

APPENDIX OF FORMS

FORM 1
ADMISSION INSTRUCTIONS

Instructions for Admission by Verified Application

The accompanying form shall be used in applying for admission to the bar of this court pursuant to RCFC 83.1. This form should be duly executed and returned to the clerk along with the following items:

1. A certificate issued within the last 30 days by the clerk of the highest court of any U.S. state, territory, or possession, or the District of Columbia, attesting to your admission to the bar of that court and your good standing therein (**Note: a letter from the bar of your state is NOT acceptable**);
2. Two (2) letters or signed statements from attorneys stating the following:
 - a. They are members of the bar of this court or of the Supreme Court of the United States;
 - b. They are not related to you;
 - c. You are personally known to them;
 - d. You possess all of the qualifications required for admission here;
 - e. They have examined your application; and
 - f. They affirm that your personal and professional character and standing are good; and
3. Payment must be made in the amount required by the fee schedule posted on the court's website at www.uscfc.uscourts.gov/fee-schedule.

Applications must be complete when submitted; **incomplete applications will be returned.**

Admission under this procedure does not require your appearance in person. A certificate will be forwarded to you upon the granting of your application.

Court of Federal Claims Bar Association
Pro Bono/Attorney Referral Pilot Program Registration

Attorneys who register for the Pro Bono/Attorney Referral Pilot Program agree to the following terms:

I am willing to be contacted regarding representation of pro se plaintiffs on a pro bono basis. I agree that the clerk's office of the U.S. Court of Federal Claims may provide my name and contact information to the U.S. Court of Federal Claims Bar Association and to potential clients in need of representation. I understand that by registering for the Pro Bono/Attorney Referral Pilot Program, I will not be obligated to represent any particular plaintiff. I certify that I have at least five years of civil litigation experience or that I will be supervised by an attorney with at least five years of civil litigation experience.

IN THE MATTER OF THE PETITION OF

(Please print/type your full name on the above line.)

FOR ADMISSION TO PRACTICE IN THE UNITED STATES COURT OF FEDERAL CLAIMS

TO THE CHIEF JUDGE AND JUDGES OF THE UNITED STATES COURT OF FEDERAL CLAIMS:

The petitioner, _____, respectfully shows this court:

That he/she is a resident of the city of _____, the state of _____, and that petitioner on the date of _____ was duly licensed and admitted to practice as an attorney at law in the _____ (highest state court), and is now a member of the bar thereof and in good standing.

WHEREFORE, said petitioner herein prays that he/she may be admitted to practice in the United States Court of Federal Claims in accordance with the laws and rules applicable thereto.

I, _____ DO SOLEMNLY SWEAR (OR AFFIRM) THAT I WILL SUPPORT THE CONSTITUTION OF THE UNITED STATES AND THAT I WILL CONDUCT MYSELF IN AN UPRIGHT MANNER AS AN ATTORNEY OF THIS COURT.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date) _____. (28. U.S.C. § 1746)

Signature _____

Address (including firm if applicable):

Phone: _____
Email: _____

Court of Federal Claims Bar Association
Pro Bono/Attorney Referral Pilot Program Registration*

I am willing to be contacted regarding the representation of pro se plaintiffs on a pro bono basis in the following types of cases. By checking the box(es) below, I agree to the terms described in the Admissions Instructions.

- | | |
|-----------------------|----------------------------------|
| Civilian Pay | Takings |
| Contracts | Tax |
| Intellectual Property | Unjust Conviction & Imprisonment |
| Military Claims | Miscellaneous – Other |
| Native American | |

* Representation of Vaccine Program Petitioners is not included; representation of those petitioners is governed by 42 U.S.C. §§ 300aa-1 to -34. The Office of Special Masters maintains a list of attorneys (posted on the court’s website at www.uscfc.uscourts.gov/vaccine-programoffice-special-masters) who are willing to accept vaccine injury cases. If you would like to be added to the list, please check here:

In The United States Court of Federal Claims
Form 2
Cover Sheet

Plaintiff(s) or Petitioner(s)

Names: _____

Location of Plaintiff(s)/Petitioner(s) (city/state): _____

(If this is a multi-plaintiff case, pursuant to RCFC 20(a), please use a separate sheet to list additional plaintiffs.)

Name of the attorney of record (See RCFC 83.1(c)): _____

Firm Name: _____

Contact information for pro se plaintiff/petitioner or attorney of record:

Post Office Box: _____

Street Address: _____

City-State-ZIP: _____

Telephone Number: _____

E-mail Address: _____

Is the attorney of record admitted to the Court of Federal Claims Bar? Yes No

Nature of Suit Code: _____

Select only one (three digit) nature-of-suit code from the attached sheet.

Agency Identification Code: _____

Number of Claims Involved: _____

Amount Claimed: \$ _____
Use estimate if specific amount is not pleaded.

Bid Protest Case (required for NOS 138 and 140):

Indicate approximate dollar amount of procurement at issue: \$ _____

Is plaintiff a small business? Yes No

Was this action proceeded by the filing of a protest before the GAO? Yes No Solicitation No. _____

If yes, was a decision on the merits rendered? Yes No

Income Tax (Partnership) Case:

Identify partnership or partnership group: _____

Takings Case:

Specify Location of Property (city/state): _____

Vaccine Case:

Date of Vaccination: _____

Related case:

Is this case directly related to any pending or previously filed case(s) in the United States Court of Federal Claims? If yes, you are required to file a separate notice of directly related case(s). See RCRC 40.2. Yes No

