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June 20, 2023

Sent via E-mail

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

Re: Formal Protest to RFPSDOR230072 Cape Girardeau License Office

Protesting Party: 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

Dear Ms. Ronimous:

SEMO Tags, LLC protests the award of the contract for RFPSDO4230072 (the "RFP") to Mineral Area License Offices LLC ("Mineral") pursuant to 1 CSR 40-1.050(12) and Special Delegation of Authority 537 (SDA537). As this firm represents SEMO Tags, please arrange any contact with it regarding this protest through me.

After proposals were scored, Mineral received a total evaluation score of 170.92 points and SEMO Tags received a total evaluation score of 169.22 points. Thus, Mineral won the contract by a mere 1.7 points.[1] However, there were several problems and errors in Department of Revenue's ("DOR") award of the contract to Mineral. As explained below, the contract should have been awarded to SEMO Tags. DOR should rescind the award to Mineral and award the contract to SEMO Tags.

[1] Evaluation Report at 118.

First, DOR should have rejected the bids submitted by both Mineral and the third bidder—MCLB Management Company, LLC ("MCLB")—because they engaged in improper bid manipulation. Mineral and MCLB are affiliated companies. They are owned by largely the same people. This is easily confirmed from their bids. Mineral is an LLC owned by Gerald Jones (40%), Gina Raffety (40%), and Kelly Bartel (20%).[2] MCLB is an LLC owned by Gerald Jones (40%), Gina Raffety (45%), Thomas Raffety (5%), and Amy Jones (10%).[3]

Thus, Mineral and MCLB are both predominately owned by Gerald Jones and Gina Raffety. MCLB is the incumbent bidder and current operator of the Cape Girardeau License Office. MCLB also previously ran the Farmington License Office. Mineral is a newer LLC that was formed in April 2021.

The Mineral and MCLB bids are nearly identical. Both proposed to use Penny Eaker (the current Office Manager in Cape Girardeau) as the Contract License Office Manager ("CLOM").[4] The only meaningful differences between the bids are: (i) Mineral proposed a salary of $16.50 per hour, while MCLB proposed a salary of $18.00 per hour; and (ii) MCLB disclosed it had lost more than $175 in inventory, whereas Mineral stated that it had not lost any inventory.[5]

The current contractor, MCLB, knew it would lose points due to lost inventory. Indeed, MCLB received 0 points in Section B-6B, while SEMO Tags received 2 points, and Mineral received 8 points.[6] SEMO Tags otherwise outscored MCLB by over 4 points.[7] But Jones and Raffety decided to hedge their bets by submitting bids under both MCLB and Mineral. In the process, they proposed a higher salary under the MCLB bid (which was less likely to be awarded the contract due to the inventory loss), which had the potential to further manipulate the scoring of Section A-1 (which is worth approximately 15% of the available points).

Under its delegation of authority from the Office of Administration ("OA"), DOR adheres to OA regulations. Pursuant to 1 CSR 40-1.060(7)-(8), a vendor may be suspended or debarred for engaging in misconduct in the procurement process. Among

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2 Mineral Bid at 9.
3 MCLB Bid at 9.
4 Mineral Bid at 5; MCLB Bid at 5.
5 Mineral Bid at 2, 6; MCLB Bid at 2, 6.
6 Evaluation Report at 123.
7 Evaluation Report at 118.

other things, a vendor can be sanctioned for "[v]iolating any federal, state, or local law, ordinance, or regulation in the performance of a contract/purchase order," "[p]roviding false or misleading information . . .in a bid/proposal," or "[c]olluding with others to restrain competition." 1 CSR 40-1.060(8).

At a minimum, Mineral and MCLB (which are owned by some—but not all—of the same people) engaged in collusion. OA's regulations do not address what constitutes collusion. But the Department of Justice ("DOJ") has. "In simple terms, bid rigging is fraud which involves bidding. It is an agreement among competitors as to who will be the winning bidder. . . . The bidders agree in advance who will submit the winning bid."[8] One form of bid rigging is "Complimentary Bidding," which occurs when "coconspirators submit token bids which are intentionally high or which intentionally fail to meet all of the bid requirements in order to lose a contract."[9]

That is what happened here. MCLB submitted a bid proposing a higher minimum wage, knowing full well that Mineral (owned by many of the same people), would submit an ultimately more competitive bid with a lower minimum wage. Even more concerning, Jones and Raffety were able to pick up an additional (and outcome-dispositive) 8 evaluation points by simply submitting a bid under a different LLC than the one they have been using to operate the Cape Girardeau License Office. The problems with DOR's scoring of the inventory-loss provisions are discussed further below.

