

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
Bid Protest

GOOGLE, INC,
and
ONIX NETWORKING CORPORATION,
Plaintiffs,
v.
UNITED STATES OF AMERICA,
Defendant.
No. 10-743C
Judge Susan G. Braden

APPLICATION FOR ACCESS TO INFORMATION UNDER PROTECTIVE ORDER BY OUTSIDE OR INSIDE COUNSEL

- 1. I, Steven J. Rosenbaum, hereby apply for access to protected information covered by the Protective Order issued in connection with this proceeding.
2. I am an attorney with the law firm of Covington & Burling LLP and have been retained to represent Softchoice Corporation, a company that has moved to intervene in this proceeding.
3. I am a member of the bar of the United States Court of Federal Claims (the court).
4. My professional relationship with the party I represent in this proceeding and its personnel is strictly one of legal counsel. I am not involved in competitive decision making as discussed in U.S. Steel Corp. v. United States, 730 F.2d 1465 (Fed. Cir. 1984), for or on behalf of the party I represent, any entity that is an interested party to this proceeding, or any other firm that might gain a competitive advantage from access to the information disclosed under the Protective Order. I do not provide advice or participate in any decisions of such parties in matters involving similar or corresponding information about a competitor. This means that I do not, for example, provide advice concerning, or participate in decisions about, marketing or advertising strategies, product research and development, product design or competitive structuring and composition of bids, offers, or proposals with respect to which the use of protected information could provide a competitive advantage.
5. I identify here (by writing "none" or listing names and relevant circumstances) those attorneys in my firm who, to the best of my knowledge, cannot make the representations set forth in the preceding paragraph: None.
6. I identify here (by writing "none" or listing names, position, and responsibilities) any member of my immediate family who is an officer or holds a management position with an interested party in the proceeding or with any other firm that might gain a competitive advantage from access to the information: None

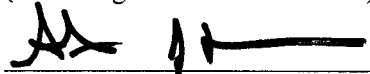
7. I identify here (by writing "none" or identifying the name of the forum, case number, date, and circumstances) instances in which I have been denied admission to a protective order, had admission revoked, or have been found to have violated a protective order issued by any administrative or judicial tribunal: None

8. NOT APPLICABLE

9. I have read the Protective Order issued by the court in this proceeding. I will comply in all respects with that order and will abide by its terms and conditions in handling any protected information produced in connection with the proceeding.

10. I acknowledge that a violation of the terms of the Protective Order may result in the imposition of such sanctions as may be deemed appropriate by the court and in possible civil and criminal liability.

By my signature, I certify that, to the best of my knowledge, the representations set forth above (including attached statements) are true and correct.



Signature

Nov. 12, 2010
Date Executed

Steven J. Rosenbaum, outside counsel


Typed Name and Title

202 662 5568

Telephone Number

202 778 5568

Fax Number



Signature of Attorney of Record

Nov. 12, 2010
Date Executed

Steven J. Rosenbaum, outside counsel

Typed Name and Title

202 662 5568

Telephone Number

202 778 5568

Fax Number

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
Bid Protest

GOOGLE, INC,)	
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and)	
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ONIX NETWORKING CORPORATION,)	No. 10-743C
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Plaintiffs,)	Judge Susan G. Braden
)	
v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
)	

**APPLICATION FOR ACCESS TO INFORMATION UNDER
PROTECTIVE ORDER BY OUTSIDE OR INSIDE COUNSEL**

1. I, Alan A. Pemberton, hereby apply for access to protected information covered by the Protective Order issued in connection with this proceeding.
2. I am an attorney with the law firm of Covington & Burling LLP and have been retained to represent Softchoice Corporation, a company that has moved to intervene in this proceeding.
3. I am a member of the bar of the United States Court of Federal Claims (the court).
4. My professional relationship with the party I represent in this proceeding and its personnel is strictly one of legal counsel. I am not involved in competitive decision making as discussed in *U.S. Steel Corp. v. United States*, 730 F.2d 1465 (Fed. Cir. 1984), for or on behalf of the party I represent, any entity that is an interested party to this proceeding, or any other firm that might gain a competitive advantage from access to the information disclosed under the Protective Order. I do not provide advice or participate in any decisions of such parties in matters involving similar or corresponding information about a competitor. This means that I do not, for example, provide advice concerning, or participate in decisions about, marketing or advertising strategies, product research and development, product design or competitive structuring and composition of bids, offers, or proposals with respect to which the use of protected information could provide a competitive advantage.
5. I identify here (by writing “none” or listing names and relevant circumstances) those attorneys in my firm who, to the best of my knowledge, cannot make the representations set forth in the preceding paragraph: None.
6. I identify here (by writing “none” or listing names, position, and responsibilities) any member of my immediate family who is an officer or holds a management position with an interested party in the proceeding or with any other firm that might gain a competitive advantage from access to the information: None

