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Sent via E-mail

Tara Ronimous
Missouri Department of Revenue
301 West High Street, Room 218
P.O. Box 87
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Re: Formal Protest to RFPSDOR240110, South Springfield License Office

Protesting Party:	CGB Holdings LLC 722 W. Olive Street, Suite B Springfield, MO 65806
Point of Contact:	Crystal Webster 417.849.8834
Attorney:	Alexander C. Barrett Stinson LLP 230 W. McCarty Street Jefferson City, MO 65101 573.556.3601

Ms. Ronimous:

CGB Holdings LLC ("CGB") protests the award of the contract for RFPSDOR240110 (the "RFP") to BCFO Titleworks, Inc. ("BCFO") pursuant to 1 CSR 40-1.050(12) and Special Delegation of Authority 537 (SDA537). As this firm represents CGB, please arrange any contact with it regarding this protest through us.

There were several errors in DOR's award of the contract to BCFO. First, DOR improperly declined to award 21 points to CGB based on the fact that a page was missing from CGB's proposal due to a scanning error. There is no conceivable reason why CGB, or any other vendor, would intentionally fail to submit the page in question. Further, CGB's proposal as a whole made clear that CGB was attempting to earn the evaluation points related to the matters on the missing page. The omission of that page was a facially apparent clerical error. As such, DOR was required—by Section 8.a of the RFP's Terms and Conditions—to contact CGB and request clarification from CGB as to whether it intended to omit the page in question. Had DOR done so, CGB would have clarified that the omission was a mistake and submitted the missing page. The information on that page would have resulted in CGB being awarded an additional 21 evaluation points, which would have made CGB the top-ranked proposal.

Second, DOR improperly calculated BCFO's score for inventory control experience in Section B-6B of Exhibit A. The evaluation report states DOR verified BCFO had lost $15.75 in inventory during the last two state audits, resulting in a score of 5 points (corresponding with lost inventory of less than $75). That figure appears to be facially erroneous, based on DOR's publicly available data, which do not show $15.75 in inventory losses at BCFO's license offices and instead show $20.25 in inventory losses at the Nixa office.

More important, however, DOR should have charged BCFO with responsibility for the inventory losses of its parent company, Breast Cancer Foundation of the Ozarks (the "Foundation"). BCFO is a wholly owned subsidiary of the Foundation. As the Foundation's CEO admitted in recent litigation with DOR, the Foundation formed BCFO as a for-profit arm of the Foundation so the Foundation could continue operating license offices without jeopardizing its tax-exempt status. Until a few months ago, the Foundation held the contracts for the Joplin and Glenstone license offices. It still holds the contract for the Republic office. But, as the Foundation's CEO acknowledged, the Foundation transferred actual operation of its license offices to BCFO employees several years ago. BCFO should be held responsible for inventory losses experienced at Joplin, Glenstone, and Republic while BCFO employees were operating those offices. Had DOR done this, BCFO would have received zero points rather than 5 points in Section B-6B.

CGB respectfully requests that DOR sustain its bid protest, rescind the award to BCFO, and award the contract for operation of the South Springfield license office to CGB. In the alternative, DOR should sustain the protest and re-bid the contract.

Failure to Contact CGB Regarding a Clerical Error in Its Proposal

Section 8.a of the RFP's Terms and Conditions addresses clerical errors. It provides that "[a]ny clerical error, apparent on its face, may be corrected by the buyer before the contract award. Upon discovering an apparent clerical error, the buyer **shall** contact the vendor and request clarification of the intended proposal. The correction **shall** be incorporated in the notice of award. Ex. A, RFP at 41 (emphasis added). In short, when DOR discovers an apparent clerical error, it is obligated to contact the vendor to inquire about and correct the issue. That did not happen here.

The proposal CGB submitted through Missouri Buys was missing a critical page – page 51 of the RFP (part of Exhibit A). *See* Ex. B, CGB Proposal at 6-7. That page contained a series of checkboxes from which vendors were to select various options that would result in the award of points. Ex. A at 51. The omission of a critical page from a proposal is a clerical error. *See Black's Law Dictionary* (10th ed.) at 659 ("An error resulting from a minor mistake or inadvertence and not from judicial reasoning or determination . . . . Among the numberless possible examples of clerical errors are omitting an appendix from a document . . . .”).