These improper tactics directly resulted in Mineral being awarded the contract rather than SEMO Tags. All three vendors received identical scores in most categories. The following chart identifies those categories where they received different scores:

8 *See* Exhibit A at 2.
9 *Id.*

	MCLB Score	Mineral Score	SEMO Tags Score
A-1 – Wage	25	22.92	22.22
A-3 – Prior Experience	20	20	15
B-6B – Inventory Loss	0	8	2
B-6D – Transaction Processing	5	5	15
Total	50	55.92	54.22

Had Mineral's owners not manipulated the bids by forming a different LLC, they would have received 0 points in Section B-6B. The resulting 8-point swing would have resulted in SEMO Tags being awarded the contract. That would be true regardless of whether Mineral had proposed $16.50 or $18.00 an hour as the minimum wage. (In the absence of MCLB's bid—and assuming Mineral kept its $16.50/hour proposal—Mineral would have received 25 points in Section A-1, while SEMO Tags would have received 24.24 points.)

In short, Mineral and MCLB engaged in bid rigging. That is "collusion" under any definition. Per OA's regulations, they are subject to suspension and/or debarment. At a minimum, DOR should toss out their proposals and award the contract to SEMO Tags.

Second, and relatedly, Section B-6B of the RFP gave improper preferential treatment to Mineral. That section offers points based on how much inventory a vendor lost within the previous two years. Mineral has not operated license offices for two years. It was awarded the contract to operate the Farmington License Office (previously operated by MCLB) in April 2022.

Nonetheless, DOR awarded Mineral 8 points for having lost no inventory in the last two years. It awarded SEMO Tags 2 points after verifying that SEMO Tags had lost less than $138 in inventory. MCLB received 0 points. As just explained, however, Mineral should also have received 0 points on this section, which would have resulted in the contract being awarded to SEMO Tags.

Section B-6B offered points to vendors based on the amount of inventory they lost within the preceding two years. Notably, if a vendor has "no prior experience operating a License Office," they cannot receive any points. Thus, DOR recognizes that it is improper to permit a start-up vendor to obtain points when it has not had the opportunity to lose

inventory, as that would result in an unfair advantage over established office operators. DOR did not go far enough, however, and that RFP provision still resulted in an unfair advantage for Mineral.

The comparison DOR drew between Mineral and SEMO Tags was not fair or appropriate because Mineral has not operated for two years, and thus has had far less time to potentially lose inventory than SEMO Tags. The bids at issue illustrate the inherent flaw in Section B-6B. It assesses inventory loss based on the experience of *the vendor* rather than the *vendor's owners*. This makes it extremely easy for vendors to avoid any point loss by simply spinning up a new LLC every time they bid. That's what happened here.

MCLB and Mineral have functionally the same owner group. They proposed the same CLOM. Yet, Jones and Raffety were able to escape the consequences of their poor inventory management (illustrated by the fact that DOR awarded MCLB 0 points in Section B-6B) by simply bidding through Mineral *in addition to* MCLB. The bid documents amply illustrate why this is improper and why Section B-6B needs revision. Mineral, like MCLB, should have received 0 points on Section B-6B, and SEMO Tags should have been awarded this contract.

Third, SEMO Tags should have received 20 points, rather than 15 points, in Section A-3 based on the management experience of its proposed CLOM, Lynette Kay Sexton. This would have independently resulted in SEMO Tags being awarded the contract.

Section A-3 of Attachment 1 to the RFP offered up to 20 evaluation points based on the managerial experience of a vendor's proposed Contract License Office Manager or "CLOM." To receive 20 points, the proposed CLOM needed 1 or more years of experience as the "Manager" of a license office during the last 10 years. To receive 15 points, the proposed CLOM needed to have been an assistant manager or some other supervisor for 3 of the last 10 years. SEMO Tags received 15 points and Mineral received 20 points, resulting in a 5-point differential.[10]

SEMO Tags' proposal stated that Ms. Sexton had served as the Contract License Office Manager at the Jackson License Office from December 23, 2015 to August 27, 2018.[11] From the evaluation report, it appears that DOR came to a different conclusion

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10 Evaluation Report at 120.