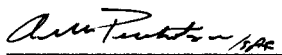
7. I identify here (by writing "none" or identifying the name of the forum, case number, date, and circumstances) instances in which I have been denied admission to a protective order, had admission revoked, or have been found to have violated a protective order issued by any administrative or judicial tribunal: In March 2010, I violated the terms of the protective order issued in a GAO protest (*GTSI Corp.*, B-401969.3) when I inadvertently forwarded to my clients an e-mail from agency counsel that contained a letter that agency counsel intended to file under seal. At the time, I did not notice the protected material legend at the bottom of each page of the letter, in part because the letter did not discuss any confidential or proprietary matters. When I discovered this mistake, I promptly contacted my clients to ask them to destroy the letter and I notified GAO of this mistake. Since then, GAO has reviewed the matter, determined that the imposition of a sanction is not warranted, and concluded that this matter will not affect my admission under future GAO protective orders. Enclosed for your reference is a copy of a March 29, 2010 correspondence from GAO regarding the resolution of this matter.

8. NOT APPLICABLE

9. I have read the Protective Order issued by the court in this proceeding. I will comply in all respects with that order and will abide by its terms and conditions in handling any protected information produced in connection with the proceeding.

10. I acknowledge that a violation of the terms of the Protective Order may result in the imposition of such sanctions as may be deemed appropriate by the court and in possible civil and criminal liability.

By my signature, I certify that, to the best of my knowledge, the representations set forth above (including attached statements) are true and correct.



Signature

11/12/10

Date Executed

Alan A. Pemberton, outside counsel

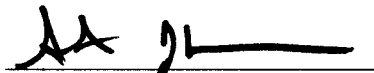
Typed Name and Title

202 662 5642

Telephone Number

202 778 5642

Fax Number



Signature of Attorney of Record

Nov. 13, 2010

Date Executed

Steven J. Rosenbaum, outside counsel

Typed Name and Title

202 662 5568

Telephone Number

202 778 5568

Fax Number



United States Government Accountability Office
Washington, DC 20548

B-401969.3

March 29, 2010

Alan A. Pemberton, Esq.
Covington & Burling LLP

Dear Mr. Pemberton:

By telephone call and e-mail on the morning of March 17, 2010, followed by your letter of March 18, you advised our Office that you were involved in a violation of the terms of the protective order issued by our Office on February 22, 2010 in connection with your representation of the protester, GTSI Corporation.

According to your statement, on March 16, you received a copy of the agency's letter proposing corrective action in response to the telephonic alternative dispute resolution (ADR) session conducted on March 15. Although you reviewed the letter, you stated that you did not notice the protected material legend at the bottom of each page. In part, because the letter did not appear to you to discuss any confidential or proprietary matters, you stated that it did not occur to you that the letter was subject to the protective order. You then e-mailed the letter to your clients (who are not admitted to the protective order) seeking their views on a possible response to our Office.

On March 17, when reviewing the agency's letter prior to sending your objections to our Office and the agency, you noticed the protective legend. You then e-mailed your clients, asking that they immediately destroy all copies of the letter, and that they inform you when they had done so. You also notified our Office and the agency, acknowledging and apologizing for your violation of the protective order.

In your March 18 letter, you reported that four of the five recipients had deleted their electronic files and destroyed any paper copies of the letter. By a separate e-mail of March 18, you reported that the fifth recipient, who had been on travel, had also deleted the letter. By e-mail of March 18, the agency advised our Office that—after reviewing its March 16 letter—it did not believe that the letter contained any confidential information or that its dissemination would cause any harm or damage to the government on the current or future acquisitions. On March 18, we dismissed GTSI's protest as academic, based on agency corrective action.

Protective orders are essential to the proper functioning of GAO's bid protest process. The terms of our protective order limit "disclosure of certain material and information submitted in the . . . protest, so that no party obtaining access to

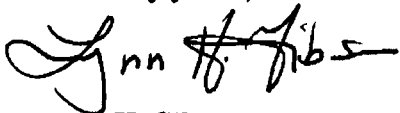
protected material under this order will gain a competitive advantage as a result of the disclosure." Protective Order at 1. The order "applies to all material that is identified by any party as protected, unless GAO specifically provides otherwise," and strictly limits access to protected material only to those persons authorized under the order. Id. ¶¶ 1-3. Here, you acknowledge that you transmitted—to persons not admitted to the protective order—the agency's proposed corrective action letter with its protected legend. We consequently conclude that you violated the protective order.

