

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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In the Matter of

Index No. 034589/2025

TINA TRASTER and TINA TRASTER
PRODUCTIONS, LLC d/b/a/ ROCKLAND COUNTY
BUSINESS JOURNAL,

Assigned Justice:

Petitioners,

Hon. Hal B. Greenwald

-against-

ROCKLAND COUNTY SOLID WASTE
MANAGEMENT AUTHORITY,

Respondent,

For a Judgement pursuant to Article 78 of the Civil
Practice Law and Rules

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RESPONDENT'S MEMORANDUM OF LAW IN OPPOSITION TO PETITIONERS'
VERIFIED PETITION

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The ROCKLAND COUNTY SOLID WASTE MANAGEMENT AUTHORITY (the “Authority” or “Rockland Green”) by and through their attorneys, West Group Law PLLC, respectfully submit this Memorandum of Law in Opposition to Petitioners’ Verified Petition.

PRELIMINARY STATEMENT

The Petitioners in this proceeding are the publisher of a website dedicated to local news coverage and a limited liability company that is the corporate entity of the website. Petitioners submitted a request pursuant to the Freedom of Information Law (“FOIL”) N.Y. Pub. O. § 87 *et seq* to Rockland Green on December 12, 2024 requesting what Petitioners termed “bids” relating to Rockland Green’s construction of a new municipal animal shelter in West Haverstraw, New York as well as notes of the committee that evaluated such “bids” (the “Request”). Rockland Green responded within the statutorily prescribed time frame acknowledging the Request and a date when it expected the documents to be produced. Rockland Green produced the requested documents. In accordance with FOIL provisions, the documents contained redactions of confidential information, personal information, and trade secrets as permitted under FOIL. Additionally, Rockland Green did not release documents responsive to the second portion of the Request because such notes were predecisional deliberative materials and were subject to both attorney work product and attorney-client privileges. Petitioners now come before this Honorable Court requesting that the Court order the unredacted documents and notes of the evaluation committee be produced. For the reasons set forth herein, Rockland Green respectfully submits that this Court should deny and dismiss the Petition.

FACTS AND PROCEDURAL POSTURE

Rockland Green is a public benefit corporation created pursuant to Title 13-M of the New York Public Authorities Law. When it was created, Rockland Green was empowered “to collect, receive, transfer, transport, process, dispose of, sell, store, convey, recycle, compost, combust and deal with, in any lawful manner and way, solid waste and any products or by-products thereof now or hereafter developed and discovered, including any recovered materials, compost or energy produced or generated by the operation of any solid waste management facility.” (Damiani Aff. ¶ 7). In service of its mission, Rockland Green owns and operates multiple facilities which handle various types of waste. These facilities include transfer stations, one bio-solids cocomposting facility, one materials recovery facility, multiple leaf composting facilities, a mulching facility, a concrete and asphalt crushing facility, and a household hazardous waste facility. All facilities are located within the County of Rockland (the “County”). (Damiani Aff. ¶ 8).

In 2022, Rockland Green’s enabling legislation was amended to add “animal management” to its purpose. *See* N.Y. Pub. A. Law §2053-b. Additionally, the enabling legislation was amended to reflect that “the authority shall also be known as Rockland Green.” *Id.* at § 2053-c(1). (Damiani Aff. ¶ 9). After the amendment to the enabling legislation, Rockland Green entered into a lease with the County whereby Rockland Green would assume responsibility for the County’s animal shelter located at 65 Firemen’s Memorial Drive in Pomona, New York (the “Existing Shelter”). (Damiani Aff. ¶ 10).

The Existing Shelter was built approximately 50 years ago and is inadequate for a modern animal shelter. Rockland Green has performed and continues to perform significant upgrades to the Existing Shelter to make it more habitable for the animals and safer for the Existing Shelter’s staff. (Damiani Aff. ¶ 11).

At the same time, Rockland Green recognized that both the physical space and the location of the Existing Shelter are inadequate for modern animal sheltering. For instance, the Existing Shelter has no access to public sewers and only one structure on the premises has a source for running water. Connecting to public sewerage and retrofitting the buildings with bathrooms and water would be prohibitively expensive. Because the County owns the property and the permanent structures on the site, any improvements would have to be approved by the County, and the process would have potentially jeopardized Rockland Green's ability to meet its obligations pursuant to the New York Agricultural and Markets Law, which is the law that regulates animal shelters. (Damiani Aff. ¶ 12).

The New York Agricultural and Markets Law was recently amended and those updates go into effect at the end of 2025. The updated law puts significant new requirements on shelters. Making the Existing Shelter come into compliance with the updated law would require a complete teardown and would also be prohibitively expensive. (Damiani Aff. ¶ 13).

When Rockland Green assumed animal management responsibilities, its intentions were (and remain) to make cost-effective upgrades to the existing Shelter while also planning to build a new state-of-the-art shelter (the "New Shelter") that complies with all applicable laws going forward. (Damiani Aff. ¶ 14).

Rockland Green frequently contracts with private companies for services. For instance, all but one of Rockland Green's municipal solid waste facilities is operated and maintained by outside contractors. Rockland Green contracts with private companies for curbside collection of garbage and recyclables as well as long-distance hauling to final disposal sites. Additionally, Rockland Green contracts with private companies for construction of new facilities and buildings. (Damiani Aff. ¶ 15).

Rockland Green's procurement process is guided by applicable law and its procurement policy. (Damiani Aff. ¶ 16). For each procurement, Rockland Green strictly follows applicable law and its procurement policy. Each letting document (e.g. Request for Bids, Request for Proposals) is carefully crafted to ensure that the services needed are obtained and costs are kept low. (Damiani Aff. ¶ 17). Rockland Green frequently employs the services of outside counsel as part of the procurement letting and evaluation process because much of the work of procurement involves compliance with various federal, state, and local laws and regulations as well as contract negotiation and drafting. (Damiani Aff. ¶ 18).