11 SEMO Tags Bid at 5.

regarding Ms. Sexton's experience. It recites that Ms. Sexton served in the following roles at the Jackson License Office:

- 12/23/2015 – 05/23/2018, Assistant Manager, Jackson License Office;
- 05/24/2018 – 08/27/2018, Contract Manager, Jackson License Office;
- 08/27/2018 – 04/08/2019, Office Manager, Jackson License Office.[12]

DOR appears to have credited Ms. Jackson's time as the Contract Manager and Office Manager, which amounted to 10 months, 15 days of "management experience."[13]

As an initial matter, SEMO Tags is unclear why DOR's records show Ms. Sexton as being only an Assistant Manager from December 23, 2015 to May 23, 2018. Ms. Sexton served as the manager of the Jackson License Office during that period. She was "on site" at the Jackson License Office. She oversaw all aspects of the license office. She had authority to act on behalf of SEMO Tags in all matters of management. She therefore met the definition of "Manager in Attachment 3 to the RFP.

Indeed, DOR records should reflect that Ms. Sexton has been a "Keyholder" at the Jackson License Office since approximately August 19, 2014. In another recent evaluation, DOR declined to award points to Breast Cancer Foundation of the Ozarks ("BCFO") for the inventory experience of one of its identified officers. Subsequently, BCFO protested, claiming that its identified officer had such experience because she was a "keyholder," which DOR could have confirmed, and that meant she had "managerial experience." In ruling on that portion of the protest, DOR concluded the proposed manager had served in a "management role" and BCFO should have received additional points.[14]

Ms. Sexton served in roles that meet the definition of "Manager" in Attachment 3 for more than 1 year. 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 <u>actually</u> served as a "Manager"—is arbitrary and unlawful. Ms. Sexton was a "Manager" of the Jackson License Office for more than 1 year, SEMO Tags should have received 20 points in Section A-3, and should have been awarded this contract.

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12 Evaluation Report at 129.
13 *Id.*
14 Exhibit B, Joplin Protest Ruling.

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For all of these reasons, the contract award to Mineral was arbitrary and unlawful. DOR should rescind the award to Mineral, suspend and/or debar both Mineral and MCLB, and award the contract at issue to SEMO Tags.

Thank you for your consideration.

Sincerely,

Stinson LLP

Alexander Barrett

EXHIBIT A

THE UNITED STATES DEPARTMENT of JUSTICE

PREVENTING AND DETECTING BID RIGGING, PRICE FIXING, AND MARKET ALLOCATION IN POST-DISASTER REBUILDING PROJECTS

PREVENTING AND DETECTING BID RIGGING,
PRICE FIXING, AND MARKET ALLOCATION
IN POST-DISASTER REBUILDING PROJECTS

An Antitrust Primer for Agents and Procurement Officials

I. INTRODUCTION

American consumers have the right to expect the benefits of free and open competition the best goods and services at the lowest prices. Public and private organizations often rely on a competitive bidding process to achieve that end. The competitive process only works, however, when competitors set prices honestly and independently. When competitors collude, prices are inflated and the customer is cheated. Price fixing, bid rigging, and other forms of collusion are illegal and are subject to criminal prosecution by the Antitrust Division of the United States Department of Justice.

As a member of the Department of Justice Hurricane Katrina Fraud Task Force, the Antitrust Division is committed to offering our expertise and assistance in the wake of the devastation caused by Hurricane Katrina. As FEMA and state and local government agencies with whom FEMA is coordinating begin to solicit competitive bids for rebuilding contracts, the Antitrust Division is prepared to provide assistance to these agencies to protect against bid rigging, price fixing and other collusive conduct among companies competing for rebuilding contracts. Experienced Antitrust Division attorneys are available to provide training to law enforcement agents, auditors, and procurement personnel in the affected areas to assist them in identifying and preventing potential bid rigging and collusion in the competitive bidding process. If collusive conduct is discovered, the Antitrust Division stands ready to criminally prosecute the individuals and corporations seeking to unjustly profit from this tragedy.