As you know, our Office views any violation of a protective order with the utmost concern. While protective orders provide a way for protesters to effectively pursue their protests, they require agencies and private parties to make available sensitive and valuable information. That information could be improperly released if the parties are not scrupulous in honoring the restrictions imposed by the protective order. Here, while your improper release of protected information was inadvertent, you failed in your responsibility to ensure that protected information is not disclosed to unauthorized persons.

We also have considered your acceptance of responsibility for forwarding this protected information to your clients; your explanation of the actions that caused the violation; your statement that you take protective orders seriously and attempt to comply with them in good faith; that you have never previously violated our protective orders; and that you regret your violation in this case. The record also indicates that you promptly took appropriate steps to have the protected information destroyed, and it does not appear that any competitive harm resulted. You also promptly notified our Office and the agency of the violation.

We conclude that, under these circumstances, the imposition of sanctions is not warranted. However, we admonish you to exercise greater care in the future in the handling of protected material. Although this violation alone will not affect your admission under future protective orders, any additional violation or relevant adverse information may affect your standing in the future. Accordingly, you must disclose this finding of a violation of the protective order on any future Government Accountability Office protective order applications filed within the next 2 years of the date of this letter.

Sincerely yours,



Lynn H. Gibson
Acting General Counsel

cc: Andrew Bramnick, Esq.
Lisa Marie Golden, Esq.
Washington Headquarters Services

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
Bid Protest

GOOGLE, INC,)	
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and)	
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ONIX NETWORKING CORPORATION,)	No. 10-743C
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Plaintiffs,)	Judge Susan G. Braden
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v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
)	

**APPLICATION FOR ACCESS TO INFORMATION UNDER
PROTECTIVE ORDER BY OUTSIDE OR INSIDE COUNSEL**

1. I, Sarah L. Wilson, hereby apply for access to protected information covered by the Protective Order issued in connection with this proceeding.
2. I am an attorney with the law firm of Covington & Burling LLP and have been retained to represent Softchoice Corporation, a company that has moved to intervene in this proceeding.
3. I am a member of the bar of the United States Court of Federal Claims (the court).
4. My professional relationship with the party I represent in this proceeding and its personnel is strictly one of legal counsel. I am not involved in competitive decision making as discussed in *U.S. Steel Corp. v. United States*, 730 F.2d 1465 (Fed. Cir. 1984), for or on behalf of the party I represent, any entity that is an interested party to this proceeding, or any other firm that might gain a competitive advantage from access to the information disclosed under the Protective Order. I do not provide advice or participate in any decisions of such parties in matters involving similar or corresponding information about a competitor. This means that I do not, for example, provide advice concerning, or participate in decisions about, marketing or advertising strategies, product research and development, product design or competitive structuring and composition of bids, offers, or proposals with respect to which the use of protected information could provide a competitive advantage.
5. I identify here (by writing “none” or listing names and relevant circumstances) those attorneys in my firm who, to the best of my knowledge, cannot make the representations set forth in the preceding paragraph: None.
6. I identify here (by writing “none” or listing names, position, and responsibilities) any member of my immediate family who is an officer or holds a management position with an interested party in the proceeding or with any other firm that might gain a competitive advantage from access to the information: None

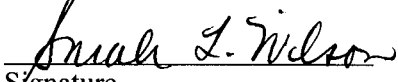
7. I identify here (by writing "none" or identifying the name of the forum, case number, date, and circumstances) instances in which I have been denied admission to a protective order, had admission revoked, or have been found to have violated a protective order issued by any administrative or judicial tribunal: None

8. NOT APPLICABLE

9. I have read the Protective Order issued by the court in this proceeding. I will comply in all respects with that order and will abide by its terms and conditions in handling any protected information produced in connection with the proceeding.

10. I acknowledge that a violation of the terms of the Protective Order may result in the imposition of such sanctions as may be deemed appropriate by the court and in possible civil and criminal liability.

By my signature, I certify that, to the best of my knowledge, the representations set forth above (including attached statements) are true and correct.


