

DOCKETED

Docket Number:	13-ATTCP-01
Project Title:	Acceptance and Training Certification
TN #:	211132
Document Title:	Response to Application for Confidentiality - ICF International
Description:	N/A
Filer:	Sabrina Savala
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	4/18/2016 1:58:23 PM
Docketed Date:	4/18/2016

CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512

April 18, 2016

Mark V. Ouellette
ICF International
601 West 5th Street, Suite 900
Los Angeles, CA 90071

RE: **Application for Confidential Designation for CALCTP Acceptance
Test Curriculum Materials and Test Questions
Docket No. 13-ATTCP-01**

Dear Mr. Ouellette:

The California Energy Commission is in receipt of an Application for Confidentiality submitted on behalf of ICF International (Applicant), a program administrator for the California Advanced Lighting Controls Training Program (CALCTP). The application seeks confidential designation for the following documents comprising the CALCTP 2016 ATTCP Curriculum Update (Confidential Records):

- 1) *CALCTP Acceptance Technician Curriculum;*
- 2) *CALCTP Test Acceptance Technician Questions Bank;*
- 3) *CALCTP Acceptance Technician/Employer Recertification Curriculum;*
- 4) *CALCTP overview of changes to 2016 acceptance test forms;*
- 5) *CALCTP Acceptance Test Employer Certification Curriculum; and*
- 6) *CALCTP Test Acceptance Employer Questions Bank.*

The application states that confidentiality is sought for CALCTP's training materials and tests as part of CALCTP's application to become a Lighting Control Acceptance Test Technician Certification Provider. Applicant notes that it is feasible to summarize the information and data contained in the Confidential Records, which would sufficiently aggregate and mask the information for public disclosure. However, further disclosure beyond such a summary would compromise the integrity of the certification process and reveal trade secrets. Neither a summary nor the Confidential Records themselves have been disclosed to the public.

A properly filed Application for Confidentiality shall be granted under the California Code of Regulations, title 20, section 2505(a)(3)(A), "If the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the California Energy Commission to keep the record confidential." The California Public Records Act allows for the non-disclosure of trade secrets. (Gov. Code, § 6254(k); Evid. Code, § 1060.)

California courts have traditionally used the following definition of trade secret:

a trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. . . .

(*Uribe v. Howe* (1971) 19 Cal.App.3d 194, 207-208, from the Restatement of Torts, vol. 4, § 757, comments b, p.5.)

California Code of Regulations, title 20, section 2505(a)(1)(D), states that if an applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, or its disclosure would otherwise cause loss of a competitive advantage, an application shall state: 1) the specific nature of the advantage; 2) how the advantage would be lost; 3) the value of the information to an applicant; and 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

The application addresses these four elements: (1) the Confidential Records are of a technical nature which provide a business advantage over parties without access to the information; (2) the value of the information would be significantly impaired if made available to the public, because the integrity and effectiveness of the certification process would be compromised, resulting in less reliable and effective acceptance tests; (3) the Confidential Records are valuable to Applicant because of the time and resources expended to compile the information, the efforts to maintain the Confidential Records, and the use of the information to facilitate ongoing business activities; and (4) the Confidential Records are not readily available on the marketplace and can only be obtained with significant investment of time and money.

Government Code § 6254(g) exempts from disclosure under the California Public Records Act "test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination. . . ."

Mark V. Ouellette
April 18, 2016
Page 3

In this case, the Confidential Records are acceptance test curriculum materials and test questions which are being supplied to the California Energy Commission as part of CALCTP's application to become a Lighting Control Acceptance Test Technician Certification Provider.

The application is clear that confidentiality is being sought for trade secret information related to the certification of Acceptance Test Technicians. Therefore, Applicant has made a reasonable claim that the law allows the California Energy Commission to keep the Confidential Records from public disclosure.

Applicant requests that the information be kept confidential indefinitely to protect the integrity of the certification testing process and to protect Applicant's trade secrets. The trade secret information has value as long as the certification Acceptance Test Technician Certification Provider Program is in place; therefore, it is appropriate to grant confidentiality indefinitely until the end of the certification program.

For the reasons stated above, the request for confidential designation for the Confidential Record is granted. The information will remain confidential indefinitely.

Be advised that persons may petition to inspect or copy records that I have designated as confidential. The procedures and criteria for filing, reviewing, and acting upon such petitions are set forth in the California Code of Regulations, title 20, section 2506.

If you have any questions concerning this matter, please contact Michelle Chester, Staff Counsel, at (916) 651-2935.

Sincerely,



Robert P. Oglesby
Executive Director

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