The Antitrust Division, FEMA, and other federal law enforcement agencies have collaborated successfully in the past on several occasions to detect and deter anticompetitive conduct. For example, after Typhoon Paka hit Guam in 1997, leaving thousands of people homeless, FEMA made more than $70 million in federal funds available for disaster relief. The Antitrust Division conducted a bid-rigging and public corruption investigation jointly with the U.S. Attorney's Office in Guam and agents from the FEMA Office of Inspector General, the FBI, the IRS, and the Department of Interior. The investigation resulted in numerous convictions, including that of Austin J. "Sonny" Shelton, who was the Director of Guam's Department of Parks and Recreation and was responsible for awarding contracts to repair typhoon damage. Shelton was convicted after trial of organizing three separate bid-rigging conspiracies, soliciting and receiving bribes in return for the award of contracts, committing wire fraud, and conspiring to launder money. Shelton was sentenced to serve eight years in prison. Following that successful partnership, the Antitrust Division also worked with FEMA to provide proactive assistance to the State of New Mexico following the Los Alamos fires in 2000.

This Primer contains an overview of the federal antitrust laws and the penalties that may be imposed for their violation. It briefly describes the most common antitrust violations and outlines those conditions and events that may indicate anticompetitive collusion so that you might better identify and investigate suspicious activity.

II. FEDERAL ANTITRUST ENFORCEMENT

The Sherman Antitrust Act prohibits agreements among competitors to fix prices, rig bids, or engage in other anticompetitive activity. Criminal prosecution of Sherman Act violations is the responsibility of the Antitrust Division of the United States Department of Justice.

Violation of the Sherman Act is a felony punishable by up to 10 years imprisonment and a $1 million fine for individuals and a fine of up to $100 million for corporations. In addition, collusion among competitors may also involve violations of the mail or wire fraud statute, the false statements statute, or other federal felony statutes, all of which the Antitrust Division prosecutes.

In addition to receiving a criminal sentence, a corporation or individual convicted of a Sherman Act violation may be ordered to make restitution to the victims for all overcharges. Victims of bid-rigging and price-fixing conspiracies also may seek civil recovery of up to three times the amount of damages suffered.

III. DETECTING CRIMINAL ANTITRUST VIOLATIONS

Most criminal antitrust prosecutions involve price-fixing, bid-rigging, or market division or allocation schemes. Each of these forms of collusion may be prosecuted criminally if they occurred, at least in part, within the past five years. To prove such a crime, we do not have to show that the conspirators entered into a formal written or express agreement. Price fixing, bid rigging, and other collusive agreements can be established either by direct evidence, such as the testimony of a participant, or by circumstantial evidence, such as suspicious bid patterns, travel and expense reports, telephone records, and business diary entries.

Under the law, price-fixing and bid-rigging schemes are per se violations of the Sherman Act. This means that where such a collusive scheme has been established, it cannot be justified under the law, for example, by arguments or evidence that the agreed-upon prices were reasonable, that the agreement was necessary to prevent or eliminate price cutting or ruinous competition, or that the conspirators were merely trying to make sure that each got a fair share of the market.

A. **Bid Rigging**

<u>Basic Schemes</u>

One of the most common violations the Division prosecutes is bid rigging. In simple terms, bid rigging is fraud which involves bidding. It is an agreement among competitors as to who will be the winning bidder. Bid rigging occurs when a purchaser solicits bids to purchase goods or services. The bidders agree in advance who will submit the winning bid. The purchaser, which depends on competition between the bidders to generate the lowest competitive price, receives instead a "lowest bid" that is higher than the competitive market would bear.

There are four basic schemes involved in most bid-rigging conspiracies:

- ***Bid Suppression:*** In this type of scheme, one or more competitors agree not to bid, or withdraw a previously submitted bid, so that a designated bidder will win. In return, the non-bidder may receive a subcontract or payoff.
- ***Complementary Bidding:*** In this scheme, coconspirators submit token bids which are intentionally high or which intentionally fail to meet all of the bid requirements in order to lose a contract. "Comp bids" are designed to give the appearance of competition.

- ***Bid Rotation:*** In bid rotation, all co-conspirators submit bids, but by agreement, take turns being the low bidder on a series of contracts.
- ***Customer or Market Allocation:*** In this scheme, co-conspirators agree to divide up customers or geographic areas. The result is that the coconspirators will not bid or will submit only complementary bids when a solicitation for bids is made by a customer or in an area not assigned to them. This scheme is most commonly found in the service sector and may involve quoted prices for services as opposed to bids.

