



STATE OF NEW YORK
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April 19, 2023

Ms. Sarah Goff
Common Cause/New York

Re: FOIL Request #2023-0305

Dear Ms. Sarah Goff,

This is in reply to your Freedom of Information Law (FOIL) (Public Officers Law [POL], Article 6) request to the Office of the State Comptroller (OSC) dated April 17, 2023, seeking a copy contracts and all contract amendments made for Deloitte Consulting, Boston Consulting Group and Gotham Ghostwriters with the Executive Chamber as of 2019. Attached are records deemed responsive to your request: DOB01-C000460-1050000 between the New York State Division of the Budget and The Boston Consulting Group, Inc. (BCG); DOB01-C000461-1050000 between the New York State Division of the Budget and Deloitte Consulting, LLP (Deloitte); all payments associated with these contracts; and any other payments for “SOS,” “SOTS” or “State of the State” for 2022 and 2023. Please note OSC has, after a diligent search, found no records of any contracts associated with Gotham Ghostwriters.

FOIL authorizes an agency to withhold records or portions thereof that, if disclosed, would constitute an unwarranted invasion of personal privacy [POL §§87(2)(b), 89(2)]. The records retrieved in response to your request include the home addresses of certain individuals, employee names and contact information, and signatures. OSC has determined that disclosure of such information would constitute an unwarranted invasion of personal privacy and, therefore, this information has been redacted.

POL §87(2)(d) authorizes an agency to withhold records or portions thereof that “are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise.” Based on the foregoing, it has been recognized that competition in business turns on the relative costs and opportunities faced by members of the same industry, and that there is a potential windfall, not contemplated as part of FOIL’s principal aim of promoting openness in government, for competitors to whom valuable information is released under FOIL (*Encore College Bookstores, Inc. v Auxiliary Service Corp. of State University of New York at Farmingdale*, 212 A.D.2d 418, leave to appeal granted, 85 NY2d 811, affirmed as modified 87 NY2d 410[1995]).

In accordance with POL §89(5), our Office provided the Vendor associated with each contract an opportunity to substantiate the alleged proprietary nature of the material in its contract. Based on the rationale submitted by Deloitte, we concur that contract C000461 contains trade secret and proprietary information of such Vendor, which could injure its competitive position in the marketplace if disclosed. Accordingly, we have determined that the following portions of

contract C000461 are proprietary and will be withheld: proprietary methodologies, tools and assets; pricing; financial information; and information on past and present clients/customers. Further, based on the rationale submitted by BCG, we concur that contract C000460 contains trade secrets and proprietary information of such Vendor, which could injure its competitive position in the marketplace if disclosed. Accordingly, we have determined that the following portions of contract C000460 are proprietary and will be withheld: pricing rates; information regarding current and former BCG clients and references; signatures and personal contact information; staffing plans; and BCG's proprietary approach and methodology.

Lastly, we note amendments to the requested contracts were not subject to OSC review and approval; and we do not have these records. OSC recommends that any questions relating to these amendments be directed to the Division of the Budget.

If you do not agree with our determination to deny access to portions of the records retrieved in response to your request, please be advised that you have the right, within thirty days of the receipt of this letter, to appeal, in writing, to: Camille Jobin-Davis, Records Appeals Officer, Office of the State Comptroller, 110 State Street, 14th Floor, Albany, New York 12236 or via email to FOILAppeal@osc.ny.gov.

Sincerely,

Jane Hall
Records Access Officer