Nature-of-Suit Codes for General Jurisdiction Cases

100	Contract – Construction – (CDA)	206	Tax – Excise	348	Military Pay – Reinstatement
102	Contract – Fail to Award – (CDA)	208	Tax – Gift	350	Military Pay – Relocation Expenses
104	Contract – Lease – (CDA)	210	Tax – Income, Corporate	352	Military Pay – Retirement
106	Contract – Maintenance – (CDA)	212	Tax – Income, Individual	354	Military Pay – SBP
108	Contract – Renovation – (CDA)	213	Tax – Income, Individual (Partnership)	356	Military Pay – Other
110	Contract – Repair – (CDA)	214	Tax – Informer’s Fees	500	Carrier – transportation
112	Contract – Sale – (CDA)	216	Tax – Preparer’s Penalty	502	Copyright
114	Contract – Service – (CDA)	218	Tax – Railroad Retirement/Unemployment Tax Act	504	Native American
116	Contract – Supply – (CDA)	220	Tax – TEFRA Partnership – 28:1508	506	Oil Spill Clean Up
118	Contract – Other – (CDA)	222	Tax – Windfall Profit Overpayment – Interest	507	Taking – Town Bluff Dam
120	Contract – Bailment	224	Tax – 100% Penalty – 26:6672 – Withholding	508	Patent
122	Contract – Bid Preparation Costs	226	Tax – Other	509	Taking – Addicks & Barker Reservoirs
124	Contract – Medicare Act	300	Civilian Pay – Back Pay	510	Taking – Personalty
125	Contract – Affordable Care Act	302	Civilian Pay – COLA	512	Taking – Realty
126	Contract – Realty Sale	303	Civilian Pay – Disability Annuity	513	Taking – Rails to Trails
128	Contract – Subsidy	304	Civilian Pay – FLSA	514	Taking – Other
130	Contract – Surety	306	Civilian Pay – Overtime Compensation	515	Unjust Conviction and Imprisonment
132	Contract – Timber Sale	308	Civilian pay – Relocation Expenses	516	Miscellaneous – Damages
134	Contract – Other	310	Civilian Pay – Suggestion Award	518	Miscellaneous – Lease
136	Contract – Other – Wunderlich	312	Civilian Pay – Other	520	Miscellaneous – Mineral Leasing Act
138	Contract – Protest (Pre Award)	340	Military Pay – Back Pay	522	Miscellaneous – Oyster Growers Damages
140	Contract – Protest (Post Award)	342	Military Pay – CHAMPUS	524	Miscellaneous – Safety Off. Ben. Act
200	Tax – Allowance of Interest	344	Military Pay – Correct records	526	Miscellaneous – Royalty/Penalty Gas Production
202	Tax – Declaratory Judgment – 28:1507	346	Military Pay – Correct/Reinstate	528	Miscellaneous – Other
204	Tax – Estate			535	Informer’s Reward
				536	Spent Nuclear Fuel

Nature-of-Suit Codes for Vaccine Cases

449	Injury – Hepatitis A	485	Injury – Hemophilus Influenzae	477	Death – Pertussis
453	Injury – Pneumococcal Conjugate	486	Injury – Varicella	478	Death – Polio – inactive
456	Injury – DPT& Polio	490	Injury – Rotavirus	479	Death – Polio – other
457	Injury – D/T	492	Injury – Thimerosal	480	Death – Rubella
458	Injury – DTP/DPT	494	Injury – Influenza (Flu)	481	Death – Tetanus & Diphtheria
459	Injury – Measles	496	Injury – Meningococcal	482	Death – Tetanus & Tox.
460	Injury – M/M/R	498	Injury – Human Papillomavirus	483	Death – Other
461	Injury – Measles/Rubella	452	Death – Hepatitis A	487	Death – Hepatitis B
462	Injury – Mumps	454	Death – Pneumococcal Conjugate	488	Death – Hemophilus Influenaze
463	Injury – Pertussis	470	Death – DPT & Polio	489	Death – Varicella
464	Injury – Polio – inactive	471	Death – D/T	491	Death – Rotavirus
465	Injury – Polio – other	472	Death – DTP/DPT	493	Death – Thimerosal
466	Injury – Rubella	473	Death – Measles	495	Death – Influenza (Flu)
467	Injury – Tetanus & Diphtheria	474	Death – M/M/R	497	Death – Meningococcal
468	Injury – Tetanus & Tox.	475	Death – Measles/Rubella	499	Death – Human Papillomavirus
469	Injury – Other	476	Death – Mumps		
484	Injury – Hepatitis B				

AGENCY CODES

AGR	Agriculture	SBA	Small Business Administration
AF	Air Force	TRN	Department of Transportation
ARM	Army	TRE	Department of Treasury
AEC	Atomic Energy Commission	VA	Department of Veterans Affairs
COM	Department of Commerce	VAR	Various Agencies
DOD	Department of Defense	O	Other
DOE	Department of Energy		
ED	Department of Education		
EPA	Environmental Protection Agency		
GPO	Government Printing Office		
GSA	General Services Administration		
HHS	Health and Human Services		
HLS	Homeland Security		
HUD	Housing and Urban Development		
DOI	Department of the Interior		
ICC	Interstate Commerce Commission		
DOJ	Department of Justice		
LAB	Department of Labor		
MC	Marine Corps		
NAS	National Aeronautical Space Agency		
NAV	Navy		
NRC	Nuclear Regulatory Commission		
PS	Postal Service		
STA	State Department		

**FORM 3A
REPORTER FORM**

Caption Page

[Withdrawn (eff. Nov. 3, 2008).]

**FORM 3B
CERTIFICATE OF REPORTER**

(Recording)

DOCKET NO.: _____

CASE TITLE: _____

HEARING DATE: _____

LOCATION: _____

I hereby certify that the proceedings and evidence are contained fully and accurately on the recordings and notes reported by me at the proceeding in the above case before the United States Court of Federal Claims.

Date: _____

Signature: _____

Printed
Name: _____

Reporter
Address: _____

**FORM 3C
CERTIFICATE OF REPORTER**

(Transcript)

DOCKET NO.: _____

CASE TITLE: _____

HEARING DATE: _____

LOCATION: _____

I hereby certify that the foregoing is a true and correct transcript made to the best of my ability from a copy of the official recording of proceedings and, if applicable, from a real-time transcription of proceedings in the above-captioned matter.

Date: _____

Signature: _____

Printed
Name: _____

Reporter
Address: _____

FORM 3D
NOTICE OF INTENT TO REQUEST REDACTION

United States Court of Federal Claims

)	
)	
)	
Plaintiff(s),	)	No. _____
)	
v.	)	Judge _____
)	
)	
THE UNITED STATES,)	
)	
Defendant,)	
)	

NOTICE OF INTENT TO REQUEST REDACTION¹

Notice is hereby given by _____,
that a redaction request for the transcript filed on _____ will be filed
with the court within 21 days from the filing of the transcript with the clerk.

Date: _____

Signature of Attorney of Record

(Address, Telephone, E-mail)

¹ This form is to be used to provide notice of the intent to seek redaction of personal identifiers pursuant to Rule 80.1(c)(4)(B). Any request for additional redactions must be made by separate motion to the court.

**FORM 3E
TRANSCRIPT REDACTION REQUEST**

United States Court of Federal Claims

)	
)	
Plaintiff(s),	)	No. _____
	)	Judge _____
v.)	
)	
THE UNITED STATES,)	
)	
Defendant,)	
)	

TRANSCRIPT REDACTION REQUEST¹

Consistent with the court’s transcript redaction policy, it is requested that the following information be redacted prior to the transcript being made available to the public through the Public Access to Court Electronic Records (PACER).

Transcript Page #	Transcript Line #	Personal Identifier (e.g., SSN xxx-xx-1234)

Additional sheet attached.

Date: _____

Signature of Attorney of Record

(Address, Telephone, E-mail)

NOTE: This request will be filed in CM/ECF using the “Redaction Request – Transcript” docket event. The docket entry can be accessed by court staff and case participants only.

¹ This form is limited to the redaction of personal identifiers pursuant to Rule 80.1(c)(4)(B). Any request for additional redactions must be made by separate motion to the court.

FORM 4
BILL OF COSTS

In The United States Court of Federal Claims

BILL OF COSTS

No. _____

vs.