Subcontracting arrangements are often part of a bid-rigging scheme. Competitors who agree not to bid or to submit a losing bid frequently receive subcontracts or supply contracts in exchange from the successful low bidder. In some schemes, a low bidder will agree to withdraw its bid in favor of the next low bidder, in exchange for a lucrative subcontract that divides the illegally obtained higher profits between them.

Almost all forms of bid-rigging schemes have one thing in common: an agreement among some or all of the bidders which predetermines the winning bidder and limits or eliminates competition among the conspiring vendors.

Determining the Winner

Participants can decide who wins a particular contract using a number of allocation standards, including:

- Rotating contracts so that each will win an equal dollar volume over time;
- Rotating so that each will win an equal number of contracts over time;
- Allocating based on overall market share;
- Dividing up by territory, such as giving each company the accounts closest to its headquarters;
- Dividing up by type of customer, such as one taking federal accounts and the other taking state accounts; and
- On the basis of need --splitting up the business so that each company keeps its assembly line or equipment fully occupied.

Payback

If a company agrees to intentionally lose business, naturally it must be given some compensation by the winning company. That compensation can take several forms including:

- The loser will be promised that it can win another contract later (this is the most common payback);
- The winning contractor may give a subcontract or supply a contract to one or more of the losers; or
- There may be a direct payoff in the form of goods, cash, or check, normally disguised as a legitimate payment.

Suspicious Indicators:

- You receive identical bids from different companies either as to individual line items or lump sum bids;
- Bids come in way above the agency's estimate for the value of the contract or way above comparable bids by the same companies in other areas;
- A winning bidder subcontracts part of the business to one or more losing bidders;
- There is some indication of a physical alteration of bids, particularly at the last minute;
- Particular line items for some bidders are much higher than for others (no relation to cost);
- The range of bids shows a clear gap between the winner and all others (an indicator of a number-to-bid-above situation);
- You notice that the bids of all companies are very close (an indicator that bidders knew each others' prices);
- You notice the same increment between the bids of each company;
- All companies submit high bids when work is known to be scarce;
- The company gives different bids for the same line item on different contracts that are close in time;
- The companies appear to have engineered a split of the contract by each bidding low on some aspect of it and inexplicably high on other parts;
- There is physical evidence of collusion, such as different companies submitting bids with the same handwriting, or in the same envelopes, or with the same mathematical or spelling errors, or from the same fax number;
- Qualified bidders do not bid, especially if they initially took steps to bid;

- If a contract is re-bid because all initial bids are unacceptable, the bidders come back in the same order or some bidders fail to re-bid;
- There are significant increases by most bidders over previous prices when there have been no substantial cost increases;
- Prices mysteriously drop when a new bidder appears on the scene; and
- Competitors are seen meeting shortly before or after the bids are submitted.

Quid Pro Quo

This is what you look for to spot payback patterns:

- Any kind of territorial pattern (draw out the area each company serves on a map);
- A company always bids for a contract but never wins it or conversely always wins it;
- All of the companies in the group win an equal volume of business over time;
- All of the companies win an equal number of contracts over time; or
- Any pattern (many are possible).

B. **Price Fixing**

Price Fixing impacts procurement when business is conducted through purchase order or direct purchase. In this situation, competitors may agree to raise or fix prices they will charge for their goods or services, set a minimum price that they will not sell below, or reduce or eliminate discounts.

Suspicious Indicators:

- Look for situations where competitors always announce their price increases at the same time for the same amount or have staggered price increases with some pattern, such as appearing to take turns going first.
- Look for competitors reducing or eliminating discounts at about the same time.
- Generally, be alert to situations in which all prices seem to be uniform and all suppliers refuse to negotiate those prices.

C. **Customer or Market Allocation**

As mentioned earlier, allocation schemes may involve bidding or quoted prices for services or goods.

Suspicious Indicators:

- Look for situations in which the same company seems to get your business over and over and the competitors never come around to solicit it. If you try to get other competitors interested in serving you, they may refuse to give you a quote or show reluctance in some way. If they do give you a quote, it may be ridiculously high to discourage you from changing suppliers. With bid rigging, look for situations where the competitors do not submit bids or submit complementary bids.
- Look for anything that makes it obvious that companies that should want your business are not interested in it.

