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July 6, 2023

Vendor: McMenemy Ventures, LLC  
103-1 South St.  
Crane, MO 65633

Point of Contact: Cara L. McMenemy  
417-723-8552

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

Re: Crane License Office, Protest of Award for RFPDOR230053

Dear Mr. Alexander C. Barrett:

The Department of Revenue ("Department") received your protest letter dated April 28, 2023, and the supplement to your protest letter dated May 9, 2023, on behalf of McMenemy Ventures, LLC, ("McMenemy") challenging the above-referenced award to RFPDOR230053. The Department has reviewed your protest pursuant to the authority granted the Department 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 McMenemy's protest. Pursuant to SDA537 and 1 CSR 40-1.050(12), the Department will take no further action.

#### **Findings of Fact**

- 1) On March 22, 2023, in accordance with SDA537, the Department issued RFPDOR230053 for the Crane License Office ("CLO"), a request for proposal ("RFP") to provide license office services in and around Crane, Missouri;

- 2) On April 04, 2023, the CLO RFP closed;
- 3) McMenemy and Dandelion Fields, LLC (“Dandelion”), submitted proposals for the CLO RFP;
- 4) On April 27, 2023, after evaluation, the CLO RFP was awarded to Dandelion with a total score of 127 points, and McMenemy came in second with a total score of 108.25 points;
- 5) On April 28, 2023, McMenemy filed a timely protest, and on May 9, 2023 a timely supplement to the protest, alleging the following:

Point I: Dandelion did not submit an adequate Credit and Asset Verification Form.

Point II: The Department’s refusal to answer questions deprived McMenemy of points which would have resulted in McMenemy being awarded the contract.

Point III: Section B-6B of the RFP gives an unfair advantage to newer vendors like Dandelion.

Point IV: Section B-5 of the RFP is impossible to realistically comply with and should be revised.

### Analysis

#### **Point I: Dandelion did not submit an adequate Credit and Asset Verification Form.**

McMenemy first alleges Dandelion’s bid should have been rejected as non-responsive, because Dandelion failed to submit an adequate Credit and Asset Verification Form. Specifically, McMenemy alleges that Dandelion did not meet the required amount of verified credit or unencumbered assets for the offices awarded.

Section 4.8.4 of the RFP states:

“Credit and Asset Verification – The vendor must submit a completed 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 thereof, 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.”

Dandelion submitted their Credit and Asset Verification Form for the CLO RFP on March 24, 2023. The Credit and Asset Verification Form is only required to include the amount specified in Attachment 1 (\$27,556.25 for CLO) and any license offices awarded to the vendor at time of RFP submission. At time of RFP submission, Dandelion only had one additional awarded license office – Elsberry License Office, awarded September 29, 2022 carrying a \$5,799.00 credit & asset requirement. The Aurora License Office was awarded on May 4, 2023, following the CLO being awarded, making it unnecessary to be included on the form for the CLO RFP.

Dandelion submitted the Credit and Asset Verification Form for the CLO RFP indicating \$62,840.77 in credit or unencumbered assets, exceeding the minimum \$33,355.25 required (\$27,556.25 + \$5,799.00). Dandelion has submitted adequate credit and asset verification for the CLO RFP.

Point I of McMenemy's protest is denied.

**Point II: The Department's refusal to answer questions deprived McMenemy of points which would have resulted in McMenemy being awarded the contract.**

McMenemy next alleges the Department refused to respond to a question from McMenemy regarding the new Contract License Office Manager ("CLOM") requirement.

First, regarding McMenemy's allegation of the Department refusing to respond to a question, Section 1.2.4 of the RFP states:

"Upon the Department of Revenue's consideration of questions and issues, if the Department of Revenue determines that changes are necessary, the resulting changes will be included in a subsequently issued RFP addendum(s); absence of such response indicates the questions and issues were considered but deemed unnecessary for a RFP addendum. All vendors will be advised of any change to the RFP's language, specifications, or requirements by a formal addendum to the RFP. There will be no separately posted question/answer document."

