

February 25, 2016

Ms. Donna Jerry
Senior Health Policy Analyst
Green Mountain Care Board
89 Main Street, Third Floor, City Center
Montpelier, Vermont 05620

Re: Docket No. GMCB-005-15con
Certificate of Need Application Replacement Linear Accelerator — Request for
Quote for Linear Accelerator

Dear Ms. Jerry:

Please accept this letter as a follow up to our telephone conversation regarding the Board's request for the full vendor quote for the Varian TrueBeam linear accelerator in order to complete the above referenced CON application.

While we understand the Board's need to have this document for review purposes, we respectfully request that the entirety of the quote not be included in the publicly available copy of the CON application. We believe that the terms of the quote fall under the trade secrets exemption outlined in 1 V.S.A. § 317(c) (9). This subsection protects against disclosure of information or materials that would cause a competitive disadvantage. For the following reasons, both Applicant and the vendor would be at a disadvantage were the pricing information to become public.

The vendor's pricing is not standard, from a list, but is a carefully negotiated term between the individual purchaser (Applicant) and the vendor. It often takes into account total business between the parties and other factors that lead to discounts and pricing not available or known outside of the specific purchase relationship. Both parties are contractually obligated to maintain the confidentiality of the quote and pricing information, as they consider this confidential information to constitute a trade secret.

Were the quote and pricing to become known to the public, competing vendors could benefit by adjusting their pricing or negotiations in order to offer better deals either by price or additional products or services. This is a particularly strong risk as this transaction cannot be completed without CON approval. Also, competing healthcare providers could use the information to demand pricing terms that would not otherwise have been available to them, potentially creating an additional competing service provider who would not otherwise have entered the market.

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Similar concerns have resulted in the protection of pricing terms on pending purchase contracts from public disclosure. See, e.g., *McDonnell Douglas Corp. v. U.S. Dep't of the Air Force*, 375 F.3d 1182, 1189 (D.C. Cir. 2004) (holding that pricing information in a contract with the Air Force was protected under the federal Freedom of Information Act because its disclosure would likely cause the contracting party “substantial competitive harm,” in that it would “significantly increase the probability [the contracting party’s] competitors would underbid it in the event the Air Force rebids the contract”), as cited in *Rinkers, Inc. v. State*, No. 798-11-08 Wncv, 2009 WL 2969646 (Vt. Super. Ct. Washington County, May 29, 2009) (Toor, J.). We believe this situation fits within the rationale cited with approval by the Superior Court and that the quote should be protected.

We thank you for your attention to this matter and we would be happy to discuss this request with counsel or other Board representatives as you undertake your consideration.

Sincerely,

Jason E. Aldous
Director of Business Planning

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