D. **A Caution About Indicators of Collusion**

While these indicators may arouse suspicion of collusion, they are not proof of collusion. For example, bids that come in well above the estimate may indicate collusion or simply an incorrect estimate. Also, a bidder can lawfully submit an intentionally high bid that it does not think will be successful for its own independent business reasons, such as being too busy to handle the work but wanting to stay on the bidders' list. Only when a company submits an intentionally high bid because of an agreement with a competitor does an antitrust violation exist. Thus, indicators of collusion merely call for further investigation to determine whether collusion exists or whether there is an innocent explanation for the events in question.

IV. CONDITIONS FAVORABLE TO COLLUSION

While collusion can occur in almost any industry, it is more likely to occur in some industries than in others. An indicator of collusion may be more meaningful when industry conditions are already favorable to collusion.

- Collusion is more likely to occur if there are few sellers. The fewer the number of sellers, the easier it is for them to get together and agree on prices, bids, customers, or territories. Collusion may also occur when the number of firms is fairly large, but there is a small group of major sellers and the rest are "fringe" sellers who control only a small fraction of the market.
- The probability of collusion increases if other products cannot easily be substituted for the product in question or if there are restrictive specifications for the product being procured.
- The more standardized a product is, the easier it is for competing firms to reach agreement on a common price structure. It is much harder to agree on other forms of competition, such as design, features, quality, or service.
- Repetitive purchases may increase the chance of collusion, as the vendors may become familiar with other bidders and future contracts provide the opportunity for competitors to share the work.
- Collusion is more likely if the competitors know each other well, through social connections, trade associations, legitimate business contacts, or shifting employment from one company to another.
- Bidders who congregate in the same building or town to submit their bids, have an easy opportunity for last-minute communications.

V. WHAT AGENTS AND AUDITORS CAN DO

Antitrust violations are serious crimes that can cost a company hundreds of millions of dollars in fines and can send an executive to jail for up to ten years. These conspiracies are by their nature secret and difficult to detect. The Antitrust Division needs your help in uncovering them, bringing them to our attention, and working with us to build prosecutable cases.

VI. WHAT PROCUREMENT OFFICIALS CAN DO

If companies are conspiring to collude on prices, the purchasing agent is the last person in the world that they want to know about the scheme. For this reason, even the most conscientious buyer can be victimized. Nonetheless, here are some procedures that can be established to discourage anticompetitive activity.

- Expand the list of bidders to make it more difficult for bidders to collude. Buyers should solicit bids from as many suppliers as economically possible. As the number of bidders increases, the probability of successful collusive bidding decreases. While there is no magic number of bidders above which collusion cannot occur, past experience suggests that collusion is more likely to arise where there are five or fewer competitors.
- Bid packages should require bidders to sign and submit a non-collusion affidavit stating that the bidder has not colluded and informing bidders of the penalties both for violating the Sherman Act and for signing a false non-collusion affidavit. (We can provide sample affidavits, if necessary).
- Ensure that all purchasing department employees are familiar with the indicators of bid rigging, price fixing, and other types of collusion.
- Maintain procurement records, e.g., bid lists, abstracts, and awards. When collusion is suspected, it is necessary for us to review the procurement history of a product to determine if a pattern of bid allocation or rotation is present.
- Ask questions. If the prices or bids submitted don't make sense, press your vendors to explain and justify their prices. You may be provided with a reasonable explanation or your suspicions may be heightened by a bogus answer. Either way, you learn more about your markets and demonstrate your interest in competitive prices.
- Know and understand the dynamics of the markets in which you make major purchases. A knowledgeable buyer may correctly suspect collusion from market behavior that may not arouse suspicions in an uninformed buyer.

VII. REPORT YOUR SUSPICIONS

We encourage all agents, auditors, and procurement officials to report suspicions of collusion through appropriate channels in your organization. Your observations may add to information we already have about an industry or, together with other reports, indicate a more widespread problem. Your call will always be appreciated and treated in accordance with our confidentiality policy, and, when warranted, we will conduct an investigation.

