access to confidential and proprietary information, identification and safeguarding of that information, and submission of redacted copies of documents omitting confidential and proprietary information.

(Name Of Purchasing Entity)	
(Name of Appellant), Appellant, V. (Name of Purchasing Entity), Respondent, (Name of Intervenor(s), if any), Intervenor.	Docket No. ____ (“Action”) Protective Order

Certain information that may be exchanged in discovery involves the production of trade secrets, confidential business information, or other confidential or proprietary information. Accordingly, (Name of Purchasing Entity) (“Purchasing Entity”) enters the following protective order (“Order”) to govern the proceedings. Where the term “Purchasing Entity” as used herein refers to the Purchasing Entity serving in an adjudicatory capacity in connection with this Action, such reference, to the extent the procedural posture of the Action at the time necessitates such an understanding, shall be understood as referring to any tribunal serving as an agent of the Purchasing Entity in connection with this Action and its personnel.

1. Each Party may designate as confidential for protection under this Order, in whole or in part, any document, information or material that constitutes or includes, in whole or in part, confidential or proprietary information or trade secrets of the Party or a Third Party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such document, information or material (“Protected Material”). Protected Material shall be designated by the Party producing it by affixing a legend or stamp on such document, information or material as follows: “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY” (referred to both individually and collectively as “Label”). A Label shall be

placed clearly on each page of the Protected Material (except native files, deposition and hearing transcripts) for which such protection is sought. A Label shall be included in the title of the designated native files. For any deposition and hearing transcripts, a Label shall be placed on the cover page of the transcript (if not already present on the cover page of the transcript when received from the court reporter) by each attorney receiving a copy of the transcript after that attorney receives notice of the designation of some or all of that transcript as “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY.”

2. With respect to documents, information or material designated “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY” (referred to both individually and collectively as “DESIGNATED MATERIAL”), subject to the provisions herein and unless otherwise stated herein or provided by applicable law or rule, this Order governs, without limitation: (a) all documents, electronically stored information, and/or things as defined by the Iowa Rules of Civil Procedure; (b) all prehearing and hearing or deposition testimony, or documents marked as exhibits or for identification in depositions and hearings; (c) pleadings, exhibits to pleadings and other filings; (d) affidavits; and (e) stipulations. All copies, reproductions, extracts, digests and complete or partial summaries prepared from any DESIGNATED MATERIALS shall also be considered DESIGNATED MATERIAL and treated as such under this Order.

3. Protected Material (i.e., “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY”) may be designated as such at any time. Inadvertent or unintentional production of documents, information or material that has not been designated as DESIGNATED MATERIAL or Labeled shall not be deemed a waiver in whole or in part of a claim for confidential treatment. Any party that inadvertently or unintentionally produces Protected Material without designating it as DESIGNATED MATERIAL may request destruction of that Protected Material by notifying the recipient(s) as soon as reasonably possible after the producing Party becomes aware of the inadvertent or unintentional disclosure and providing replacement Protected Material that is properly designated. The recipient(s) shall then destroy all copies of the inadvertently or unintentionally produced Protected Material and any documents, information or material derived from or based on such Protected Material.

4. “CONFIDENTIAL” documents, information and material may be disclosed only to the following persons, except upon receipt of the prior written consent of the producing party, upon order of the Purchasing Entity, or as set forth in paragraph 12 herein:

(a) outside counsel of record in this Action for the Parties. The Attorney General’s Office shall be considered outside counsel of the Purchasing Entity for purposes of this Order;

(b) employees of such outside counsel assigned to and reasonably necessary to assist such counsel in the litigation of this Action;

(c) in-house counsel for the Parties who either have responsibility for making decisions dealing directly with the litigation of this Action, or who are assisting outside counsel in the litigation of this Action, provided the names and titles of such in-house counsel have been disclosed to the designating party;

(d) up to and including three (3) designated representatives of each of the Parties to the extent reasonably necessary for the litigation of this Action, except that either party may in good faith request the other Party’s consent to designate one or more additional representatives, the other Party shall not unreasonably withhold such consent, and the requesting Party may seek leave to designate such additional representative(s) if the requesting Party believes the other Party has unreasonably withheld such consent;

