

HUSCH BLACKWELL

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March 3, 2023

VIA E-MAIL

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

Re: Protest of Contract Award for Operation of Joplin Office,
Number RFPSDOR220036

Party: BCFO Titleworks, Inc.
620 W. Republic Road
Springfield, Missouri 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

Dear Ms. Ronimous:

I am writing on behalf of BCFO Titleworks, Inc. (“BCFO”) to protest the award of a contract for a license fee office in Joplin, Missouri, Solicitation Number RFPSDOR220036. This protest letter is submitted within 10 business days of the award of the contract and is therefore timely.

BCFO was the previous contractor for a license fee office in Joplin (sometimes referred to herein as “the Joplin contract”). The Joplin contract expired in 2019. Over the next 3 ½ years, the Joplin contract has been bid and rebid a total of four times. In April 2022, the contract was awarded to BCFO; Neosho Area Business Industrial Foundation Inc. (NABIFI) finished in second place and CGB Holdings LLC came in third place.

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Following the award of the Joplin contract, along with the award of a second contract for the Glenstone office, to BCFO, protests were lodged by the law firm of Stinson LLP on behalf of CGB Holdings, protesting the Glenstone office and NABIFI, protesting the award of the Joplin contract.

Under the section subtitled, *Improper Award of Points to BCFO*, both protests filed on behalf of two different vendors related to two different RFPs use the same language, *verbatim*, for nearly three full pages. The only thing linking the two protests is their shared competitor, BCFO, which held the contracts to the Joplin and Glenstone offices.

After the protests were upheld by the State and the RFPs sent back to the Department of Revenue, a new RFP was issued and bids gathered. During this last bidding process, NABIFI did not even submit a bid, which ultimately led to CGB Holdings, which submitted the original language for both protests, to win the award of the Glenstone and Joplin contracts.

“To meet basic standards of due process and to avoid being arbitrary, unreasonable, or capricious, an agency's decision must be made using some kind of objective data rather than mere surmise, guesswork, or ‘gut feeling.’” *Mo. Nat’l Educ. Ass’n v. Mo. State Bd. Of Educ.*, 34 S.W.3d 266, 281 (Mo.App.W.D. 2000) (citation omitted). “Moreover, an agency which completely fails to consider an important aspect or factor of the issue before it may also be found to have acted arbitrarily and capriciously.” *Barry Serv. Agency Co. v. Manning*, 891 S.W.2d 882, 892 (Mo.App.W.D. 1995) (citation omitted).

Under Missouri law, proposed vendors “shall be accorded fair and equal treatment with respect to any opportunity for negotiation...” *Section 34.044, RSMo*. In fact, a contract issued pursuant to an RFP must be *cancelled* if a material provision “gives a bidder a substantial advantage or benefit not enjoyed by other bidders.” *State ex rel. Stricker v. Hanson*, 858 S.W.2d 771, 776 (Mo.App. W.D.1993). “This test ... reflects a belief that **every element which enters into the competitive scheme should be required equally for all and should not be left to the volition of the individual aspirant** to follow or to disregard and thus to estimate his bid on a basis different from that afforded the other contenders.” *Id.* (emphasis in original; internal citations omitted).

Under these standards, the process for awarding the Joplin contract was flawed.

First, the drafter of the proposed contract initially attempted to prevent BCFO from even bidding, by virtue of a provision (Section 4.8.2) that mandated a certain corporate structure to even submit a bid, thereby eliminating companies such as BCFO Titleworks, Inc. Following BCFO’s protest of this provision, the RFP was revised and this requirement eliminated. Nonetheless, the fact that an RFP would even issue with this requirement shows that someone was putting a thumb

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on the scale. This favoritism continued up to the point of an award of the Joplin contract to CGB Holdings.

Second, in the Joplin contract, Section B6B.3, DOR determined that Breanna Gonzalez was 'not verified' regarding her inventory experience. State records should reflect BCFO employment records which show she was promoted to “keyholder” on October 27, 2017. That is the first level of management in a license office and is a “management role”. In that role she opened and closed the office and was responsible for inventory. She also recorded and reconciled and this can be verified. After that, she was promoted to assistant manager and then office manager where she presently serves.

The exact verbiage of the RFP states “[h]as worked directly in a license office in a management role responsible for stocking and monitoring inventory for the office for at least five of the previous ten years.” Ms. Gonzalez meets this requirement, and points should have been awarded accordingly

Third, the license office bid process has been broken since 2019. Despite multiple protests and lawsuits, DOR continued opening bids on offices including four of the offices run by BCFO: Glenstone license office (GLO), Joplin license office (JLO), Nixa license office (NLO) and Ozark license office (OLO).

