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September 8, 2023

Vendor: James R. Williams, LLC  
PO Box 29122  
Kansas City, MO 64152

Point of Contact: Chase Williams  
(816) 355-4500

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

Re: St. Joseph License Office, Protest of Award for RFPDOR230099

Dear Mr. Barrett:

The Department of Revenue ("Department") received your protest letter dated August 15, 2023 on behalf of James R. Williams, LLC ("JRW") challenging the above-referenced award to License Office Services, LLC ("LOS"). 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 JRW's protest. Pursuant to SDA537 and 1 CSR 40-1.050(12), the Department will take no further action.

#### **Findings of Fact**

- 1) On June 14, 2023, in accordance with SDA537, the Department issued RFPDOR230099 for the St. Joseph License Office ("STJLO"), a request for proposal ("RFP") to provide license office services in and around St. Joseph, Missouri;

- 2) On June 28, 2023, the STJLO RFP closed;
- 3) JRW and LOS, among others, submitted proposals for the STJLO RFP;
- 4) On August 1, 2023, after evaluation, the STJLO RFP was awarded to LOS with a total score of 165.00 points, Paul J Wrabec Co. (“Wrabec”) came in second with a total score of 164.87 points, and JRW came in third with a total score of 160.26 points;
- 5) On August 15, 2023, JRW through counsel Alexander Barrett, filed a timely protest alleging the following:

Point I: JRW should have received an additional 15 points for the experience of its Contract License Office Manager (“CLOM”) and DOR’s handling of CLOM experience scoring is arbitrary and capricious.

Point II: LOS and Wrabec’s bids should have been rejected as non-responsive.

Point III: DOR’s handling of inventory loss in the RFP is arbitrary and capricious.

### Analysis

**Point I: JRW should have received an additional 15 points for the experience of its CLOM and DOR’s handling of CLOM experience scoring is arbitrary and capricious.**

JRW first alleges that an additional fifteen (15) points should have been awarded to JRW in Exhibit A – Section A-3 – Prior Experience in a License Office, and JRW should have been awarded the STJLO contract as a result. On Exhibit A – Section A-3 – Prior Experience in a License office, JRW 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. JRW instead received five (5) points for this section after Department verification indicated JRW’s proposed CLOM did not meet the criteria necessary to receive twenty (20) points.

Pursuant Attachment 3 of the STJLO 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. (Emphasis added.)

Department records show the following for JRW's proposed CLOM, Charlcey Marks:

1. 05/30/2019 – 12/11/2019, Clerk (full time), Cameron License Office,
2. 12/11/2019 – 02/02/2021, Greeter (full time), Cameron License Office;
3. 06/01/2023 - Present (RFP close date of 06/28/2023), Clerk (full time), Liberty License Office.

These positions amount to total management experience of: zero (0) years, zero (0) months, and zero (0) days.

Based on the definition of "manager", the proposed CLOM, Charlcey Marks does not have the required management experience to receive the twenty (20) points for Section A-3 – Prior Experience in a License Office. Charlcey Marks however does have one (1) year, nine (9) months, and two (2) days of experience in "...any position in a license office...of the last ten (10) years" and consequently JRW was awarded five (5) points for the section.

JRW further alleges DOR records should reflect that Charlcey Marks has been a "Keyholder", however, JRW did not submit Form 5485 – Approval Request for Supervisory or Management Personnel ("Form 5485") to designate Charlcey Marks to such role. Form 5485 not only designates the employee's job title, but duties as well – including those managerial. It was the responsibility of JRW to submit Form 5485 to the Department designating Charlcey Marks in a role with managerial duties sufficient to meet the definition of "manager" per the RFP, to be scored accordingly. Therefore, JRW did not submit to the Department the proper documentation to have additional experience considered under Exhibit A – Section A-3 – Prior Experience in a License Office.

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, JRW failed to update and submit the necessary documentation at the time of submission of the RFP. Therefore, JRW is not entitled to the points it now seeks.

Additionally, JRW's first point of protest alleges DOR's "verification" of vendors' proposed experience "ignores the day-to-day reality of license offices," asserting the RFP process as flawed "from the way DOR previously wrote its RFPs," and is therefore "arbitrary and capricious". Specifically, JRW alleges the requirement disregards "individuals' actual job responsibilities" and it "disregards important reasons why an employee's job title might not have been listed with DOR as 'Office Manager.'"

The Department first rejects JRW's allegations regarding prior RFPs as they are unrelated to the current STJLO RFP. The Department further rejects JRW's allegation that the RFP process is "arbitrary and capricious."

