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Department of Finance
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Director Patterson,

I am writing in response to the procurement protest filed by METRC regarding RFP S000000361. I am specifically addressing the allegations raised by METRC concerning the evaluators and to add clarity to a resurfacing claim.

Allegation-

METRC claims that Bio Track was over scored for experience because evaluators failed to consider past performance. Also, that BioTrack did not list their experience in Arkansas due to poor performance and issues.

Despite this lack of disclosure and prior troubling experience, the four evaluators each gave BioTrack the highest score of 10 for experience and three of the four gave BioTrack the highest score of 10 for solution. Ark. Code Ann. § 19-11-229(f) specifically allows, if not requires, the evaluator of a response to an RFP to consider past performance. It does not appear that the consideration of BioTrack's proposal in any way took into account the experience and solution issues raised by its prior performance of the Arkansas contract nor does it appear the evaluators took into consideration the State's prior experience with BioTrack and its solution. (See Exhibit 2 for articles re: BioTrack) Instead, it appears that BioTrack's status as a current contractor gave it some advantage in the review in that it appears the regulators took into account the issues that might be raised by a transfer to a new vendor. Such consideration is contrary to the provisions of the RFP and, if allowed, would result in this being something significantly different than a competitive bid process.

Response:

Both METRC and BioTrack operate in numerous states and have significant experience in marijuana tracking systems. Both offerors greatly surpassed the minimum requirement of section 2.4 *Prospective Contractor Minimum Qualifications* listed on page 7 of the Request for Proposal (RFP). The protest letter further states that offeror BioTrack did not disclose any experience in its proposal related to the State of Arkansas. This is factually untrue. BioTrack claimed Arkansas specific experience in section "*Information for Evaluation – Experience*".

The protest letter also claims that the evaluators did not consider prior problems with BioTrack's system. For context when addressing this allegation, the RFP evaluation team consisted of an attorney assigned to the medical marijuana administrative division, a DFA project manager who works for the IT department, the supervisor over the medical marijuana auditing division, and the director of enforcement who oversees all medical marijuana compliance for the state. Collectively these individuals are the most knowledgeable of the current and past Arkansas State Traceability Enforcement Management System (ARSTEMS), history of the program, growth of the program, struggles, and needed requirements for a future tracking system. Two of the four evaluators oversee 14 employees that are solely dedicated to monitoring the Arkansas medical marijuana program and who work in ARSTEMS daily. The Arkansas Regulatory Division licenses, teaches, monitors, enforces and advises medical marijuana industry on

compliance methods, best practices and assist them in sorting their technical problems regularly. Thus, it would have been impossible for them to not be knowledgeable of BioTrack's prior performance.

Arkansas medical marijuana is tracked at a highly granular level and requires attention to detail when working in the ARSTEMS program. The reality is that the overwhelming majority of reported technical problems with ARSTEMS are user error or errors with the third-party point of sales systems. If an industry member doesn't understand the intricacy of the marijuana program, how it works or rule requirements, the easy response is to blame "technical problems" when the system does not perform the desired function.

A licensee is never and has never been administratively sanctioned for a "system error" outside of their control. This is why the administrative sanction process has had almost no ABC board hearings or appeals based on inventory tracking violations. Both METRC and BioTrack were given the highest possible score on experience from all evaluators. Both offerors clearly established their expertise set forth by procurement guidelines.

"The response provides metrics clearly establishing that the Prospective Contractor is reliable and capable of fully performing the required services."

Allegation-

METRC also claims that evaluators gave an advantage to Bio Track because of their status as the current vendor. The specific language of the RFP document speaks directly against the claim that a lack of desire for regulators to change vendors existed or that evaluator's desire was to always stay with BioTrack or provide them some additional scoring advantage. It is noteworthy that the mandatory system requirements that are outlined in the RFP are very different from the current ARSTEMS program.

State regulators are seeking a **new** State Traceability Enforcement Management System (ARSTEMS) with enhanced functionality and greater user-friendly capabilities beyond what is currently in use. In preparation for this endeavor DFA wrote specific language regarding data conversion and migration to a brand-new system. These requirements were carefully crafted in sections 2.12 which sets the clear expectations of a new vendor to move the legacy data into a new system. Furthermore *Section 2.14 Implementation and Testing* details how the movement of the data will occur with the expectation of a full data migration.

Sections 2.15 Training Requirements details the expectations for a vendor to train members of industry and state members in the functionality of a new system before a final implementation, therefore reducing any downtime or program impact.

"The Contractor shall provide all training sufficiently in advance to the "Go-Live" of the proposed S2S such that all Users required to be trained have had a sufficient amount of exposure to capably use the S2S."

The robust requirements in section 2.5 through 2.11 and remaining sections are a roadmap for a completely **new** system implementation. There was no desire for a return to the previous system. Nor would the previous system meet the RFP requirements.

Also keep in mind this RFP was drafted well before evaluators had any knowledge that Bio Track had developed a "next generation" enhanced version they planned to propose. Implementation timelines proposed by both METRC and BioTrack systems are almost identical. There is no workload benefit in terms of system implementation to select one over the other.

Arkansas medical marijuana regulations require a high level of accountability, traceability, and detailed management to ensure patient safety and transparency. The resulting score assessments are based

on the specific Arkansas marijuana program requirements. The evaluators selected the best vendor to meet the needs of a unique Arkansas program.

Clarity regarding the involvement of convicted felon Micheal Shvartsman:

In November of 2024 during the final phases of the Medical Marijuana Seed to Sale Software Procurement, Arkansas DFA Regulatory Division was made aware that a member of the medical marijuana industry was raising an issue that one of the shareholders/officers of the parent company that owned BioTrack was a convicted felon. That same day the public information officer of DFA received a media request from the Arkansas Democrat Gazette.

Arkansas DFA Regulatory Division immediately directed OSP to hold the anticipation to award until a thorough review could be conducted. After a review was concluded, it was determined that the individual in question, Michael Shvartsman, ceased to be a shareholder of BioTrack or its parent companies prior to his conviction (for matters unrelated to BioTrack). We further required that BioTrack certify that none of their officers, shareholders or owners were convicted felons. The timing of the allegations concerning Michael Shvartsman raise serious concerns as to an attempt to affect the procurement process.

In closing, evaluators explicitly followed all procurement office guidance, laws, and procedures during the entire process. The evaluation team possessed experience, knowledge, and all relevant information needed to make the best, fairest, and most beneficial decision for the State of Arkansas.



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