Similarly, Section 3(b) of the Terms and Conditions, states, "[I]n order to maintain a fair and equitable procurement process, all vendors will be advised, via the issuance of an addendum to the RFP, of any relevant or pertinent information related to the procurement."

The absence of a response from the Department indicates that the question was considered and response was deemed unnecessary. If any changes needed to be made to the RFP, a RFP addendum would have been issued pursuant the procedure set forth in Section 1.2.4 and Terms and Conditions, Section 3(b).

Second, regarding the question of what a Contract License Office Manager is, Attachment 3 of the RFP defines Contract License Office Manager as:

“An 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.”

Manager is defined as:

“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.”

Finally, in order to maintain a fair process for all vendors, the Department cannot offer private advice to any vendors regarding the RFP. Both the Department and Vendors are bound by the terms of the RFP, and the Department’s position is that the RFP speaks for itself. If any changes are to be made to the RFP, the issuance of a RFP addendum will follow pursuant to the procedure set forth in Section 1.2.4 and Terms and Conditions, Section 3(b). If a vendor needs further assistance in interpreting the RFP, they must seek their own counsel.

Point II of McMenemy’s protest is denied.

**Point III: Section B-6B of the RFP gives an unfair advantage to newer vendors like Dandelion.**

McMenemy’s third point of protest alleges Section B-6B of the RFP treats vendors unequally and unfairly. Specifically, McMenemy alleges it is improper to permit a start-up vendor to obtain points when it has not had the opportunity to lose inventory as it would result in an unfair advantage over established office operators. However, as neither McMenemy nor Dandelion are start-up vendors in the sense they have prior experience contracting a license office, this complaint is irrelevant to the evaluation of the CLO RFP.

The Department may include any criteria in the best interest of the state in the evaluation. Under 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.”

Evaluating a vendor's prior performance for inventory management, including instances of lost inventory, is reasonable. Given neither vendor is a start-up vendor, and the requirements under 1 CSR 40-1.050 specify criteria deemed in the best interest of the state may be utilized in determining vendor contracts, McMenemy's protest claiming vendors are being treated unfairly are irrelevant to the evaluation of the current CLO RFP.

Point III of McMenemy's protest is denied.

**Point IV: Section B-5 of the RFP is impossible to realistically comply with and should be revised.**

McMenemy's last point of protest alleges Section B-5 of the RFP offers points for improper and unrealistic promises by a vendor. McMenemy's argument lacks merit, because the requirement is not that the CLOM be present for all hours of operation, but "all required operating hours per week." Section B-5 responses state:

- The vendor proposes that the Contract License Office Manager named below will be present in the license office during **all required operating hours per week.**
- The vendor proposes that the Contract License Office Manager named below will be present at least 75% of **all required operating hours per week.**
- The vendor proposes that the Contract License Office Manager named below will be present at least 50% of **all required operating hours per week.**
- The vendor proposes that the Contract License Office Manager named below will be present less than 50% of **all required operating hours per week.**

Attachment 1 of the RFP defines the minimum required operating hours and days for the Crane License Office as: Four (4) days per week or thirty-two (32) hours each week. Further, the RFP lists under 2.1.1.c (1) that:

"The contractor must fully comply with all state agency policies, procedures, and statutes and shall not be relieved of any responsibility for performance under the contract due to failure to review current state agency policies, procedures, and statutes..."

This includes Department Procedure Number LP008 - License Office Closures, which describes the procedures for closures including, holidays & optional free days, vacation, personal reasons, illness, weather, fire, or property maintenance.

Ms. Cara McMenemy

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These policies in place create reasonable flexibility for a CLOM to be present during all required operating hours per week and allow for closures and absences, making it realistically possible to comply with Section B-5 of the RFP.

Point IV of McMenemy's protest is denied.

**Conclusion**

For the reasons set forth above, the Department finds McMenemy's protest fails to establish a basis for cancellation of the Division's award of RFPSDOR230053 to Dandelion. Therefore, McMenemy's protest is denied. Pursuant to 1 CSR 40-1.050(12), the Department will take no further action on McMenemy's protest.

Sincerely,

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

Ken Struempf

Director

Motor Vehicle and Driver License Division