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CHRISTOPHER D. RICH, Clerk
STEPHANIE HARDY
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

BLUE CROSS OF IDAHO CARE PLUS,
INC., and Idaho nonprofit corporation and
authorized managed care organization,

Plaintiff,

vs.

IDAHO DEPARTMENT OF
ADMINISTRATION, ROBERT L. GEDDES,
acting in his official capacity as Director of the
Department of Administration, MCNA
Insurance Company, LIBERTY DENTAL
PLAN OF NEVADA, INC.,

Defendant.

Case No. CV-OC-2016-0009719

MEMORANDUM DECISION AND ORDER
RE: MOTION TO COMPEL PRODUCTION
OF WITHHELD DOCUMENTS AND/OR
SHOW CAUSE WHY DOCUMENTS
SHOULD NOT BE PRODUCED

THIS CASE involves a public records request for information regarding a public contract bid for dental health for Medicaid recipients in Idaho. The Department of Administration (the "Department") awarded the contract to Defendant MCNA Insurance Company ("MCNA"). Plaintiff, Blue Cross of Idaho Care Plus, Inc. ("Blue Cross") and Defendant Liberty Dental Plan of Nevada, Inc. ("Liberty") were not the lowest bidders. On May 26, IPC filed a Complaint, alleging improper withholding of documents by the Department. Blue Cross filed a Complaint for Declaratory Judgment, Injunctive Relief and Temporary Restraining Order/Preliminary Injunction on May 26, 2016. A Temporary Restraining Order was issued, effective until two days after the issuing of this order.

BACKGROUND

On November 12, 2015, the Department released a Request for Proposal No. 160003281 (the “RFP”) to solicit proposals from contractors to implement, administer, and maintain dental insurance for Idaho Medicaid participants.¹ On January 7, 2016, the Department issued an Amended Request for Proposal.² MCNA, Liberty, Blue Cross, and two other companies submitted timely proposals to the Department.³

As part of the Solicitation Instruction to Vendors, the Department explained

“all, or most, of the information contained in your response to the State’s Solicitation will be a public record subject to disclosure under the Public Records Law...One exception...may be for trade secrets...If you consider any material that you provide in your Bid, Proposal or Quotation to be a trade secret, or otherwise protected from disclosure, you MUST so indicate by marking as “exempt” EACH PAGE containing such information...Prices that you provide in your Bid, Proposal or Quotation are to a trade secret. The State, to the extent allowed by law and in accordance with these Solicitation Instructions, will honor a designation of nondisclosure.”⁴

In the Amended Proposal Section 5 titled Mandatory Requirements provides,

Paragraph 28 of the Solicitation Instructions to Vendors describes trade secrets to “include a formula, pattern, compilation, program, computer program, device, method, technique or process that derives economic value, actual or potential, from not being generally known to, and not be readily ascertainable by proper means by other persons and is not subject to the efforts that are reasonable under the circumstance to maintain its secrecy.” In addition to marking each page of the document with a trade secret notation...Offerors must also:

¹ Compl., p. 2.

² Def. MCNA Opp’n. To Mot. To Compel, p. 3

³ Compl., p.3

⁴ *Id.*

Identify with particularity the precise text, illustration, or other information contained within each page marked “trade secret” (it is not sufficient to simply mark the entire page). The specific information you deem “trade secret” within each noted page must be highlighted, italicized, identified by asterisks, contained within a text border, or otherwise clearly delineated from other text/information and specifically identified as a “trade secret.”⁵

On April 19, 2016, The Department sent a letter to MCNA explaining “[p]ortions of your response are marked as “trade secret” or “confidential/protected;” however, in reviewing the material that you submitted, it is clear that some information provided in your response, and marked “trade secret/confidential” by notation, does not meet the State’s definition of “trade secret.”⁶ A similar letter was sent to Liberty.⁷ Thereafter, MCNA and Liberty sent a revised redacted copy to the Department.⁸

On May 13, 2016, the Department issued a Letter of Intent to award the Dental Insurance Plan for Idaho Medicaid Participants contract to MCNA.⁹ On May 13, 2016, Blue Cross submitted a written public records request regarding documents related to the RFP.¹⁰ The request sought (1) a copy of Liberty and MCNA’s proposals submitted in response to the RFP, and (2) evaluations and scoring of Liberty and MCNA’s proposals.¹¹

⁵ Department of Administration, Division of Purchasing for the Department of Health and Welfare, Request for Proposal: Dental Insurance Plan for Medicaid Participants (Jan. 7, 2016).

⁶ Decl. of Alison Hunter, Exhibit B.

⁷ Def. Liberty Resp. Mot. to Compel, p. 1.

⁸ Def. MCNA Opp’n. Mot. to Compel, p. 7; Def. Liberty Response Mot. to Compel, p. 2.

⁹ Compl., p. 3.

