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August 29, 2023

Vendor: Semo Tags, LLC  
1515 E. Malone Avenue  
Sikeston, MO 63801

Point of Contact: Terry Cole  
(573) 380-4113

Attorney: Alexander C. Barrett  
Stinson LLP  
230 W. McCarty Street  
Jefferson City, MO 65101  
(573) 556-3601

Re: Cape Girardeau License Office, Protest of Award for RFPSDOR230072

Dear Mr. Barrett,

The Department of Revenue ("Department") received your protest letter dated June 20, 2023, on behalf of Semo Tags, LLC ("Semo"), challenging the above-referenced award to Mineral Area License Offices LLC ("Mineral"). The Department has reviewed your protest pursuant to the authority granted by the Special Delegation of Authority ("SDA537"), executed with the Office of Administration, Division of Purchasing (the "Division"), on December 1, 2021, as well as 1 CSR 40-1.050(12), and considered the information and arguments presented therein. After having done so, the Department denies Semo's protest. Pursuant to SDA537 and 1 CSR 40-1.050(12), the Department will take no further action.

#### **Findings of Fact**

- 1) On April 11, 2023, in accordance with SDA537, the Department issued RFPSDOR230072 for the Cape Girardeau License Office ("CGLO"), a request for proposal ("RFP") to provide license office services in and around Cape Girardeau, Missouri;

- 2) On April 24, 2023, the CGLO RFP closed;
- 3) Semo and Mineral, among others, submitted proposals for the CGLO RFP;
- 4) On June 6, 2023, after evaluation, the CGLO RFP was awarded to Mineral with a total score of 170.92 points, and Semo came in second place with a total score of 169.22 points;
- 5) On June 20, 2023, Semo through counsel Alexander Barrett, filed a timely protest alleging the following:

Point I: Mineral and MCLB Management Company, LLC (“MCLB”) have engaged in improper bid manipulation based on collusion between Mineral and MCLB.

Point II: Section B-6B gave improper preferential treatment to Mineral.

Point III: Semo should have received 20 points in section A-3, rather than 15 points.

### Analysis

#### **Point I: Mineral and MCLB Management Company, LLC (“MCLB”) have engaged in improper bid manipulation based on collusion between Mineral and MCLB.**

Semo first raises objections alleging Mineral used improper bidding tactics to receive the awarded contract.

Mineral and MCLB each have two similar members, however, three separate members are unique to each limited liability company. Further, each entity is guided by different interests under the direction of the separate members. There is no evidence of collusion between Mineral and MCLB that would have been unfair to the other vendors. Nothing in the RFP guidelines or rules prohibit similar entity owners bidding for the same contract. Similarly, neither Missouri law, nor applicable federal law prohibit two entities with correlating owners from submitting proposals for a RFP. Semo offers no authority to the contrary.

Semo further alleges Mineral manipulated the bids through “forming a different LLC”, and hypothesizes, “this makes it extremely easy for vendors to avoid any point loss by simply spinning up a new LLC every time they bid.” Mineral has been in business since April of 2021, operating the Farmington, Missouri license office since May of 2022. Semo’s assertion fails to establish any form of bid manipulation. The bid process is decided through the set point system and does not offer an advantage to one bidder or another. Sections 34.042.3 and 34.010.2, RSMo, plainly combine to permit the consideration of any factors deemed relevant by the State in determining the “lowest and best” bidder, so long as those factors are identified as “evaluation criteria” in a request for proposal and are not otherwise expressly prohibited from consideration by statute. *Lee's Summit License, LLC v. Off. of Admin.*, 486 S.W.3d 409, 421 (Mo. Ct. App. 2016).

Mineral has not committed “collusion” nor has any “bid rigging” been shown by Semo. Mineral and MCLB have not violated any of the rules set forth in the RFP, nor law. The scoring criteria at issue are relevant to determining the winning proposal, are not expressly prohibited from consideration by statute, and are clearly identified within the solicitation documents.

Point I of Semo’s protest is denied.

**Point II: Section B-6B gave improper preferential treatment to Mineral.**

Semo’s second argument asserts Exhibit A Section B-6B – Contract License Office Manager Experience – Inventory Control gave preferential treatment to Mineral. Mineral has not received preferential treatment.

Inventory management and control is an important duty assigned to the license offices and its evaluation is relevant to determining the lowest and best proposal. Pursuant 1 CSR 40-1.050(10)(G), “In addition to cost, subjective and any other criteria deemed in the best interest of the state may be utilized in the evaluation of bids/proposals provided that the criteria are published in the solicitation document.” Similarly, 1 CSR 40-1.050(16) provides “[f]or solicitations using weighted criteria evaluations, the evaluation criteria and point assessment assigned to each criterion, as well as the award process, will be specified in the solicitation documents.”

The Department has determined that the vendor’s prior inventory control experience and transaction volume for Contract License Office Managers are relevant criteria to determining which submitted proposal would best serve the interest of the state in the evaluation of proposals.

Section 32.042, RSMo, states:

The contract shall be let to the lowest and best offeror as determined by the evaluation criteria established in the request for proposal and any subsequent negotiations conducted pursuant to this subsection...