Rockland Green is a public authority. As opposed to a municipal corporation, such as towns, villages, and counties, public authorities are not bound by General Municipal Law § 103, which requires municipal corporations to award public contracts to the "lowest responsible bidder." (Damiani Aff. ¶ 19). Although similar, bids and proposals differ in important ways. Bids are more commonly used for standardized services, including construction projects that do not require customization and let using a Request for Bids ("RFB"). RFBs provides precise details about the desired products or services and competing companies are asked to submit bids based on those specifications. In RFB procurements, the contract is awarded to the bidder with the lowest bid that meets all the requirements. (Damiani Aff. ¶ 20).

Proposals are more commonly used for the solicitation of solutions or services that are complex or require customization. These types of procurements are let using a Request for Proposals ("RFP"). RFPs usually provide the scope of the needs, expectations, program requirements, performance specifications, and outcomes for specific projects. This allows proposers to address these requirements using their technical skill and expertise. RFP procurements also allow the project owner and the proposers to negotiate on matters such as price

and specifications, which additionally affords the project owner the ability to identify potential issues with the various proposers. (Damiani Aff. ¶ 21).

Often, proposers submit sensitive information in response to RFPs. For instance, Rockland Green frequently requires proposers to submit sensitive financial information so that Rockland Green is assured of the proposer's financial solvency. (Damiani Aff. ¶ 22). Proposers often submit details about proprietary functions and trade secrets. Rockland Green endeavors to keep such confidential information private to the extent allowed by law. (Damiani Aff. ¶ 23). If Rockland Green were to publicly disclose this confidential information, it would jeopardize future procurements because contractors do not want such confidential information made available and would no longer propose on these procurements. Additionally, Rockland Green could face potential liability under relevant trade secret protection laws. (Damiani Aff. ¶ 24)

On several occasions, Rockland Green has received FOIL requests from entities in the municipal solid waste industry seeking procurement documents and proposals of competitors. In fact, during the pendency of this litigation, Rockland Green received one such FOIL request related to the procurement of design-build of its dual-stream recyclables processing system at the Materials Recovery Facility. (Damiani Aff. ¶ 25, Haggerty Aff. ¶ 8). In response to this FOIL request, Rockland Green will go through a similarly exacting process of redacting trade secrets and confidential information as described below (Damiani Aff. ¶ 25). Additionally, prior to receiving the Request, one of the unsuccessful proposers on the subject project, UniMak LLC ("UniMak"), sent a FOIL request which asked for much of the same information as Petitioners' Request. In response, Rockland Green made the exact documents available to UniMak that it did to Petitioners. UniMak's FOIL request is attached hereto as Exhibit C. (Damiani Aff. ¶ 26, Haggerty Aff. 9-10).

Pages 4-5 of Rockland Green's procurement policy specifically allow it to "award contracts for the purchase of goods, equipment, and services through a competitive negotiations process. (Damiani Aff. ¶ 27). The Competitive Negotiations section of the procurement policy reads as follows:

COMPETITIVE NEGOTIATIONS

As set forth above, the Authority may award contracts for the purchase of goods, equipment, and services through a competitive negotiations process.

Competitive Negotiation Process – Procedures

In undertaking a competitive negotiation process for the award of a contract pursuant to this Policy, the Executive Director (or his/her designee) shall comply with the following procedures:

- (1) A request for proposals shall be developed which shall indicate the relative importance of price and other evaluation factors, and any information deemed appropriate by the Executive Director or Authority General Counsel.
- (2) The request for proposals shall also contain a description of the evaluation and selection procedures which shall be followed in awarding the contract, including procedures which govern written or oral discussions with proposers, the proposal clarification process, concurrent or sequential negotiations, discontinuance and resumption of negotiations and rights reserved to the Authority.
- (3) Adequate public notice of the request for proposals shall be given in the manner provided in the section of this Policy entitled "Advertisement of Proposals."
- (4) The Authority shall form an Evaluation Committee whose purpose is to determine
 - a. if the proposal complies with the requirements of the request for proposals; and
 - b. which proposal is Most Advantageous to the Authority.
- (5) Award shall be made by the Authority Board to the proposer whose proposal is determined in writing to be the Most Advantageous to the Authority, pursuant to a "best value" analysis, meaning that the Authority has the right to select the proposer whose proposal best satisfies the interests of the Authority and is most responsive to the request for proposals, and not necessarily on the basis of price or any other single factor.
Id.

Rockland Green's ability to procure services via the "Competitive Negotiations" section of its procurement policy has been repeatedly upheld by courts in New York. *See Matter of AAA*

Carting & Rubbish Removal, Inc. v Town of Stony Point, N.Y., 159 A.D.3d 1036 (2nd Dept. 2018) *lv denied* 32 N.Y.3d 901 (2018). *See also AAA Carting & Rubbish Removal, Inc. v. Village of Sloatsburg, N.Y.* Docket No. 2940-16 (Sup. Ct. Westchester, Cty., 2016).

In 2023, Rockland Green identified a property it found suitable for the New Shelter. It has access to public sewers and water, and it has enough square footage to build a significantly larger and higher quality shelter than the existing one. Thereafter, Rockland Green purchased the property located at 427 Beach Road in West Haverstraw. (Damiani Aff. ¶ 29).

Rockland Green's Executive Director, Gerrard M. Damiani, Jr. determined that a Competitive Negotiation would be most beneficial to Rockland Green for this project. In accordance with the "Competitive Negotiations" section of its procurement policy, on July 25, 2024, Rockland Green issued Request for Proposals No. 2024-01 for the Build-Out of a New Animal Shelter Located at 427 Beach Road in Haverstraw, NY (the "RFP"). The RFP contained a description of the evaluation and selection procedures which were followed in awarding the contract. The RFP made clear that while price was a factor, multiple non-price factors would be considered and that Rockland Green would select the proposal that was most advantageous, as authorized by its procurement policy. (Damiani Aff. ¶ 30). Additionally, page 15 of the RFP notified potential proposers that Rockland Green is subject to FOIL and that "trade secrets or other information that the disclosure of which could reasonably be expected to be harmful to business interests" must be clearly identified and marked as such. The RFP also stated that if marked information was the subject of a FOIL request, the proposer may be asked "either to consent to the request, or make representation explaining why the information should not be disclosed." (Damiani Aff. ¶ 31).