¹⁰ *Id.*

¹¹ *Id.*

On May 17, 2016, The Department provided Blue Cross with a response and disc of the requested proposals.¹² MCNA had redacted, partially or fully, 507 of its 709 page technical proposal, asserting that the redacted material was exempt from public records as trade secrets.¹³ Liberty redacted as trade secret, partially or fully, 55 of its 206 page technical proposal.¹⁴ The Department explained “each offeror has identified protected content exempt from public record as trade secret,” and “[e]ach requested proposal is accompanied by a list of information redacted from the provided proposal”¹⁵

On May 19, 2016, Blue Cross submitted a second public records request for “[a]ll written communications, including electronically transmitted communication, relating in any manner to the RPF.”¹⁶ The Department provided the letter sent to MCNA on April 19, 2016 to Blue Cross.¹⁷

On May 19, 2016, the Department issued letters stating its intention to rescind and re-issue the Notice of Intent to Award to MCNA for the RFP.¹⁸ On May 20, 2016, the Department re-issued the Notice of Intent to Award to MCNA for the RFP.¹⁹

On May 26, Blue Cross filed a Complaint for Declaratory Judgment, Injunctive Relief and Temporary Restraining Order/Preliminary Injunction, alleging improper withholding of

¹² Decl. Derrick O’Neill, p. 2.

¹³ Compl., p. 4.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Pla. Mot. To Compel, p. 5.

¹⁷ *Id.*

¹⁸ Pla. Mot. to Compel, p. 6.

¹⁹ *Id.*

documents by the Department.²⁰ An emergency hearing was held on May 27, 2016 in which the Court granted the TRO, pursuant to I.R.C.P. 65(b), staying the procurement process for the RFP while the parties litigated Plaintiff's claim under the Public Records Act.²¹ On June 8, 2016 the Court held a status conference in which the parties stipulated to extending the TRO until June 13, 2016 and an expedited briefing schedule.²²

On June 8, 2016, Blue Cross filed a Motion to Compel and/or Show Cause under the Idaho Public Records Act, "Declaration In Support Of Motion to Compel Production of Withheld Documents and/or Show Cause Why Documents Should Not Be Produced," and Declaration of Derrick J. Oneil. Liberty filed a Reply on June 9, 2016. On June 10, 2016 MCNA filed a Response and Request for an *in camera* hearing, and a Notice of Intent to Present Live Testimony, and the Declaration of Carlos A. Lacasa. On June 10, 2016, Liberty filed a Response and Declarations of John Carvelli and Diane Blume. On June 13, 2016, Blue Cross filed a Reply to both MCNA and Liberty's Responses, and Second Declaration of Alison C. Hunter. On June 13, 2016, a hearing was held in which the Court gave the parties the option to submit a written affidavit or live testimony explaining why each redacted portion of the RFP qualified as trade secret. On June 15, 2016, MCNA notified the Court of its intention to submit a written affidavit by MCNA's Vice President of Operations.

On June 17, 2016, MCNA filed a Supplemental Brief and Declaration of Shannon Turner. Blue Cross filed the Third Declaration of Alison C. Hunter, a Supplemental Brief, and a

²⁰ Compl., p. 1.

²¹ TRO.

²² Stipulation.

Declaration of Douglas T. Manning on June 24, 2016. Blue Cross also submitted a “comparison binder” containing the redacted material from MCNA’s RFP and various material from other RFP’s submitted by MCNA for other state contracts. On July 5, 2016, MCNA filed a Reply Brief in “Opposition to Blue Cross of Idaho Care Plus, Inc.'s Motion to Compel Production of Withheld Documents and Request for Attorneys' Eyes Only Review of MCNA's Trade Secrets.” MCNA filed a Reply Brief in “Objection To "Comparison" Binder.”

LEGAL STANDARD

“Every person has a right to examine and take a copy of any public record of this state and there is a presumption that all public records in Idaho are open at all reasonable times for inspection except as otherwise expressly provided by statute.” Idaho Code § 74-102(1). One exemption from disclosure is trade secrets. Trade secrets include:

“a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

I.C. § 74-116(1).

“After determining whether a record qualifies as a “public record,” a court must then decide whether a record is exempt from disclosure pursuant to the Act. When considering the question of exemption, a court must start with the presumption that “all public records are open

to disclosure ad that all exemptions are narrowly construed.” *Ward v. Portneuf Medical Center, Inc.*, 150 Idaho 501, 504 n.3, 248 P.3d 1236, 1239 n.3 (2011) (citing *Cowles Publishing Co. v. Kootenai County Bd. Of County Comm’rs*, 144 Idaho 259, 264, 159 P.3d 896, 901 (2007)).

When a party requests information and believes it was improperly withheld, the party may “institute proceedings . . . to compel the public agency . . . to make the information available.” I.C. § 74-115(1). The party seeking records has the initial burden to establish that it appears the “records are . . . improperly withheld from a member of the public.” I.C. § 74-116(1); *Donoval v. City of Sun Valley*, No. 40853, 2014 WL 3587369, at *4-5 (Idaho Ct. App. July 22, 2014) (unpublished). If the plaintiff makes this showing, “the court shall order the public official charged with withholding records to disclose the public record or show cause why he should not do so.” I.C. § 74-116(1). The party submitting the documents to the public entity “shall have standing to oppose the request for disclosure and to support the decision of the agency to deny the request.” I.C. § 74-115(1).