The omission of page 51 resulted from a scanning error. When CGB’s principal, Crystal Webster, submitted CGB’s proposal, she printed the RFP out, compiled the relevant pages, signed the proposal, and then scanned the packet. Ex. C, Webster Affidavit ¶ 11. During the scanning process, pages 50 and 51 stuck together, resulting in page 51 being omitted from the PDF that Ms. Webster uploaded to Missouri Buys. *Id.* ¶¶ 13-14.

CGB has documentation reflecting what its complete proposal looked like (including how CGB filled out page 51) prior to submitting the proposal to DOR. Attached as Exhibit D is the copy of the PDF that CGB submitted to DOR (missing page 51) as it exists on CGB’s computer. Attached as Exhibit E is a copy of the complete RFP as CGB filled it out (including the completed page 51) prior to printing it for signature, as it exists on CGB’s computer. The metadata for these two files on CGB’s computer system reflect that Exhibit E was last modified on October 29, 2023 and that Exhibit D was last modified on October 31, 2023. Ex. C ¶ 10. As Missouri Buys will reflect, CGB submitted its proposal on October 31, 2023. Screen shots reflecting the metadata on Exhibits D and E are provided here:

Exhibit D

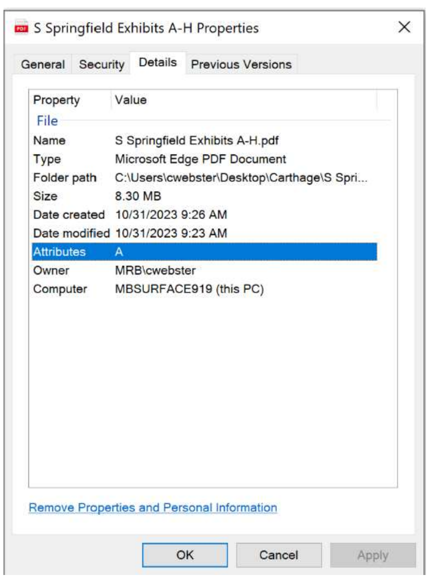
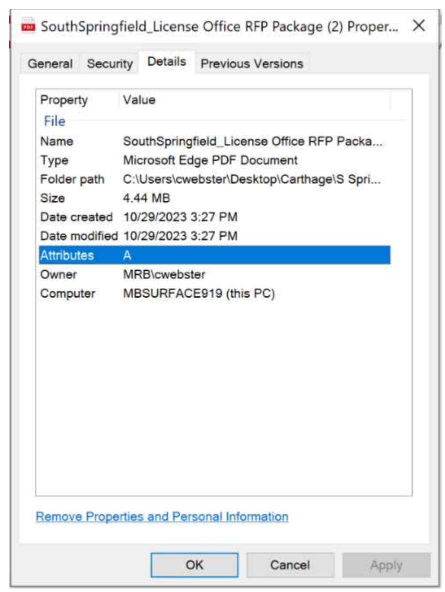


Exhibit E



This error was also apparent from the face of CGB’s proposal. First, the RFP page numbers were reprinted in the top right corner of CGB’s proposal. CGB’s proposal jumps from page 50 to 52. Ex. B at 6-7. As noted above, page 51 was a series of checkboxes that determined point awards. As DOR is unquestionably aware, scoring on RFPs is always close and license office contracts are highly prized and contested. There is no conceivable reason why CGB or any other vendor would intentionally fail to fill out and include page 51 in its proposal. In total—assuming a vendor selected all options worth the maximum number of points—page 51 represents 21 available points, or 11% of the points available. There is simply no way to win a license office contract without picking up some or all of those points. Indeed, every other responsive vendor in this procurement simply selected every option worth the most points, and received them. That is precisely what CGB did as well. Ex. E at 51.

Anyone reviewing CGB's proposal (*i.e.*, DOR's evaluators) could not fail to miss this omission. DOR plainly *did* notice the omission, since it awarded CGB zero points in every category contained on page 51.

Second, CGB's proposal makes clear that CGB was attempting to respond to, and receive points for, the categories on page 51 of the RFP. Section B-6D of Exhibit A spanned pages 50 and 51 of the RFP. *See* Ex. A at 50-51. The portion of Section B-6D on page 50 concerns the number of DL and MV transactions the proposed CLOM has processed. *Id.* at 50. DOR scores that portion of Section B-6D by verifying the proposed CLOM's experience from its records. *Id.* Nonetheless, when Ms. Webster printed out page 50 of the RFP, she circled the experience levels that corresponded with the experience of CGB's proposed CLOM. Ex. B at 6. This makes clear that CGB intended to fill out and receive points in Section B-6D, which (again) spans pages 50 and 51. DOR's evaluators would have reviewed page 50 and seen the circled bullet points.