In response, Rockland Green received proposals from the following eight (8) proposers: Andron Construction Corp. (“Andron”), Blue City Construction Corp. (“Blue City”), Butler Construction Group, Inc. (“Butler”), EW Howell Construction Group (“EW Howell”), Norco Construction, Inc. (“Norco”), O’Connor Company of N.C., Inc. (“O’Connor”), UniMak LLC (“UniMak”), and Worth Construction Company Inc. (“Worth”). (Damiani Aff. ¶ 32).

Upon receiving the proposals, Rockland Green’s evaluation committee began reviewing the proposals. Rockland Green deemed Blue City’s proposal non-responsive and deemed Butler’s price proposal too expensive to justify its continued consideration. Rockland Green then conducted its first round of clarification questions and interviews with the remaining six (6) proposers. Following the first round of clarifications and interviews, Rockland Green narrowed the field to four proposers, EW Howell, O’Connor, UniMak, and Worth, determining that Norco could not provide the proposal security required by the RFP and that Andron refused to provide any information about subcontractors until it was awarded the contract. Rockland Green then submitted two more rounds of clarifications to the remaining four proposers, including a request for best and final offers (“BAFO”). The BAFOs from the remaining proposers were as follows:

- EW Howell - \$14,685,000
- O’Connor - \$14,824,900
- UniMak - \$14,997,000
- Worth - \$16,014,523 *Id.*

Upon review of the three rounds of clarifications, the interviews and the BAFOs the evaluation team narrowed the final list to two proposers, O’Connor and EW Howell, reasoning that UniMak lacked an understanding of the work required under the RFP and failed to respond to

a portion of the RFP, and that Worth's increase of price in submitting its BAFO warranted its exclusion from advancing further. (Damiani Aff. ¶ 33).

The evaluation committee consisted of the Executive Director of Rockland Green, Gerard M. Damiani, Jr., other Rockland Green staff, Rockland Green's outside consulting engineers, the project's architect, and Rockland Green's outside counsel. Ultimately, the evaluation committee issued a summary of the proposals with a recommendation. The summary was prepared by Rockland Green's outside counsel. The evaluation committee ultimately recommended the selection of O'Connor. Mr. Damiani presented that recommendation to Rockland Green's Board of Commissioners at its regularly scheduled meeting on December 10, 2024. Of the two remaining candidates, EW Howell had the lower price. The evaluation committee concluded, however, that O'Connor's proposal was more advantageous to Rockland Green because (1) O'Connor's proposal and clarification responses demonstrated a level of understanding regarding the project's needs and a commitment to the project such that the work could be performed with fewer change orders and delays, resulting in a lower priced project overall and (2) the difference in price between the two proposers was approximately one percent. (Damiani Aff. ¶ 34). O'Connor's proposal to retrofit the building into an animal shelter will average approximately \$527 per square foot. The County's proposal to build a new shelter at the current site in Pomona was estimated to cost approximately \$1,200 per square foot. (Damiani Aff. ¶ 35).

Rockland Green's entire evaluation process was reported in detail at the December 10, 2024 meeting of the Board of Commissioners and is reflected in the minutes of that meeting. Rockland Green posts the minutes of every meeting of the Board of Commissioners on its website, and they are available to anyone. (Damiani Aff. ¶ 36).

By resolution number 61 of 2024, the Board of Commissioners of Rockland Green awarded the project to the O'Connor Company of N.C., Inc. Construction is currently underway. (Damiani Aff. ¶ 37). On December 12, 2024, Rockland Green received the subject FOIL Request from the Petitioners. The Request asked for “(1) all of the bid documents and submissions submitted for the construction of the animal shelter at 427 Beach Road in West Haverstraw” and “(2) for the notes of the committee assessing the bids and any determination made to accept or reject a submitted bid.” The Request was submitted by email to Rockland Green’s FOIL Officer, Suzanne Haggerty. (Damiani Aff. ¶ 38, Haggerty Aff. ¶ 11).

Rockland Green responded to Petitioners’ FOIL Request as it would any other request. (Damiani Aff. ¶ 40). Rockland Green endeavors to respond to each and every FOIL request in a timely manner that balances the public’s right to inspect the workings of Rockland Green while also protecting confidential information. (Damiani Aff. ¶ 39).

Within the statutorily dictated time frame, Ms. Haggerty responded with an estimated date when the documents would be available. The FOIL Request submitted by the Petitioners was particularly large. The RFP itself is 539 pages. Some of the proposals submitted in response to the RFP were hundreds of pages and contained dozens of pages of confidential information. (Damiani Aff. ¶ 41, Haggerty Aff. ¶ 11).

Thereafter, Rockland Green searched the records in its possession, identified records that were responsive to the Request, and engaged in a thorough review to determine what information therein is subject to disclosure under FOIL. During this review, it became apparent that the records sought contained personal information, commercially sensitive trade secrets, exempt deliberative agency materials, and other information that is exempt from disclosure under FOIL. Rockland Green engaged outside counsel for advice regarding its need to balance the personal privacy and

commercial interests implicated by the Request while strictly complying with FOIL. (Damiani Aff. ¶ 42).

In determining what information was redacted and what was not, Rockland Green did not rely on the proposer's assertion of what was and was not confidential.¹ Rockland Green staff and its outside counsel reviewed thousands of individual pages and identified any sensitive information that may potentially trigger any of FOIL's enumerated exemptions. Through its review, Rockland Green identified and cataloged nearly 400 instances that warranted further investigation and deliberation. (Damiani Aff. ¶ 43).

