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 **TEXAS Law**  
The University of Texas at Austin  
School of Law

# **CONFIDENTIAL INFORMATION AND INTELL. PROPERTY**

**In Government Contracting: State and Federal**

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## **Introduction**

- Our backgrounds
- State / Federal
- Vendor / Purchaser (Government Entity)
- Solicitation phase / Operational phase

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## A few definitions

- Confidential Information
  - Deemed confidential by contract, or by statute / regulation
- Intellectual Property
  - Trade Secrets, patents, copyrights, trademarks
  - Focus on IP that may also be confidential

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## Analysis of policy objectives

- Promoting innovation
- Balancing the interests of the government and contractors
- Enhancing competitiveness

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# Recent Policy Initiatives on Intellectual Property in Federal Government Contracts

## • Overview of key protections

- Trade Secrets Act
- NDAs
- FOIA/reverse FOIA

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# Recent Policy Initiatives on Intellectual Property in Federal Government Contracts

## • Overview of Confidentiality Issues

- Trade Secrets Act, 18 U.S.C. § 1905; See *CACI, Inc. v. United States*, 674 F.Supp.3d 57 (E.D. Va. 2023) (entering injunction in favor of CACI to prevent further disclosure of CACI's trade secret information and ordering forensic computer analysis).
- Use of Non-Disclosure Agreements; See *Demodulation, Inc. v. United States*, 103 Fed. Cl. 794, 798 (2012); *Liberty Ammunition, Inc. v. United States*, 835 F.3d 1388, 1401 (Fed. Cir. 2016).
- FOIA, 5 U.S.C. § 552
- "Reverse" FOIA – See *CNA Fin. Corp. v. Donovan*, 830 F.2d 1132, 1133 n.1 (D.C. Cir. 1987).
- FAR/DFARS – See, e.g., FAR 52.215-1, Instructions to Offerors (marking proposals)

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"Confidential Information and IP in Government Contracting: State and Federal"