

August 15, 2023

Sent via E-mail

Tara Ronimous
Missouri Department of Revenue
tara.ronimous@dor.mo.gov

Re: Formal Protest to RFPSDOR230099 – St. Joseph License Office

Protesting Party: James R. Williams, LLC
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Point of Contact: Chase Williams
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Ms. Ronimous:

James R. Williams, LLC (“JRW”) protests the award of the contract for RFPSDOR230099 (the “RFP”) to License Office Services, LLC pursuant (“LOS”) to 1 CSR 40-1.050(12) and Special Delegation of Authority 537 (SDA537). Please arrange any contact with JRW concerning this protest through me.

After scoring, LOS received a total of 165 evaluation points. JRW, which came in third, received a total of 160.26 points. Thus, LOS outscored JRW by only 4.74 points. As explained below, DOR made several errors in scoring the RFP, and in crafting the RFP more generally. JRW should have received an additional 15 points based on the experience of its proposed Contract License Office Manager (“CLOM”). Additionally, both LOS and the second-place bidder (Paul J Wrabec Co) should have been disqualified because their proposals were non-responsive.

DOR should rescind the award of the contract to LOS and award it to JRW. Alternatively, DOR should rescind the award and re-bid the contract.

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

The RFP offered points to vendors based on the experience of the person the vendor proposed to serve as the CLOM. Among other things, Section A-3 to Exhibit A of the RFP evaluates the proposed CLOM's prior experience serving in a license office. That section contains five pre-set options a vendor may select. **Ex. 1 at 46.** Those options can earn a vendor anywhere from zero to 20 points, in 5-point increments. **Id. at 109.**

As relevant here, the top option (worth 20 points) requires the designated CLOM to have "1 or more years of experience as the Manager of a license office within the last ten (10) years." **Id.** The fourth option, which is worth 5 points, requires the designated CLOM to have "[h]eld any position in a license office for one (1) of the last ten (10) years." **Id.** Attachment 3 to the RFP provides various definitions. Among other things, Attachment 3 states that a "Manager" is "[t]he 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." **Id. at 99.** The definition also requires a "Manager" to meet certain transaction processing requirements. **Id.** The definition goes on to exclude "other supervisory positions such as assistant manager, lead clerk, or clerk." **Id.** Notably, however, the definition does not say that a person must be assigned a particular job title in DOR's system to qualify as a "Manager"

In its proposal, JRW designated Charlcey Marks to serve as CLOM if JRW were awarded the contract. **Ex. 2 at 5.** JRW's proposal further stated Ms. Marks had served as a Manager/Keyholder of the Cameron License Office from July 2019 to January 2021, and as a Manager/Keyholder at the Liberty License Office since May 2023. **Id.** In Section A-3 of Exhibit A, JRW selected the 20-point option concerning Ms. Marks' experience. **Id. at 2.**

In scoring, however, DOR followed its general practice of "verifying" the experience of vendors' proposed CLOMs. Based on that process, DOR concluded JRW should receive only 5 points in Section A-3, based on its determination that Ms. Marks had held a position at a license office for at least one year. **Ex. 1 at 119.** In provided commentary, the evaluation committee stated it had confirmed Ms. Marks had worked as a "Clerk" at the Cameron office from May 2019 to December 2019, and as a "Greeter" at that office from December 2019 to February 2021. **Id. at 124.** Thus, while not directly stated, it appears DOR concluded JRW did not meet the requirements for the 20-point option solely because Ms. Marks' title was not listed as "Office Manager" in DOR's records.

This method of scoring is arbitrary and capricious and ignores the day-to-day reality of license office operation and management. As explained in the attached letter from Ms. Marks, she in fact served as a Keyholder and Manager at the Cameron License Office, notwithstanding what her title may be in DOR's records. **See Ex. 3.** Ms. Marks possessed a key to the Cameron office the entire time she was employed there. **Id.** She was responsible for: opening/closing the

office, processing transactions, training, staff, preparing and making deposits for the office, ordering inventory, and managing all levels of relevant business for the office. **Id.** Per the list of qualifications in Attachment 3, this makes Ms. Marks a Manager.

The fact that DOR's records list Ms. Marks as a Clerk and a Greeter does not change her actual job responsibilities. Indeed, DOR's records and evaluation make clear that Ms. Marks was not serving simply as a "Greeter" when she was employed at the Cameron License Office. In Section B-6D of Exhibit A to the RFP, vendors could earn points based on the number of Driver License and Motor Vehicle Transactions their proposed CLOM had processed in the last decade. **Ex. 1 at 50.** During the evaluation, DOR verified that Ms. Marks had processed 2,500-4,999 Driver License Transactions and more than 15,000 Motor Vehicle Transactions. **Id. at 121.** That put Ms. Marks' Motor Vehicle Transaction processing experience substantially above that of LOS's proposed CLOM, who DOR deemed to qualify for the full 20-point experience threshold in Section A-3. **Compare id. at 119, 121.** Further, Ms. Marks would not have accrued such substantial processing experience if she had been serving as nothing more than a "Greeter" from December 2019 to February 2021, as DOR's records seem to reflect.