(e) outside consultants or experts (i.e., not existing employees or affiliates of a Party or an affiliate of a Party) retained for the purpose of this litigation, provided that: (1) such consultants or experts are not presently employed by the Parties hereto for purposes other than this Action; and (2) before access is given, the consultant or expert has completed the Acknowledgment Form attached as Exhibit A hereto and the same is served upon the producing Party with a current curriculum vitae of the consultant or expert at least ten (10) days before access to the Protected Material is to be given to that consultant or expert to afford the producing Party an opportunity to object to and notify the receiving Party in writing that it objects to the disclosure of the Protected Material to the consultant or expert. The Parties agree to promptly confer and use good faith to resolve any such objection. If the Parties are unable to resolve any objection, the objecting Party may file a motion with the Purchasing Entity within fifteen (15) days of the notice, or within such

other time as the Parties may agree, seeking resolution of the dispute with respect to the proposed disclosure. No disclosure shall occur until all such objections are resolved by agreement of the Parties or order of the Purchasing Entity;

(f) independent litigation support services, including persons working for or as court reporters, graphics or design services, jury or trial/hearing consulting services, and photocopy, document imaging, and database services retained by counsel and reasonably necessary to assist counsel with the litigation of this Action; and

(g) the Purchasing Entity serving in an adjudicatory capacity in connection and its personnel or tribunal serving as an agent of the Purchasing Entity in connection with this Action and its personnel.

5. A Party shall designate documents, information or material as "CONFIDENTIAL" only upon a good faith belief that the documents, information or material contains confidential or proprietary information or trade secrets of the Party or a third party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such documents, information or material.

6. Documents, information or material produced pursuant to any discovery request in this Action, including but not limited to Protected Material designated as DESIGNATED MATERIAL, shall be used by the Parties only in the litigation of this Action and shall not be used for any other purpose. Any person or entity who obtains access to DESIGNATED MATERIAL or the contents thereof pursuant to this Order shall not make any copies, duplicates, extracts, summaries or descriptions of such DESIGNATED MATERIAL or any portion thereof except as may be reasonably necessary in the litigation of this Action. Any such copies, duplicates, extracts, summaries or descriptions shall be classified DESIGNATED MATERIALS and subject to all of the terms and conditions of this Order.

7. To the extent a producing Party believes that certain Protected Material qualifying to be designated CONFIDENTIAL is so sensitive that its dissemination deserves even further limitation, the producing Party may designate such Protected Material "RESTRICTED – ATTORNEYS' EYES ONLY."

8. For Protected Material designated RESTRICTED – ATTORNEYS' EYES ONLY, access to, and disclosure of, such Protected Material shall be limited to individuals listed in paragraphs 4(a), 4(b), 4(c), 4(f) and 4(g).

9. Nothing in this Order shall require production of documents, information or other material that a Party contends is protected from disclosure by the attorney-client privilege, the work product doctrine, or other privilege, doctrine, or immunity. If documents, information or other material subject to a claim of attorney-client privilege, work product doctrine, or other privilege, doctrine, or immunity is inadvertently or unintentionally produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any such privilege, doctrine, or immunity. Any Party that inadvertently or unintentionally produces documents, information or other material it reasonably believes are protected under the attorney-client privilege, work product doctrine, or other privilege, doctrine, or immunity may obtain the return of such documents, information or other material by promptly notifying the recipient(s) and providing a privilege log for the inadvertently or unintentionally produced documents, information or other material. The recipient(s) shall gather all copies of such documents, information or other material and return them to the producing Party, except for any pages containing privileged or otherwise protected markings by the recipient(s), which pages shall instead be destroyed and certified as such to the producing Party within ten (10) business days.

10. There shall be no disclosure of any DESIGNATED MATERIAL by any person authorized to have access thereto to any person who is not authorized for such access under this Order. The Parties are hereby ORDERED to safeguard all such documents, information and material to protect against disclosure to any unauthorized persons or entities.

11. Nothing contained herein shall be construed to prejudice any Party's right to use any DESIGNATED MATERIAL in taking testimony at any deposition or hearing provided that the DESIGNATED MATERIAL is only disclosed to a person(s) who is: (i) eligible to have access to the DESIGNATED MATERIAL by virtue of his or her employment with the designating party; (ii) identified in the DESIGNATED MATERIAL as an author, addressee, or copy recipient of such information; (iii) although not identified as an author, addressee, or copy recipient of such DESIGNATED MATERIAL, has, in the ordinary course of business, seen such DESIGNATED MATERIAL; (iv) a current or former officer,

director or employee of the producing Party or a current or former officer, director or employee of a company affiliated with the producing Party; (v) counsel for a Party, including outside counsel and in-house counsel (subject to paragraphs 8 and 9 of this Order); (vi) an independent contractor, consultant, and/or expert retained for the purpose of litigating this Action (subject to paragraph 4 of this Order); (vii) court reporters and videographers; (viii) the Purchasing Entity serving in an adjudicatory capacity in connection and its personnel or tribunal serving as an agent of the Purchasing Entity in connection with this Action and its personnel; or (ix) other persons entitled hereunder to access to DESIGNATED MATERIAL. Such DESIGNATED MATERIAL shall not be disclosed to any other persons unless prior authorization is obtained from counsel representing the producing Party or in an order issued by the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action.

