

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

BID FOR POSITION, LLC,

Plaintiff,

v.

**AOL, LLC, GOOGLE, INC.,
MICROSOFT CORP., and MIVA, INC.,**

Defendants.

CASE NO. 2:07-cv-582 JBF/TEM

**PLAINTIFF'S MEMORANDUM IN
SUPPORT OF MOTION TO SEAL**

Plaintiff Bid For Position, LLC (“Bid For”) is filing in this action certain deposition testimony attached as Exhibit F to the July 6, 2008 Declaration of David E. Rosen. For the reasons set forth below, this Court should maintain those documents under seal.

The presumption in favor of public disclosure of court records can be overcome by a significant countervailing interest. *See Under Seal v. Under Seal*, 326 F.3d 479, 485-86 (4th Cir. 2003). One such significant countervailing interest is a litigant’s desire to protect trade secret or other commercially sensitive information. *Id.*; *see also Nixon v. Warner Communications*, 435 U.S. 589, 598-99, 55 L. Ed. 2d 570, 98 S. Ct. 1306 (1978) (recognizing that “the right to inspect and copy judicial records is not absolute,” and that “courts have refused to permit their files to serve as . . . sources of business information that might harm a litigant’s competitive standing”). Bid For is obligated to take reasonable steps to maintain the confidentiality of its materials, including deposition testimony, designated as confidential and commercially sensitive by defendant Google, in accordance with the terms of the Agreed Protective Order in this action.

Since the entirety of the cited deposition testimony is confidential and has been deemed by Google to be commercially sensitive, a more limited redaction would be an unsuitable alternative.

For the foregoing reasons, Bid For respectfully requests that the Court maintain under seal Exhibit F to the July 6, 2008 Declaration of David E. Rosen, as well as citations thereto contained in Bid For's Brief in Opposition to Google's Motion for Protective Order.

Dated: July 6, 2008

Respectfully submitted,

BID FOR POSITION, LLC

By Counsel

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2008, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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