NDAs – Preventing IP Theft

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Why Vendors Use NDAs?

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Answer: To protect IP while exploring a potential business relationship.

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Types of IP

- Patents
- Copyrights
- Trade Secrets
- Trademarks

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A Trade Secret is information that:

a. Is used or intended for use in a trade or business;

b. Is included or embodied in a formula, pattern, compilation, computer software, drawing, device, method, technique, or process;

c. Is not publicly known and is not generally known in the trade or business of the person asserting that it is a trade secret;

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d. Cannot be readily ascertained or derived from publicly available information;

e. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and

f. Has significant economic value.

Alabama Code Section 8-27-1

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Each party agrees not use the other party's Confidential Information for any purpose except for the "Business Purpose."

NDAs – Government Role

Typically the government prefers not to be involved in agreements between vendors—especially involving prime/subcontractor relationships

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Question: What if Gov't wants to provide a support contractor with limited rights technical data or restricted rights software?

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Answer: Require the support contractor enter into an NDA with vendor owning the IP rights. **DFARS § 227.7103-7**

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DFARS § 227.7103-7

The Recipient agrees to indemnify and hold harmless the Government … from every claim or liability … arising out of … the misuse or unauthorized … release … of Data received from the Government"