



Department of Transformation and Shared Services

Governor Sarah Huckabee Sanders

Secretary Leslie Fiskien

March 25, 2025

Mr. Kevin A. Crass
Friday, Eldredge, & Clark, LLP
400 West Capitol Avenue, Suite 2000
Little Rock, Arkansas 72201
Via email: Crass@fridayfirm.com

RE: Metrc Protest of Anticipation to Award, Solicitation No. S000000361: Medical Marijuana Seed to Sale Tracking System

Mr. Crass,

The Office of State Procurement (OSP) has reviewed Metrc's protest of the Department of Finance and Administration Services's (DFA) anticipated award to BioTrackTHC (BioTrack) for a Medical Marijuana Seed to Sale Tracking System (Solicitation: S000000361). Metrc protests on two grounds: (1) that DFA failed to adhere to the rules of the procurement as stated in the solicitation, and the failure to adhere to the rules materially affected the contract award; and (2) BioTrack's responses were collusive, submitted in bad faith, or not arrived at independently through open competition. See Ark. Code Ann. § 19-11-244 (a)(4)(A)(iii)-(iv). The protest is denied.

I. Background

On September 9, 2024, DFA issued public notice of RFP, Solicitation No. S000000361. Four (4) companies submitted proposals in response to the solicitation, but two of the proposals were disqualified. Only Metrc's and BioTrack's proposals resulted in final scoring. BioTrack received the highest-scored proposal, which totaled 900.13, and DFA issued the anticipation to award to BioTrack. Metrc received the second highest-scored proposal, with a total score of 829.38. Metrc timely filed a protest pursuant to Ark. Code Ann. § 19-11-244, and BioTrack and DFA timely responded to the protest.

II. Protested Issues

Under Ark. Code Ann. § 19-11-244(a)(4), protests may only be made on specific grounds. Metrc protests on the grounds that "the procurement agency failed to adhere to the rules of the procurement as stated in the solicitation" and that "[t]he procurement process involved responses that were collusive, submitted in bad faith, or not arrived at

independently through open competition...” Ark. Code Ann. § 19-11-244(a)(4)(A)(iii)-(iv). Metrc claims that BioTrack’s Experience and Solution scores were inconsistent and inflated and that BioTrack failed to list felony convictions of two of its officers.

A. BioTrack’s Experience and Solution scores were inconsistent and inflated.

Metrc asserts that BioTrack’s Experience and Solution scores were inconsistent and inflated when considering the RFP’s criteria. It cites three reasons; each are without merit.

First, Metrc claims that BioTrack did not offer any information regarding its experience. But this allegation is inaccurate. BioTrack’s proposal specifically cited its work in Arkansas in its proposal section, “Information for Evaluation – Experience.” It stated, in part,

BioTrack has provided the Seed to Sale System for the State of Arkansas since go-live in 2017. BioTrack successfully designed and implemented the State of Arkansas Department of Health comprehensive medical marijuana system that includes both a seed-to-sale tracking system and an integrated patient registry. BioTrack has provided superior support and maintenance for that system since go-live.

Metrc next claims that BioTrack should not have been given an average score of 10 for the Experience portion of its proposal because of problems DFA has experienced with its BioTrack system. A score of 10 on the RFP meant that “the response provides metrics clearly establishing that the Prospective Contractor is reliable and capable of fully performing the required services.” Specifically, Metrc asserts that “[i]t 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.” (emphasis added).

However, as DFA explains in its response, the evaluation team was comprised of individuals who are knowledgeable of the State’s current system, including its history with BioTrack and the current system’s limitations. Also, none of the support issues that Metrc has cited are from current sources; they all are 3-4 years old. And, according to DFA’s protest response, the “overwhelming majority of reported technical problems with [the current system] are user error or errors with the third-party point of sales systems.”

Furthermore, it seems that neither vendor is immune to implementation issues. In BioTrack’s response it cites similar examples of support-related issues other states have experienced with Metrc systems. And yet, Metrc, like BioTrack, also received an Experience score of 10. Accordingly, Metrc has not demonstrated that the evaluators’ scores were inconsistent, such that the procurement rules were violated or that BioTrack’s proposal was submitted in bad faith or collusive.

Finally, Metrc alleges that BioTrack’s status as the incumbent vendor gave it an advantage in the Solution scoring. BioTrack’s average Solution score was 8.8. Metrc’s

average Solution score was 6.3. However, the RFP clearly sought implementation of a new system, and BioTrack's proposal includes an entirely new, enhanced system that will take nearly as long to implement as the system Metrc proposed. Therefore, the existing system was not considered as part of the Solution scoring, and as DFA states, "there is no workload benefit in terms of system implementation to select one over the other." DFA also explains that the RFP was "drafted well before evaluators had any knowledge that BioTrack had developed a 'next generation' enhanced version they planned to propose." (emphasis in original). Simply put, DFA states that the evaluators' Solutions scores were based on "the best vendor to meet the needs of a unique Arkansas program." Accordingly, Metrc's arguments that the RFP's scoring was inconsistent and inflated is unsupported by the evidence presented.

B. BioTrack's officers were convicted of insider trading

Metrc asserts that BioTrack's proposal should have been disqualified because two of its officers were convicted of insider trading. It also claims that BioTrack's failure to disclose this information in its proposal should result in its disqualification.

In its response, DFA explains that upon learning of these allegations in November 2024, it paused the RFP process and conducted a review. Its review concluded that the men had ceased to be shareholders of BioTrack's parent company prior to their convictions for matters unrelated to BioTrack. BioTrack also certified to DFA that none of its officers, shareholders, or owners were convicted felons. In its protest response, BioTrack similarly states that the men "have never held any formal, corporate, or leadership role within BioTrack and our company is not affiliated with them."

Therefore, BioTrack did not have a duty to disclose this information because at the time it submitted its proposal these individuals no longer had any relation to BioTrack or its parent company. Given this information, I find that BioTrack did not submit its response to the RFP contrary to procurement rules or in bad faith.

III. Conclusion

Metrc's protest is denied. Metrc has failed to present evidence that procurement rules were not adhered to or that BioTrack's proposal was collusive or submitted in bad faith. DFA may proceed with the procurement consistent with Arkansas Procurement Law. This determination is final and conclusive. Ark. Code Ann. § 19-11-244(e)(1).

Sincerely,

A handwritten signature in black ink that reads "Jessica Patterson". The script is cursive and fluid, with the first letters of the first and last names being capitalized and prominent.

Jessica Patterson
State Procurement Director