Rockland Green then compared the records which proposers marked or otherwise indicated as confidential in the proposals with the records it identified as containing sensitive information that seemed to fall within the scope of an exemption to disclosure. Upon reviewing this comparison, Rockland Green realized that there was a difference between what the proposers considered confidential and what Rockland Green could actually treat as confidential for purposes of FOIL. Therefore, Rockland Green decided that further correspondence with the proposers was necessary to clarify the extent to which it could treat their information as confidential. (Damiani Aff. ¶ 44).

In an effort to both comply with FOIL and respect the confidentiality of the proposers, in February 2025, Rockland Green contacted all of the entities who submitted proposals, informed them that Rockland Green had received a FOIL request seeking access to proposals in response to the RFP and explained the purpose of FOIL and the rationale behind the RFP's instructions to identify portions of the proposal that contain trade secrets or the disclosure of which would cause

¹ Contained within the RFP was Proposal Form 9, which provides background information on FOIL, explains the extent to which information is exempt from disclosure, and prompts proposers to indicate whether their proposal contains trade secrets or other sensitive commercial information and to identify what specific portions of their proposals contain such information.

substantial injury to their competitive position. Proposers who did not indicate that any portions of their proposal contained such information were afforded the opportunity to identify any such materials. Rockland Green reviewed their responses (to the extent they were received) and then assessed whether any further identified information was exempted from disclosure under FOIL to determine whether such information may be withheld. Rockland Green informed the proposers who indicated that portions of their proposal contained such information that it would “remove said information from the requested documents to the extent it can under applicable law,” explaining that, while Rockland Green respects their designation, FOIL’s exemptions are construed narrowly and that these designations may not ultimately comport with FOIL’s mandate. Proposers were informed that Rockland Green required a response by February 26 to ensure that it could comply with the impending February 28 deadline. (Damiani Aff. ¶ 45).

On February 27, recognizing that it needed more time to process the Request in the manner described above, Rockland Green informed Petitioners that it required an extension of the date by which it would render a decision whether to grant or deny the Request, citing a need for additional time “for review and processing.” This correspondence indicated that Rockland Green would endeavor to render a decision on the Request no later than March 21, 2025. (Damiani Aff. ¶ 46, Haggerty Aff. ¶ 12).

On March 4 and March 7, 2025, Rockland Green sent two more follow up letters to proposers who did not respond. Ultimately, Rockland Green did not receive a response from every proposer; however, of the responses it received, some proposers indicated that they were content with the redactions and others identified additional pages that contained sensitive information, necessitating further review by Rockland Green. (Damiani Aff. ¶ 47).

On March 11, Petitioner “appealed” Rockland Green’s extension of the date by which to render a decision, asserting that Rockland Green’s February 27 correspondence was a “constructive denial of the request” because it lacked the authority to seek such an extension. There was no constructive denial. Rockland Green was diligently working to provide the responsive non-confidential documents as meticulously described above. (Damiani Aff. ¶ 48).

On March 21, Rockland Green notified Petitioner that the records requested via the Request were available upon payment of a \$450 fee for processing, representing a fraction of the time and expense Rockland Green expended on dutifully responding to the Request. On March 26, Petitioners submitted a new “appeal” challenging the decision to charge this fee. In an effort to avoid further conflict, on April 9, Rockland Green reduced the fee to \$52.42 which represented one hour of preparation time of Rockland Green’s lowest paid hourly salary and the cost of the flash drive required to provide the documents in digital format. (Damiani Aff. ¶ 49, Haggerty Aff. ¶¶ 13-14).

On April 14, Rockland Green made the procurement documents and proposal submissions related to the construction of the animal shelter available to Petitioners, redacted appropriately pursuant to Pub. O. §§ 87(2)(b) and (d). After an exhaustive review, Rockland Green determined that 93 of the pages—or portions thereof—that proposers marked as being confidential were not exempt at all and that 42 of these pages or portions of pages were only partially exempt. (Damiani Aff. ¶ 50). Ultimately, Rockland Green identified 375 instances requiring redaction including:

- 75 instances of financial information related to annual contracting values, contract backlog, bonding capacity, tax information, and average values of contract;
- 72 instances of financial statements;
- 47 instances of financial information regarding bank references;

- 5 instances of litigation and settlement related information;
- 32 instances of medical information and associated personal information (i.e., employee names, home addresses, gender, or dates of birth);
- 42 instances of private personal information (i.e., cell phone numbers, personal email addresses, home addresses, dates of birth);
- 14 instances of private personal information regarding licensing and certification;
- 81 instances of sensitive commercial information related to prior experience and reference projects, including breakdowns of amount of work subcontracted, payment of prevailing wages, and points of contact to be used as a reference;
- 1 instance of sensitive commercial information regarding the proposer's supply chain; and
- 6 instances of sensitive commercial information regarding trade and industry references.

Id.

Rockland Green maintained a detailed privilege log as well as unredacted versions of the proposals and clarification records containing its "draft" redactions. Additionally, Rockland Green denied the Request with respect to the notes of the committee assessing the "bids" and any determination made to accept or reject a submitted "bid" as such records are inter- or intra-agency materials exempt from disclosure pursuant to § 87(2)(g). (Damiani Aff. ¶ 51).

As described in more detail *infra*, notes from the evaluation committee as well as any summary reports created are all considered pre-decisional deliberations and are considered exempt from FOIL. Additionally, Rockland Green worked closely with its outside counsel. Many such documents responsive to the second part of the Request, to the extent that they exist, are protected by both attorney-client and attorney work product privileges. (Damiani Aff. ¶ 52).

In determining what information was redacted and what was not, Rockland Green did not rely on the proposers' assertions of what was and was not confidential. Rockland Green worked closely with counsel to redact only information that fell squarely into an exemption under FOIL. (Damiani Aff. ¶ 53). For example, while Rockland Green did redact several full pages of O'Connor's proposal, more than 50 pages of O'Connor's proposal that O'Connor marked as confidential were produced by Rockland Green either completely unredacted or lightly redacted. The pages in those 50 plus pages were not redacted because we were advised by counsel that they did not fall squarely into an exemption. (Damiani Aff. ¶ 54).

