

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

METRC LLC,)
4151 S. Pipkin Road,)
Lakeland, FL 33811,)

Petitioner,)

v.)

SARAH STEELMAN,)
Commissioner, Office of Administration,)
State of Missouri,)
State Capitol Building, Room 125,)
Jefferson City, MO 65101,)

and)

OFFICE OF ADMINISTRATION,)
State of Missouri,)
State Capitol Building, Room 125,)
Jefferson City, MO 65101,)

and)

Case No.

KAREN S. BOEGER,)
Director, Division of Purchasing and)
Materials Management,)
301 West High Street, Room 630,)
Jefferson City, MO 65101,)

and)

DIVISION OF PURCHASING AND)
MATERIALS MANAGEMENT,)
301 West High Street, Room 630,)
Jefferson City, MO 65101,)

Respondents.)

PETITION FOR DECLARATORY JUDGMENT

Petitioner, for its Petition, states as follows:

PARTIES, JURISDICTION and VENUE

1. Plaintiff Metrc LLC (“*Metrc*”) is the winning bidder on State of Missouri RFP No. RFPT 30034901901827, Missouri Medical Marijuana Information System (*the “RFP”*), for the State of Missouri contract that was the subject of the RFP (*the “Contract”*) designated as contract number CT191827001.

2. Defendant Sarah Steelman is the Commissioner of Administration. She has the statutory duty to purchase all supplies for the State of Missouri, pursuant to statutes and regulations. § 34.040, *RSMo*. Commissioner Steelman is sued only in her official capacity.

3. Defendant Office of Administration employs Commissioner Steelman. Employees of the Office of Administration work under the direction of Commissioner Steelman to, among other things, purchase supplies for the State of Missouri.

4. Defendant Karen S. Boeger is the Director of the Division of Purchasing and Materials Management (“*DPMM*”), which is a division within the Office of Administration. As will be described below, in a DPMM letter, dated May 20, 2019, to counsel to a protesting bidder, Bio-Tech Medical Software, Inc. (“*BioTrack*”), DPMM denied BioTrack’s protest. However, in that letter, Ms. Boeger included an interpretation of the Contract awarded to Metrc that would incorrectly limit Metrc’s rights and has led to this lawsuit. Director Boeger is sued only in her official capacity.

5. Defendant DPMM is a division within the Office of Administration which has been delegated the responsibility to purchase supplies and materials for the State of Missouri.

6. The word “supplies” in Section 34.040, RSMo includes the Missouri Medical Marijuana System in Contract CT191827001.

JURISDICTIONAL STATEMENT

7. This Court has jurisdiction over this case pursuant to Missouri Rules of Civil Procedure 87.01 and 87.02 and Section 527.010, RSMo. The basis of the claim in this Petition is that Metrc has a valid contract with the State of Missouri, but that Defendants have caused uncertainty as to the terms of the contract.

8. Any person interested under a contract or any person whose rights, status or legal relations are affected by a contract may obtain a declaration of rights, status, or legal relations to any question of construction or validity arising under the contract. *Rule 87.02(a); § 527.020, RSMo.*

9. Metrc has an interest in its contract with the State, and its rights, status or legal relations are affected by that contract. Accordingly, Metrc may obtain a declaration from this Court as to the construction of Contract CT191827001.

10. This Court also has the power to render declaratory judgments as to the validity of agency rules or threatened applications thereof. *Rule 87.02(c).*

11. Metrc asserts that the position taken by Defendant Boeger in the aforesaid May 20, 2019 DPMM letter, interpreting and limiting Metrc’s rights under the Contract,

is inconsistent with a rule subsequently promulgated by the State of Missouri, and therefore this Court may render a declaration that the agency rule is valid.

12. Venue is proper in Cole County under Section 508.010(2) because the Defendants reside in Cole County.

THE RFP AND CONTRACT

13. The RFP was originally issued by DPMM on March 4, 2019. A true and accurate copy of the original RFP is attached hereto at **Petition Exhibit 1** and incorporated by reference herein.