In addition to disregarding individuals' actual job responsibilities, DOR's practice of basing its point awards based solely on what its records list as a person's job title is also arbitrary and capricious because it disregards important reasons why an employee's job title might not have been listed with DOR as "Office Manager." These reasons stem from the way DOR previously wrote its RFPs. Under older versions of the RFP, vendors were required to submit proposals that specified the number of years of management experience the Office Manager would have. **See Ex. 4 at 23.**¹ Vendors received points based on the amount of experience their proposed Office Manager would have, and were thus incentivized to propose a higher amount. Once the contract was awarded, the vendor was then obligated to have an Office Manager who met that minimum requirement at all times.

This results in a situation where someone like Ms. Marks could carry out all the responsibilities of an office manager (alongside the specified Office Manager) but could not herself be formally designated as an "Office Manager" with DOR because she did not meet whatever management experience threshold was specified in the contract.² DOR has now revised the RFP such that a person will qualify for the maximum number of CLOM-experience points with merely a year as a Manager. **Ex. 1 at 109.** Yet, DOR's practice of requiring its records to reflect that a person is an "Office Manager" under an existing contract renders it extremely

¹ Exhibit 4 is an excerpt from JRW's awarded contract for the Gladstone License Office, which was awarded in 2018. In that contract, JRW committed to having an Office Manager with 5 years of management experience.

² There are, of course, numerous other reasons why a vendor might not have designated someone performing Manager functions as the "Office Manager" with DOR, including the fact that the vendor already had a designated Office Manager.

difficult for someone to actually qualify since existing contracts frequently require substantially more than one year of management experience to be designated as the “Office Manager” in the first place. This scoring methodology is arbitrary and capricious. DOR should be awarding points based on whether the proposed CLOM actually has at least one year of management experience at a license office, which Ms. Marks does.

Finally, Ms. Marks also qualified as a Manager because, as her letter reflects, she was a Keyholder at the Cameron License Office for more than one year. In another recent bid protest submitted by BCFO Titleworks, Inc., DOR acknowledged that a “Keyholder” was a “management position” that entitled BCFO Titleworks to additional experience points based on its proposed CLOM. **Ex. 5 at 2-3**. Here, Ms. Marks was a Keyholder for more than one year (while also fulfilling all responsibilities that would be handled by an office manager).

For all these reasons, DOR’s scoring of Section A-3 of JRW’s proposal was arbitrary, capricious, and incorrect. Ms. Marks’ has served as a Manager of a license office for at least one year out of the last ten. JRW should have been awarded an additional 15 points in that section, which would have made it the winning proposal, before even considering the other issues below.

II. LOS and Wrabec’s Bids Should Have Been Rejected as Non-Responsive

DOR should also have rejected the proposals submitted by both LOS and second-place bidder Paul J Wrabec Co because those proposals were non-responsive in several respects. The areas of non-responsiveness are addressed below.

A. LOS and Wrabec Did Not Properly Sign their Bids

Review of the bids submitted by LOS and Wrabec show that both vendors “signed” the first page of their proposals using a digital or electronic signature. **Ex. 6 at 1; Ex. 7 at 1**. The RFP does not permit this. Section 4.2.7.a of the RFP states: “The proposal must be signed by an authorized officer of the vendor, or an official of the political subdivision.” **Ex. 1 at 31**. The RFP does not say the proposal cover page may be “signed” using a digital or electronic signature. Had DOR meant to permit use of such signatures on the cover page, it could and should have expressly permitted it.

Indeed, elsewhere the RFP did expressly permit use of digital signatures. Specifically, Section 4.2.8.b(3) directs vendors to submit certain exhibits and states a vendor must “[o]btain signatures required in Exhibits C, D, and E. Digital signatures are acceptable.” **Id. at 32** (emphasis added). Thus, the RFP made clear when digital signatures were acceptable and it did not permit their use on the cover page, which must have a “wet” signature.

Section 4.2.7 states that proposal cover pages “must” be signed. Use of a wet, rather than digital, signature is therefore a mandatory term of the RFP. Proposals that do not contain a wet signature on the cover page are thus non-responsive, and DOR cannot accept non-responsive

proposals. Because neither LOS nor Wrabec included a wet signature on the cover page of their proposals, those proposals were non-responsive and DOR should have rejected them.

