



TUTORIAL 27

How to Protect Proprietary Information in your DOE Phase I SBIR/STTR Application

Before submitting your application to the Department of Energy through GRANTS.gov, take the time to assure that you have properly marked all proprietary information in your proposal. The type of information that is considered proprietary usually includes technical information that the company considers a trade secret, as well as commercial and financial information that one would typically not share with others. As you will submit your DOE application in several discrete sections through grants.gov – make note of which sections contain proprietary information. Typically, these will include

The documents in the application package that typically contain proprietary information include the project narrative, commercialization plan, financials and Letters of Support.

the **project narrative, the commercialization plan, and the financials**. However, it is possible that you may have other information that you consider proprietary including your **Letters of Support**. Once you have identified the sections of the application that contains proprietary information, then add the appropriate markings using the protocols provided by DOE. As the project narrative and the commercialization plan will go through many iterations, we recommend that you make these additions once you have the near-final version.



Protecting your Trade Secrets, Commercial, and Financial Information

An application may include technical data and other data, including trade secrets and commercial or financial information that are privileged or confidential, which the applicant does not want disclosed to the public or used by the Government for any purpose other than application evaluation. Examples of documents that may contain proprietary information include the commercialization plan and the project narrative.

To protect such data, any document uploaded as part of your application must be marked in accordance with one of the following examples:

1. [IP Markings Example 1 – Underline Method](#)
2. [IP Markings Example 2 – Highlight Method](#)
3. [IP Markings Example 3 – Brackets Method](#)
4. [IP Markings Example 4 – Vertical Line Method](#)

Figure 1: Protecting Your Trade Secrets, Commercial, and Financial Information.

Source: [DOE Website](#)

APPROPRIATE MARKINGS

So, what constitutes appropriate marking? According to the DOE Funding Opportunity Announcement (FOA), on the cover page of the project narrative you must place the following notice. It is recommended that you cut and paste this notice exactly.

“Pages [insert page numbers] of this document may contain trade secrets or commercial or financial information that is privileged or confidential and is exempt from public disclosure. Such information shall be used or disclosed only for evaluation purposes or in accordance with a financial assistance or loan agreement between the submitter and the Government. The Government may use or disclose any information that is not appropriately marked or otherwise restricted, regardless of source.”

Please note that this last sentence clearly indicates that anything that is NOT marked as proprietary could be disclosed – so be sure to think carefully about what is proprietary.

On subsequent pages that contain proprietary information add the following statement, again cutting and pasting precisely: *“May contain trade secrets or commercial or financial information that is privileged or confidential and exempt from public disclosure.”* Please refer to the DOE SBIR/STTR web site. Under [“Applicant Resources,”](#) click on [“Protecting your Trade Secrets, Commercial, and Financial Information.”](#) That link will bring up four examples of how to properly denote and mark proprietary information in your application.

The guidance in the FOA clarifies that one must NOT include this statement on pages that do NOT contain proprietary information. On those pages that DO contain proprietary information, each line or paragraph containing trade secrets or commercial or financial information that is privileged, must be marked with one of the following: brackets, highlighted text, underlined text, or vertical line. Again, please refer to the DOE web site for examples for properly identifying proprietary information. Once you have chosen how to mark your proprietary information, you must also include on the cover page a Proprietary Data Legend denoting your chosen method, whether brackets, highlights, or underlined text. It is recommended that you cut and paste this statement exactly. *“Proprietary Data Legend: Lines, paragraphs, tables, charts, and other graphics containing trade secrets, commercial, and/ or financial information are marked with (insert your method here).”* Failure to follow these guidelines may result in DOE's inability to treat such information as proprietary and may delay the grant process.

Select one of the following methods to denote proprietary information: brackets, highlighted text, underlined text or vertical line.



The Department of Energy wants to protect your proprietary information. However, to do that you must first consider and clearly indicate which information is proprietary using the procedures identified in the FOA and discussed here.



WHO SEES YOUR APPLICATION?

An obvious question to ask is *“Beyond DOE SBIR/STTR program managers and staff, who will see the proprietary information during the evaluation process?”* For many applications, DOE uses qualified non-Federal personnel as reviewers when conducting the merit review evaluation. However, these individuals must sign conflict of interest agreements prior to reviewing an application. By submitting an application, the applicant is providing consent to the use of non-Federal reviewers and administrators.

DOE must retain one electronic copy for three years for each unsuccessful applicant.

Another question that may cross your mind is *“What happens to information in an applicant’s proposal if they are unsuccessful in winning an award?”* The application that you submit remains the property of the applicant. However, the DOE must retain one electronic copy for three years for each unsuccessful application.

Another reason to ensure your proprietary data is properly marked is that any application submitted to a federal agency is subject to existing statutory and regulatory requirements such as the Freedom of Information Act (FOIA). All information clearly marked by the applicant in accordance with the guidance provided in the Funding Opportunity Announcement, will be treated in confidence to the extent permitted by law.

It is important to remember that the Department of Energy wants to protect your proprietary information. However, to do that you must first consider and clearly indicate which information is proprietary using the procedures identified in the FOA and discussed here.