

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Wednesday, March 23, 2022 2:29 PM
To: 'FOIL@osc.ny.gov'
Subject: FOIL REQUEST: Comptroller DiNapoli's "independent audits" of "internal controls" pursuant to Executive Law §954

TO: Comptroller DiNapoli's Records Access Officer Jane Hall

Pursuant to FOIL [Public Officers Law Article VI], this is to request:

- (1) a FOIL-conforming pdf of the [October 8, 2014 "technical proposal" submitted by Toski](#) in response to the [Comptroller's September 10, 2014 RFP 14-12](#) for "independent certified public accountants" to conduct the internal controls audit required by [Executive Law §954](#).

The Comptroller's September 10, 2014 RFP expressly stated, at section 5.8 entitled "Freedom of Information Law":

"All proposals shall become the property of OSC and may be disclosed or used by OSC to the extent permitted by law. OSC may disclose a proposal to any person for the purpose of assisting in evaluating the proposal or for any other lawful purpose. All proposals will become State agency records, which will be available to the public in accordance with the Freedom of Information Law. **Any portion of the proposal that a Proposer believes constitutes proprietary information entitled to confidential handling, as an exception to the Freedom of Information Law, must be clearly and specifically designated in the proposal.** If OSC agrees with the proprietary claim, the designated portion of the proposal will be withheld from public disclosure. Blanket assertions of proprietary material will not be accepted, and failure to specifically designate proprietary material will be deemed a waiver of any right to confidential handling of such material. OSC's determination of whether the Proposer's claim of proprietary status of the designated information should be granted will be predicated in large measure upon the Proposer's written statement of the necessity for the exemption. Therefore, while not required, Proposers are advised to submit their written statements of the necessity for the claimed proprietary information exceptions at the time of the submission of their proposals." (bold in the original).

It further stated, at Section 6.1 entitled "Administrative Proposal", under its subsection F entitled "Freedom of Information Law – Proposal Redactions":

"Proposers must clearly and specifically identify any portion of the proposal that a Proposer believes constitutes proprietary information entitled to confidential handling as an exception to the Freedom of Information Law. While not required, Proposers are advised to submit their written statements of the necessity for the claimed proprietary

information exceptions at the time of submission of their proposals. **See Section 5.8 (Freedom of Information Law).** (bold in the original)

[Toski's October 8, 2014 "administrative proposal"](#) stated as follows under the heading "FREEDOM OF INFORMATION LAW" (last page/p. 24):

"We believe that the following information should be protected from disclosure under New York State's Freedom of Information Law:

- References -- Pages 10-12 of the technical proposal
- Background and qualifications of personnel -- Appendix A of the technical proposal
- Partial listing of clients -- Appendix B of the technical proposal

Due to the competitive nature of the accounting profession, our firm believes that it is in the best interest of the firm not have this information available for public inspection."

There was NO reason for the Comptroller to have accepted such request, as the "competitive nature of the accounting profession" was NOT manifested by responses the Comptroller received to its RFP – where [only one other firm put in a proposal, Nawrocki Smith](#) – which it thereafter ["withdrew from consideration"](#). In any event, the Comptroller's redactions went beyond those Toski had requested – such as at pages 5-8 – which presumably blacked out the same information that Toski had provided by its [June 6, 2013 proposal to the Assembly](#) in response to the [Assembly's May 15, 2013 RFP](#), and which Toski provided again to the Assembly, by its [May 6, 2019 proposal](#), in response to the [Assembly's April 8, 2019 RFP](#) – which the Assembly did not redact in response to my FOIL requests. Moreover, when, [on January 26, 2018, Toski – now known as EFPR Group -- submitted its administrative proposal to the Division of Budget](#) to do its "internal controls audit", it answered NO (at p. 28) on the "FORM 10: FREEDOM OF INFORMATION LAW REDACTION REQUEST", which read:

"The Proposer should indicate below if there is specific information in a Proposer's proposal that a Proposer claims to be proprietary and/or trade secret information that meets the definition set forth in Section 87(2)(d), the Proposer should provide a letter in its Administrative Proposal outlining any specific concerns regarding disclosure under the New York State Freedom of Information Law (Article 6 of the Public Officers Law). Is the Proposer submitting a Freedom of Information Law Redaction request? If Yes, Proposer should include the specific details of its request as part of the Proposer's Administrative Proposal."

Suffice to note that the SAME "Freedom of Information Law" language that was in the Comptroller's September 10, 2014 RFP would be repeated in the [Comptroller's July 18,](#)

[2019 RFP](#) – and the [August 22, 2019 proposal submitted by Mitchell Titus](#) that you sent me was redacted only to withhold taxpayer identification numbers and the like.

- (2) The “related management letters” pertaining to [Mitchell Titus’ March 22, 2021 “Independent Accountant’s Report”](#) comparable to the four you furnished in connection with [Toski’s September 8, 2015 “Independent Accountants’ Report”](#):

[Comptroller's September 8, 2015 letter to Toski,
pertaining to the Division of Contracts & Expenditures,
signed by Deputy Comptroller](#)

[Comptroller's September 8, 2015 letter to Toski,
pertaining to the Division of Payroll, Accounting and Revenue Services,
signed by Deputy Comptroller](#)

[Comptroller's September 8, 2015 letter to Toski,
pertaining to the Division of Retirement Services,
signed by Asst. Comptroller](#)

[Comptroller's September 9, 2015 letter to Toski,
pertaining to the Division of Pension, Investment and Cash Management,
signed by Deputy Comptroller & CIO Vicki Fuller](#)

- (3) any further “related management letters” for Toski’s September 8, 2015 “Independent Accountants’ Report” and for Mitchell Titus’ March 22, 2021 “Independent Accountant’s Report”, such as from or pertaining to the Comptroller’s Office of Inspector General;
- (4) all “related management letters” for [Toski’s May 26, 2011 “Independent Accountant’s Report”](#) and, specifically, from or pertaining to the Comptroller’s Office of Inspector General;
- (5) the signed/approved contracts retaining Toski for the independent audit of internal controls that culminated in its September 8, 2015 “Independent Accountants’ Report” and retaining Mitchell Titus for the independent audit of internal controls that culminated in its March 22, 2021 “Independent Accountant’s Report”.

Pursuant to Public Officers Law §89.3, your response is required “within five business days” of your receipt of this request.

Thank you.

Elena Sassower, Director
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