The RFP contained a form entitled Proposal Form 9. Proposal Form 9 required each individual proposer to indicate whether the Proposal contained Trade Secrets. (Damiani Aff. ¶ 55) In the Andron proposal, Andron responded to Rockland Green's Proposal Form 9 that the entire proposal was considered trade secrets. Rockland Green responded to such assertion with a clarification question which indicated that it was "not acceptable for a Proposer to consider an entire proposal to be trade secrets." (Damiani Aff. ¶ 56). Ultimately, Rockland Green released many unredacted pages of Andron's proposal that Andron marked "Confidential" and/or "Trade Secrets." (Damiani Aff. ¶ 57).

On May 6, Petitioners submitted their "third administrative appeal," which accused Rockland Green of: (1) failing to respond to the portion of the Request seeking "notes of the committee assessing the bids and any determination made to accept or reject a submitted bid," (2) failing to justify the materials withheld or redacted under exemptions, (3) misapplying the trade secret and personal privacy exemptions to disclosure, and (4) redacting more information than permitted. *See generally* Ver. Pet., (Damiani Aff. ¶ 58).

On May 20, Rockland Green denied Petitioners' appeal, explaining that: (1) Rockland Green was permitted to withhold such notes as inter- or intra-agency materials exempt from disclosure pursuant to § 87(2)(g), (2) Rockland Green had sufficiently justified its withholding and redaction of information by providing a categorical, as opposed to document-by-document justification, (3) the materials redacted comprised sensitive financial data, proprietary business information, and personal information, the very type of information exempted from disclosure pursuant to §§ 87(2)(b) and (d), and (4) Rockland Green's redactions were made narrowly and precisely, with great care and time. (Damiani Aff. ¶ 59). The instant Petition followed.

ARGUMENT

This Article 78 proceeding challenges Rockland Green's ("Respondent") careful and good-faith compliance with the Freedom of Information Law ("FOIL"), codified under Article 6 of the Public Officers Law. Respondent has long respected FOIL's important role in promoting government transparency and has consistently fulfilled its obligations under the statute since Respondent's inception in 1994. Respondent understands that compliance with FOIL is a core component of government business, undertaken with respect for the statutory process and with the recognition that transparency must be carefully balanced against the protection of information expressly exempted by law.

The request at issue involved a substantial number of documents across multiple categories, many of which contained exempt deliberative agency materials (including documents that are protected by both attorney-work product and attorney-client privileges, which are not subject to disclosure under FOIL), personal information, commercially sensitive trade secrets, and other information that is exempt from disclosure. FOIL does not simply demand disclosure. Rather, it

demands *lawful* disclosure, which requires agencies to release public records while at the same time protecting information that falls within the statute's exemptions. Respondent undertook this task responsibly and with great care, as it always does. It conducted a thorough review, disclosing all materials that could properly be released and redacting only those portions plainly within FOIL's exemptions, all in Respondent's best judgment and after careful and thorough consideration and analysis.

Because of the volume of material, several extensions of time were necessary. Those extensions were not delay tactics, as claimed by Petitioners. They were the product of Respondent's commitment to comply with FOIL responsibly by ensuring that every record was properly reviewed and exemptions applied correctly. The suggestion that Respondent "slow walked" the request is not supported by the record. To the contrary, Respondent acted promptly and diligently at every step, dedicating the time, staff, and resources required to fulfill its statutory duties.

FOIL was designed to ensure public access to records while safeguarding protected information. Respondent honored both aspects of that mandate here. It made a good-faith, reasonable effort to be transparent, while at the same time protecting exempt deliberative agency materials, personal information, commercially sensitive trade secrets, and other information that is exempt from disclosure under FOIL. The fact that Respondent devoted the effort necessary to strike that balance is not evidence of noncompliance. Rather, it is evidence of *full* compliance.

This case does not involve an agency failing to meet its obligations. It involves an agency doing what the law expressly requires and what vendors and the public are entitled to expect. For that reason, the Petition should be dismissed in its entirety.

POINT I

I. AS A PUBLIC RECORDS CUSTODIAN, RESPONDENT MAY PROPERLY WITHHOLD OR REDACT REQUESTED INFORMATION THAT MEETS CAREFULLY PRESCRIBED EXEMPTIONS FROM DISCLOSURE IN FURTHERANCE OF THE PROTECTIONS AFFORDED TO CERTAIN DOCUMENTS UNDER FOIL.

FOIL permits agencies to withhold or redact records that fall within its carefully drawn exemptions. *See* N.Y. Pub. O. § 87(2). Those exemptions are not discretionary loopholes, but statutory mandates designed to protect personal privacy, confidential business information, and the integrity of governmental deliberations. Respondent's application of those exemptions under the present circumstances was not only correct but also careful, measured, and undertaken in good faith. Its determinations are fully consistent with both the text of the statute and case law recognizing that agencies must balance the public's right to know with the equally important obligation to safeguard protected information.

A. The Committee and advisors' notes and communications are exempt from disclosure because they comprise comments, opinions or recommendations prepared to assist agency decision makers and therefore are deliberative or predecisional materials within the ambit of New York Public Officers Law § 87(2)(g).

