

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska ) Application No. CPF-2  
Public Service Commission, on )  
its own motion, to administer ) PROTECTIVE ORDER  
federal Capital Projects Funds )  
for broadband development in )  
Nebraska. ) Entered: December 18, 2023

BY THE HEARING OFFICER:

On December 13, 2022, the Nebraska Public Service Commission ("Commission") initiated this proceeding on its own motion to administer the federal Coronavirus Capital Projects Fund ("CPF") for broadband deployment in Nebraska pursuant to Neb. Rev. Stat. § 81-12,245 and in accordance with the Nebraska Broadband Bridge Act, Neb. Rev. Stat. §§ 81-1301-1312. On November 7, 2023, the Commission entered an order initiating the 2024 CPF grant application schedule ("2024 Program Year") in the above-captioned docket.

I hereby find that certain information required to be submitted by participants in the CPF-2 program grant cycle may be confidential and/or proprietary in nature. Therefore, parties submitting CPF applications or challenges to CPF applications in the 2024 Program Year may submit certain information, detailed below, confidentially in accordance with the terms of this Protective Order. This Protective Order shall apply to information included in applications and challenges submitted in the CPF program for Commission Docket No. CPF-2.

**Protective Order**

1. This Protective Order shall govern the use of all confidential information and documents submitted to the Commission by, or on behalf of, any Applicant or Challenger. Notwithstanding any order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Nebraska Public Service Commission.
2. Definitions. For purposes of this Protective Order:
  - a. The term "Applicant" shall mean a party submitting an application for funding in the CPF-2 program for the award cycle occurring in the 2024 Program Year.

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- b. The term "Challenger" shall mean a party submitting a challenge to an application for funding submitted in the CPF-2 program for the award cycle occurring in 2024 Program Year.
- c. The term "Participant" shall mean Applicants and Challengers. Participant does not include Commission staff.
- d. The term "Confidential Materials" shall mean:
  - (1) Materials provided by an Applicant or Challenger in the CPF-2 program in the award cycle occurring in the 2024 Program Year which are of a sensitive financial, confidential, and/or proprietary nature, including:
    - (a) maps of currently existing facilities;
    - (b) identifying information, including address information, relating to an Applicant's or Challenger's currently existing customers;
    - (c) an Applicant's financial statements submitted as Attachment "I" to an application and/or supplemental financial or cybersecurity and supply chain risk management information submitted as Attachment "M" to an application;
    - (d) an Applicant's materials filed pursuant to the instructions under "Section 2.2.3 Attachments" item 11 subparts 2-4, Attachment Letter K1 (tower locations), and Attachment K2 (propagation data); and
    - (e) a Challenger's materials submitted as Attachment "G", Attachment "N", and copies of invoices/purchase orders and locate tickets submitted as Attachment "K" to a Challenge.
  - (2) Materials and submissions not specifically listed above shall not be considered Confidential

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Materials unless so designated by further Order of the Hearing Officer or the Commission.

- (3) The Participant producing the Confidential Materials shall include in the digital file name the following: "CONFIDENTIAL MATERIALS - 2024 CPF-2" Materials formatted in pages or sheets (including but not limited to Word documents, Excel files, and PDF documents) must also be marked with the same language on each page or sheet in not less than 10 point font. Materials which are not so marked will not be considered Confidential Materials.
  - (4) Confidential Materials shall not include any information or document contained in the files of the Commission, or any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court.
  - (5) Confidential Materials shall not include information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order.
3. Nondisclosure Agreement. No access to Confidential Materials shall be authorized under the terms of this Order to any person until the person desiring access to such information signs a Nondisclosure Agreement in the form that is attached to this Order. The Nondisclosure Agreement shall require the person to whom disclosure is to be made to certify in writing that he or she has read this Order and agrees to be bound by its terms and conditions. The Nondisclosure Agreement shall contain the signatory's printed full name, permanent address and employer, and the name of the party with whom the signatory is associated. Such Nondisclosure Agreement shall be filed with the Commission and served on all parties to this proceeding. Any Participant filing multiple Nondisclosure Agreements with the Commission shall compile and submit to the Commission a typed list of all persons signing a Nondisclosure Agreement on that Participant's behalf. All Nondisclosure Agreements filed with the Commission will be made publicly available on the Commission's website.