Section 34.010.2, RSMo, states:

The term "lowest and best" in determining the lowest and best award, cost, and other factors are to be considered in the evaluation process. Factors may include, but are not limited to, value, performance, and quality of a product.

Given that the Department may utilize any criteria deemed in the best interest of the state, and the criteria and any associated point assessments were specified clearly within the solicitation documents, the RFP process did not give “improper preferential treatment”, nor disproportionately weigh Exhibit A Section B-6B – Contract License Office Manager Experience – Inventory Control in favor of Mineral. Mineral does not have any influence over

the Department's point system. As such, the CGLO contract is to be awarded to the lowest and best offeror as determined by the evaluation criteria and corresponding point assessment, all of which is clearly specified within the solicitation documents. Semo was afforded all benefits enjoyed by other offerors and every criteria established in the RFP was required equally of all.

Point II of Semo's protest is denied.

**Point III: Semo should have received 20 points in section A-3, rather than 15 points.**

Semo claims that an additional five (5) points should have been awarded in section Exhibit A – Section A-3 – Prior experience in a license office, and Semo should have been awarded the CGLO contract as a result. On Exhibit A – Section A-3 – Prior experience in a license office, Semo selected, "Contract License Office Manager has one (1) or more years of experience as a manager of a License Office within the last ten (10) years," which is worth twenty (20) points.

Pursuant Attachment 3 of the CGLO RFP, the definition of Manager is:

Manager (when not used as part of another title such as Contract License Office Manager, Contract Manager, or Office Manager):  
The on-site employee who oversees all aspects of a contract license office and that has the authority to act on behalf of the contractor in all matters related to the management of the contract, and has completed a combination of at least 500 Motor Vehicle and/or Driver License transactions over the ten (10) years prior to the proposal end date. This does not include other supervisory positions such as assistant manager, lead clerk, or clerk.

Based on this definition, the proposed Contract License Office Manager, Lynette Sexton, does not have the required management experience to receive twenty (20) points in Exhibit A – Section A-3 – Training – Contract License Office Manager.

Department records show the following license office experience for Lynette Kay Sexton:

- i. 06/05/2012 – 12/23/2015, Clerk, Jackson License Office;
- ii. 08/06/2014 – 11/22/2017, Clerk (as needed), Sikeston License Office
- iii. 12/23/2015 – 05/23/2018, Assistant Manager, Jackson License Office
- iv. 11/01/2017 – 02/20/2018, Clerk (as needed), Dexter License Office
- v. 01/25/2018 – 04/01/2019, Clerk (as needed), Sikeston License Office
- vi. 05/24/2018 – 08/27/2018, Contract Manager, Jackson License Office

vii. 08/27/2018 – 04/08/2019, Office Manager, Jackson License Office

These positions total management experience 0 Years, 10 Months, 14 Days.

Semo asserts “DOR records should reflect that Ms. Sexton has been a ‘Keyholder’”, however, Semo did not submit Form 5485 Approval Request for Supervisory or Management Personnel (“Form 5485”) to designate Lynette Sexton to such role. Therefore, Semo did not submit to Department records the proper documentation to have additional experience considered under Exhibit A – Section A-3 – Prior experience in a license office.

Under Paragraph 4.2.8(b)(1), the vendor is responsible for the accuracy of the information submitted in the Exhibits, as follows:

. . . The State of Missouri is under no obligation to solicit information if it is not included with the proposal. The vendor’s failure to submit the requested information or failure to complete the exhibits as specified may cause an adverse impact on the evaluation of the proposal.”

. . .

b. To complete the exhibits, the vendor must . . .

1) Complete each fillable area, review for accuracy, and obtain any additional documentation specified.

(Emphasis added.)

The Department rejects Semo’s assertion that “DOR’s practice of declining to award points based solely on someone’s title as reflected in DOR’s records—without regard to whether they actually served as a “Manager”—is arbitrary and unlawful.” Semo understands fully the requirement of Form 5485, having filed “Approval Request for Supervisory or Management Personnel” proposing Lynette Sticht (Sexton) as the “Office Manager” of Jackson License Office on August 15, 2018.

Given the requirements that all necessary information be included in the solicitation documents and it is the final responsibility of the vendor to ensure the accuracy of their submission, Semo failed to submit the necessary documentation at the time of submission of the RFP, Exhibit A – Section A-3 – Prior experience in a license office. Therefore, Semo was not entitled to the points it now seeks.

Point III of Semo’s protest is denied.

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**Conclusion**

For the reasons set forth above, the Department finds that Semo's protest fails to establish a basis for cancellation of the Division's award of RFPSDOR230072 to Mineral. Therefore, Semo's protest is denied. Pursuant to 1 CSR 40-1.050(12), the Department will take no further action on Semo's protest.

Sincerely,

A handwritten signature in black ink that reads "Kenneth Struempf". The signature is written in a cursive style with a long horizontal flourish at the end.

Kenneth Struempf, Director  
Motor Vehicle and Driver License Division