Committee notes and advisor communications created during the review of proposals plainly fall within FOIL's exemption for inter- or intra-agency deliberative material. Section 87(2)(g) permits an agency to withhold inter-agency or intra-agency materials, or portions thereof, unless such materials consist of "statistical or factual information, instructions to staff that affect the public, final agency policy or determinations or external audits." N.Y. Pub. O. § 87(2)(g); *see also McAulay v. Board of Education*, 61 A.D.2d 1048, 1048 (2d Dept. 1978) (noting that FOIL "specifically exempts intra- and inter-agency materials which are not: statistical or factual tabulations or data; instructions to staff that affect the public; or final agency policy or

determination”). Although FOIL does not define the term ‘inter-agency materials,’ Advisory Opinions issued by the New York State Committee on Open Government (“NYCOG”) and decisions of New York courts have interpreted this exemption as applying to ‘deliberative material’, which includes “communications exchanged for discussion purposes not constituting final policy decisions,” *Russo v. Nassau County Community College*, 81 N.Y.2d 690, 699 (1993), and other “opinions, ideas, or advice exchanged as part of the consultative or deliberative process of government decision making,” *Matter of Smith v. New York State Off. of the Attorney Gen.*, 116 A.D.3d 1209, 1210-11 (3d Dept. 2014). Likewise, the term ‘inter-agency materials’ has been interpreted as including “predecisional material, prepared to assist the decision makers in arriving at [a] decision.” *Xerox Corp. v. Webster*, 65 N.Y.2d 131, 132-33 (1985) (citing *McAulay*, 61 A.D.2d 1048 at 1048). This exemption recognizes that disclosure of such materials might “impinge upon the agency’s predecisional processes...[and] affirmatively mislead the public,” *McAulay*, 61 A.D.2d 1048 at 1048, or “stifl[e] open, honest and frank communication [among agency personnel],” *Smith*, 116 A.D.3d 1209 at 1212. Accordingly, this exemption serves “to protect the deliberative process of the government by ensuring that persons in an advisory role would be able to express their opinions freely to agency decision makers.” *Xerox Corp.*, 65 N.Y.2d 131 at 132.

Here, the notes and other materials related to the RFP process are clearly exempt from disclosure under FOIL to the extent that they contain deliberative or predecisional materials, “opinions, ideas, or advice exchanged as part of the consultative or deliberative process of government decision making.” *Smith*, 116 A.D.3d 1209 at 1210-11; *see also Professional Standards Review Council of Am. v. New York State Dep’t of Health*, 193 A.D.2d 937, 940 (3d Dept. 1993) (“the subjective comments, opinions and recommendations written in by [the agency] are not required to be disclosed and may be redacted.”). These documents also include materials

that are protected by both attorney-work product and attorney-client privileges which are not subject to disclosure under FOIL.

Because these notes comprise comments, opinions or recommendations and were prepared to assist Respondent in arriving at a decision, they are deliberative or predecisional materials and fall plainly within the ambit of Public Officers Law § 87(2)(g). Respondent applied this exemption in good faith, consistent with FOIL's mandate to safeguard the integrity of governmental decision-making while still ensuring that all non-exempt materials were disclosed.

B. Respondent properly withheld intended non-public and commercially sensitive information contained within the proposals to protect the competitive position of proposers in their industry, as clearly permitted and required under FOIL's "trade secrets" exemption.

The policy underlying the trade secrets exemption under § 87(2)(d) is "to protect businesses from the deleterious consequences of disclosing confidential commercial information, so as to further the State's economic development efforts and attract business to New York." *See Encore College Bookstores v. Auxiliary Serv. Corp.*, 87 N.Y.2d 410, 420 (1995); *see also Matter of Verizon N.Y., Inc. v. New York State Pub. Serv. Commn.*, 137 A.D.3d 66, 71 (App Div 3d Dept 2016).

- i. The Request for Proposals placed an affirmative obligation on Respondent to protect proposers' confidential or trade secret information and take all lawful steps to withhold industry-sensitive information entrusted to Respondent in the proposal process.**

The RFP placed an affirmative obligation on Respondent to protect proposers' confidential and trade secret information and to take all lawful steps to withhold industry-sensitive material entrusted in the proposal process. To meet that obligation, the RFP required proposers to identify and mark materials claimed to constitute trade secrets or commercially sensitive information, and advised that such information would be fully treated as confidential third-party material permitted

by law. The RFP further provided that, in the event of a FOIL request, proposers would have an opportunity to justify nondisclosure. These provisions reflect the interplay between Respondent's obligation to safeguard confidential information and FOIL's express authorization to withhold records that qualify as trade secrets or commercially sensitive information.

Indeed, Section 87(2)(d) authorizes Respondent to deny access to records, or portions thereof, that constitute trade secrets or other commercial information that, if disclosed, would cause substantial injury to the proposers' competitive position. N.Y. Pub. O. § 87(2)(d). Although the term 'trade secret' is not defined under FOIL, New York courts have developed a two-step inquiry to determine whether specific commercial information is a bona fide trade secret worthy of protection. *See Matter of Verizon N.Y., Inc.*, 137 A.D.3d 66 at 72-73. First, the information at issue must "consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it." *New York Tel. Co. v. Public Service Com.*, 56 N.Y.2d 213, 219, n. 3 (1982). Where information meets this definition, one must discern whether the alleged trade secret is truly 'secret' by considering: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken by the business to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended by the business in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *See Matter of Verizon N.Y., Inc.*, 137 A.D.3d 66 at 72-73.

As such, § 87(2)(d) authorizes Respondent to withhold or redact records, or portions thereof, if (1) the records contain formulas, patterns, or compilations of information that gives one

an advantage over competitors, (2) the information contained therein is truly ‘secret,’ and (3) the information, if disclosed, would cause substantial injury to a proposer’s competitive position. *Id.*

Respondent, treating the submitted materials as confidential, received and stored this information through its password-protected procurement portal. Moreover, proposers identified and/or marked various materials it deemed confidential and urged that Respondent has an obligation to protect the proposers’ trade secrets and commercially sensitive information. Indeed, many of the records sought, including financial statements and supply chain information, are precisely the kind of information which is neither widely known internally or by the general public. Further, the information at issue does not appear to be readily available from another source. Such circumstances tend to indicate that the proposers customarily and actually treated this information as confidential and that it expected the same from Respondent.