VIII. HOW THE ANTITRUST DIVISION CAN HELP

Our role as part of the Hurricane Katrina Fraud Task Force is to assist federal, state, and local government agencies in preventing and deterring fraud that subverts the competitive bid process. In that regard, Antitrust Division attorneys are available to provide training to law enforcement agents, auditors, and procurement personnel on the detection of criminal antitrust violations. We also are available to assist in the review of bids and contracts, as needed. If violations occur, we stand ready to investigate and prosecute those cases. size="+3">

For Your Information . . .size="+3">

The Antitrust Division is committed to offering our experience and resources to help ensure that the communities hardest hit by Hurricane Katrina are not further victimized by those that seek to subvert competition and divert federal funds to their own pockets and away from the most needed rebuilding projects. Attorneys in the Antitrust Division are happy to answer any questions you may have about possible violations. Please report any suspicions you have of possible antitrust violations to:

Frank J. Vondrak, Assistant Chief, Chicago Field Office
U. S. Department of Justice
Antitrust Division
209 South LaSalle Street, Suite 600
Chicago, IL 60604-1204
312-353-7530 (office)
312-353-1046 (fax)
E-mail: Frank.Vondrak@usdoj.gov

Please contact us at the above telephone numbers or e-mail addresses if you would like one of our attorneys to give a presentation to your group regarding the antitrust laws and detection of criminal antitrust violations. We look forward to working with you!

Updated December 1, 2022

EXHIBIT B

Division of Motor Vehicle and Driver License
Post Office Box 629
Jefferson City, Missouri 65105-0629

MISSOURI DEPARTMENT OF REVENUE

Telephone: (573) 526-1827
Fax: (573) 526-4774

March 17, 2023

Vendor: BCFO Titleworks, Inc.
620 W. Republic Road
Springfield, MO 65807
(417) 862-3838

Point of Contact: Joe Daues
417-862-3838

Attorney: Lowell D. Pearson
235 East High Street
Jefferson City, Missouri 65101
573-761-1115

Re: Joplin License Office, Protest of Award for RFPSDOR220036

Dear Mr. Pearson:

The Department of Revenue ("Department") received your protest letter dated March 3, 2023, on behalf of BCFO Titleworks, Inc., challenging the above-referenced award to CGB Holdings, LLC. 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 BCFO Titleworks, Inc.'s protest. Pursuant to SDA537 and 1 CSR 40-1.050(12), the Department will take no further action.

Findings of Fact

The following findings of fact are the basis for this response to BCFO's protest:

1. On December 8, 2022, in accordance with SDA537, the Department of Revenue ("Department") issued RFPSDOR220036 (the "JLO RFP"), a request for proposal ("RFP") to provide license office services in and around Joplin, Missouri;

2. On December 21, 2022, the JLO RFP closed;

3. Among others, BCFO and CGB Holdings, LLC submitted proposals for the JLO RFP;

4. In BCFO's proposal, Breanna Gonzales was proposed as BCFO's Contract License Office Manager. In evaluating Ms. Gonzales' experience with Inventory Control, BCFO was not

given credit for Ms. Gonzales' service as a Key Holder, a management position, between October 27, 2017 and May 24, 2018. BCFO was awarded 151.75 total points for their submitted proposal. With this additional experience, BFCO should have been awarded an additional four (4) points for a total score of 155.75.

5. On February 16, 2023, after evaluation, the JLO RFP was awarded to CGB Holdings, LLC with a total score of 161.50 points;

6. The current operator of the Joplin License Office ("JLO") is BCFO. BCFO has operated the JLO under RFPB3Z14285 from June 13, 2014, to present.

7. On March 3, 2023, BCFO, through counsel Lowell Pearson of Husch Blackwell LLP, filed a timely protest alleging the following:

Point I:	Favoritism.
Point II:	Improper Evaluation of the BCFO's Inventory Control Experience in Exhibit A, Section B-6B, paragraph 3.
Point III:	General qualms with the history of the RFP process.

Analysis

Point I: Favoritism.

BCFO first alleges "favoritism" in the RFP process claiming that the Department "initially attempted to prevent BCFO from even bidding" and "that someone was putting a thumb on the scale." The objection was that on a previous RFP, BCFO discovered there was no option to correctly input their business entity type and ownership structure, and alleged this was done intentionally to prevent BCFO from being able to submit a proposal. BCFO admits that "the RFP was revised" and the concern corrected. BFCO provides no evidence or even a reasonable factual or legal theory to support that an alleged error in a prior RFP was indicative of favoritism.