ANALYSIS

Blue Cross asserts the Department improperly withheld documents in response to a public records request for material relating to the RFP. Defendants Liberty and MCNA contend the material withheld was proper because the material fell within the trade secret exception within the Public Records Act. The Department asserts it reasonably relied on MCNA and Liberty to exercise good faith in making the redactions pursuant to Paragraph 28 of the Solicitation Instructions to Vendors.

Blue Cross asserts the Department has the ultimate burden to show cause for withholding the requested documents, however, agrees Liberty and MCNA may provide support as they are in a better position to explain the reason the redactions qualify as trade secrets.

The party submitting the documents to the public entity “shall have standing to oppose the request for disclosure and to support the decision of the agency to deny the request.” I.C. § 74-115(1). Accordingly, MCNA and Liberty have standing to oppose the request for disclosure, and are the effective real parties in interest.

Ultimately, the Department reasonably relied on the good faith of the vendors submitting bid proposals to only redact information exempt by law. The Department sent both Liberty and MCNA notification indicating its concern that potentially certain redacted information in each companies RFP likely did not qualify as trade secret. The Department took the necessary steps to comply with law, however, lacks adequate means to determine whether either Liberty or MCNA improperly withheld information from their bid proposals. Accordingly, MCNA and Liberty bear the burden of demonstrating the redacted material is within the trade secret exemption.

The Public Records Act is meant to provide transparency in government. However, the Legislature recognized the need to balance this policy of openness against the equally important need for privacy of certain information provided by citizens and businesses that is necessary for

the conduct of the government's business. This balance is contained in Title 74 of the Idaho Code.²³ Section 102 states "all public records in Idaho are open at all reasonable times for inspection except as otherwise expressly provided by statute." I.C. 74-102.

MCNA asserts that the balancing act in this case is between the importance of keeping the proprietary information protected and Blue Cross' need for information. The IPRA, however, stands for the proposition that the balancing act is between governmental transparency and individual protection of trade secrets. In striking the balance, the purpose for which the records are sought is "irrelevant in analyzing whether or not the records were exempt from disclosure." *Wade v. Taylor*, 156 Idaho 91, 101, 320 P.3d 1250, 1260 (2014). The pertinent inquiry is whether the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and is subject to efforts that are reasonable under the circumstances to maintain its secrecy.

This Court agrees that there are two very important interests that have come head to head in this matter. Contrary to suggestions by the parties, the legislature has not decided this issue. In order for information contained within a proposal for a bid for a public governmental contract to be considered a trade secret, the party claiming exemption must demonstrate that (1) the information has independent economic value from being kept secret, and (2) that reasonable means have been taken to keep that information secret. I.C. § 74-116(1).

A "public record," as defined by the Idaho Code, is an extremely broad concept. It "includes, but is not limited to, any writing containing information relating to the conduct or administration of the public's business prepared, owned, used or retained by any state agency, independent public body corporate and politic or local agency regardless of physical form or characteristics." I.C. § 74-101(13).

After determining whether a record qualifies as a "public record," a court must then decide whether a record is exempt from disclosure pursuant to the Act. When considering the question of exemption, a court must start with the presumption that "all public records are open to disclosure and that all exemptions are narrowly construed." *Cowles Publishing Co. v. Kootenai County Bd. of County Comm'rs*, 144 Idaho 259, 264, 159 P.3d 896, 901 (2007). In other words, the presumption of transparency and disclosure is only overcome by a specific demonstration that an exemption applies." *Ward v. Portneuf Medical Center, Inc.*, 150 Idaho 501, 508, n.3, 248 P.3d 1236, 1243, n.3 (2011). One exemption that has yet to be clarified and defined is the trade secret exception; particularly as it applies within the context of a bid for a public government contract.

Contracts, proposals, and bids are subject to public inspection and copying after bids are opened or after the contract is awarded. Idaho Code § 9-340D(4). However, trade secrets, including those contained in response to public agency requests for proposal, requests for clarification, requests for information and similar requests are exempt from public disclosure.

MCNA contends the definition is simple: a trade secret is any information that provides economic value because of its secrecy in a particular case.²⁴ This does not encompass the entirety of the trade secret exception, because it ignores the second requirement that reasonable measures must have been taken to ensure the secrecy.²⁵ Blue Cross asserts the canon “*ejusdem generis*” directs the court to construe the general term “information” to embrace things similar to those enumerated in the list of examples, and trade secrets are only those that are similar to those listed in the non-exhaustive list provided by statute, emphasizing that exemptions within the IPRA should be narrowly construed. The Court is influenced by the general presumption that all public records are open unless expressly provided otherwise by statute. I.C. § 9-338(1). Therefore, we narrowly construe exemptions to the disclosure presumption. *Federated Publications Inc. v. Boise City*, 128 Idaho 459, 463, 915 P.2d 21, 25 (1996).