Signature

November 12, 2010
Date Executed

Sarah L. Wilson, outside counsel


Typed Name and Title

202 662 5397

Telephone Number

202 778 5397

Fax Number


Signature of Attorney of Record

Nov. 13, 2010
Date Executed

Steven J. Rosenbaum, outside counsel

Typed Name and Title

202 662 5568

Telephone Number

202 778 5568

Fax Number

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
Bid Protest

GOOGLE, INC,)	
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and)	
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ONIX NETWORKING CORPORATION,)	No. 10-743C
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Plaintiffs,)	Judge Susan G. Braden
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v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
)	

**APPLICATION FOR ACCESS TO INFORMATION UNDER
PROTECTIVE ORDER BY OUTSIDE OR INSIDE COUNSEL**

1. I, Scott A. Freling, hereby apply for access to protected information covered by the Protective Order issued in connection with this proceeding.
2. I am an attorney with the law firm of Covington & Burling LLP and have been retained to represent Softchoice Corporation, a company that has moved to intervene in this proceeding.
3. I am a member of the bar of the United States Court of Federal Claims (the court).
4. My professional relationship with the party I represent in this proceeding and its personnel is strictly one of legal counsel. I am not involved in competitive decision making as discussed in *U.S. Steel Corp. v. United States*, 730 F.2d 1465 (Fed. Cir. 1984), for or on behalf of the party I represent, any entity that is an interested party to this proceeding, or any other firm that might gain a competitive advantage from access to the information disclosed under the Protective Order. I do not provide advice or participate in any decisions of such parties in matters involving similar or corresponding information about a competitor. This means that I do not, for example, provide advice concerning, or participate in decisions about, marketing or advertising strategies, product research and development, product design or competitive structuring and composition of bids, offers, or proposals with respect to which the use of protected information could provide a competitive advantage.
5. I identify here (by writing "none" or listing names and relevant circumstances) those attorneys in my firm who, to the best of my knowledge, cannot make the representations set forth in the preceding paragraph: None.
6. I identify here (by writing "none" or listing names, position, and responsibilities) any member of my immediate family who is an officer or holds a management position with an interested party in the proceeding or with any other firm that might gain a competitive advantage from access to the information: None

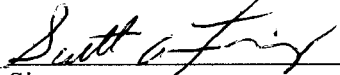
7. I identify here (by writing "none" or identifying the name of the forum, case number, date, and circumstances) instances in which I have been denied admission to a protective order, had admission revoked, or have been found to have violated a protective order issued by any administrative or judicial tribunal: None

8. NOT APPLICABLE

9. I have read the Protective Order issued by the court in this proceeding. I will comply in all respects with that order and will abide by its terms and conditions in handling any protected information produced in connection with the proceeding.

10. I acknowledge that a violation of the terms of the Protective Order may result in the imposition of such sanctions as may be deemed appropriate by the court and in possible civil and criminal liability.

By my signature, I certify that, to the best of my knowledge, the representations set forth above (including attached statements) are true and correct.


Signature

11/12/10
Date Executed

Scott A. Freling, outside counsel

Typed Name and Title

202 662 5255

Telephone Number

202 778 5244

Fax Number


Signature of Attorney of Record

NOV. 13, 2010
Date Executed

Steven J. Rosenbaum, outside counsel

Typed Name and Title

202 662 5568

Telephone Number

202 778 5568

Fax Number

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
Bid Protest

GOOGLE, INC,)	
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and)	
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ONIX NETWORKING CORPORATION,)	No. 10-743C
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Plaintiffs,)	Judge Susan G. Braden
)	
v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
)	

**APPLICATION FOR ACCESS TO INFORMATION UNDER
PROTECTIVE ORDER BY OUTSIDE OR INSIDE COUNSEL**

1. I, Shelli L. Calland, hereby apply for access to protected information covered by the Protective Order issued in connection with this proceeding.
2. I am an attorney with the law firm of Covington & Burling LLP and have been retained to represent Softchoice Corporation, a company that has moved to intervene in this proceeding.
3. I am not a member of the bar of the United States Court of Federal Claims (the court).
4. My professional relationship with the party I represent in this proceeding and its personnel is strictly one of legal counsel. I am not involved in competitive decision making as discussed in *U.S. Steel Corp. v. United States*, 730 F.2d 1465 (Fed. Cir. 1984), for or on behalf of the party I represent, any entity that is an interested party to this proceeding, or any other firm that might gain a competitive advantage from access to the information disclosed under the Protective Order. I do not provide advice or participate in any decisions of such parties in matters involving similar or corresponding information about a competitor. This means that I do not, for example, provide advice concerning, or participate in decisions about, marketing or advertising strategies, product research and development, product design or competitive structuring and composition of bids, offers, or proposals with respect to which the use of protected information could provide a competitive advantage.
5. I identify here (by writing “none” or listing names and relevant circumstances) those attorneys in my firm who, to the best of my knowledge, cannot make the representations set forth in the preceding paragraph: None.
6. I identify here (by writing “none” or listing names, position, and responsibilities) any member of my immediate family who is an officer or holds a management position with an interested party in the proceeding or with any other firm that might gain a competitive advantage from access to the information: None