B. LOS Did Not Provide a Complaint Anti-Discrimination Against Israel Certification

LOS's proposal was also non-responsive because it did not include a correctly executed Anti-Discrimination Against Israel certification. As explained in Exhibit F to the RFP, § 34.600 prohibits state agencies from entering a contract with a company unless that company provides a written certification that it is not engaged in and will not engaged in boycotts of goods from Israel. **Id. at 78**. Exhibit F goes on to state that a vendor "must" certify compliance using a supplied form, which contains three options, depending on vendor type. **Id. at 78-79**. Compliance is therefore mandatory and a proposal that does not comply is non-responsive.

Companies—like LOS—that employ more than 10 people must use Section C of the supplied form. **Id.** Section C requires a vendor to fill in a box stating that the company meets the requirements of § 34.600. **Id. at 79**. It then includes spaces for the vendor to identify its authorized representative, provide a signature, list the company's name again, and date the form. **Id.**

The anti-discrimination certification LOS submitted with its proposal was defective. 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. **Ex. 6 at 19**. In other words, LOS did not actually certify that it is complying with, and will continue to comply with, § 34.600. Because provision of a properly completed anti-discrimination certification is a mandatory term of the RFP, LOS's proposal was non-responsive and DOR should have rejected it.

III. DOR's Handling of Inventory Loss in the RFP is Arbitrary and Capricious and LOS Should Have Been Disqualified or More Substantially Penalized for its Shocking Lack of Inventory Control

DOR's scoring of Section B-6B of Exhibit A to the RFP, which concerned a vendor's inventory control experience, was also flawed. **See Ex. 1 at 50**. In that section, DOR awards point based on the amount of inventory a vendor has lost within the last two years. **Id. at 50, 110**. A vendor will receive full points (eight) if it has not lost any inventory, while a vendor will receive zero points if it has lost \$175 or more of inventory in the last two years. **Id.** The RFP thus demonstrates that inventory control is important to DOR (as it should be) and that the loss of \$175 worth of inventory in two years is highly problematic, resulting in the loss of all associated points. Indeed, the RFP is filled with provisions addressing a vendor's obligation to keep track of inventory.

Here, DOR awarded JRW the full 8 points because JRW has not lost any inventory in the last two years. ***Id.*** at 120. DOR awarded LOS zero points because it has lost more than \$175 of inventory in the last two years. ***Id.*** But this significantly understates the disparity. As DOR verified, LOS lost an astonishing \$10,160 of inventory in the last two years. That is remarkable. To be sure, LOS runs a substantial number of license offices. But even assuming that LOS is operating 20 offices for DOR, that would amount to approximately \$500 in lost inventory (more than double the maximum amount needed to earn zero points) per office at 20 offices in the last two years.

By providing only a \$175 and 8-point “spread,” Section B-6B does not sufficiently distinguish between good vendors and bad vendors in the area of inventory control. (Likely because DOR would not expect a single vendor to have such a significant level of inventory loss.) The RFP is arbitrary and capricious insofar as it fails to adequately distinguish between a vendor that has lost \$0 in inventory and one who has lost more than \$10,000. LOS should have been disqualified based on its massive inventory losses.

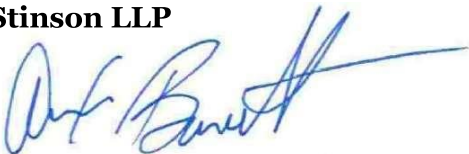
If DOR does not award this contract to JRW based on the scoring errors concerning Ms. Marks’ experience or rescind the award to LOS based on the non-responsiveness of LOS and Wrabec’s proposals, DOR should nonetheless rescind the award and re-bid the contract under an RFP that adequately accounts for such massive disparities in inventory control.

* * *

For all the reasons discussed above, DOR’s award of the contract to LOS was arbitrary, capricious, and unlawful. DOR should award JRW an additional 15 points based on the experience of Ms. Marks, sustain this protest, rescind the award to LOS, and award the contract the JRW. DOR should also sustain the protest and award the contract to JRW because LOS and Wrabec’s proposals were non-responsive. Finally, and at a minimum, DOR’s handling of the inventory control scoring was arbitrary and capricious and DOR should rescind the award to LOS and re-bid the contract under a revised RFP.

Sincerely,

Stinson LLP



Alexander Barrett

August 15, 2023

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Exhibit List:

Exhibit 1 – St. Joseph Evaluation

Exhibit 2 – JRW Proposal

Exhibit 3 – Marks Letter

Exhibit 4 – JRW Gladstone Proposal

Exhibit 5 – DOR Joplin Protest Ruling

Exhibit 6 – LOS Proposal

Exhibit 7 – Wrabec Proposal