Trade secrets are exempt from disclosure under the Public Records Act because by their nature the secrecy derives value to the business. Without secrecy, the value of protecting the information is all but eliminated. However, value is not solely determined by the secrecy of the information. To qualify as an exemption, the information must have independent economic value, such that keeping it secret from competitors gives the business an advantage over others. The party claiming the information as trade secret bears the burden of demonstrating that the information does in fact derive independent value from not being known and that reasonable means have been taken to keep the information secret.

While the value need not be actual, it may be merely potential value, this prong of the statutory exemption is not satisfied by mere conclusory or general statements that the information has value.

Moreover, a general statement that information has been kept secret does not meet the burden required by the second prong. The party asserting trade secret exemption must demonstrate that steps have actually been taken to keep this information secret. Information that is generally known or readily ascertainable through proper means does not qualify as a trade secret. Information that is published on the company's website is clearly not within the exemption. Further, information that has knowingly been previously disclosed by the company does not qualify for this exemption.

There are no known Idaho cases interpreting the trade secrets exemption under the Idaho Public Records Act (IPRA). However, in interpreting the exemption, we start with the definition of 'trade secret' within the IPRA,²³ which is almost identical to the definition in the Idaho Trade Secret Act (ITSA).

Pursuant to the ITSA:

"Trade secret" means information, including a formula, pattern, compilation, program, computer program, device, method, technique, or process, that:

- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

²³ See *First Health Grp. Corp. v. Nat'l Prescription Adm'rs, Inc.*, 155 F. Supp. 2d (M.D. Pa. 2001) ; see also *Am. Totalisator Co. v. Autotote Ltd.*, No. CIV A. 7268, 1983 WL 21374, at *3 (Del. Ch. Aug. 18, 1983).

Idaho Code § 48-801(5).

Pursuant to the IPRA:

“Trade Secret” means information, including formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research that:

- (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and
- (b) is subject to efforts that are reasonable under the circumstances to maintain its secrecy.

Idaho Code § 74-107(1).

The only difference is the IPRA specifically protects research that is unpublished or in progress, which is not specifically mentioned in the ITSA, issues that are not pertinent to the case at bar. Otherwise the wording is identical. Therefore, cases reviewing the ITSA are applicable in analyzing the issues under the IPRA.

In order to prevail under the ITSA, the party “must show that a trade secret actually existed.” *Basic American, Inc. v. Shatila*, 133 Idaho 726, 734, 992 P.2d 175, 183 (1999); Idaho Code § 48-801. It seems only logical that the plaintiff must show the same under the IPRA. Accordingly, in order to demonstrate that a trade secret existed, MCNA must show how the redacted material derives independent economic value from not being readily ascertainable by proper means and is subject to efforts that are reasonable to maintain its secrecy.

MCNA has defined the different categories of redacted material in different ways, but has yet to clearly explain how each piece of redacted material has independent economic value to MCNA by not being disclosed to competitors, and how or what measures MCNA has undertaken to protect its secrecy.

MCNA has asserted it has redacted the very same information from all its proposals submitted for Medicaid contracts with various states. While that argument is accurate in some respects, it is not accurate entirely. Blue Cross identified other bid proposals that are open to the public which contain much of the information that is redacted from its Idaho proposal.

MCNA contends the statute explicitly provides that “any kind of information” could potentially be a trade secret. However, this Court could not find those words in the statute, and further notes that exemptions under the IPRA are to be narrowly construed. *Bolger v. Lance*, 137 Idaho 792, 796, 53 P.3d 1211, 1215 (2002).

To help determine whether information qualifies as a trade secret under the ITSA, the *Basic American* Court relied on the Restatement and looked at the following six factors:

- (1) the extent to which the information is known outside [the plaintiff's] business;
- (2) the extent to which it is known by employees and others involved in the business;
- (3) the extent of measures taken by him to guard the secrecy of the information;
- (4) the value of the information to him and his competitors;
- (5) the amount of effort or money expended by him in developing the information; and
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Basic American, 133 Idaho at 735, 992 P.2d at 184 (quoting Restatement of Torts § 757 cmt. b (1939)) (alteration in original). “All of these factors address the issue of whether the information in question is generally known or readily ascertainable.” *Wesco Autobody Supply, Inc. v. Ernest*, 149 Idaho 881, 898, 243 P.3d 1069, 1086 (2010).

Findings of Fact/Conclusions of Law - Liberty

After careful review of the record and file in this case, the Court makes the following findings of fact and conclusions of law regarding Liberty’s bid:

The Court finds that Liberty provided sufficient evidence to persuade the Court that the redactions it made in its most current version of the RFP provide independent economic value to Liberty and that reasonable steps have been taken to ensure that the information remains secret. The Court therefore concludes that the redacted information properly falls within the narrow exception of the trade secret within the IPRA and was properly withheld.