Further, CGB always includes a supplemental information packet with its proposals, which contains information DOR can use to verify the representations in CGB's proposal. Attached as Exhibit F is a copy of the supplemental information packet (entitled "CGB Holdings LLC Officer and Entity Supporting Documentation") CGB submitted through Missouri Buys on October 31, 2023. Although the copy of CGB's proposal currently available on Missouri Buys does not include that supplemental information packet, CGB undoubtedly submitted it and it was available to DOR. Attached as Exhibit G is a confirmation receipt from Missouri Buys showing that CGB uploaded this document with its proposal.

The second part of Section B-6D of Attachment A (which appeared on page 51) asked for information concerning the experience of the proposed CLOM with various office software. Ex. A at 51. CGB selected options on page 51 worth two points. Ex. E at 51. While that selection did not appear in the uploaded version of CGB's proposal due to the aforementioned scanning error, the supplemental information packet CGB submitted contained a letter from the proposed CLOM (Cory Truster) identifying her experience with office software. Ex. F at 6. The only reason for CGB to have submitted this letter was to bolster its request for points in the second portion of B-6D, which appeared on page 51. The inclusion of this letter further illustrates that CGB did not intentionally omit page 51 from its submitted proposal and underscores that its omission was a facially apparent clerical error.

For all these reasons, the omission of page 51 from CGB's submitted proposal was a clerical error caused by a scanner malfunction. That error was facially apparent and DOR was thus obligated under Section 8.a of the Terms and Conditions to contact CGB to clarify CGB's intent. Had it done so, CGB would have confirmed the scanning error and would have submitted the completed page 51. As Exhibit E to this protest demonstrates, CGB selected options on page 51 that would have resulted in CGB being awarded an additional 21 evaluation points. Because BCFO's total score was 175 points and CGB's total score was 155.10 points, these additional 21 points would have resulted in CGB being the highest score (and thus the winner) by 1.10 points.

Because DOR was obligated to contact CGB to clarify this facially apparent clerical error but did not do so, DOR's award was contrary to the terms of the RFP and thus void. *See* § 34.042.3, RSMo (contracts must be awarded according to criteria and terms in RFP) and § 34.150, RSMo (contracts awarded contrary to statute are void). DOR should rescind the award to BCFO and award the contract for South Springfield to CGB. Alternatively, DOR should rescind the award and re-bid.

Improper Calculation of BCFO's Inventory Experience

Section B-6B of Exhibit A to the RFP offers up to 8 points based on the amount of inventory a vendor has lost. The instructions say DOR will "award points based on the Vendor's License Office(s) assessed charges for missing inventory in the aggregate, at any License Office based on the two (2) most recent state agency-conducted inventory audits." The phrase "Vendor's License Office(s)" is not defined and no other information is provided.

BCFO received 5 evaluation points based on DOR's determination that BCFO had lost $15.75 in inventory. Ex. H, Eval Report at 114. It is unclear how DOR made this determination, as the evaluation report does not identify which license offices it looked at, when they were audited, or how much inventory was documented as having been lost. It is impossible for CGB, or anyone else, to verify DOR's calculations without this information. DOR's publicly available data (which apparently cut off in August 2023) does not reflect that BCFO had $15.75 in lost inventory.[1] There *is* an undated entry concerning the Nixa license office reflecting $20.25 in losses.

DOR's practice of "verifying" information based on its records is arbitrary and capricious. This information is not publicly available and vendors have no way to review the data to confirm whether DOR has correctly calculated scores. The arbitrariness is exacerbated by DOR's failure to even include a worksheet with the evaluation report explaining how it reached its calculations concerning inventory losses and CLOM experience for each vendor. We are unaware of any other procurement where the State purports to award evaluation points based on its own data—rather than the contents of a bid/proposal—and does not provide that data to the vendors and the public so they can determine whether the evaluation was done correctly.

