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August 4, 2023

Vendor: Dogwood Strategies LLC
341 US HWY 61
New Madrid, MO 63869

Point of Contact: Catherine Cooper
573-521-7559
Catherinecooper0110@gmail.com

Attorney: Jereme G. Lytle
P.O. Box 495
Hayti, MO 63851
573-757-7555

Re: Caruthersville License Office, Protest of Award for RFPSDOR230083

Dear Mr. Lytle:

The Department of Revenue ("Department") received your protest letter dated July 16, 2023 on behalf of Dogwood Strategies LLC ("Dogwood"), challenging the above-referenced award to AMW Support, LLC ("AMW"). 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 Dogwood's protest. Pursuant to SDA537 and 1 CSR 40-1.050(12), the Department will take no further action.

Findings of Fact

- 1) On May 10, 2023 in accordance with SDA537, the Department issued RFPSDOR230083 for the Caruthersville License Office ("CLO"), a request for proposal ("RFP") to provide license office services in and around Caruthersville, Missouri;
- 2) On May 23, 2023, the CLO RFP closed;

- 3) Dogwood and AMW submitted proposals for the CLO RFP;
- 4) On July 12, 2023, after evaluation, the CLO RFP was awarded to AMW with a total score of 147 points, and Dogwood was non-compliant in their proposal submission, therefore their proposal was not eligible for evaluation;
- 5) On July 16, 2023, Dogwood through counsel Jereme G. Lytle, filed a timely protest alleging the following:

Point I: The process for awarding the CLO contract was flawed.

Point II: In the absence of a clerical error, Dogwood would have won the CLO contract.

Analysis

Point I: The process for awarding the CLO contract was flawed.

Dogwood first raises objections to the RFP process generally, alleging that the process for awarding the CLO contract was “flawed,” because “[AMW] has had several violations”, while “Dogwood . . . has had zero violations and has a perfect point score.” Dogwood further alleges that a contract with “a material provision” which gives “a bidder a substantial advantage” must be cancelled. Dogwood does not support either of these grounds with adequate detail or support. Dogwood does not identify a specific “material provision” that provides a substantial advantage to other vendors, nor how AMW’s alleged prior violations were not accounted for in the evaluation, especially given that AMW’s proposal was the only proposal that qualified for evaluation. Due to Dogwood’s non-compliance, as discussed under the second point, Dogwood’s complaints regarding the evaluation process are irrelevant since, as a non-compliant proposal, Dogwood’s proposal was not evaluated. Since there was no evaluation, the Department cannot confirm that Dogwood would have received a perfect score.

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.

Further, 1 CSR 40-1.050(10)(G) states:

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.

Finally, 1 CSR 40-1.050(16) states:

[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.

As such, the CLO 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. Dogwood was afforded all benefits enjoyed by other offerors and every criteria established in the RFP was required equally of all. There are no “material provisions” which would have given AMW a “substantial advantage”.

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 is not “flawed.”

Point I of Dogwood’s protest is denied.

Point II: In the absence of a clerical error, Dogwood would have won the contract.

Dogwood claims that in the absence of a clerical error by the bank, the CLO contract would have been awarded to them. Specifically, Dogwood alleges their bank, First State Community Bank, listed an incorrect amount for the security bond that Dogwood held at that bank.

Paragraph 4.2.2 of the RFP instructed the vendors “to review the solicitation submission provisions carefully.”

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.)

In Paragraph 4.2.3, the vendors are cautioned that “the State of Missouri shall not award a non-compliant proposal.” Paragraph 4.2.3 further states that non-compliant proposals “shall be eliminated from further consideration for award . . .”

Paragraph 4.8.4 of the RFP, Credit and Asset Verification, states:

The vendor must submit a complete and notarized Credit and Asset Verification Form (Exhibit G) so the state agency can verify that the vendor has the availability of credit or unencumbered assets, or a combination there of, in the amount specified in Attachment 1. A completed and notarized Exhibit G must be submitted at the time of proposal submission.

- A. The vendor must provide the state agency with an original, completed and notarized Credit and Asset Verification Form (Exhibit G), dated no earlier than sixty (60) calendar days prior to the proposal end date.
- B. The amount available shall include all offices awarded to the vendor. The state agency shall have the right to cancel the contract immediately if the contractor is unable to provide Form 5418 in compliance with this requirement.

Further, under “State of Missouri Department of Revenue Terms and Conditions – Request for Proposal” it states:

8. EVALUATION/AWARD

- a. Any clerical error, apparent on its face, may be corrected by the buyer before 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. Examples of apparent clerical errors are: 1) misplacement of a decimal point; and 2) obvious mistake in designation of unit.

Dogwood was required to submit the completed and notarized Credit and Asset Verification Form showing the necessary credit and assets at the time of proposal submission. The Exhibit G submitted with the proposal showed that Dogwood had a credit line of \$31,243.63 while identifying “the minimum amount of credit or unencumbered assets that must be available” as \$51,373.95. The proposal was non-compliant. The corrected version which was submitted with the protest from Dogwood shall not be considered because it was not received with the proposal submission, but instead sent to the Department after the CLO RFP closed. In addition, the “corrected” Exhibit G is not properly notarized. The document seems to represent that Tiffany Allen corrected her prior certification sometime after the award, but prior to the protest. There is no new notarization of the purported signature located under the correction note.

As demonstrated by the Exhibit G which was submitted by Dogwood as an attachment to this protest, this was not a clerical error that was apparent on its face. Although an error by the bank maybe should have been obvious to Dogwood upon diligent review of the certification, there is nothing on the face of the document to alert the Department that the Bank’s certification was inaccurate, even if it was inadequate to support Dogwood’s proposal. The alleged incorrect amount listed on the Credit and Asset Verification was not an apparent clerical error and it is the

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ultimate responsibility of the vendor to review their proposal prior to submission.
Point II of Dogwood's protest is denied.

Conclusion

For the reasons set forth above, the Department finds that Dogwood's protest fails to establish a basis for cancellation of the Division's award of RFPSDOR230083 to AMW. Therefore, Dogwood's protest is denied. Pursuant to 1 CSR 40-1.050(12), the Department will take no further action on Dogwood's protest.

Sincerely,

A handwritten signature in blue ink that reads "Ken Struemp". The signature is written in a cursive, slightly slanted style.

Ken Struemp
Director
Motor Vehicle and Driver License Division