Findings of Fact/Conclusions of Law - MCNA

After careful review of the record and file in this case, the Court makes the following findings of fact and conclusions of law regarding MCNA’s bid, first with an eye to the factors identified in the *Basic American* case, supra, and then as to the various individual sections of redacted or withheld material or information:

(1) the extent to which the information is known outside MCNA's business;

MCNA claims that the redacted information is not readily known or ascertainable through proper means. The claims are conclusory, without factual explanation or specific detail. In fact, the Court easily found much of this information prior to Blue Cross's filing on June 24, 2016. Generally, the Court finds much of MCNA's redacted information was previously disclosed publically and freely available on its own website, on various other state websites, and on simple Google searches. MCNA has obtained numerous contracts for similar Medicaid dental programs in other states. Those bids and contracts are frequently freely available online and others are available for very modest copying costs. Those bids and contracts reveal information that is either exactly or substantially the same as information in its Idaho bid, but which MCNA has redacted and claims as exempt from disclosure as trade secrets. Information that is not secret cannot be a trade secret.

(2) the extent to which it is known by employees and others involved in the business

The information seems to be known to the employees, though the specifics of certain information may be only known to higher level officials (i.e., financial information and reference materials). As mentioned above, however, a lot of this information is also available from outside sources and is known outside the business by both providers and members of dental plans operated in numerous states.

(3) the extent of measures taken by him to guard the secrecy of the information

MCNA contends that it has taken extensive measures to keep this information secret, mainly by redacting the information. However, as shown by the material found on-line and retrieved by Blue Cross, MCNA has not taken the measures extensive enough to ensure it is kept confidential and away from the public's eye.

(4) the value of the information to MCNA and its competitors;

MCNA makes conclusory statements that the information has competitive value and it "sets MCNA apart from its competitors."²⁴ MCNA does not otherwise explain or provide any factual detail about the the independent economic value of each redacted portion.

(5) the amount of effort or money expended in developing the information

The amount of money and effort put into the development of the bid as a whole was extensive, but to cut and paste something from a previous bid does not take the extensive time, energy, and money. On that basis, MCNA claims that the entire bid is a trade secret. If the Court were to accept MCNA's contention, then this might weigh in favor of nondisclosure. However, that would undermine the purpose of the law, the presumption of transparency, and the objective to construe exceptions narrowly. Moreover, by submitting a bid that is partially redacted, MCNA

²⁴ See, e.g., Turner Decl. ¶ 83.

undercuts its claim that the whole bid is a trade secret. While other states have addressed a similar issue, this Court is not persuaded by the theory that an entire bid qualifies as a trade secret.

(6) the ease or difficulty with which the information could be properly acquired or duplicated by others

As previously indicated above, the Court finds that much of MCNA's redacted information was previously disclosed publically and was freely available on its own website, on various other state websites, and by simple Google searches, revealing information that is either exactly or substantially the same as information in its Idaho bid, but which MCNA has redacted and claims as exempt from disclosure as trade secrets.

MCNA has participated in numerous bid proposals, and must understand that the information contained in previous proposals was made publically available.²⁵ Thus, information that was contained in those previous bid proposals that was not redacted, and is publically available has been disclosed and cannot now be claimed as a trade secret. If the information has been made public, then by definition it cannot and is not a trade secret.

SPECIFIC FINDINGS

²⁵ See Third Decl. of Alison Hunter, Ex. B.

- 1) Pages 212-213, 231, 383-403, and 407-408 were originally fully redacted by MCNA and have now been voluntarily unredacted entirely by MCNA.
- 2) Originally, pages 232, 233, and 589-609 were partially redacted and all originally redacted information has been voluntarily unredacted by MCNA.
- 3) Attachment 8.2.3 “Draft Provider Manual;” Attachment 8.2.4 “Customer Service System Plan;” Attachment 8.2.13 “Sample Utilization Cost Report;” Attachment 8.2.18 “Capitation Report;” Attachment 8.2.18 “Membership Activity by Benchmark;” Attachment 8.2.18 “Idaho Medicaid;” Attachment 8.2.18 “Claims Costs and Access Rates Report;” Attachment 8.2.18 “Authorization Summary;” Attachment 8.2.18 “Access Available Report;” Attachment 8.2.18 “Authorizations for Services Report;” Attachment 8.2.18 “Utilization Cost Report;” Attachment 8.2.18 “Claims Payment Activity;” Attachment 8.2.18 “Complaint Resolution and Tracking Report;” Attachment 8.2.18 “Satisfaction Summary Report;” Attachment 8.2.18 “Customer Services Report;” Attachment 8.2.18 “Availability of Services;” Attachment 8.2.18 “Idaho 834 Member Error Example;” Attachment 8.2.18 “Program Integrity Activities Report;” Attachment 8.2.18 “Access and Oral Health Activities Report;” Attachment 8.2.18 “Provider List Report;” Attachment 8.2.18 “TMSIS;” Attachment 8.2.18 “Meeting Minutes and Action Log;” and Attachment 8.2.18 “Network Dental Validation Report” were originally fully redacted and have been voluntarily unredacted entirely by MCNA.