The Department may include any criteria in the best interest of the state in the evaluation of submitted proposals. Management 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 managerial experience for CLOMs is relevant criteria to determine which submitted proposal would best serve the interest of the state in the evaluation of proposals. All such criteria are published in the solicitation document as required by 1 CSR 40-1.050(10)(G). Further, the evaluation criteria and point assessment assigned to each criterion, as well as the award process, is clearly specified in the solicitation documents as required by 1 CSR 40-1.050(16). No scoring criteria within the STJLO RFP are “arbitrary and capricious” and all criteria are published and specified within the solicitation documents.

Point I of JRW’s protest is denied.

**Point II: LOS and Wrabec’s bids should have been rejected as non-responsive.**

JRW next alleges LOS and Wrabec’s bids should have been rejected as non-responsive for two reasons. First, JRW alleges both LOS and Wrabec’s bids should have been rejected because they “did not properly sign their bids”. Specifically, JRW insists that only a “wet” signature is acceptable, whereas LOS and Wrabec used electronic signatures and therefore should have been rejected as non-responsive. The Department disagrees.

Section 432.230.1, RSMo, states: “A record or signature shall not be denied legal effect or enforceability solely because it is in electronic form.”

Section 432.315, RSMo, states: “Sections 432.200 to 432.295 apply to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after August 28, 2003.”

Section 432.220.2, RSMo, states: “Sections 432.200 to 432.295 apply only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties’ conduct.”

Section 432.205, RSMo, defines “transaction” as: “an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.”

Section 4.2.1 of the RFP states in part: “Vendors must submit their solicitation response as an electronic response. The electronic method of submission is explained briefly below...” (Emphasis added.)

The fact that the only acceptable way for a vendor to submit their proposal per the RFP is via electronic method of submission, and the vendors have agreed to these terms by submitting such, demonstrates all parties agreed to conduct the RFP transaction by electronic means. Therefore, electronic signatures cannot be denied enforceability solely because they are in electronic form.

Second, JRW alleges, "LOS did not provide a compliant Anti-Discrimination Against Israel Certification" because, "although the bottom of the certification form is filled out and signed, LOS did not complete the actual certification section in that it did not identify "License Office Services, LLC" as the company certifying compliance with the statute" and therefore should have been rejected as non-compliant. The Department disagrees.

Both areas that need to be filled out on the certification say "Company Name" – although LOS did not fill out the first box, they did sign as "License Office Services, LLC" on the second box – in the same section asking for "Company Name". Considering LOS filled out the correct section based on their company structure, included the authorized representative's name, dated signature, and company name in one of the two places on the section; the latter signature is sufficient to demonstrate LOS's agreement to comply with section 34.600, RSMo.

Point II of JRW's protest is denied.

**Point III: DOR's handling of inventory loss in the RFP is arbitrary and capricious.**

JRW for its final protest point alleges Section B-6B – Inventory Control Experience was "flawed" and resulted in LOS being awarded points when they should have been "disqualified or more substantially penalized for its shocking lack of inventory control."

Section B-6B – Inventory Control Experience asks: "Has the Vendor's License Office(s) been assessed charges for missing inventory during the last two (2) years?" DOR awarded JRW the maximum eight (8) points for their selection because JRW has not lost any inventory in the last two years. DOR awarded LOS zero (0) points for their selection because they have lost more than \$175.00 of inventory in the last two years. After Department verification, both vendors' responses and corresponding points awarded were confirmed accurate.

Section B-6B – Inventory Control Experience only asks the vendor whether charges have been assessed against them for missing inventory in any/all license offices the vendor has operated over the last two (2) years, capping at \$175.00 (resulting in zero (0) points). So, although it is true LOS has greater than \$175.00 in inventory losses over the last two (2) years, there are no further penalties or deductions in points for exceeding the amount. Consequently, no further action will be taken.

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 pursuant 1 CSR 40-1.050(10)(G), and the criteria and any associated point assessments were specified clearly within the solicitation documents pursuant 1 CSR 40-1.050(16), the RFP process was not "arbitrary and capricious". As such, the STJLO 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. JRW was afforded all benefits enjoyed by other offerors and every criteria established in the RFP was required equally of all.

Point III of JRW's protest is denied.

### Conclusion

For the reasons set forth above, the Department finds that JRW's protest fails to establish a basis for cancellation of the Division's award of RFPDOR230099 to LOS. Therefore, JRW's protest is denied. Pursuant to 1 CSR 40-1.050(12), the Department will take no further action on JRW's protest.

Sincerely,



Kenneth Struempf, Director  
Motor Vehicle and Driver License Division