The contents of a withdrawn RFP have no effect on the evaluation of the JLO RFP or the awarding of a contract under the JLO RFP. Therefore, BFCO's first point on protest is denied.

Point II: Improper Evaluation of the BCFO's Inventory Control Experience in Exhibit A, Section B-6B, paragraph 3.

BCFO next alleges Breanna Gonzales's management experience in regards to "Section B6B.3 – Contract License Office Manager Experience – Inventory Control" was improperly "not verified", resulting in BCFO receiving zero (0) points for this section, instead of four (4) points.

In its proposal, BCFO claimed that the "Contract License Office Manager . . . has worked directly in a license office in a management role responsible for stocking, monitoring, and ordering inventory for the license office for at least five (5) out of the previous ten (10) years." Upon initial verification, Department records indicated Breanna Gonzalez was an "Office Manager" at the Joplin License Office between August 28, 2019, through December 21, 2022, an

"Assistant Manager" between May 24, 2018 through August 28, 2019, and a "Clerk" between March 7, 2016 through May 24, 2018. Only the positions of Manager and Assistant Manager would classify as "management roles", therefore Breanna Gonzales was credited with only four (4) years, six (6) months, and twenty-nine (29) days of experience in a management role out of the previous ten (10) years – short of the five (5) year threshold.

Upon receipt of this protest and further review of Department records, a "Form 5253 – License Office Operation Change" submitted by BCFO on October 27, 2017, was discovered, indicating Ms. Gonzalez (then Breanna Hartley) had been promoted to the supervisory role of "Key Holder" effective immediately. With the additional time as Key Holder, a management role, Breanna Gonzalez met the five (5) year threshold as claimed by BCFO in its proposal. BCFO was therefore deprived of four points (4) points for this section.

This would have changed BCFO's final score on the JLO RFP from 151.75 to 155.75, which is still short of CGB Holdings, LLC's winning proposal, which scored 161.50. Therefore, BCFO's protest is denied.

Point III: General qualms with the RFP process.

BCFO raises objections to the history of the RFP process, generally, including four sites currently run by BCFO. As part of this point, BCFO alleges there are "anecdotal references" and that it has "fears" that someone within the Missouri Association of License Offices ("MALO") "had influenced the RFP." Specifically, BCFO alleges that MALO's treasurer, Crystal Webster, owner of CGB Holdings, LLC, "inserted language into the RFP that favored CGB Holdings and worked against BCFO Titleworks Inc." The complaints regarding prior requests for proposals are unrelated to the current JLO RFP. Under § 32.042, RSMo, the contract is to be "let to the lowest and best offeror as determined by the evaluation criteria established in the request for proposal." In addition, Paragraph 4.2.8.c. of the JLO RFP states:

> The vendor's proposal, as submitted in response to the subject RFP, will be considered separate and distinct from any other proposal the vendor may have submitted in response to another RFP, including proposals of an existing license office contract or in response to another RFP currently in evaluation. Therefore, the vendor should not rely on or refer to information included in a proposal submitted by the vendor in response to another RFP.

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 that "[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 for the allegations against MALO and Crystal Webster, the Department denies that there was any such improper influence. In addition, BCFO does not identify the specific

provisions that they believe were altered which prejudiced BCFO. As such, the Department cannot evaluate the vague allegations that unidentified changes or insertions worked against BCFO.

Given the requirements that all information be included in the solicitation documents, BCFO's complaints regarding the history of the proposal process for the JLO are irrelevant to the evaluation of the current JLO RFP. In addition, the allegations against MALO are not supported with a detailed statement or supported by exhibits, evidence, or documents to substantiate the claim as required by 1 CSR 40-1.050(12). Therefore, Point III of the protest is denied.

Conclusion

For the reasons set forth above, the Department finds that BCFO Titleworks, Inc.'s protest fails to establish a basis for cancellation of the Division's award of RFPSDOR220036 to CGB Holdings, LLC. Therefore, BCFO Titleworks, Inc.'s protest is denied. Pursuant to 1 CSR 40-1.050(12), the Department will take no further action on BCFO's protest.

Sincerely,

Kenneth Struemph

Kenneth Struemph
Director
Motor Vehicle and Driver License Division