- 4) Originally, the entirety of page 9, which contained the cover letter, was redacted. MCNA has voluntarily unredacted all information except the names of two key MCNA staff involved in the preparation of the proposal.

- 5) Page 91 was originally redacted, however was voluntarily unredacted by MCNA except for the contact information of the named individuals.

- 6) Independent economic value is derived from the redacted information on pages 25, 40-45, 48, 50-81, 88-89, 137-139, 145, 149, 162, 165-170, 175, 177, 180, 187-191, 192-193, 193-195, 198-199, 200, 204-206, 232, 237, 238-239, 241, 243-243, 326, 352-356, 406, 425-430, 432-445, 447, 451-461, 465-478, 482-505, 507-511, 521-522, 531, 533-537, 540, 542-567, 576-577, 579-588, 640-646, 655-675, 679-680, 683, 865-696, and Attachments 6.1 "SOC 2 Report," 8.2.12 "Data Protection and Security Omnibus," 8.2.12 "IMPD and Strategic Plan," 8.2.12 "Quality Assurance Plan," 8.2.12 "Records Management and Retention," 8.2.12 "Risk Management Program," 8.2.12 "System Security Program," 8.2.20 "DRCO Plan." The information on the above pages and attachments is not readily available through proper means. Reasonable steps have been taken to keep the information contained on the above pages and attachments secret.

- 7) Dr. Sanger is named on a public website as the Executive Director of the MCNA Idaho Dental Medicaid Insurance Company.

- 8) The information on page 26 relating to the Texas Medicaid and CHIP programs, on page 27 relating to the Florida Healthy Kids Corp. program, on page 28 the information referencing the Florida Agency Health Care Administration (State) program, on page 29 relating to the Florida Agency for Health Care Administration (Miami-Dade) program, on page 29 relating to the Prestige Health Choice program, and on page 30 relating to the Sunshine Health program has been made publically available and is accessible by proper and legal means.

- 9) The contact information of certain individuals contained on page 91 has been made publically available and is accessible by proper and legal means.

- 10) The information about (1) the Plan President on pages 97-98, (2) the Senior Vice Present and General Counsel on pages 103-104, (3) the Chief Financial Officer on Page 105-106, (4) the Chief Information Officer on pages 105-106, and (5) the Director of Quality Improvement on pages 117-118 has been made publically available and is accessible by proper and legal means.

- 11) The information contained on page 152 has been made publically available and is accessible by proper and legal means.

- 12) The information contained on page 154, with the exception of the last paragraph, has been made publically available and is accessible by proper and legal means.
- 13) The information contained on Pages 159-160, 161, 163, and 164 has been made publically available and is accessible by proper and legal means.
- 14) The information contained on Pages 159-160, 161, 163, and 164 has been made publically available and is accessible by proper and legal means.
- 15) The information on pages 170-173 has been made publically available and is accessible by proper and legal means.
- 16) The information on page 176 has been made publically available and is accessible by proper and legal means.
- 17) The information on Pages 182-183 regarding the UM Committee and the “utilization of review criteria and distribution” on page 184 has been made publically available and is accessible by proper and legal means.
- 18) The statement on page 186 regarding MCNA’s experience has been made publically available and is accessible by proper and legal means.

- 19) The information contained on pages 210-211 regarding provider education and training, including the trainings prior to “go live” has been made publically available and is accessible by proper and legal means.

- 20) The information on Page 215 discussing the workshops has been made publically available and is accessible by proper and legal means.

- 21) The information on page 219-220 pertaining to the customer service plan has been made publically available and is accessible by proper and legal means.

- 22) The sample scorecard provided on page 227 has been made publically available in almost identical form and is accessible by proper and legal means.

- 23) The last paragraph on page 228, which continues onto 229, has been made publically available and is accessible by proper and legal means.

- 24) The information contained in the two paragraphs on page 230 has been made publically available and is accessible by proper and legal means.

- 25) The map contained on page 240 is very similar in concept as what has been previously depicted in previous public bid proposals made by MCNA. This information conveys the same idea and information as has previously been made publically made available. The last paragraph on page 240 has been made publically available and is accessible by proper and legal means.
- 26) The information contained in the first paragraph on page 262 has been made publically available and is accessible by proper and legal means. The chart contained on page 262-263 has also been made part of a public record in identical form and is thus accessible by proper and legal means.
- 27) The information contained on pages 297-300 has been previously made released within a previous bid proposal as a public record. The information is almost identical; however, the time frames are different.
- 28) Both redacted paragraphs on page 309 have been made publically available and is accessible by proper and legal means.
- 29) The survey information contained on page 309 was previously made publically available although the information was from 2013 instead.