12. Parties may, at the deposition or hearing or within thirty (30) days after receipt of a deposition or hearing transcript, designate the deposition or hearing transcript or any portion thereof as “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY” pursuant to this Order. Access to the deposition or hearing transcript so designated shall be limited in accordance with the terms of this Order. Until expiration of the 30-day period, the entire deposition or hearing transcript shall be treated as “Confidential” in accordance with this Order.

13. Any DESIGNATED MATERIAL that is filed in connection with this Action shall be filed under seal and shall remain under seal until further order of the Purchasing Entity. The filing party shall be responsible for informing the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action that the filing should be sealed and for placing the legend “FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER” above the caption and conspicuously on each page of the filing. Exhibits to a filing shall conform to the labeling requirements set forth in this Order. If a prehearing pleading filed with the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action, or an exhibit thereto, discloses or relies on confidential documents, information or material, such confidential portions shall, except to the extent otherwise provided for or required by applicable law or rule, be redacted to the extent necessary and the pleading or exhibit filed publicly with the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action.

14. The Order applies to prehearing discovery. Nothing in this Order shall be deemed to prevent the Parties from introducing any DESIGNATED MATERIAL into evidence at any hearing of this Action, or from using any information contained in DESIGNATED MATERIAL at any hearing of this Action, subject to any prehearing order issued by the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action.

15. A Party may request in writing to the other Party that the designation given to any DESIGNATED MATERIAL be modified or withdrawn. If the designating Party does not agree to redesignation within ten (10) business days of receipt of the written request, the requesting Party may apply to the Purchasing Entity for relief. Upon any such application to the Purchasing Entity, the burden shall be on the designating Party to show why its classification is proper. Such application shall be treated procedurally as a motion to compel pursuant to Iowa Rule of Civil Procedure 1.517, subject to that Rule’s provisions relating to sanctions. In making such application, the requirements of the Iowa Rules of Civil Procedure shall be met. Pending the Purchasing Entity’s ruling or order on such application, or the ruling or order by the tribunal serving as an agent of the Purchasing Entity in connection with this Action, the original designation of the designating Party shall be maintained and respected.

16. Each outside consultant or expert to whom DESIGNATED MATERIAL is disclosed in accordance with the terms of this Order shall be advised by counsel of the terms of this Order, shall be informed that he or she is subject to the terms and conditions of this Order, and shall sign an acknowledgment that he or she has received a copy of, has read, and has agreed to be bound by this Order. A copy of the Acknowledgment Form is attached as Exhibit A.

17. To the extent that any discovery is taken of persons who are not Parties to this Action and in the event that such third parties contended the discovery sought involves trade secrets, confidential business information, or other proprietary information, such third parties may agree to be bound by this Order.

18. To the extent that discovery or testimony is taken of third parties, the third parties may designate as “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY” any documents, information, or other material, in whole or in part, produced or given by such third parties. The third parties shall have ten (10) business days after production of such documents, information, or other materials to make such a designation. Until that time period lapses or until such a designation has been made, whichever occurs sooner, all documents, information or other material so produced or given shall be treated as “CONFIDENTIAL” in accordance with this Order.

19. Within thirty (30) days of final termination of this Action, including any appeals, all DESIGNATED MATERIAL, including all copies, duplicates, abstracts, indexes, summaries, descriptions, and excerpts or extracts thereof (excluding excerpts or extracts incorporated into any privileged memoranda of the Parties and materials which have been admitted into evidence in this Action), shall be returned to the producing Party or, where agreed to by the producing Party, destroyed by the receiving Party. The receiving Party shall verify the return or destruction, as applicable, by affidavit furnished to the producing Party upon the producing Party’s request.

