

COMPLETED



APPLICATION FOR CONFIDENTIAL DESIGNATION

(Title 20 Cal. Code. Regs., § 2505 et seq.)

DOCKET 09-011-1
DATE 1/5/09
RECD. 1/28/10

TO: ENERGY COMMISSION EXECUTIVE DIRECTOR, MS-39

ENERGY COMMISSION CONTRACT/DOCKET NO.: 09-011-1 – American Recovery and Reinvestment Act Proceeding, State Energy Efficient Appliance Rebate Program (SEEARP)

APPLICANT: Sears Holdings Corporation
ADDRESS: 3333 Beverly Road, Hoffman Estates IL 60179

1(a). Title, date, and description (including number of pages) of the information or data for which you request confidential designation. Information or data seeking a designation of confidentiality must be included with this application.

In-kind services letter for California's State Energy Efficiency Appliance Rebate Program, directed to the California Energy Commission, dated 10/20/09, entire length is 1 page (attached). This letter describes the services that Sears is willing to offer California to implement its SEEARP program and an estimate of the costs associated with these efforts.

1(b). Specify the part(s) of the information or data for which you request confidential designation.

Sears requests that the information contained in the entire letter be held confidential.

2. State and justify the length of time the Energy Commission should keep the information or data confidential.

Sears requests that the contents of this letter be held confidential for at least 1 year, but not longer than end of the SEEARP. This time period will encompass the time frame these services will be implemented and the costs incurred.

3(a). State the provision(s) of the Public Records Act (Gov. Code, § 6250 et seq.) or other law that allows the Energy Commission to keep the information or data confidential, and explain why the provision(s) apply to that material.

California Code of Regulations, title 20, section 2505(a)(1)(D) states that if the 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, the application shall state the following: 1) the specific nature of the advantage; 2) how the advantage would be lost; 3) the value of the information to the applicant; and 4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

Sears, consistent with the provisions of the California Public Records Act (Gov. Code, § 6254(k); Evid. Code, § 1060), requests that the California Energy Commission exercise their authority to hold confidential the contents of the attached letter. As defined by the courts, 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. . . . (from the Restatement of Torts, vol. 4, § 757, comments b, p.5.).

3(b). Discuss the public interest in nondisclosure of the material submitted for a confidential designation. If the material contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, please state how it would be lost, the value of the information to the applicant and the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

Pursuant to the State's request, Sears is prepared to share with the state of California certain confidential and proprietary information regarding how Sears intends to conduct specific marketing campaigns and activate its specific marketing and advertising messages for the state of California's Appliance rebate program. Sears is also prepared to disclose certain program specific sales data and results provided that all said information be kept confidential. Sears is prepared to invest significant money in marketing support across several marketing channels to further this initiative. This will include unique and distinct marketing activations and promotions that, if known to Sears competitors, would jeopardize Sears competitive advantage and would provide its competitors with direct visibility into Sears confidential and proprietary marketing and advertising strategies. As such, the information requested consists of Sears trade secrets that would cause significant financial harm to Sears and put Sears at a competitive disadvantage to others in the marketplace if disclosed. Sears has expended significant amounts of both human and financial resources in developing these plans and programs, and has taken great steps to ensure the confidentiality of such data and information, including, among other things, the use of such protections as Non-Disclosure Agreements and secure, password protected websites. Sears will be unique in its marketing and advertising efforts as it relates to this program and the disclosure of any confidential and proprietary information would allow it's competitors to strategize, combat or mirror Sears' efforts. Among other things, the disclosure of this information would result in a loss of revenue, competitive advantage, lessen the return on investment for the dedicated marketing spend, and would endanger Sears' ability to reach target revenue goals for this program. The information could not be legitimately acquired or duplicated by others given the strict confidentiality of the data.

Furthermore, there is a significant public interest in the nondisclosure of the material submitted for a confidential designation in that any disclosure or release of the information to a third party would cause financial impact to Sears which could ultimately impact customer pricing and the ability for Sears to sell its merchandise to customers at a competitive price. Accordingly, Sears requests that all of the information which it intends to provide be kept confidential and under seal by the State of California.

4. State whether the information or data can be disclosed if it is aggregated with other information or masked to conceal certain portions (including but not limited to the identity of the applicant). State the degree of aggregation or masking required. If the data cannot be disclosed even if aggregated or masked, explain why.

Aggregation with similar retailer/manufacturer marketing expenditures which conceals both the types of services offered and the associated costs is acceptable if such aggregation is consistent with the federal reporting requirements of this program. If the services and expenditures cannot sufficiently be masked to prevent disclosure of Sears as the provider, Sears requests that reporting of services under this program to the federal government also be held confidential.

5. State how the material is kept confidential by the applicant and whether it has even been disclosed to a person other than an employee of the applicant. If it has, explain the circumstances under which disclosure occurred.

Sears takes great care to ensure that all confidential information is preserved and protected and not made available to third parties or the general public. These efforts include, among other things, password protected computer software and email, as well as making certain that the information is not shared with any third party. To date, Sears has not disclosed this letter or the information contained therein, to any other party outside the employment of the corporation (disclosure only to internal SHC Home Appliances team).

I certify under penalty of perjury that the information contained in this application for confidential designation is true, correct, and complete to the best of my knowledge and that I am authorized to make the application and certification on behalf of the applicant.

Dated: 11.05.09

Signed: *Paul Campbell*

Name (print or type): Paul Campbell

Title: (print or type): Director, Home Appliances

Representing: SEARS Holding Corporation

From: "Campbell, Paul" <Paul.Campbell@searshc.com>
To: "Lorraine White" <Lwhite@energy.state.ca.us>.
CC: "Ward, Jason" <Jason.Ward@searshc.com>
Date: 1/26/2010 8:06 AM
Subject: FW: Application for Confidential Designation
Attachments: Application for Confidential Designation.pdf

Lorraine,

As requested, attached is the signed confidentiality designation document for your records. Glad we can put this behind us and move forward. Would you like me to schedule an update call for our teams? Thanks.

Paul Campbell

Director-Operations and Service

Home Appliances

Sears Holdings Corp.

847-286-3307 (Office)

847-420-2258 (Cell)

paul.campbell@searshc.com

-----Original Message-----

From: Paston, Aurora

Sent: Tuesday, January 26, 2010 9:04 AM

To: Campbell, Paul

Subject: FW: Application for Confidential Designation

Aurora Paston | Home Appliances

Executive Administrative Assistant to Nolan Pike

Ph: (847) 286.3421 | Aurora.Paston@searshc.com

Sears Blue Appliance Crew