THE UNITED STATES

Judgment with costs having been entered in the above-captioned case on the _____ day of _____, 20____, against _____, the clerk is requested to tax the following as costs:

- Fees of the clerk.....\$ _____
- Fees of the reporter for all or any part of the trial or hearing transcript necessarily obtained for use in the case..... _____
- Fees for witnesses; for statutory fees, see 28 U.S.C. § 1821 (attach itemized listing)..... _____
- Costs for certification or duplication of papers necessarily obtained for use in case, provide number of copies, total pages and cost per page..... _____
- Costs incident to taking of depositions (if not of record, then attach statement as to need) _____
- Costs pursuant to FRAP 39(e)..... _____
- Other costs (itemize on attachment) _____
- Total.....\$ _____

CERTIFICATION

State/District of _____.

County of _____.

I certify under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed and that a copy hereof was this day mailed to _____ with postage fully prepaid thereon. Executed on (Date). (28 U.S.C. § 1746)

(Signature of Attorney of Record)

(Address, Telephone, E-Mail)

Form 5. Equal Access to Justice Act Form

APPLICATION FOR FEES AND OTHER EXPENSES UNDER THE EQUAL ACCESS TO JUSTICE ACT	
1. COURT: U.S. Court of Federal Claims	2. DATE FILED: 3. DOCKET NO.:
4. NAME OF APPLICANT: <i>(one per form)</i>	5. GOVERNMENT AGENCY INVOLVED IN CLAIM: <i>(use agency code on reverse side)</i>
6. NATURE OF APPLICATION: A. Original application under 28 USC§2412(d)(1)(A) after judgment in a civil action against the U.S. B. Appeal of fees and expenses awarded by Lower Court, (If Item 6B is checked, go to Item 7). C. Original application under 28 USC§2412(d)(3) after review of agency decision. D. Petition for leave to appeal an administrative agency fee determination under 5 USC§504(c)(2).	
7. APPEAL FROM: DISTRICT COURT BANKRUPTCY COURT OTHER:	7A. DATE FILED IN LOWER COURT: 7B. DOCKET NO.
8. ADMINISTRATIVE AGENCY DOCKET NO:	9. DATE FILED IN ADMINISTRATIVE AGENCY:
10. SHOWING OF PREVAILING PARTY STATUS (28 USC § 2412(d)(1)(B)): IS AGENCY ORDER, COURT ORDER, OR OTHER RELEVANT DOCUMENT ATTACHED? YES NO	
11. SHOWING OF ELIGIBILITY (28 USC § 2412(d)(2)(B)): IS NET WORTH INFORMATION ATTACHED? YES NO	
12. ENTER ALLEGATION THAT GOVERNMENT POSITION WAS NOT SUBSTANTIALLY JUSTIFIED (28 USC § 2412(d)(1)(B)):	
13. FOR EACH AMOUNT CLAIMED, PLEASE ATTACH ITEMIZATION INFORMATION INDICATING SERVICE PROVIDED, DATE, HOURS, AND RATE (28 USC §2412(d)(2)(A)):	
AMOUNT CLAIMED	
A. ATTORNEY FEES \$ _____ B. STUDY \$ _____ C. ANALYSIS \$ _____ D. ENGINEERING REPORT \$ _____ E. TEST \$ _____ F. PROJECT \$ _____ G. EXPERT WITNESS FEES \$ _____ H. OTHER FEES AND EXPENSES—SPECIFY \$ _____ 1. _____ \$ _____ 2. _____ \$ _____ 3. _____ \$ _____ I. TOTAL FEES AND EXPENSES \$ _____	
14. SIGNATURE:	15. DATE:

EAJA ADMINISTRATIVE AGENCY CODES

(Use the following abbreviations for the U.S. Government Agency involved in claim (Item 5))

BENEFITS REVIEW BOARD	(BRB)
CIVIL AERONAUTICS BOARD	(CAB)
CIVIL SERVICE COMMISSION (U.S.).....	(CSC)
CONSUMER PRODUCTS SAFETY COMMISSION	(CPSC)
COPYRIGHT ROYALTY TRIBUNAL	(CRT)
DEPARTMENT OF AGRICULTURE	(AGRI)
DEPARTMENT OF COMMERCE	(COMM)
DEPARTMENT OF DEFENSE.....	(DOD)
DEPARTMENT OF EDUCATION	(EDUC)
DEPARTMENT OF ENERGY	(DOE)
DEPARTMENT OF HEALTH, EDUCATION & WELFARE	(HEW)
DEPARTMENT OF HEALTH & HUMAN SERVICES.....	(HHS)
DEPARTMENT OF HOMELAND SECURITY	(HLS)
DEPARTMENT OF HOUSING & URBAN DEVELOPMENT	(HUD)
DEPARTMENT OF INTERIOR.....	(DOI)
DEPARTMENT OF JUSTICE.....	(DOJ)
DEPARTMENT OF LABOR (Except OSHA)	(LABR)
DEPARTMENT OF TRANSPORTATION SAFETY BOARD	(TRAN)
DEPARTMENT OF THE TREASURY (Except IRS).....	(TREA)
DRUG ENFORCEMENT AGENCY	(DEA)
ENVIRONMENTAL PROTECTION AGENCY	(EPA)
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION	(EEOC)
FEDERAL AVIATION AGENCY	(FAA)
FEDERAL COAL MINE SAFETY BOARD	(FCMS)
FEDERAL COMMUNICATIONS COMMISSION.....	(FCC)
FEDERAL DEPOSIT INSURANCE CORPORATION	(FDIC)
FEDERAL ELECTION COMMISSION	(FEC)
FEDERAL ENERGY AGENCY	(FEA)
FEDERAL ENERGY REGULATORY COMMISSION.....	(FERC)
FEDERAL HOME LOAN BANK BOARD	(FHLB)
FEDERAL LABOR RELATIONS AUTHORITY	(FLRA)
FEDERAL MARITIME BOARD	(FMBD)
FEDERAL MARITIME COMMISSION.....	(FMC)
FEDERAL MINE SAFETY & HEALTH ADMINISTRATION.....	(MSHA)
FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION	(MSHR)
FEDERAL RESERVE SYSTEM.....	(FRS)
FEDERAL TRADE COMMISSION	(FTC)
FOOD & DRUG ADMINISTRATION	(FDA)
GENERAL SERVICES ADMINISTRATION	(GSA)
IMMIGRATION & NATURALIZATION SERVICE.....	(INS)
INTERNAL REVENUE SERVICE (Except TAX COURT).....	(IRS)
INTERSTATE COMMERCE COMMISSION	(ICC)
MERIT SYSTEMS PROTECTION BOARD	(MSPB)
NATIONAL LABOR RELATIONS BOARD	(NLRB)
OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION.....	(OSHA)
OCCUPATIONAL SAFETY & HEALTH REVIEW COMMISSION	(OSHC)
OFFICE OF MANAGEMENT & BUDGET	(OMB)
OFFICE OF PERSONNEL MANAGEMENT.....	(OPM)
OFFICE OF WORKERS COMPENSATION PROGRAM	(OWCP)
PATENT OFFICE	(PATO)
POSTAL RATE COMMISSION (U.S.).....	(PRC)
POSTAL SERVICE (U.S.).....	(USPS)
RR RETIREMENT BOARD.....	(RRRB)
SECURITIES & EXCHANGE COMMISSION	(SEC)
SMALL BUSINESS ADMINISTRATION	(SBA)
TAX COURT, INTERNAL REVENUE SERVICE	(TXC)

FORM 6A
SUBPOENA TO APPEAR AND TESTIFY AT A HEARING OR TRIAL

United States Court of Federal Claims

vs.