- 30) The first paragraph on page 310 has been made publically available and is accessible by proper and legal means.
- 31) The redacted paragraph on page 311 as well as the redacted diagram on page 311, the information relating to the Missions of Mercy, Member Outreach Specialists, and Health Fairs on pages 312-213 have been made publically available and is accessible by proper and legal means.
- 32) The information contained on page 323 has been made publically available and is accessible by proper and legal means.
- 33) The information contained on page 324 has been made publically available and is accessible by proper and legal means.
- 34) The first and third paragraph on page 348 has been made publically available and is accessible by proper and legal means.
- 35) The last three paragraphs on page 350 have been made publically available and is accessible by proper and legal means.

- 36) The information contained on page 368-369 relating to identification cards and welcome packets are available to the public in a very similar form. The information relating to the process to terminate a provider on pages 370-371 has been made publically available and is accessible by proper and legal means.
- 37) The information on pages 380-381 has been made publically available and is accessible by proper and legal means.
- 38) Page 423 was partially redacted, page 424 was fully redacted, and page 425 was partially redacted. The redacted information that spans these three pages has been made publically available and is accessible by proper and legal means.
- 39) Pages 461-462 were partially redacted. The HIPAA 5015 picture on page 462 and the information regarding HIPPA has been made publically available and is accessible by proper and legal means.
- 40) Pages 611-612 were partially redacted. The information contained on these two pages, including the diagram is extremely similar with essentially the same information and concepts that was contained within a previous contract bid, which became public record. The information on these pages has been made publically available and is accessible by proper and legal means.

- 41) The redacted sentence on the far left on page 611, to the extent it discusses a dentist who is yet unknown to the public as having an affiliation to MCNA was properly withheld.
- 42) Page 613 was fully redacted and page 614 was partially redacted. The information contained on pages 613-614 has been made publically available and is accessible by proper and legal means.
- 43) Pages 616-639 were fully redacted. The information that is contained on these pages details the quality improvement program. This information, while presented in different format, was all contained within a previous bid proposal by MCNA, and has been made publically available and is accessible by proper and legal means.
- 44) While potentially not generally available through proper means, the evidence is insufficient to find independent economic value from the information contained on pages 17-18, 19, 20, 26, 27-28, 29, 30-31-39, 90, 93-94, 95-96, 99-100, 101-102, 109-110, 111-112, 113-114, 115-116, 119-120, 121-122, 123-124, 125-126, 127-128, 129-130, 131-132, 148, 152-153, 154-155, 174, 181-182, 233, 240, 248, 301, 303-305, 314-320, 322, 324, 348, 349, 379, 514-519, 520, 567, 649, 650-651, 652, 684, 699-700, 701-709.

CONCLUSIONS OF LAW REGARDING MCNA

- 1) There is no issue regarding the improper withholding of any information that has since been voluntarily unredacted.

- 2) In order to qualify under the trade secret exception of the Public Records Act, the information must 1) provide independent economic value, and 2) the information must be kept secret. If either of the two prongs is not met, then the exception does not apply, and the information is not exempt from disclosure. Information that is not exempt must be disclosed as part of the public record.

- 3) The information contained on pages 25, 40-45, 48, 50-81, 88-89, 137-139, 145, 149, 162, 165-170, 175, 177, 180, 187-191, 192-193, 193-195, 198-199, 200, 204-206, 232, 237, 238-239, 241, 243-243, 326, 352-356, 406, 425-430, 432-445, 447, 451-461, 465-478, 482-505, 507-511, 521-522, 531, 533-537, 540, 542-567, 576-577, 579-588, 640-646, 655-675, 679-680, 683, 865-696, and Attachments 6.1 "SOC 2 Report," 8.2.12 "Data Protection and Security Omnibus," 8.2.12 "IMPD and Strategic Plan," 8.2.12 "Quality Assurance Plan," 8.2.12 "Records Management and Retention," 8.2.12 "Risk Management Program," 8.2.12 "System Security Program," 8.2.20 "DRCO Plan" was properly withheld under the trade secret exception to the Public Records Act. Accordingly, the information is properly redacted.

- 4) When information is a public record, regardless if it was not within this state, it is accessible by legal and proper means. When information has been made a public record, then no further efforts can be made to then turn what is otherwise public information into a trade secret. By definition a trade secret must be kept secret. Information contained in a public record is then not secret. Because the information discussed in the above Findings of Fact paragraphs 7-43 is available to the public by legal and proper means, it does fit within the trade secret exception of the Public Records Act. Information that does not fit in within the exception but is nonetheless withheld, is withheld improperly, and must be disclosed.

- 5) The information discussed in the Findings of Fact paragraphs 7-43 was improperly withheld because the information is public accessible through legal and proper means. Accordingly, that information must be disclosed.