While some of the information contained in the records marked as ‘confidential’ or ‘containing trade secrets’ plainly constitute trade secrets or other commercial information pursuant to § 87(2)(d), not all of the information marked as such qualifies. As such, in producing the records sought, Respondent redacted only those portions that clearly qualified and produced the remainder, all in full compliance with FOIL.

Further, although Petitioners urge that individuals submitting proposals in response to an RFP have no reasonable expectation of not having it open to the public and that the terms of a proposal are no longer competitively sensitive, such an argument misunderstands the fundamental distinction between a bid and a proposal.

New York courts have expressly recognized that procurement through an RFP invokes the government’s authority to evaluate non-price considerations in order to select the most advantageous proposal—or one that provides the most value—rather than the ‘lowest responsible

bidder.’ *In re. AAA Carting and Rubbish Removal, Inc., v. Sloatsburg*, Index No. 2940-16, 15-18 (Sup Ct, Westchester County 2017) (distinguishing between an RFP and an RFB—a Request for Bids). Given that an RFP seeks the most advantageous proposal or one that provides the most value, rather than focusing solely on price, there may be a variety of non-price considerations that involve the submission of commercially sensitive information regarding business methods, strategies, and financial matters.

Because the information redacted satisfied each element of the trade secrets exemption, reflected material that proposers customarily and consistently treated as confidential, and concerned the categories of competitively sensitive information New York courts have recognized as protected, Respondent not only acted properly in denying access to those materials but faithfully discharged both its statutory obligations under FOIL and its affirmative obligation under the procurement process to safeguard protected vendor information. In fact, if Respondent were to publicly disclose protected vendor information, it would jeopardize future procurements because contractors do not want such confidential information made available and would possibly no longer propose on Respondent’s procurements.

- ii. **Respondent acted in good faith in response to Petitioners’ FOIL request, withholding only the minimum amount of information while providing more than 3,000 pages of the requested documents consistent with the protections afforded proposers under FOIL.**

Respondent’s response to Petitioners’ FOIL request was supported at all times by good faith and a commitment to transparency within the four corners of the law. Respondent reviewed and produced a substantial body of records, totaling more than 3,000 pages, while redacting only those portions of documents that clearly fell within FOIL’s exemptions. The redactions were not

overbroad or indiscriminate. Rather, they were carefully applied to protect deliberative materials, personal information, proprietary vendor data, financial references, and trade secrets.

Here, Respondent applied redactions as narrowly as possible, expending great care and time at virtually the sole expense of Respondent, consistent with FOIL's statutory requirements. Indeed, as FOIL requires, Respondent, in making such redactions, balanced the public's right to access with the legitimate interests of businesses involved in the procurement process. *See The Matter of Catapult Learning, LLC v. New York City Dept. of Educ.*, 109 A.D.3d 731 (1st Dept. 2013) (holding that New York City Department of Education could be compelled to redact information about pricing, budget, and insurance from a petitioner's contract proposal).

Although an agency may not redact an entire page—or series of pages—merely because a part of it is exempt from disclosure, nothing within FOIL prevents an agency from doing so where an exemption encompasses the entire page or series of pages. *See* N.Y. Pub. O. § 87(2) (noting that an agency “may deny access to records or portions thereof” that fall under an exemption to disclosure under FOIL, the only limitation being whether the material is exempted). Given that FOIL permits redaction of entire paragraphs, even entire pages, so long as they qualify under an exemption and the foregoing explanation of Respondent's efforts and why the information redacted is encompassed by the personal privacy and trade secret exemptions, Respondent was justified in redacting such information, even if those redactions were extensive.

Moreover, Respondent's substantial production demonstrates the absence of any bad faith. Agencies that intend to obstruct FOIL requests produce nothing or provide records only after litigation compels them. Here, by contrast, Respondent disclosed thousands of pages voluntarily, before this proceeding was even initiated.

Respondent's conduct reflects the proper balance of FOIL demands, providing maximum legally supported disclosure, coupled with protection of exempt material. Petitioners' claim that Respondent acted improperly is plainly contradicted by the record, which shows compliance, diligence, and good faith at every stage on the part of Respondent.

C. Respondent properly recognized, and applied, the privacy exemption in withholding or redacting personal information from disclosure and properly documented the purpose of the redactions in a good faith attempt to balance FOIL's objectives.

Respondent appropriately recognized that FOIL's objectives must be balanced against the statute's protection of individual privacy. Accordingly, Respondent applied the personal privacy exemption in good faith, withholding only those categories of information that would expose individuals to unwarranted intrusions if disclosed, while otherwise producing responsive records. This careful approach aligns with § 87(2)(b), which authorizes agencies to deny access to records where disclosure would constitute an unwarranted invasion of personal privacy.

Indeed, pursuant to § 87(2)(b), Rockland Green is authorized to withhold or redact records, or portions thereof, to the extent that such information, if disclosed, would constitute an unwarranted invasion of personal privacy. N.Y. Pub. O. § 87(2)(b); *see also Matter of Data Tree, LLC v. Romaine*, 9 N.Y.3d 454, 462 (2007). While § 89(2)(b) provides a list of examples constituting an unwarranted invasion of personal privacy, that section makes clear that such a list is not exclusive. N.Y. Pub. O. § 89(2)(b). Accordingly, New York courts have extended the meaning of an unwarranted invasion of personal privacy to include the disclosure of identifying information such as names, home addresses, dates of birth, and Social Security numbers. *See Harris v. City University of New York, Baruch College*, 114 A.D.2d 805, 806 (1st Dept. 1985) (noting that withholding or redacting such information will not impede the purposes of FOIL but will protect individuals from an unwarranted invasion of personal privacy); *see also Prall v. New*

York City Dept. of Corr., 40 Misc. 3d 940, 944 (Sup. Ct., Queens Cty.. 2013) (noting that disclosure of personal information, including dates of birth and home addresses, reported to a government entity that is not relevant to that entity's ordinary work would constitute an unwarranted invasion of privacy).

