

Todd Fitzsimmons

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May 9, 2026

FOIL Appeals Officer

Onondaga County
Civic Center, 10th Floor
421 Montgomery Street
Syracuse, NY 13202

Re: Administrative Appeal — FOIL Request F000165-032026 (Oak Orchard Industrial Treatment Plant Design-Build RFQ)

Dear FOIL Appeals Officer:

Pursuant to New York Public Officers Law § 89(4)(a), I respectfully appeal the May 6, 2026 denial of FOIL Request F000165-032026, issued by the Onondaga County FOIL Office (Judy Fougner, Executive Secretary and Assistant FOIL RAO). Copies of the original request and the denial letter are attached.

The denial relies on Public Officers Law §§ 87(2)(c) and 87(2)(d). Neither provision supports the categorical denial of the records I requested.

I. The records requested were narrowly scoped to non-proprietary information.

My March 20, 2026 request sought three discrete categories of records: (1) the list of firms that submitted Statements of Qualifications in response to the Oak Orchard Industrial Treatment Plant design-build RFQ that closed on or about September 26, 2025; (2) any shortlist of firms selected for further consideration; and (3) any scoring sheets or evaluation matrices used to evaluate respondents.

The request expressly stated: “I am not requesting proprietary technical or pricing information submitted by respondents. I am requesting only the identity of firms that responded and any shortlist resulting from the county’s review.”

The denial does not engage with this limitation. It treats the request as if it sought proprietary content. It does not.

II. Section 87(2)(c) does not support denial of bidder identities.

Section 87(2)(c) permits denial of records that “if disclosed would impair present or imminent contract awards.” The County asserts that the contract has “not yet been fully executed.” That is the converse of the statutory standard. Section 87(2)(c) requires a contract award that is imminent, not one whose timing remains undefined.

Beyond the threshold question, the Committee on Open Government has consistently held that bidder identities on a public works procurement do not, standing alone, fall within § 87(2)(c)’s protection.

Bidder identities become public at the time bids are opened or at the conclusion of the qualifications phase, and pre-disclosure of those identities does not impair the integrity of the contract award. The County has articulated no specific way in which disclosure of names — as distinct from proposals, pricing, or evaluation methodology — would impair an award that has not yet occurred.

III. Section 87(2)(d) does not support denial of bidder identities.

Section 87(2)(d) protects records whose disclosure “would cause substantial injury to the competitive position of the subject enterprise.” This provision protects the bidder, not the procuring agency, and it protects commercially sensitive content, not the bare fact that a firm has submitted a qualifications statement.

There is no plausible argument that disclosing the names of firms that responded to a publicly-advertised RFQ for a \$550 million publicly-funded wastewater treatment plant would substantially injure those firms’ competitive positions. The firms chose to compete for a public contract. Their participation in that competition is not a trade secret.

IV. Section 89(3) requires partial disclosure where full denial is unwarranted.

Even if the County believed some portion of the requested records contained content protected under § 87(2)(d) — a position the request’s narrow scope already forecloses — § 89(3) requires the County to redact the protected content and produce the remainder. Categorical denial of a request that expressly excludes proprietary content is overbroad on its face.

V. Public interest considerations weigh strongly toward disclosure.

The Oak Orchard Industrial Treatment Plant is a publicly-financed facility intended to treat wastewater discharged by Micron Technology, Inc. into the Oneida River, approximately 1.5 miles upstream of municipal drinking water intakes serving more than 500,000 Central New York residents. The Onondaga County Legislature is currently considering bond authorization for the project. The identity of firms competing to design and build the facility is a matter of substantial public interest.

The Committee on Open Government has long recognized that public interest weighs in the FOIL balancing analysis. Disclosure of bidder identities on a major public works contract serves the basic FOIL purpose of allowing the public to monitor the conduct of government.

VI. Relief requested.

I respectfully request that the Appeals Officer:

1. Reverse the May 6, 2026 denial in full;
2. Direct the FOIL Office to produce the records requested in items 1 and 2 of the original request (firm identities and any shortlist) without redaction;
3. Direct the FOIL Office to produce the records requested in item 3 (evaluation materials) with any legitimately exempt content redacted under § 89(3) and a written statement of the specific statutory basis for each redaction; and
4. Issue a written determination within 10 business days as required by § 89(4)(a).

Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "L. Todd Fitzsimmons", with a long horizontal flourish extending to the right.

Todd Fitzsimmons

Founder, ForeverChemicals NY

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Attachments: (1) Original FOIL Request dated March 20, 2026; (2) Denial Letter dated May 6, 2026