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4. Except as set forth below, Confidential Materials shall be made available under the terms of this Protective Order only to the Commission and Commission staff and counsel. Confidential Materials shall be treated as proprietary and confidential once submitted, and shall not be made available to Participants in this docket. Confidential Materials shall not be made available to the public or published on the Commission website.
5. Authorized Disclosures. For purposes of the CPF-2 grant cycle for the 2024 Program Year:
  - a. An Applicant whose application is challenged may request a copy of all challenge materials related to that application, including Confidential Materials, from the Challenger. The Challenger receiving the request must provide all challenge materials within three (3) business days of receipt of the request.
  - b. If an Applicant provides documentation or materials to the Commission in response to a challenge, the Challenger that submitted said challenge may request a copy of all response materials, including Confidential Materials, from the Applicant. The Applicant receiving the request must provide all challenge materials within three (3) business days of receipt of the request.
  - c. If the Participant who would otherwise receive Confidential Materials has not submitted a Nondisclosure Agreement to the Commission, the Participant submitting Confidential Materials is not required to provide them to the receiving Participant. If the Participant who would otherwise receive Confidential Materials then submits a Nondisclosure Agreement and provides a copy of the Nondisclosure Agreement to the Participant submitting Confidential Materials, the Participant submitting Confidential Materials shall provide Confidential Materials to the receiving Participant as required by subparagraphs 5(a) and 5(b) within three (3) business days of receiving the Nondisclosure Agreement.
  - d. The requirements of this paragraph shall extend until the final award of grants in the CPF-2 program in the award cycle of the 2024 Program Year. No requirement for Participants to disclose Confidential Materials pursuant to this Protective Order shall extend beyond the final

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award of grants in the award cycle of the 2024 Program Year.

6. Should Confidential Materials be inadvertently disclosed, any person who identifies the disclosure must immediately notify the Commission of the disclosure and destroy any copies of the Confidential Materials in their possession or control. No additional copies of Confidential Materials shall be made. Any further disclosure or use of Confidential Materials is strictly prohibited and shall constitute a violation of an order of the Commission.
7. All Confidential Materials shall be submitted to the Commission through secure transmission. Such materials shall be marked as set forth in paragraph 2(d)(3) of this Order. Participants shall take all reasonable precautions necessary to ensure that Confidential Materials are not distributed to unauthorized persons. The use of such precautions does not, however, alter or extend any filing deadlines previously set in this matter. It is the Participant's responsibility to ensure that all materials, including Confidential Materials, are filed in a timely manner.
8. The Commission or the Hearing Officer may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.
9. This Protective Order governs only Confidential Materials filed in the course of the CPF program in the award cycle of the 2024 Program Year. Materials submitted in other grant programs or grant cycles are not included in the scope of this Protective Order.
10. Nothing in this Protective Order shall be deemed to preclude any Participant from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Protective Order.
11. Any violation of this Protective Order shall constitute a violation of an order of the Commission.

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O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer assigned to this matter that this Protective Order shall be entered in the above-captioned proceeding.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 18th day of December, 2023.

NEBRASKA PUBLIC SERVICE COMMISSION

BY:



Hearing Officer  
Tim Schram

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BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska )            Application No. CPF-2  
Public Service Commission, on )  
its own motion, to administer )  
federal Capital Projects Funds )            **NONDISCLOSURE AGREEMENT**  
for broadband development in )  
Nebraska. )

I, \_\_\_\_\_, hereby certify my understanding that access to Confidential Materials is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it.

I understand that the contents of the Confidential Materials, any notes or other memoranda, or any other form of information that copies or discloses Confidential Materials shall not be disclosed to anyone other than in accordance with the Protective Order.

I acknowledge that a violation of this certificate constitutes a violation of an order of the Commission.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Representing: \_\_\_\_\_

Date: \_\_\_\_\_