No. _____

THE UNITED STATES

**SUBPOENA TO APPEAR AND TESTIFY
AT A HEARING OR TRIAL**

To: _____

YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a hearing or trial in the above-captioned case. When you arrive, you must remain at the court until the judge or a court officer allows you to leave. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place:	Courtroom No.:
	Date and Time:

You must also bring with you the following documents, electronically stored information, or objects (*blank if not applicable*):

The provisions of RCFC 45(d), relating to your protection as a person subject to a subpoena, and RCFC 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: _____

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

NOTE – If the person served is neither a party nor a party’s officer and the place of travel is more than 100 miles (by the shortest usual means of travel) from the place where the subpoena is served, or if the place of the hearing or trial is more than 100 miles from the place where the person served resides, is employed, or transacts business in person, the person served may file a motion to quash the subpoena pursuant to RCFC 45(d)(3) unless there is attached to the subpoena an order of the court requiring his/her appearance notwithstanding the distance of travel. In any event, response to the subpoena will entitle the person to the fees and mileage allowed by law. (28 U.S.C. § 1821)

The name, address, telephone number, and e-mail of the attorney representing (*name of party*) _____, who issues or requests this subpoena, are: _____

PROOF OF SERVICE

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the subpoena at the individual’s residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there, on
(date) _____, and mailed a copy to the individual’s last known address; or

I served the subpoena on *(name of individual)* _____ who is designated by law to accept
service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because _____; or

Other *(specify)*: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day’s attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server’s signature

Printed name and title

Server’s address

Additional information regarding service, etc:

RCFC 45.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney’s fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of

production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things, or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for an order compelling production or inspection.

- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) **Quashing or Modifying a Subpoena.**

(A) **When Required.** On timely motion, the court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to comply beyond the limitations specified in RCFC 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception of waiver applies; or
- (iv) subjects a person to undue burden.

(B) **When Permitted.** To protect a person subject to or affected by a subpoena, the court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) **Specifying Conditions as an Alternative.** In the circumstances described in RCFC 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) **Duties in Responding to a Subpoena.**

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not

reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of RCFC 26(b)(2)(C). The court may specify conditions for the discovery.

(2) **Claiming Privilege or Protection.**

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

* * * * *

(g) **Contempt.** The court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

FORM 6B
SUBPOENA TO TESTIFY AT A DEPOSITION AND TO PRODUCE DOCUMENTS

United States Court of Federal Claims

vs.

No. _____

THE UNITED STATES

**SUBPOENA TO TESTIFY AT A DEPOSITION
AND TO PRODUCE DOCUMENTS**

To: _____

Testimony: **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in the above-captioned cases. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place:	Date and Time:
--------	----------------

The deposition will be recorded by this method: _____

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

The provisions of RCFC 45(d), relating to your protection as a person subject to a subpoena, and RCFC 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: _____

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

NOTE – If the person served is neither a party nor a party’s officer and the place of travel is more than 100 miles (by the shortest usual means of travel) from the place where the subpoena is served, or if the place of the hearing or trial is more than 100 miles from the place where the person served resides, is employed, or transacts business in person, the person served may file a motion to quash the subpoena pursuant to RCFC 45(d)(3) unless there is attached to the subpoena an order of the court requiring his/her appearance notwithstanding the distance of travel. In any event, response to the subpoena will entitle the person to the fees and mileage allowed by law. (28 U.S.C. § 1821)

The name, address, telephone number, and e-mail of the attorney representing (*name of party*) _____, who issues or requests this subpoena, are: _____

PROOF OF SERVICE

This subpoena for (*name of individual and title, if any*) _____ was received by me on (*date*) _____.

I personally served the subpoena on the individual at (*place*) _____ on (*date*) _____; or

I left the subpoena at the individual's residence or usual place of abode with (*name*) _____, a person of suitable age and discretion who resides there, on (*date*) _____, and mailed a copy to the individual's last known address; or

I served the subpoena on (*name of individual*) _____ who is designated by law to accept service of process on behalf of (*name of organization*) _____ on (*date*) _____; or

I returned the subpoena unexecuted because _____; or

Other (*specify*): _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding service, etc:

RCFC 45.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information,

or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms

requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to comply beyond the limitations specified in RCFC 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception of waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in RCFC 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not

specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of RCFC 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

* * * * *

(g) Contempt. The court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

FORM 6C
SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES

United States Court of Federal Claims

vs.

No. _____

THE UNITED STATES

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR
OBJECTS OR TO PERMIT INSPECTION OF PREMISES**

To: _____

Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

Place:	Date and Time:
--------	----------------

Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The provisions of RCFC 45(d), relating to your protection as a person subject to a subpoena, and RCFC 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: _____

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

NOTE – If the person served is neither a party nor a party's officer and the place of travel is more than 100 miles (by the shortest usual means of travel) from the place where the subpoena is served, or if the place of the hearing or trial is more than 100 miles from the place where the person served resides, is employed, or transacts business in person, the person served may file a motion to quash the subpoena pursuant to RCFC 45(d)(3) unless there is attached to the subpoena an order of the court requiring his/her appearance notwithstanding the distance of travel. In any event, response to the subpoena will entitle the person to the fees and mileage allowed by law. (28 U.S.C. § 1821)

The name, address, telephone number, and e-mail of the attorney representing (*name of party*) _____, who issues or requests this subpoena, are: _____

PROOF OF SERVICE

This subpoena for (*name of individual and title, if any*) _____ was received by me on (*date*) _____.