14. Amendments to the RFP were issued by DPMM on March 8, 2019, March 12, 2019, and March 13, 2019. True and accurate copies of the first two pages of Addendum No. 1, Addendum No. 2 and Addendum No. 3, identifying the sections of the RFP that were amended, are attached hereto at **Petition Exhibits 2, 3 and 4**, respectively, and each is incorporated by reference herein.

15. A Best and Final Offer (“**BAFO**”) request was issued by DPMM on March 25, 2019, with BAFO’s due on or before March 28, 2019. A true and accurate copy of the first two pages of the BAFO request issued by DPMM is attached hereto at **Petition Exhibit 5** and incorporated by reference herein. The remaining pages of that BAFO request are included within Metrc’s BAFO response, which is attached hereto at **Petition Exhibit 6**. Metrc submitted its BAFO response on March 27, 2019. A true and accurate copy of Metrc’s BAFO response is attached hereto at **Petition Exhibit 6** and incorporated by reference herein.

16. On March 29, 2019, DPMM requested clarification from Metrc with regard to RFP Exhibit A, line item 11, of Metrc's BAFO response.

17. Specifically, DPMM questioned whether the price stated in line item 11 was dependent on the total number of businesses ultimately licensed by the State. In an email from the buyer, Stacia Dawson, DPMM stated:

On line item 11, please clarify whether the pricing stated for the Original Contract Period, years 1 through 5, and the two renewal periods are firm, fixed prices or whether the pricing is dependent upon the number of businesses that will actually be licensed by the state.

A true and accurate copy of the March 29, 2019 email from Stacia Dawson is attached hereto at **Petition Exhibit 7** and incorporated by reference herein. That same day, Metrc responded by stating that the "amount on Line Item 11 is our firm and fixed pricing." A true and accurate copy of Metrc's March 29, 2019 email from Ernie Francise is attached hereto at **Petition Exhibit 8** and incorporated by reference herein.

18. Following receipt of the BAFO responses, the DPMM evaluation committee completed discussions of the proposals, completed a subjective evaluation and assigned the subjective evaluation points to the categories of Proposed Methodology and Approach, Team Qualifications and Past Performance.

19. DPMM also performed a cost evaluation in accordance with paragraph 4.7 of the RFP. Additionally, DPMM reviewed each proposal to determine participation by an MBE/WBE, an Organization for the Blind and/or Sheltered Workshop, and/or a Service-Disabled Veterans Business Enterprise.

20. After completion of the subjective evaluation, DPMM inserted the cost evaluation points and Organization for the Blind/Sheltered Workshop bonus points onto the evaluation report form and computed the total points for each vendor.

21. Metrc received the highest total point score and was recommended by the evaluation committee for contract award as the “lowest and best” vendor. A true and accurate copy of the April 4, 2019 evaluation memorandum is attached hereto at **Petition Exhibit 9** and incorporated by reference herein.

22. The results from the evaluation were presented to the Department of Health and Senior Services (“**DHSS**”) to ensure that the recommended vendor would meet the needs of the state agency and to ensure that the pricing was acceptable.

23. DHSS agreed with the recommendation of the evaluation committee and recommended that DPMM proceed with a contract award to Metrc.

24. On April 5, 2019, a Notice of Award was issued to Metrc. A true and accurate copy of the Notice of Award is attached hereto at **Petition Exhibit 10** and incorporated by reference herein.

**THE BIOTRACK PROTEST, METRC RESPONSE
AND BOEGER DENIAL OF PROTEST**

25. On April 18, 2019, BioTrack protested the award of the Contract to Metrc. BioTrack was one of five unsuccessful bidders. A true and accurate copy of BioTrack’s protest letter (without exhibits) is attached hereto at **Petition Exhibit 11** and incorporated by reference herein.

26. BioTrack set forth several theories in support of its protest, and asked DPMM to cancel the award of the contract to Metrc and, instead, award the contract to BioTrack. *See* **Petition Exhibit 11**.

27. One of BioTrack's theories asserted that Metrc's BAFO response failed to adequately set forth Metrc's RFID tag charges. *See* **Petition Exhibit 11**. This is wrong.