Given that the records at issue contain sensitive personal information, including home addresses, personal cell phone numbers, personal e-mail addresses, dates of birth, and OSHA related information, and that the disclosure of such information would constitute an unwarranted invasion of personal privacy, Respondent was authorized to withhold or redact such records or portions thereof pursuant to § 87(2)(b). Contrary to Petitioners' arguments, these redactions were limited and targeted. Respondent carefully documented its rationale, and its application of the personal privacy exemption was fully consistent with the statute and case law.

POINT II

II. IF THE COURT IS UNWILLING TO DISMISS ALL OR A PORTION OF THE PETITION, THE MOST APPROPRIATE REMEDY WOULD BE REMAND TO RESPONDENT WITH SPECIFIC INSTRUCTIONS TO CURE ANY INFIRMITY IN THE MANNER OF REDACTION OR IDENTIFICATION.

Even if the Court were to conclude that any portion of Respondent's determinations requires further clarification, the proper remedy is remand, not compelled disclosure. Courts routinely remand FOIL disputes for refinement of justifications or additional specificity, thereby ensuring compliance while preserving statutory protections for exempt material. *See Empire Ctr. for Pub. Pol'y v. Metro. Transit Auth.*, 2021 N.Y. Misc. LEXIS 51220, *14 (Sup Ct, New York County 2021) (remanding to agency for a response that complies with the findings of an Article 78 decision); *Matter of Mazzone v New York State Dept. of Transp.*, 30 Misc. 3d 981, 985 (Sup Ct,

Albany County 2011) (remand to agency with direction to process a FOIL request in accordance with the Article 78 determination).

Remand allows the agency to cure any alleged infirmity without jeopardizing sensitive personal, commercial, or deliberative information. Here, compelled disclosure would risk releasing precisely the categories of information FOIL was enacted to protect.

Because FOIL's application is fact-sensitive, courts have developed procedures to ensure exemptions are properly applied without compromising confidentiality. Where an agency's explanations are deemed insufficient, the appropriate mechanism is an *in camera* inspection of the records at issue, not wholesale disclosure. *See M. Farbman & Sons, Inc. v. New York City Health & Hosps. Corp.*, 62 N.Y.2d 75, 83 (1984); *Gould v. New York City Police Dep't*, 89 N.Y.2d 267, 275 (1996).

Following such review, the court may then direct the agency to disclose non-exempt material while permitting redactions of exempt portions, or remand for further proceedings consistent with its findings. *See Gould*, 89 N.Y.2d at 275; *Xerox Corp.*, 65 N.Y.2d at 133. This procedure protects sensitive information, honors FOIL's exemptions, and ensures that disclosure obligations are satisfied without overstepping statutory limits.

POINT III

III. PETITIONERS ARE NOT ENTITLED TO ATTORNEY'S FEES BECAUSE RESPONDENT ACTED IN GOOD FAITH, COMPLIED WITH FOIL'S REQUIREMENTS, AND HAD A REASONABLE BASIS IN LAW FOR ITS REDACTIONS AND WITHHOLDINGS.

Petitioners' demand for attorney's fees is wholly unwarranted. FOIL permits a fee award only where a petitioner has "substantially prevailed" and the agency either lacked any reasonable

basis for its position or failed to comply with FOIL's statutory deadlines. *See* N.Y. Pub. O. § 89(4)(c). Neither element is satisfied here.

Respondent acted diligently and in good faith throughout the process. It timely acknowledged Petitioners' requests, conducted a careful review of thousands of responsive pages, and produced all non-exempt materials. Where redactions and withholdings were made, they were done so in accordance with FOIL's statutory exemptions, including § 87(2)(g) (protecting deliberative, predecisional materials), § 87(2)(d) (protecting trade secrets and confidential commercial information), and § 87(2)(b) (protecting against unwarranted invasions of personal privacy). Respondent carefully balanced transparency with the statute's clear protections for certain information.

Petitioners' attempt to reframe Respondent's good-faith, legally supported determinations as a basis for fees ignores the statutory framework. Respondent fully complied with FOIL's deadlines, cited specific exemptions, and safeguarded competitively sensitive, private, and deliberative records as the law allows.

Moreover, courts consistently decline to award attorney's fees where an agency acted on a reasonable basis in law, even if its reliance on an exemption is later narrowed or rejected. *See Norton v. Town of Islip*, 17 A.D.3d 468, 470 (2d Dep't 2005); *Matter of Lepper v. Village of Babylon*, 230 A.D.3d 582, 584 (2d Dep't 2021); *Matter of Lane v. Port Wash. Police Dist.*, 221 A.D.3d 698, 708 (2d Dep't 2023). That principle plainly applies under the present circumstances.

Respondent made substantial disclosures well before this proceeding commenced, releasing both redacted and unredacted materials. It withheld only those portions that clearly fell within FOIL's enumerated exemptions, and it did so in good faith and on the basis of a well-established body of law recognizing the protection of deliberative materials, personal privacy, and

trade secrets. Under these circumstances, there is no justification for an award of fees. To the contrary, the record establishes that Respondent not only had a reasonable basis in law for its determinations but also fulfilled its duties under FOIL exactly as the statute contemplates. Awarding fees in this context would contravene FOIL's intent by penalizing an agency for doing exactly what the law requires.

CONCLUSION

Respondent carefully and lawfully complied with FOIL by producing all responsive records and withholding only those portions expressly exempt under the statute. It devoted substantial time, effort, and resources to ensure compliance, and did so in good faith at every step. The Petition now seeks to penalize Respondent for fulfilling its statutory obligations. FOIL was designed to promote transparency while protecting sensitive information, and Respondent's actions reflect that balance just as the Legislature intended.

Accordingly, the Petition should be dismissed in its entirety. Even if the Court were to determine that additional agency consideration is warranted, the appropriate remedy would be remand, not an award of attorney's fees or costs. Under no circumstances is a fee award justified where Respondent acted reasonably, diligently, and in full compliance with the law.

Dated: August 25, 2025

White Plains, New York

Respectfully submitted,

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