



Treatment of Trade Secret or Proprietary Information Submitted to OGS

One of the more useful ways to establish price reasonableness for a preferred source contract is to compare the proposed pricing to the pricing on a non-preferred source, competitively awarded contract for similar work. Such prior contracts provide a useful comparable, but the Office of General Services (“OGS”) recognizes that preferred members and corporate partners may be reluctant to submit copies of past contracts to OGS because, as a State agency, OGS is subject to the Freedom of Information Law (“FOIL”).

While OGS cannot promise not to disclose copies of past contracts, there is a procedure under FOIL by which preferred members and corporate partners may request that certain types of information they submit be exempted from disclosure under FOIL. Set out below is a brief overview of the process for requesting exemption from disclosure.

- The exemption from disclosure applies only to trade secrets or information obtained from a commercial enterprise where disclosure of the information would cause substantial injury to the competitive position of the enterprise.
- The preferred member or corporate partner seeking an exemption from disclosure of any information under the Freedom of Information Law must request the exemption in writing, setting forth the reasons for the claimed exemption.
- The preferred member or corporate partner must clearly identify the portions of the records for which the exemption is sought. Pricing information can usually be withheld from disclosure if its release would legitimately harm the competitive position of the preferred member or corporate partner. But requests for the exemption of entire documents have generally not been found to be reasonable and are discouraged.
- The request for exemption does not guarantee that the information will not be disclosed. If OGS receives a FOIL request and the information submitted by a preferred member or corporate partner falls within the description of the records requested, OGS has a statutory obligation to make a reasoned determination as to whether to withhold the information from disclosure under FOIL.
- The preferred member or corporate partner will have an opportunity to submit a written statement on the necessity for continuing the exemption from disclosure and will have the right to appeal a decision by OGS to deny the exemption prior to any release of the information that the preferred member or corporate partner has requested be exempted from disclosure.
- Details of the process for requesting an exemption for trade secrets or proprietary information are set forth in Public Officers Law §89(5).