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VIA HAND-DELIVERY & VIA EMAIL: [Tara.Ronimous@dor.mo.gov](mailto:Tara.Ronimous@dor.mo.gov)

Tara Ronimous  
Department of Revenue, Administration Division  
301 West High Street, Room 218  
PO Box 87  
Jefferson City, MO 65105

RE: Protest of Contract Award for Operation of South Springfield Office, RFPSDOR240110

Protesting Party: 2015 Schotthill Woods LLC  
2015A Schotthill Woods Drive  
Jefferson City, MO 65101

Point of Contact: David Koester Jr.  
(573) 470-5555

Attorney: Stephanie S. Bell  
Ellinger Bell LLC  
308 East High Street, Suite 300  
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(573) 750-4100

Dear Ms. Ronimous:

2015 Schotthill Woods LLC (“Schotthill”) protests the award of the contract for RFPSDOR240110 (the “RFP”) to BCFO Titleworks Inc. (“BCFO”) pursuant to 1 CSR 40-1.050(12), and Special Delegation of Authority 537 (SDA537).

The Department of Revenue (“DOR”) erroneously awarded the contract to BCFO. DOR erroneously determined Schotthill Woods was non-compliant for not meeting the requirements established in the RFP. *See* Exhibit A. DOR should have scored Schotthill’s proposal. If it had so, Schotthill would have been the lowest and best bidder and been awarded the contract.

DOR should rescind the award and re-bid the contract. The disqualification of Schotthill's response is factually incorrect and should be reversed. Additionally, DOR's actions in looking beyond Schotthill's response, and in changing the rules mid-stream, are arbitrary and capricious. DOR should have promulgated the change as a rule, but such rule would violate the Constitution in any event.

**Point I: DOR's "Non-compliant RFP Proposals" statement is false.**

DOR determined Schotthill's proposal was "not eligible for evaluation" for not meeting the RFP requirements pursuant to Section 4.2.3. Exhibit A, p. 121. DOR determined Schotthill was ineligible because "The individual named as Contract License Office Manager was named as a Contract License Officer Manager on a previously awarded contract for the same vendor." *Id.*

This statement is false as it is contradicted by the facts. On June 7, 2023, Schotthill was awarded the Columbia South License Office. *See* Exhibit D, RFPDOR230073. On August 31, 2023, DOR approved a change to the Contract License Office Manager ("CLOM") for Columbia South – making the new CLOM Melia Thomas. When Schotthill's RFP Response for South Springfield was submitted on October 31, 2023, Kim Peck-Matney was not the named CLOM for any previously awarded contract.

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 on the contractor in all matters related to the management of the contract." Exhibit A, p. 93. As of August 31, 2023, Kim Peck-Matney was not an on-site employee overseeing any contract license office, and the same was true when Schotthill submitted its response for South Springfield on October 31, 2023.

DOR was, or should have been, aware of this fact. That it disqualified Schotthill based on information that DOR had in its possession is sufficient grounds for a rebid. Schotthill's proposal should not have been deemed "not eligible for evaluation", should have been evaluated, and because it was not, the DOR should rescind the award and re-bid the contract.

**Point II: The South Columbia RFP governs Kim Peck-Mackney.**

It is unclear under which provision DOR purported to disqualify Schotthill, because DOR did not identify the exact provision in its Memo regarding "Non-compliant RFP Proposals." Exhibit A, p. 121. The language DOR used to disqualify Schotthill does not come directly from the RFP at all ("The individual named as Contract License Office Manager was named as a Contract License Officer Manager on a previously awarded contract for the same vendor.").

This appears to be a disqualification under RFP Section 2.3.1(5), which reads as follows:

5) Once an individual is named as a Contract License Office Manager in a bid proposal for a contract by a vendor, they cannot be named as Contract License Office Manager by the same vendor in any other bid proposals until the contract is finally awarded.

As described above in Point I, disqualification on this ground is error because the statement in the memo by DOR is false based upon all the facts; which were or should have been known by DOR.

To the extent the grounds for non-compliance was 2.3.1(6), the decision by DOR was also arbitrary, capricious, and unlawful. When Schotthill included Kim Peck-Matney as a Contract Manger in its submission, it did so under the provisions of the South Columbia RFP. That RFP provided:

6) Once an individual is named as a Contract License Office Manager of an awarded contract, they cannot be named as a Contract License Office Manager in any other awarded contracts, or in any further bid proposals, while remaining in the capacity of a Contract License Office Manager, unless it is for the rebid of the license office which the current Contract License Office Manager manages. An exception may be made, based on the required operating hours listed on Attachment 1 for each location proposed or under contract, and the percent of hours identified on Exhibit A Section B-6 of the RFP, or the corresponding documentation of an awarded contract to determine the allocation of hours worked by the Contract License Office Manager.

Exhibit D, p. 10. Following the award of the Columbia South License Office (June 7, 2023), on August 31, 2023, DOR approved a change to the CLOM for Columbia South – making the new CLOM, Melia Thomas. *See* Exhibits B and C. Under the terms in which the Columbia South License Office was awarded, that made Kim Peck-Matney a “free agent” as she no longer “remain[ed] in the capacity of a Contract License Officer Manager” as of August 31, 2023.

At the time Schotthill requested the change, and at the time DOR approved the change, there was no prohibition on proposing Kim Peck-Matney as CLOM for any future office. As such, there is no basis for DOR to disqualify Schotthill’s response to the South Springfield RFP. DOR’s actions in approving Melia Thomas demonstrates that it had actual knowledge that Kim Peck-Matney was not the CLOM under any existing contract.