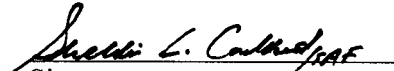
7. I identify here (by writing "none" or identifying the name of the forum, case number, date, and circumstances) instances in which I have been denied admission to a protective order, had admission revoked, or have been found to have violated a protective order issued by any administrative or judicial tribunal: None

8. NOT APPLICABLE

9. I have read the Protective Order issued by the court in this proceeding. I will comply in all respects with that order and will abide by its terms and conditions in handling any protected information produced in connection with the proceeding.

10. I acknowledge that a violation of the terms of the Protective Order may result in the imposition of such sanctions as may be deemed appropriate by the court and in possible civil and criminal liability.

By my signature, I certify that, to the best of my knowledge, the representations set forth above (including attached statements) are true and correct.


Signature

11/13/10
Date Executed

Shelli L. Calland, outside counsel

Typed Name and Title

202 662 5480

Telephone Number

202 778 5480

Fax Number


Signature of Attorney of Record

Nov. 13, 2010
Date Executed

Steven J. Rosenbaum, outside counsel

Typed Name and Title

202 662 5568

Telephone Number

202 778 5568

Fax Number

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
Bid Protest

GOOGLE, INC,)	
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and)	
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v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
)	

**APPLICATION FOR ACCESS TO INFORMATION UNDER
PROTECTIVE ORDER BY OUTSIDE OR INSIDE COUNSEL**

1. I, William A. Shook, hereby apply for access to protected information covered by the Protective Order issued in connection with this proceeding.
2. I am an attorney with the law firm of Shook Doran Koehl LLP and have been retained to represent Softchoice Corporation, a company that has moved to intervene in this proceeding.
3. I am a member of the bar of the United States Court of Federal Claims (the court).
4. My professional relationship with the party I represent in this proceeding and its personnel is strictly one of legal counsel. I am not involved in competitive decision making as discussed in *U.S. Steel Corp. v. United States*, 730 F.2d 1465 (Fed. Cir. 1984), for or on behalf of the party I represent, any entity that is an interested party to this proceeding, or any other firm that might gain a competitive advantage from access to the information disclosed under the Protective Order. I do not provide advice or participate in any decisions of such parties in matters involving similar or corresponding information about a competitor. This means that I do not, for example, provide advice concerning, or participate in decisions about, marketing or advertising strategies, product research and development, product design or competitive structuring and composition of bids, offers, or proposals with respect to which the use of protected information could provide a competitive advantage.
5. I identify here (by writing "none" or listing names and relevant circumstances) those attorneys in my firm who, to the best of my knowledge, cannot make the representations set forth in the preceding paragraph: None.
6. I identify here (by writing "none" or listing names, position, and responsibilities) any member of my immediate family who is an officer or holds a management position with an interested party in the proceeding or with any other firm that might gain a competitive advantage from access to the information: None


7. I identify here (by writing "none" or identifying the name of the forum, case number, date, and circumstances) instances in which I have been denied admission to a protective order, had admission revoked, or have been found to have violated a protective order issued by any administrative or judicial tribunal: None

8. NOT APPLICABLE

9. I have read the Protective Order issued by the court in this proceeding. I will comply in all respects with that order and will abide by its terms and conditions in handling any protected information produced in connection with the proceeding.

10. I acknowledge that a violation of the terms of the Protective Order may result in the imposition of such sanctions as may be deemed appropriate by the court and in possible civil and criminal liability.

By my signature, I certify that, to the best of my knowledge, the representations set forth above (including attached statements) are true and correct.


Signature

November 13, 2010
Date Executed

William A. Shook, outside counsel

Typed Name and Title

202 583 1882

Telephone Number

202 280 1097

Fax Number


Signature of Attorney of Record

Nov. 13, 2010
Date Executed

Steven J. Rosenbaum, outside counsel

Typed Name and Title

202 662 5568

Telephone Number

202 778 5568

Fax Number