- 6) A conclusory statement that information derives independent economic value is insufficient to persuade this Court to find that the information falls within the narrow trade secret exception in the Public Records Act. The Court therefore concludes that the information contained on pages 17-18, 19, 20, 26, 27-28, 29, 30-31-39, 90, 93-94, 95-96, 99-100, 101-102, 109-110, 111-112, 113-114, 115-116, 119-120, 121-122, 123-124, 125-126, 127-128, 129-130, 131-132, 148, 152-153, 154-155, 174, 181-182, 233, 240, 248, 301, 303-305, 314-320, 322, 324, 348, 349, 379, 514-519, 520, 567, 649, 650-651, 652, 684, 699-700, 701-709 does not derives independent economic value by maintaining its

secrecy sufficient to satisfy the first prong of the trade secret exception. Accordingly, that information must be disclosed.

CONCLUSION

Much of the information to be unredacted here is specific to MCNA and cannot be even be used by competitors. The major argument that MCNA advances is that if a competitor was to see the bid in its entirety, then the competitor would have an advantage in future bids. It seems that the same advantage MCNA enjoyed in this instance, i.e. to see the bids or contracts of prior providers, it now seeks to prevent to its future competitors. MCNA further argues that businesses will be disinclined to come to do business in Idaho if such trade secrets were not protected. The court is not persuaded. First, it didn't stop MCNA. Second, these are policy arguments for the legislature that the law should be changed. Third, as seen here, true trade secrets are protected, but information that is not a trade secret is not protected. If a company wants to engage in public contracting, it must follow our Public Records Act, be transparent in its dealings, and recognize the public's right to know, even if the public includes a competitor.

The Court concludes that information redacted by Liberty was properly withheld because it fell within the trade secret exception to the Public Records Act.

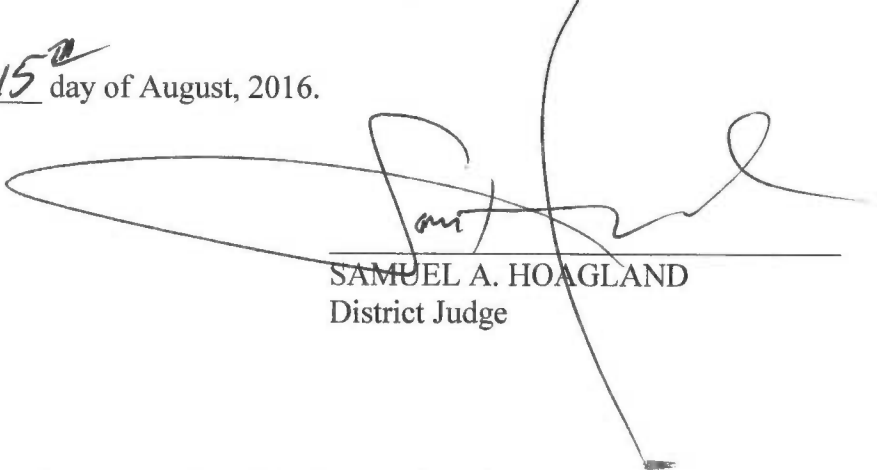
The Court further concludes that MCNA properly redacted trade secret information in its bid on pages 25, 40-45, 48, 50-81, 88-89, 137-139, 145, 149, 162, 165-170, 175, 177, 180, 187-191, 192-193, 193-195, 198-199, 200, 204-206, 232, 237, 238-239, 241, 243-243, 326, 352-356, 406,

425-430, 432-445, 447, 451-461, 465-478, 482-505, 507-511, 521-522, 531, 533-537, 540, 542-567, 576-577, 579-588, 640-646, 655-675, 679-680, 683, 865-696, and Attachments 6.1 “SOC 2 Report,” 8.2.12 “Data Protection and Security Omnibus,” 8.2.12 “IMPD and Strategic Plan,” 8.2.12 “Quality Assurance Plan,” 8.2.12 “Records Management and Retention,” 8.2.12 “Risk Management Program,” 8.2.12 “System Security Program,” 8.2.20 “DRCO Plan.”

The Court further concludes that the following information in MCNA’s bid (as more fully described in the Finding of Facts paragraphs 7-43) on pages 17-18, 19, 20, 26, 27-28, 29, 30-31-39, 90, 93-94, 95-96, 99-100, 101-102, 109-110, 111-112, 113-114, 115-116, 119-120, 121-122, 123-124, 125-126, 127-128, 129-130, 131-132, 148, 152-153, 154-155, 174, 181-182, 233, 240, 248, 301, 303-305, 314-320, 322, 324, 348, 349, 379, 514-519, 520, 567, 649, 650-651, 652, 684, 699-700, 701-709, does not fall within the trade secret exception, and therefore was improperly withheld. Accordingly, this information must be disclosed within 10 days from the date hereof.

Finally, the Court hereby *sua sponte* extends the Temporary Restraining Order until five business days after MCNA and the State have complied with this Order.

IT IS SO ORDERED this 15th day of August, 2016.



SAMUEL A. HOAGLAND
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 15th day of August, 2016, I mailed (served) a true and correct copy of the within instrument to:

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Clerk of the District Court

By Stephanie Heedy
Deputy Court Clerk



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