DOR made changes to the substance of the requirements of Section 2.3.1 sometime after September 2023. The South Springfield License Office RFP, issued on October 18, 2023, included a new provision, which reads:

6) Once a contract has been awarded to a vendor, that vendor cannot use the Contract License Office Manager for a period of thirty (30) months, from the award.

Exhibit A, p. 10. Again, the disqualification of Schotthill based on this language was in error. The RFP does not specify that the provision bans the CLOM that was listed in the RFP submission. It uses the present tense of CLOM. 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 on the contractor in all matters related to the management of the contract.” Exhibit A, p. 93. The South Columbia License Office was awarded to Schotthill, the CLOM of Schotthill at South Columbia at the time of submission of the South Springfield bid was Melia Thomas, Schotthill should not have been deemed non-compliant under the plain language of the RFP for listing Kim Peck-Matney.

The provisions governing Kim Peck-Matney were those of the Columbia RFP and contract, which contained no prohibition from her being listed on a future proposal. As such, Schotthill's proposal should not have been deemed "not eligible for evaluation", should have been evaluated, and because it was not, DOR should rescind the award and re-bid the contract.

**Point III: The Retroactive CLOM Bar is arbitrary, capricious and unlawful.**

DOR's decision to retroactively bar any Contract License Office Manager for 2.5 years is arbitrary, capricious and unlawful. To the extent DOR has determined that putting Kim Peck-Matney's name on any submission for the next thirty months makes the submission non-compliant, the same is arbitrary, capricious and unlawful.

First, it means that some of the most experienced CLOMs in the state (like Kim Peck-Matney) will be prohibited from serving as CLOMs. It is clear from the RFP that the goal, in fact, is to award contracts to bidders with experienced CLOMs. Prohibiting Schotthill Woods from proposing Kim Peck-Matney on any proposal for the next two and a half years is inconsistent with the public policy of the state in awarding contracts to the best offeror as well as arbitrary, capricious and unlawful.

In addition, it appears that this 2.5-year prohibition is for the purpose of prohibiting a bidder from putting up the same experienced "Jane Doe" for several bids, knowing that "Jane Doe" can actually only serve as the CLOM for one. Those other offices would be filled by someone with lesser experience than "Jane Doe" (but perhaps would not have been won by the vendor without the listing of Jane Doe in the submission).

This new 2.5-year bar for CLOMs does not accomplish this purpose. For instance, despite not currently being a CLOM for any office, Kim Peck-Matney is supposedly barred from being named as a potential CLOM for any office for the next 2.5 years. In addition, 2.3.1(6) does not prohibit a vendor from proposing as a CLOM someone who currently serves as a CLOM elsewhere. So, while Schotthill Woods cannot list Kim Peck-Matney (who is available, ready, willing and able to serve as CLOM on day one), another bidder could list someone who is currently the CLOM in a different office (and who is not available to serve as CLOM on day one) and not be deemed non-compliant. This is arbitrary, capricious and unlawful.

**Point IV: DOR violated procurement requirements by applying unpromulgated rules in awarding the contract, and even if DOR were to promulgate a rule, it would violate the Missouri Constitution.**

In barring the use of the same CLOM for 2.5 years, DOR has created a generally applicable policy of evaluating proposals for license office contracts. DOR is now applying this policy to all bidding opportunities for license office contracts.<sup>1</sup> This policy has not been published with the Secretary of State, and DOR did not follow the procedures in Chapter 536 for enacting a rule.

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<sup>1</sup> Other policies that make vendors ineligible to compete for contracts have been promulgated as rules. *See e.g.*, 1 CSR 40-1.060.

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DOR's use of unpromulgated rules in their evaluation and award violates Section 34.050, RSMo, and renders the resulting award of contract void and of no effect. *See* Section 34.150, RSMo.

Even if DOR was to promulgate a rule, it would be invalid under Article 1, Section 13 of the Missouri Constitution, which provides:

That no *ex post facto* law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be enacted.

The *ex post facto* prohibitions apply to the legislature, but may also be applied to "an agency's duly-promulgated substantive regulations, as they have the force and effect of laws." *Davis v. Kempker*, 167 S.W.3d 721, 728 (Mo. App. W.D. 2005) (quoting *Miller v. Mitchell*, 25 S.W.3d 658, 663 (Mo. App. W.D. 2000)).

Here, DOR's actions in deeming Schotthill Woods not eligible for evaluation based on a response given to another RFP essentially amends the South Columbia Contract (CDOR230073) by adding the following language:

If awarded, the CLOM used for this RFP cannot be used for a period of thirty (30) months, from the award.

This new language in the South Springfield RFP actually impairs the existing South Columbia contract in violation of the Missouri Constitution.

### **Conclusion**

The simple fact is that Schotthill's proposal should not have been deemed "not eligible for evaluation" and should have been evaluated. Because it was not, the DOR should rescind the award and re-bid the contract.

For all the reasons discussed above, DOR's award of the contract to BCFO Titleworks Inc. was arbitrary, capricious, and unlawful. DOR should sustain the protest, rescind the award to BCFO and re-bid the contract.

Sincerely,



Stephanie S. Bell  
Attorney at Law

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List of Attached Exhibits:

**Exhibit A – South Springfield RFP & Evaluation Summary**

**Exhibit B – Form 5485 – Approval Request for Supervisory or Management Personnel**

**Exhibit C – South Columbia License Office Contract Modification dated August 31, 2023**

**Exhibit D – South Columbia RFP & Evaluation Summary**

**Exhibit E – Schotthill Proposal**