I personally served the subpoena on the individual at (*place*) _____ on (*date*) _____; or

I left the subpoena at the individual's residence or usual place of abode with (*name*) _____, a person of suitable age and discretion who resides there, on (*date*) _____, and mailed a copy to the individual's last known address; or

I served the subpoena on (*name of individual*) _____ who is designated by law to accept service of process on behalf of (*name of organization*) _____ on (*date*) _____; or

I returned the subpoena unexecuted because _____; or

Other (*specify*): _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding service, etc:

RCFC 45.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

- (1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.
- (2) Command to Produce Materials or Permit Inspection.**

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information,

or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms

requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to comply beyond the limitations specified in RCFC 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception of waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in RCFC 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not

specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of RCFC 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

* * * * *

(g) Contempt. The court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

FORM 7
CAPTION OF ALL FILINGS IN VACCINE CASES

United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

_____,)
)
)
) Petitioner[s],) No. _____ V
)
) v.) Special Master _____
)
) SECRETARY OF HEALTH AND)
) HUMAN SERVICES,)
)
) Respondent.)
)

[TITLE OF FILING]

**FORM 7A
SUBPOENA IN VACCINE CASES**

**United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS**

_____ ,)	
Petitioner[s],	)	No. _____ V
v.	)	Special Master _____
SECRETARY OF HEALTH AND HUMAN SERVICES,)	
Respondent.)	

SUBPOENA

TO: _____

1. YOU ARE COMMANDED to appear at the place, date, and time specified below to testify in the above-captioned case.
Place of Testimony: _____
Date and Time: _____
2. YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above-captioned case.
Place of Deposition: _____
Date and Time: _____
3. YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):
Place: _____
Date and Time: _____
4. YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.
Premises: _____
Date and Time: _____

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify.

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) DATE

ISSUING OFFICER'S NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL

NOTE – If the person served is neither a party nor a party’s officer and the place of travel is more than 100 miles (by the shortest usual means of travel) from the place where the subpoena is served, or if the place of the hearing or trial is more than 100 miles from the place where the person served resides, is employed, or transacts business in person, the person served may file a motion to quash the subpoena pursuant to RCFC 45(d)(3) unless there is attached to the subpoena an order of the court requiring his/her appearance notwithstanding the distance of travel. In any event, response to the subpoena will entitle the person to the fees and mileage allowed by law. (28 U.S.C. § 1821)

PROOF OF SERVICE

DATE	PLACE
SERVED ON (PRINT NAME)	MANNER OF SERVICE

Fees tendered for one day’s attendance and mileage allowed by law. (Fees and mileage need not be tendered when the subpoena is issued on behalf of the United States or an officer or agency thereof.)

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on	
DATE	SIGNATURE OF SERVER

ADDRESS OF SERVER

RCFC 45.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions.

A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney’s fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i)** At any time, on notice to the commanded person, the serving party may move the court for an order compelling production or inspection.
- (ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to comply beyond the limitations specified in RCFC 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception of waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in RCFC 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information.

These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding

need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information.

The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of RCFC 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

* * * * *

(g) Contempt. The court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

FORM 8
PROTECTIVE ORDER IN PROCUREMENT PROTEST CASES

United States Court of Federal Claims

)	
)	
)	
Plaintiff,	)	No. _____
)	
v.	)	Judge _____
)	
THE UNITED STATES,)	
)	
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 77.4(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 electronically stored information (ESI) stored on counsel's computer network(s), destruction of ESI for purposes of compliance with this paragraph shall be complete when counsel take 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.

Judge

**FORM 8A
PROTECTIVE ORDER IN PATENT CASES**

United States Court of Federal Claims

)	
)	
)	
Plaintiff,	)	No. _____
)	
v.	)	Judge _____
)	
THE UNITED STATES,)	
)	
Defendant.)	

PROTECTIVE ORDER

The court enters this Protective Order pursuant to RCFC 26(c)(1) and PRCFC 19(b). This order does not specify the procedures under which access to National Security Information is to be provided and may not be construed as requiring the production of any information that is classified for reasons of national security. Access to such information will be governed solely by existing laws and regulations.

1. As used in this Protective Order, these terms have the following meanings:
 - a. Attorneys: counsel of record in this litigation;
 - b. Documents: all materials within the scope of RCFC 34;
 - c. Restricted—Attorneys’ Eyes Only: a subset of restricted documents that are designated pursuant to Paragraph 5 below;
 - d. Written Assurance: an executed document found at Appendix of Forms, Form 9A;
 - e. Litigation Support Contractors: contractors who are subject to an obligation, either by contract or trade practice, to maintain the confidentiality of any material received in performance of services related to this litigation and rendered for the attorneys of record in this litigation (by way of example and not limitation, litigation support contractors include copying services, court reporters, videographers, document storage and management contractors, database management contractors, and information technology and network support contractors);
 - f. Experts: outside persons who are used by a party or its attorneys to furnish technical or expert services and/or to give expert testimony in this litigation; and
 - g. Third Party: any party not directly involved in this litigation.

2. By identifying a document as “Restricted,” a party may designate any document, including an interrogatory response, another discovery response, and/or a transcript, that it, in good faith, contends constitutes or contains trade secret, proprietary, source-selection sensitive, or other similar confidential information that the owner thereof has taken reasonable measures to protect from disclosure to the public or competitors. In the case of the United States, other information and documents that may be identified as “Restricted” include:

- a. documents categorized as “FOR OFFICIAL USE ONLY,” including unclassified information in the possession or under the control of the Department of Defense; and
- b. trade secret, proprietary, source-selection sensitive, or other similar confidential information belonging to non-parties but within the control or custody of the United States.

3. All “Restricted” documents, along with the information contained in the documents, may be used solely for the purpose of this litigation and no person receiving such documents may directly or indirectly transfer, disclose, or communicate the contents of the documents in any way to any person other than those specified in Paragraph 4 below. Prohibited purposes include, but are not limited to, use for competitive purposes or the prosecution of other intellectual property rights.

4. Without a court order, access to any “Restricted” document will be limited to:

- a. the court and its personnel;
- b. attorneys of record in this litigation, to the extent they have agreed to be bound by this Protective Order, and any members or employees of their respective law firms, or in the case of the United States, the attorneys, legal assistants, and legal support staff of the Department of Justice and any agency or department of the United States involved in this litigation;
- c. persons shown on the face of the document to have authored or received it;
- d. litigation support contractors;
- e. inside counsel of the parties, subject to the conditions of Paragraph 8 below;
- f. a party’s officers and employees directly involved in this litigation whose access to the information is reasonably required to supervise, manage, or participate in this litigation, subject to the conditions of Paragraph 8 below;
- g. experts, subject to the conditions of Paragraph 8 below; and
- h. any other person or entity that the parties (including any third party, to the extent the third party has designated the document as “Restricted”) mutually agree in writing may have access to “Restricted” documents.

5. The parties have the right to further designate “Restricted” documents or portions thereof as “Restricted—Attorneys’ Eyes Only.” Without a further court order, however, disclosure of such information will be limited to the persons designated in Paragraphs 4(a), (b), (c), and (d) and, in addition, persons designated in Paragraph 4(h), to the extent the parties mutually agree in writing that an individual may have access to “Restricted—Attorneys’ Eyes Only” information.