Regardless, it appears that DOR reached its calculations concerning BCFO's inventory losses by considering only those contracts currently held in the name of BCFO (Nixa and Ozark), rather than inventory losses at license offices that were or are operated by BCFO's parent, the Foundation. This was improper. The purpose of DOR considering inventory loss is to ensure that

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[1] FY22-FY23-Inventory-Charges.xlsx (live.com)

it is working with vendors who are able to maintain and keep track of the State's property. As DOR is well aware, based on its participation in recent litigation with BCFO, BCFO is simply a wholly owned, for-profit continuation of the Foundation. The Foundation has been bidding on license offices through BCFO solely for tax reasons. Its sworn testimony makes clear that BCFO ultimately reports back to the Foundation. That testimony also makes clear that BCFO employees have been running the Foundation's license office in Republic and were running its license offices in Joplin and Glenstone before the Foundation lost those contracts. Under these circumstances, the Foundation and BCFO should not be permitted to use corporate structuring to avoid responsibility for inventory losses.

As DOR will recall, BCFO and the Foundation jointly sued DOR to enjoin the transition of the Joplin license office to CGB (and later attempted the same with Glenstone). The Foundation sought and obtained a restraining order allowing it to continue running the Joplin license office, even though it was technically BCFO that submitted the bid to run that office going forward. In their verified Amended Petition, the Foundation and BCFO acknowledged the Foundation had formed BCFO as a for-profit company for tax purposes and that the Foundation simply "re-bid the contracts through a new for-profit company." Ex. I, Amended Petition at 4 (¶¶ 25-26).

During that lawsuit, the Foundation's CEO, Joe Daues, was deposed as the representative for both the Foundation and BCFO. Ex. J, Depo. Excerpts at 8. He acknowledged that BCFO is a wholly owned subsidiary of the Foundation and that BCFO "reports directly to BCFO, or the Breast Cancer Foundation of the Ozarks." *Id.* at 6. BCFO was formed to insulate the Foundation from adverse tax consequences. *Id.* at 10-11. When asked whether BCFO or the Foundation was operating the Joplin and Glenstone offices, Mr. Daues explained that "[t]wo years ago we transferred over the actual business part of that to . . . BCFO Titleworks employees, but being a wholly owned subsidiary, they still are essentially BCFO." *Id.* at 27. And, when asked to clarify that the Foundation had not bid on the Joplin and Glenstone contracts, Mr. Daues stated the Foundation **had** bid on those contracts "through BCFO Titleworks." *Id.* Similarly, when asked to acknowledge that if BCFO had been awarded the contract, the Foundation would no longer be the operator, Mr. Daues stated that with the Foundation "being the sole shareholder of BCFO Titleworks, Inc., essentially it would" be the operator. *Id.* at 28.

Mr. Daues' testimony makes clear that there is no real distinction between the Foundation and BCFO Titleworks. The latter is simply a for-profit subsidiary that the Foundation uses to bid on contracts for tax reasons. His testimony demonstrates that the Foundation views BCFO Titleworks as a mere extension of the Foundation. It also demonstrates that even if a contract was or is held in the name of the Foundation, it is actually BCFO Titleworks staff performing day-to-day business operations.

Under these circumstances, there is no basis or reason to distinguish between the Foundation and BCFO for purposes of calculating inventory losses. Because BCFO staff were/are running license offices held in the Foundation's name, BCFO (and its staff) should be held responsible for inventory loss at the Foundation's license offices. Any other treatment elevates form over substance.

Had DOR charged BCFO with inventory losses under the Foundation's contracts, BCFO would have received zero points rather than 5 points in Section B-6B. A vendor would earn zero points if it had more than $175 in inventory loss at its license offices during the last two audits. Ex. H at 114. The Foundation still holds the contract for the Republic license office (which, according to Mr. Daues' testimony) is actually operated by BCFO staff. According to DOR's last reported data, BCFO staff lost $91.25 in inventory during the June 20, 2023 audit.[2] If there has been a subsequent audit at that office, the figure may be even higher. The last reported audit of the Glenstone office while BCFO staff was operating it (March 23, 2023) reported losses of $54.75. This, together with the $20.25 in losses documented at the Nixa office, amounts to $166.25.

We note, however, that DOR's publicly available spreadsheet does not reflect inventory losses at Joplin and Glenstone when those offices were transitioned to CGB. As part of the transition—which occurred in July and August 2023—DOR verified inventory at those offices before CGB assumed the contract. It is CGB's understanding that DOR would have documented additional losses, which should be attributed to BCFO. Factoring in those additional losses would put BCFO at more than $175 in inventory loss.

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For all these reasons, DOR's award of the contract for the South Springfield License Office to BCFO was erroneous. DOR should rescind the award and award the contract and award it to CGB. In the alternative, DOR should rescind the award and re-bid the contract.

Best Regards,

Stinson LLP

Alexander Barrett

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[2] FY22-FY23-Inventory-Charges.xlsx (live.com)