28. The RFID tag charges proposed by Metrc were initially disclosed by Metrc in both RFP Exhibit A, line item 15, and in RFP Exhibit B at p. 9. A true and accurate copy of RFP Exhibit A, line item 15, and RFP Exhibit B at p. 9 of Metrc's initial RFP response are attached hereto at **Petition Exhibit 12** and incorporated by reference herein.

29. Thereafter, DPMM requested that Metrc amend RFP Exhibit A, line item 15, to disclose only those firm, fixed costs that would be charged to the State. Metrc did so.

30. In an effort to be fully transparent, however, Metrc did not amend RFP Exhibit B of its proposal, which had previously indicated that such RFID charges would be charged on a per plant and per package basis to users of such tags within the industry. Notably, RFP Exhibit B remains a part of the contract, and at no time was the State misinformed as to Metrc's intention to charge these fees to non-state users of the RFID tags. *See* **Petition Exhibit 12 and Petition Exhibit 6**.

31. On May 20, 2019, DPMM denied the protest of BioTrack. A true and accurate copy of the May 20, 2019 letter from Karen Boeger denying the protest is attached hereto at **Petition Exhibit 13** and incorporated by reference herein. However, in

its denial letter, DPMM stated that the Contract between Metrc and the State did *not* permit Metrc to charge non-state end-users for the RFID tags. See **Petition Exhibit 13**.

THE REGULATION

32. On May 24, 2019, the Department of Health and Senior Services (“DHSS”) filed Emergency Rule 19 CSR 30-95.025. A true and accurate copy of that Emergency Rule is attached hereto as **Petition Exhibit 14** and incorporated by reference herein.

33. Emergency Rule 19 CSR 30-95.025 was effective June 3, 2019, and expires February 27, 2020. It was published in the *Missouri Register* on July 1, 2019.

34. DHSS also filed an identical proposed rule on the same topic on May 24, 2019. It was published in the *Missouri Register* on July 1, 2019.

35. Emergency Rule 19 CSR 30-95.025(7) provides as follows:

(7) Statewide Track and Trace System

(A) No entity holding a contract with the state of Missouri for a statewide track and trace system or any affiliates of that entity may sell seed-to-sale services or services related to compliance with seed-to-sale tracking regulations to a licensed or certified facility.

(B) Unless otherwise addressed or prohibited by contract or law, an entity holding a contract with the state of Missouri for a statewide track and trace system and any affiliates of that entity may charge a price to a licensed or certified facility for plant/product tracking labels, but no such price shall exceed the cost of producing the label in an amount that would create more than thirty percent (30%) net profit on each label.

36. Subsection (B) of Emergency Rule 19 CSR 30-95.025(7) plainly permits Metrc to charge licensed and certified facilities for plant/product tracking labels, up to the

thirty percent cap on profit for each label. Contract CT191827001 does not prohibit such charging.

37. The statement in Ms. Boeger's letter of May 20, 2019 asserting that Contract CT191827001 does not allow charging for RFID tags is incorrect and inconsistent with Emergency Rule 19 CSR 30-95.025(7).

COUNT I – DECLARATORY JUDGMENT

38. Petitioner restates each and every allegation made above.

39. Contract CT191827001 does not prohibit Metrc from charging non-state end users for RFID tags.

40. Contract CT191827001 permits Metrc to charge non-state end users for RFID tags.

41. Emergency Rule 19 CSR 30-95.025(7) also permits Metrc to charge for RFID tags.

42. DPMM's letter of May 20, 2019, asserting that Contract CT191827001 does not allow charging for RFID tags, is **(1)** wrong under the terms of Contract CT191827001 and **(2)** inconsistent with Emergency Rule 19 CSR 30-95.025(7).

43. This Court's issuance of a declaratory judgment would terminate this controversy between the parties.

WHEREFORE, Petitioner Metrc LLC respectfully asks this Court to declare:

(1) that Contract CT191827001 permits Metrc to charge for RFID tags and

(2) that Emergency Rule 19 CSR 30-95.025(7) permits Metrc to charge for RFID tags.

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