6. Disclosure of “Restricted—Attorneys’ Eyes Only” information:

- a. Notwithstanding any other provision of this Protective Order, information designated “Restricted—Attorneys’ Eyes Only” may not be disclosed to any individual involved in the prosecution of patent applications related to the subject matter of the claimed invention involved in this litigation.
- b. Individuals to whom “Restricted—Attorneys’ Eyes Only” information has been disclosed under this Protective Order, may, however, provide copies of material prior art or other non-confidential information to counsel involved in prosecution to be provided to the United States Patent and Trademark Office.
- c. Unless otherwise agreed upon by the parties, no individuals to whom “Restricted—Attorneys’ Eyes Only” information has been disclosed under this Protective Order may be involved in the prosecution of patent applications related to the subject matter of the claimed invention involved in this litigation until one (1) year after the final disposition of this action, including all related appeals (the “Prosecution Bar”).
 1. The parties expressly agree that the Prosecution Bar set forth herein will be personal to any attorney who reviews information designated “Restricted—Attorneys’ Eyes Only” and will be not be imputed to any other persons or attorneys at the attorney’s law firm or company, unless information concerning that designated information was communicated to an individual by one who reviewed such designated information.
 2. For purposes of the Prosecution Bar, “prosecution” includes:
 - i. the drafting or amending of patent claims, or the supervising of the drafting or amending of patent claims;
 - ii. participating in or advising on any re-examination, reissue, inter-party review, or other post-grant review proceeding, except as specified below; and
 - iii. advising any client concerning strategies for obtaining or preserving patent rights related to the subject matter of the claimed invention involved in this litigation before the United States Patent and Trademark Office or other similar foreign government or agency.
 3. “Prosecution” does not include participating in or advising on any re-examination, re-issue, inter-party review, or other post-grant review proceeding by a party’s lawyers, with respect to any patents in which an opposing party involved in this litigation has any interest or any patent involved in the pending action.
- d. Nothing contained herein will preclude lawyers having access to documents designated as “Restricted—Attorneys’ Eyes Only” from having discussions with their clients about the general status of the case and about settlement offers, so long as during any discussions the lawyers do not impart any “Restricted—Attorneys’ Eyes Only” information to their clients.

7. Third parties producing documents in the course of this litigation also may designate documents as “Restricted” or “Restricted—Attorneys’ Eyes Only,” subject to the same protections and constraints as the parties to the litigation. A copy of this Protective Order will be served together with any subpoena served in this litigation. All documents produced by such third parties, even if not designated by the third parties

as “Restricted” or “Restricted—Attorneys’ Eyes Only,” will be treated by the parties to this action as “Restricted—Attorneys’ Eyes Only” for a period of fifteen (15) days from the date of production. During that fifteen (15)-day period, any party may designate documents as “Restricted” or “Restricted—Attorneys’ Eyes Only,” pursuant to the terms of this Protective Order.

8. Each person who is to receive “Restricted” information, pursuant to Paragraphs 4(e), (f), or (g), must execute a “Written Assurance” found at Appendix of Forms, Form 9A. Opposing counsel must be notified in writing at least ten (10) days prior to disclosure of “Restricted” information to any such person. Such notice must provide a reasonable description of the person to whom disclosure is sought sufficient to permit an objection to be made. Upon good cause (which does not include challenging the qualifications of such outside person), a party may object in writing to disclosure within ten (10) days after receipt of notice by setting forth in detail the grounds on which the party’s objection is based. If a party timely objects, no disclosure will be made until the party seeking disclosure obtains the prior approval of the court or the objecting party.

9. All depositions or portions of depositions taken in this litigation that contain information that may be designated “Restricted” or “Restricted—Attorneys’ Eyes Only,” according to Paragraphs 2 and 5, may also be designated and thereby obtain the protections accorded other “Restricted” or “Restricted—Attorneys’ Eyes Only” documents. Designations for depositions must be made either on the record or by written notice to the other party within ten (10) days of receipt of the final transcript. Unless otherwise agreed, depositions must be treated as “Restricted—Attorneys’ Eyes Only” until ten (10) days after receipt of the final transcript. The deposition of any witness (or any portion of such deposition) that includes “Restricted” information may be taken only in the presence of persons qualified to have access to such information.

10. Any party who fails to designate documents as “Restricted” or “Restricted—Attorneys’ Eyes Only” may designate the documents after production, to the same extent as it may have designated the documents before production, by providing written notice of the error and substituting copies of the documents bearing appropriate designations. The party receiving the designation must, upon receiving the replacement set of documents, immediately return or destroy the documents that lacked the designation to the designating party, and the parties must undertake reasonable efforts to correct any disclosure of such information, contrary to the designation. No showing of error, inadvertence, or excusable neglect will be required for a party to avail itself of the provisions of this paragraph.

11. In addition to the requirements imposed by Federal Rule of Evidence 502 and RCFC 26(b)(5)(B), any party who inadvertently discloses documents that are privileged or otherwise immune from discovery must, promptly upon discovery of the error, advise the receiving party in writing and request that the documents be returned. The receiving party must return or certify destruction of the documents, including all copies, within ten (10) days of receiving such written request. The party returning or destroying such documents may thereafter seek reproduction of any such documents, pursuant to applicable law, although the party seeking reproduction may not use the fact that the documents were previously produced inadvertently to argue that privilege or any other immunity from discovery has been waived. No showing of error, inadvertence, or excusable neglect will be required for a party to avail itself of the provisions of this paragraph.

12. If a party intends to file a document containing “Restricted” information with the court, this Protective Order grants leave to make such filing under seal. Prior to the disclosure at trial or a hearing of any information designated “Restricted” or “Restricted—Attorneys’ Eyes Only,” the parties may seek further protections against public disclosure from the court.

13. Any party may request a change in the designation of any information designated “Restricted” or “Restricted—Attorneys’ Eyes Only.” Any such document will be treated as designated until such request is approved by the court. If the disclosing party does not agree to the requested change in designation, the party seeking the change may move the court for appropriate relief, providing notice to any third party whose designation of produced documents as “Restricted” or “Restricted—Attorneys’ Eyes Only” in the litigation may be affected. The party asserting designation will have the burden of proving that the information in question is within the scope of protection afforded by this Protective Order and RCFC 26(c).

14. No later than sixty (60) days after the termination of this litigation, including all related appeals, each party must either destroy or return to the disclosing party all documents designated by the disclosing party as “Restricted” or “Restricted—Attorneys’ Eyes Only,” and all copies of and/or extracts or data taken from such documents. Each party must provide a certification in writing to the disclosing party as to such return or destruction within the sixty (60)-day period. Attorneys will be entitled, however, to retain one set of all documents filed with the court, obtained during discovery, or generated as correspondence in connection with the action, including one copy of documents designated “Restricted” or “Restricted—Attorneys’ Eyes Only.” Nothing in this Protective Order will require deletion of data from tapes or other storage maintained solely for the purpose of permitting the rebuilding or recovery of files, provided that access to this data is restricted to those otherwise permitted access under this Protective Order.

15. Any party may move the court for a modification of this Protective Order and nothing in this Protective Order will be construed to prevent a party from seeking such further provisions enhancing or limiting access to documents as may be appropriate.

