

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 19-197

Electric and Natural Gas Utilities

Development of a Statewide, Multi-Use Online Energy Data Platform

Procedural Order Re: Response to Motion for Confidential Treatment

On October 31, 2023, the Data Platform Governance Council (GC) filed a motion requesting confidential treatment of the evaluation matrix used to select the winning bidder to assist with the NH Utility back office integration that was filed May 19, 2023, and the identity of the unsuccessful bidder and their bid amount for assistance with a Grid Resilience and Innovation Partnerships (GRIP) grant proposal, which the Council presented to the Commission on October 12, 2023.

The New Hampshire Supreme Court has interpreted the exemption for confidential, commercial, or financial information to require an "analysis of both whether the information sought is confidential, commercial, or financial information, and whether disclosure would constitute an invasion of privacy." *Union Leader Corp. v. NH Housing Fin. Auth.*, 142 N.H. 540, 552 (1997) (quotations omitted). "Furthermore, the asserted private confidential, commercial, or financial interest must be balanced against the public's interest in disclosure, since these categorical exemptions mean not that the information is per se exempt, but rather that it is sufficiently private that it must be balanced against the public's interest in disclosure." *Id.* at 553 (citation omitted). The burden of proving that the information is confidential and private rests with the party seeking non-disclosure. See *Goode v. NH Legislative Budget Assistant*, 148 N.H. 551, 555 (2002).

RSA 91-A:5(1V) expressly exempts from public disclosure requirements any "records pertaining to ... confidential, commercial or financial information ... " In furtherance of the Right-to-Know law, the Commission's rule on requests for confidential

treatment, Puc 203.08, is designed to facilitate the balancing test required by the relevant case law. The rule requires petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public. Puc 203.08(b).

The Supreme Court has stated that the determination of whether information is confidential or private must be made "objectively, and not based on the subjective expectations of the party generating it." *Union Leader Corp. v. NH. Housing Fin. Auth.*, 142 N.H. at 553. Moreover, the Court has found instructive the federal test for confidential information under which "the party resisting disclosure must prove that disclosure is likely to: (1) impair the State's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained." *Id.* at 554 (quotation and brackets omitted).

In this case the GC seeks protection for information about the evaluation matrix it used to select the winning bidder to assist with the NH Utility back office integration, the identity of the unsuccessful bidder, and their bid amount, for assistance with the GRIP proposal. According to the GC there are privacy interests in the evaluation matrix and in the identity and bid amount of the unsuccessful bidder. The evaluation matrix describes how the GC considered and weighed components of the 4 bids, an approach that the GC may follow in assessing responses to the future data platform RFP. Disclosure could impair the competitiveness of that future RFP. Furthermore, the unsuccessful bidder for the GRIP proposal has a privacy and competitive interest in protecting its identity and its bid amount.

We find that there are valid privacy interests in the evaluation matrix and the identity and bid amount of the unsuccessful bidder. Therefore, both the evaluation matrix and the identity and bid amount of the unsuccessful bidder is protected by RSA 91-A:5(IV). We also find that there may be a public interest in disclosure of this information as it does lend insight on the inner working of the GC.

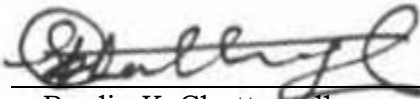
When the public's right to know in this case is balanced against the privacy interest at stake, the balance favors protection of the information. Disclosure could cause substantial competitive harm to the unsuccessful bidder. Furthermore, the evaluation matrix could be used in further RFP processes and therefore, the GC has a significant interest in protecting this information and in guarantying the overall robustness of future bid selections.

We therefore grant the GC's motion for confidential treatment of this information.

So ordered, this seventeenth day of November, 2023.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner

Service List - Docket Related

Docket#: 19-197

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