

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	
)	No. 2:12-cv-01282-JLR
Plaintiff,)	
)	AMENDED STIPULATION AND
v.)	[PROPOSED] ORDER FOR
)	FINAL APPROVAL OF LIMITED
CITY OF SEATTLE,)	PROTECTIVE ORDER
)	
Defendant.)	(Please note on motion calendar for:
)	October 9, 2012)

I. STIPULATION

On September 24, 2012, this Court provisionally entered and approved the Parties’ stipulation and proposed limited protective order (Dkt. No. 12, “Proposed Protective Order”). Dkt. No. 15. The Court entered the Proposed Protective Order provisionally in order to provide a meaningful opportunity for a third-party who, the Court was informed, intended to intervene and be heard on the Proposed Protective Order. *Id.*

Later that day, a third party, The Seattle Times Company, did move to intervene and sought relief from the Proposed Protective Order. Dkt. No. 16.

The Parties have worked cooperatively with the third party to address its concerns, while continuing to ensure the free exchange of information between monitor candidates and the Parties and to protect the integrity of the selection process. *See* Dkt. 12.

To balance these concerns, the Parties, by and through their counsel of record, hereby STIPULATE, AGREE, and JOINTLY REQUEST the Court to approve this amended limited protective order and grant final approval of the same. The Parties also stipulate and agree to be bound by the conditions, definitions, and terms of this amended limited protective order.

It is the Parties' understanding that the third party will withdraw its Motion to Intervene and Request for Relief, subject to the Court's entry of this Stipulation.

Stipulated to and presented by this 9th day of October, 2012.

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3 **II. [PROPOSED] ORDER**

4 THIS MATTER came before the Court on the parties' Stipulation for a Limited
5 Protective Order regarding the confidentiality of follow-up responses submitted to the parties
6 by applicants for the monitor position. Having considered the stipulation of the parties, it is
7 now hereby ORDERED that all parties shall keep the records and materials covered by this
8 order confidential and shall not make any further disclosure of the information contained in
9 these records or materials without the express consent of this Court except as provided in
10 paragraph B below.

11 **A. DEFINITIONS**

12 "Confidential Material" means all information and documents submitted by or to
13 monitor applicants in response to follow-up requests by the parties, including, but not limited to
14 budget and staffing information. The identity of the monitor applicants selected by the parties
15 to provide such follow-up information shall not be designated Confidential.

16 "Proprietary Information" means the following, submitted by an applicant as part of the
17 selection process: (a) valuable formulae, designs, code, and unpublished research data, where
18 disclosure would produce private gain and public loss; or (b) an applicant's unique methods of
19 conducting business, data unique to the product or services of the applicant, or internal financial
20 information, to the extent such method, data or information is a trade secret. For purposes of this
21 paragraph, "trade secret" means information that (i) derives independent economic value from
22 not being generally known to and not being readily ascertainable by third parties, and (ii) the
23 applicant maintains as secret. Without limiting the foregoing, the total proposed budget
24 submitted by an applicant shall not be designated Proprietary Information; and applicants
25 should not designate information about fees, hourly rates, service descriptions or identity of
26 staff members as Proprietary Information absent specific circumstances indicating such
27 information would fall within the definition set forth above. If Applicants believe in good faith
that information they are submitting is Proprietary Information, Applicants may designate

1 information they consider proprietary in their submissions. The Applicant should specifically
2 identify the particular material so designated, and a whole page should not be designated
3 Proprietary when only a portion of the page contains Proprietary Information.

4 **B. SCOPE, TERMS, AND REQUIREMENTS OF THIS ORDER**

5 1. During the Monitor selection process, no Confidential Materials may be released
6 or disclosed to any person other than:

- 7 a. The parties and their counsel;
- 8 b. The Court and its personnel;
- 9 c. Stenographers, their staffs, and professional vendors providing litigation
10 support services to whom disclosure is reasonably necessary for this litigation; and
- 11 d. Outside consultants and experts consulted or retained, by the parties and
12 their counsel, for the purpose of assisting the parties and their counsel to present or prepare
13 their respective positions in the above-captioned action, and/or in any appeal thereof.

14 2. Confidential Material shall be used by the parties only for purposes of selecting
15 a monitor. Use of such material for other purposes by the parties is strictly prohibited without
16 further order of the Court or stipulation of the parties.

17 3. No person having access to Confidential Material shall release or disclose those
18 materials to any person other than those specifically identified in paragraph 1, above, without
19 further order of the Court or stipulation of the parties.

20 4. If a Party receives a request to disclose any documents or information covered
21 by this Order, the Party will provide the requester with a copy of this Order.

22 5. To the extent that any Confidential Material subject to this Order is proposed to
23 be filed or are filed with the Court, the parties agree they will seek to file all such Confidential
24 Material under seal pursuant to a stipulation between the parties or motion in accord with Local
25 Rule 5(g), unless the parties agree that the documents can be redacted to remove the
26 confidential information. The Court shall decide any such motion in accordance with Local
27 Rule 5(g) and case law governing the sealing of court records.

1 6. After the conclusion of the selection process and the final selection of a monitor,
2 Confidential Materials shall be subject to disclosure pursuant to applicable law, including
3 applicable public records laws, except to the extent they have been designated as Proprietary
4 Information. The parties shall not disclose information designated as Proprietary Information
5 unless ordered to do so by the Court, or as permitted by this Paragraph 6. If a Third Party
6 requests information designated by an Applicant as proprietary, the Parties shall notify the
7 Applicant and release the information after the conclusion of the selection process and the final
8 selection of a monitor, unless the Applicant, within 10 days after receiving notice, files a notice
9 with the Court in this case requesting to maintain the protection of the Proprietary Information
10 and submitting a copy of the Proprietary Information to the Court for in camera review. The
11 Applicant will bear the burden of proving the materials are (i) Proprietary Information as
12 defined in this order and (ii) are exempt from disclosure under the applicable state or federal
13 public records statute. The Parties will take no position on such a challenge, if one arises. The
14 Third Party requester will be provided an opportunity to respond. The Court will review the
15 material and determine whether the Applicant has met its burden. Although this Order sets
16 forth the procedure that will apply to a request for Proprietary Information, nothing in this
17 Order is intended to circumvent or prejudice the application of the substantive provisions of
18 state or federal law regarding the scope of what is subject to disclosure after the final selection
19 of a monitor.

20 7. The Order shall survive the final termination of the action.

21 8. Upon final determination of this action, including any appeal thereof, unless i)
22 otherwise agreed to in writing by the parties, ii) during the pendency of, or as otherwise
23 directed as a result of, a challenge described in paragraph 6 above, or iii) required to retain the
24 records under applicable state or federal law, all parties and their counsel shall assemble and
25 destroy all information designated as or determined by this Court to be Proprietary
26 Information, except that counsel may retain copies of the subject information to the extent it is
27 used in pleadings, exhibits, and/or becomes work product.

1 DATED this ____ day of _____, 2012

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The Honorable James L. Robart
United States District Court Judge
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