16. The obligations imposed by this Protective Order will survive the termination of this litigation and all related appeals and will remain in effect until the party designating the documents as “Restricted” or “Restricted—Attorneys’ Eyes Only” agrees otherwise in writing or a further court order otherwise directs.

17. No later than sixty (60) days after the termination of this litigation, including all related appeals, the parties must file a motion with the court seeking leave to remove any physical materials designated “Restricted” or “Restricted—Attorneys’ Eyes Only” from the office or custody of the clerk.

18. Nothing in this Protective Order will be construed to prevent any party from disclosing its own “Restricted” or “Restricted—Attorneys’ Eyes Only” information in any manner that it considers appropriate.

19. In the event that any party seeks the production of documents containing material that may be classified, subject to International Traffic in Arms Regulations or other export controls, or otherwise restricted by federal law, the parties will confer regarding an appropriate resolution consistent with federal law. Notwithstanding anything contained in this Protective Order, National Security Information will be controlled according to applicable statute.

20. The court reserves the right, after reviewing the record and other information submitted by the parties, to modify this Protect Order, or the parties’ designation of materials or proceedings as “Restricted” or “Restricted—Attorneys’ Eyes Only,” in the event such materials or proceedings are not properly classified as confidential, privileged, proprietary, competition-sensitive, or otherwise protectable.

IT IS SO ORDERED.

Judge

FORM 9
APPLICATION FOR ACCESS TO INFORMATION UNDER
PROTECTIVE ORDER BY OUTSIDE OR INSIDE COUNSEL

United States Court of Federal Claims

_____,
Plaintiff,
v.
THE UNITED STATES,
Defendant.

)
)
)
) No. _____
) Judge _____
)
)
)
)
)
)

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

1. I, _____, hereby apply for access to protected information covered by the Protective Order issued in connection with this proceeding.
2. a. I [outside counsel only] am an attorney with the law firm of _____ and have been retained to represent _____, a party to this proceeding.
b. I [inside counsel] am in-house counsel (my title is: _____) for _____, a party to this proceeding.
3. I am _____ 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 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 [outside counsel only] 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:
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 disclosed under the Protective Order.

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:

-
8. I [inside counsel] have attached a detailed narrative providing the following information:
- a. my position and responsibilities as in-house counsel, including my role in providing advice in procurement-related matters;
 - b. the person(s) to whom I report and their position(s) and responsibilities;
 - c. the number of in-house counsel at the office in which I work and their involvement, if any, in competitive decision making and in providing advice in procurement-related matters;
 - d. my relationship to the nearest person involved in competitive decision making (both in terms of physical proximity and corporate structure); and
 - e. measures taken to isolate me from competitive decision making and to protect against the inadvertent disclosure of protected information to persons not admitted under the Protective Order.

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

Date Executed

Typed Name and Title

Telephone Number

E-mail Address

Signature of Attorney of Record

Date Executed

Typed Name and Title

Telephone Number

E-mail Address

FORM 9A
WRITTEN ASSURANCE

United States Court of Federal Claims

_____,
Plaintiff,
v.
THE UNITED STATES,
Defendant.

)
)
)
) No. _____
) Judge _____
)
)
)
)
)

WRITTEN ASSURANCE

I, _____, declare that:

1. My address is _____,
and the address of my present employer is _____.
2. My present occupation or job description is _____
_____.
3. My present relationship to plaintiff/defendant(s) is _____
_____.
4. I have received a copy of the Protective Order in this action.
5. I have carefully read and understand the provisions of the Protective Order, agree to be bound by it, and specifically agree I will not use or disclose to anyone any of the contents of any Restricted information received under the protection of the Protective Order.
6. I understand that I am to retain all copies of any of the materials that I receive which have been so designated as Restricted in a container, cabinet, drawer, room, or other safe place in a manner consistent with the Protective Order and that all copies are to remain in my custody until I have completed my assigned or legal duties. I will destroy or return to counsel all Restricted documents and things that come into my possession. I acknowledge that such return or the subsequent destruction of such materials will not relieve me from any of the continuing obligations imposed upon me by the Protective Order.

I declare under penalty of perjury under the laws of the state where executed that the foregoing is true and correct.

Executed this _____ day of _____, 20____, in the State of

_____.

Signature

FORM 10
APPLICATION FOR ACCESS TO INFORMATION UNDER
PROTECTIVE ORDER BY EXPERT CONSULTANT OR WITNESS

United States Court of Federal Claims

)	
)	
Plaintiff,	)	No. _____
	)	Judge _____
v.)	
)	
THE UNITED STATES,)	
)	
Defendant.)	

APPLICATION FOR ACCESS TO INFORMATION UNDER
PROTECTIVE ORDER BY EXPERT CONSULTANT OR WITNESS

1. I, the undersigned, am a _____ with _____ and hereby apply for access to protected information covered by the Protective Order issued in connection with this proceeding.

2. I have been retained by _____ and will, under the direction and control of _____, assist in the representation of _____ in this proceeding.

3. I hereby certify that 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 any party to this proceeding or any other firm that might gain a competitive advantage from access to the information disclosed under the protective order. Neither I nor my employer provides advice or participates in any decisions of such parties in matters involving similar or corresponding information about a competitor. This means, for example, that neither I nor my employer provides advice concerning, or participates 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.

4. My professional relationship with the party for whom I am retained in this proceeding and its personnel is strictly as a consultant on issues relevant to the proceeding. Neither I nor any member of my immediate family holds office or a management position in any company that is a party in this proceeding or in any competitor or potential competitor of a party.

5. I have attached the following information:

- a. a current resume describing my education and employment experience to date;
- b. a list of all clients for whom I have performed work within the two years prior to the date of this application and a brief description of the work performed;
- c. a statement of the services I am expected to perform in connection with this proceeding;

- d. a description of the financial interests that I, my spouse, and/or my family has in any entity that is an interested party in this proceeding or whose protected information will be reviewed; if none, I have so stated;
- e. a list identifying by name of forum, case number, date, and circumstances all instances in which I have been granted admission or been denied admission to a protective order, had a protective order admission revoked, or have been found to have violated a protective order issued by an administrative or judicial tribunal; if none, I have so stated; and
- f. a list of the professional associations to which I belong, including my identification numbers.

6. I have read a copy of the Protective Order issued by the court in this proceeding. I will comply in all respects with all terms and conditions of that order in handling any protected information produced in connection with the proceeding. I will not disclose any protected information to any individual who has not been admitted under the Protective Order by the court.

7. For a period of two years after the date this application is granted, I will not engage or assist in the preparation of a proposal to be submitted to any agency of the United States government for _____ when I know or have reason to know that any party to this proceeding, or any successor entity, will be a competitor, subcontractor, or teaming member.

8. For a period of two years after the date this application is granted, I will not engage or assist in the preparation of a proposal or submission to _____ nor will I have any personal involvement in any such activity.