20. The failure to designate documents, information, or material in accordance with this Order and the failure to object to a designation at a given time shall not preclude the filing of a motion at a later date seeking to impose such designation or challenging the propriety thereof. The entry of this Order and/or the production of documents, information, and material hereunder shall in no way constitute a waiver of any objection to the furnishing thereof, all such objections being hereby preserved.

21. Any Party knowing or believing that any other Party subject to this Order is in violation of or intends to violate this Order and after raising the question of violation or potential violation with the opposing Party and having been unable to resolve the matter by agreement, such Party may move the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action for such relief as may be appropriate in the circumstances. Pending disposition of the motion by the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action, the Party alleged to be in violation of or intending to violate this Order shall discontinue the performance of and/or shall not undertake the further performance of any action alleged to constitute a violation of this Order.

22. Production of DESIGNATED MATERIAL by each of the Parties shall not be deemed a publication of the documents, information and material (or the contents thereof) produced so as to void or make voidable whatever claim the Parties may have as to the proprietary and confidential nature of the documents, information or other material or its contents.

23. Nothing in this Order shall be construed to effect an abrogation, waiver, or limitation of any kind on the rights of each of the Parties to assert any applicable discovery or hearing privilege.

24. Each of the Parties shall also retain the right to file a motion with the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action: (a) to modify this Order to allow disclosure of DESIGNATED MATERIAL to additional persons or entities if reasonably necessary to prepare and present this Action and (b) to apply for additional protection of DESIGNATED MATERIAL.

25. Nothing in this Order applies to a Party’s use of its own DESIGNATED MATERIAL which it designated as such pursuant to this Order, or to material which the Party had available to it through means other than discovery in this proceeding.

26. **(SAMPLE REGULATORY COMPLIANCE PROVISION—INSERT ALTERNATE OR ADDITIONAL LANGUAGE IF NATURE OF DATA OR INFORMATION POTENTIALLY INVOLVED IN ACTION REQUIRES AS MUCH)** The Parties recognize that they may be required to produce in response to discovery requests patient information protected by the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations found at 45 C.F.R. parts 160, 162, and 164 (“HIPAA”). Any such information exchanged shall be subject to this Order, shall be used solely for the purpose of the litigation of this Action, and shall at all relevant times be protected by the Parties from further redisclosure by the Parties. Any document containing information protected by HIPAA shall be filed under seal and shall not be open to public examination. At the conclusion of the litigation of this Action, all documents exchanged that contain information protected by HIPAA shall be either returned to the disclosing Party or destroyed, with the exception that copies of such records may be retained for

document retention purposes only. At the end of any relevant document retention obligation, the documents protected by this provision of this Order shall be either returned to the disclosing Party or destroyed.

Exhibit A—(Name of Purchasing Entity)

(Name of Appellant), Appellant, V. (Name of Purchasing Entity), Respondent, (Name of Intervenor(s), if any), Intervenor.	Docket No. ____ (“Action”) Protective Order Acknowledgment Form (“Acknowledgment Form”)
---	--

Certain information that may be exchanged in discovery involves the production of trade secrets, confidential business information, or other confidential or proprietary information.

I, _____, declare that:

1. My address is _____.
My current employer is _____.
My current occupation is _____.
2. I have received a copy of the Protective Order in this Action. I have carefully read and understand the provisions of the Protective Order.
3. I will comply with all of the provisions of the Protective Order. I will hold in confidence, will not disclose to anyone not qualified under the Protective Order, and will use only for purposes of this action any information designated as “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY” that is disclosed to me.
4. Promptly upon termination of these actions, I will return or destroy, as applicable, all documents and things designated as “CONFIDENTIAL” or “RESTRICTED – ATTORNEYS’ EYES ONLY” that came into my possession, and all documents and things that I have prepared relating thereto, to or at the direction of the outside counsel for the party by whom I am employed.
5. I hereby submit to the jurisdiction of the Purchasing Entity or tribunal serving as an agent of the Purchasing Entity in connection with this Action for the purpose of enforcement of the Protective Order in this Action.

I declare under penalty of perjury that the foregoing is true and correct.

Signature _____

Date _____

IT IS SO ORDERED.

Dated this the ____ day of ____.

(name of Purchasing Entity Representative or Agent Issuing Protective Order)

11.11(4) *Violation of terms of protective order.* Any violation of the terms of a protective order may result in the imposition of sanctions as the purchasing entity deems appropriate, including prohibition from participation in the remainder of the protest, dismissal of the protest, or suspension or debarment from future opportunities.

[ARC 4826C, IAB 12/18/19, effective 1/22/20]