

ARMED SERVICES BOARD OF CONTRACT APPEALS
PROTECTIVE ORDER GUIDANCE

26 September 2016

1. *Public Access to Documents at the Board.* Appeal records maintained at the Board are not readily available to the public. If the Board receives a request for a document under the Freedom of Information Act (FOIA), 5 U.S.C. section 552, it is the Board's policy to afford the originator of the document an opportunity to assert that the document, or a portion thereof, is exempt from public release under one of the FOIA exemptions, regardless of whether a protective order has been issued.

2. *Board Policy.* While the Board does not encourage the use of protective orders, and only issues such orders in the case of demonstrated need, it recognizes that in particular cases their use may facilitate the Board's mission to provide informal, expeditious, and inexpensive resolution of disputes. Attached to this guidance is an ASBCA Model Protective Order which the parties should use as the template for proposed protective orders in appropriate cases.

3. *Definition of Protected Information.* Paragraph 1.b. of the Model Protective Order defines Protected Information as that information which a party believes would be exempt from disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(1)-(9), to include business proprietary information, personally identifiable information, and source-selection sensitive information. The parties are encouraged to narrow the definition of Protected Information as much as is feasible and appropriate for their particular appeal(s).

4. *Pro Se Cases.* The Model Protective Order presupposes that the appellant is represented by counsel. If a protective order is desired in a case in which the appellant is represented, pursuant to Board Rule 15, by other than a duly licensed attorney at law, the parties will need to agree on appropriate changes to the terms of the Model Protective Order before submitting a proposed order for Board approval.

5. *Other Alterations to Model Protective Order.* Alterations to the Model Protective Order other than those discussed in paragraphs 3 and 4, above, will be considered if they are shown to be appropriate in the particular appeal(s). No changes to paragraphs 5 and 8 of the Model Protective Order will be considered.