9. 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

Date Executed

Typed Name and Title

Telephone Number

E-mail Address

Signature of Attorney of Record

Date Executed

Typed Name and Title

Telephone Number

E-mail Address

FORM 11
SURETY BOND FOR TEMPORARY RESTRAINING ORDER
OR PRELIMINARY INJUNCTION

United States Court of Federal Claims

)	
)	
)	
Plaintiff,	)	No. _____
)	
v.	)	Judge _____
)	
THE UNITED STATES,)	
)	
Defendant.)	

SURETY BOND
FOR TEMPORARY RESTRAINING ORDER
OR
PRELIMINARY INJUNCTION

Recitals

1. _____ [name of plaintiff] has obtained from the United States Court of Federal Claims a [Temporary Restraining Order or Preliminary Injunction] against the United States.
2. The _____ [Temporary Restraining Order or Preliminary Injunction] was issued on condition that _____ [name of plaintiff] execute and file a good and sufficient bond in the amount of \$_____ for the payment of any costs and damages that may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

Promise to Pay

As a result of the facts just recited:
_____ [name of plaintiff] and _____ [name(s) of corporate surety or sureties], which has an office and usual place of business at _____ [street address], _____ [city, state, zip code], each undertakes and promises to pay up to the sum of \$_____ for any damages incurred as a result of the _____ [Temporary Restraining Order or Preliminary Injunction] if it is determined that defendant was wrongfully enjoined or restrained. Plaintiff and surety(ies) stipulate that the damages may be ascertained in such manner as the court shall direct. See RCFC 65.1.

Dated: _____

For the principal:

_____ [signature of plaintiff]

_____ [typed name of plaintiff]

For the _____ [surety or sureties]

_____ [typed or printed name of surety]

By _____ [signature]

_____ [typed name of signer]

_____ [title of signer]

_____ [street address]

_____ [city, state, zip code]

_____ [telephone number]

_____ [e-mail address]

[Repeat signature block for each additional surety.]

APPROVED: _____, 20__

_____, Clerk, United States Court of Federal Claims

**FORM 12
SUPERSEDEAS BOND (SURETY)**

United States Court of Federal Claims

)	
)	
)	
Plaintiff,	)	No. _____
)	
v.	)	Judge _____
)	
THE UNITED STATES,)	
)	
Defendant.)	

SUPERSEDEAS BOND (SURETY)

Recitals

1. A judgment was entered in the above-captioned case on _____ [date] in the United States Court of Federal Claims against Appellant, _____ [name of appellant] and in favor of _____ [name(s) of appellee(s)].

2. _____ [name of appellant] has filed a timely notice of appeal of this judgment to the United States Court of Appeals for the Federal Circuit and desires to suspend enforcement of the judgment pending determination of the appeal.

Promise to Pay

As a result of the facts just recited:

_____ [name of appellant] and _____ [names of corporate surety or sureties], which has an office and usual place of business at _____ [street address], _____ [city, state, zip code], each undertakes and promises to pay to _____ [name(s) of appellee(s)] all damages, costs, and interest that may be awarded to _____ [him or her or it or them] following the appeal of this matter up to the sum of \$ _____ if:

- a. the judgment so appealed is affirmed;
- b. the appeal is dismissed; or
- c. _____ [name of appellant] fails to pay promptly all sums awarded against _____ [him or her or it or them] in or following the appeal in this action, including any costs that the court of appeals may award if the judgment is modified.

If _____ [name of appellant] fulfills the obligations on appeal set forth above, then this obligation will become void. Otherwise, the obligation will remain in full force and effect.

Dated: _____

For the principal:

_____ [signature of plaintiff]

_____ [typed name of plaintiff]

For the _____ [surety or sureties]

_____ [typed or printed name of surety]

By _____ [signature]

_____ [typed name of signer]

_____ [title of signer]

_____ [street address]

_____ [city, state, zip code]

_____ [telephone number]

_____ [e-mail address]

[Repeat signature block for each additional surety.]

APPROVED: _____, 20__

_____, Clerk, United States Court of Federal Claims

FORM 13
BOND WITH COLLATERAL FOR
TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION

United States Court of Federal Claims

)	
)	
Plaintiff,	)	No. _____
	)	Judge _____
v.)	
)	
THE UNITED STATES,)	
)	
Defendant.)	

BOND WITH COLLATERAL FOR
TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION

Recitals

1. The above-named plaintiff(s) has commenced an action in the above-entitled court against the defendant and has made application to the court for a Temporary Restraining Order or Preliminary Injunction against the defendant, enjoining and restraining the defendant, as well as the defendant's agents or employees, from the commission of certain acts, particularly set forth and described in the complaint, and
2. The plaintiff(s) desires to give an undertaking in an amount deemed proper by the court, that is, \$_____, to secure the payment of any costs and damages, including reasonable attorney's fees to be fixed by the court that may be incurred or suffered by the defendant if the restraining order or preliminary injunction should prove to have been improvidently issued.

Promise to Pay

The undersigned surety (jointly and severally, if more than one) obligates itself to the defendant as provided in RCFC 65 and 65.1, in the sum of \$_____ on the condition that if the defendant ultimately prevails in this action and suffers damages on account of the Temporary Restraining Order or Preliminary Injunction, they will pay those damages up to and including the maximum amount of this Bond if the court determines that the Temporary Restraining Order or Preliminary Injunction was improperly or improvidently granted, or the defendant was improperly or wrongfully restrained by that Order. The undersigned stipulates that the damages may be ascertained in such manner as the court shall direct and that, on dissolving the injunction, the court may give judgment thereon against the plaintiff for said damages in the order dissolving the injunction, or in a further order after ascertainment of the amount of said damages.

The above-named plaintiff(s) as security for the Bond hereby deposits with the clerk of said court, the sum of \$_____ (either case or certified check made payable to the U.S. Treasury),¹ which sum may be utilized in payment of any damages which by court order may be levied against the plaintiff in this action.

DATED: _____, 20__

By: _____ [SEAL]

_____ [SEAL]

(Plaintiffs)

APPROVED: _____, 20__

_____, Clerk, United States Court of Federal Claims

¹ Marketable public securities of the United States payable to the bearer may also be utilized as collateral, but the Bond must be accompanied by the appropriate power of attorney.

FORM 14
ORDER IMPLEMENTING FED. R. EVID 502(d)

United States Court of Federal Claims

)	
)	
)	
Plaintiff,	)	No. _____
)	
v.	)	Judge _____
)	
THE UNITED STATES,)	
)	
Defendant.)	

ORDER

Pursuant to the agreement of the parties and the authority granted this court under Fed. R. Evid. 502(d), it is hereby ordered that a party's disclosure, in connection with this litigation, of any communication or information covered by the attorney-client privilege or entitled to work-product protection shall not constitute a waiver of such privilege or protection either in this litigation or in any other federal or state proceeding.

IT IS SO ORDERED.

Judge