BCFO, a non-profit, was and is the current contract holder. Acting upon recommendations from its CPA, BCFO re-bid the contracts through a new for-profit company, a wholly owned subsidiary of BCFO called BCFO Titleworks Inc. It is structured as a “C” business corporation with no owners and the sole shareholder of BCFO.

When BCFO originally rebid the offices, the state took no action for months. Because the RFP states that BCFO may only communicate with the buyer, at the time an employee of the Office of Administration (OA), BCFO received limited information, if any, about the status of the bids.

That summer when new bids were issued for these offices, BCFO learned the state had essentially “thrown out” the original bids without informing BCFO, revised the RFP and issued the new RFP in June, 2020. BCFO submitted new bids again at that time and again it waited.

Those bids were not decided either but instead thrown out like the first round. At least this time, BCFO was notified. During this time period, the RFP was revised again, now on the 6th or 7th iteration.

When DOR opened bids on the same contracts in January, 2022 the language had again changed. During the open bid process, BCFO sent emails and made repeated calls which largely

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went unanswered about how it should denote its corporate structure on the RFP. DOR had since taken over for OA and was handling the entire RFP process, including fielding questions. At one point, the director of administration, who was handling questions about the RFP at the time, said a lot of people were not in the office lately because of Covid and that they would do their best to answer questions... no answers came before the deadline, but they did respond “after” the deadline to file the bid.

In April, 2022 DOR awarded contracts for JLO, GLO, OLO, and NLO to BCFO Titleworks Inc. Because of a large differential in the point totals for OLO and NLO, no one protested those awards. CGB Holdings (which came in second place for GLO) protested the award of GLO and the Neosho Area Business Industrial Foundation Inc (NABIFI), which placed second for JLO, protested the award of JLO.

Those two vendors appeared to have worked together through the same law firm, Stinson, LLP, to file nearly identical protests of the awards to BCFO Titleworks Inc. Both vendors working on separate RFPs used the same language “verbatim” to criticize BCFO Titleworks Inc’s choice of corporate structure on the bid form... a form that did not contain a box for BCFO’s particular corporation (even though it had sought guidance and received no feedback from the buyer during the bid process regarding this very question).

NABIFI, which protested the first award of JLO on April 21st did not file its protest until May 4, 2022. CGB Holdings, whom BCFO believes convinced the other vendor (NABIFI) to file a protest, filed their protest of GLO seven days earlier on April 28, 2022; their award was announced April 14th.

Later that year, the state upheld both protests and started the process over again. In December, 2022 the state reopened the bids on GLO and JLO. The RFP had changed drastically, with the exception of the single point under which BCFO Titleworks had lost the protest... the state had not changed the corporation options. Before the RFP was opened for review, DOR had sought public input and received significant verbiage from the Missouri Association of License Offices (MALO), as was explained to the director of BCFO by DOR director Wayne Wallingford and Rod Jetton of the division of licensing on two separate occasions during meetings in their offices.

This was the 7th or 8th iteration of the RFP and BCFO is still uncertain why it was changed so drastically since the previous RFP had gone all the way through the bid and award process and the only contention was three instances of minor mis-scoring happened on both JLO and GLO and that BCFO Titleworks Inc had mislabeled its corporate structure.

In addition to the anecdotal references that MALO had offered RFP language, it was also evident that someone within MALO with considerable experience and background in license

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office contracts had influenced the RFP. For the first time, this latest RFP contained language minimizing the reduction in points for suspensions or contract cancellations related to former officers, owners or contact license office managers or entities related to them, section D-4 -2. With this addition, DOR is allowing discredited agents to run state offices.

This latest RFP also had removed previous important aspects to DOR regarding offices. Things like benefits, training, raises to employees, PTO, even the principle place of business (which favors larger MALO corporations bidding away from their headquarters) were removed from the RFP.

When the latest RFP was delivered, BCFO reached out to attorneys in Jefferson City, Husch Blackwell because it feared MALO and specifically their treasurer, Crystal Webster, owner of CGB Holdings, had inserted language into the RFP that favored CGB Holdings and worked against BCFO Titleworks Inc. Husch Blackwell sent a letter asserting to DOR the RFP was illegal and the day before the deadline DOR rescinded the bid. Approximately one week later, DOR reissued the bid with only 2 noticeable minor changes impacting the corporate structure portion.

On February 17th, the state awarded the JLO contract to CGB Holdings. What's worthy of noting is that NABIFI, which lodged the formal protest of the previous award through Stinson, did not even submit a bid. Then on February 21st DOR awarded the GLO contract to CGB Holdings.

Finally, I respectfully request that no transition of the contract for the Joplin office take place until an investigation and resolution of the issues raised herein occurs.

Thank you.

Sincerely,

HUSCH BLACKWELL LLP



Lowell D. Pearson