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December 14, 2016

VIA HAND DELIVERY

Office of the Arkansas Lottery
Mr. Bishop Woosley, Director
P.O. Box 3238
Little Rock, Arkansas 72203

Re: Protest of Award of Bid No. SP-17-0033

Dear Mr. Woosley:

Please be advised that this law firm represents Ghidotti-Vines, an advertising, marketing, and public relations vendor that submitted a joint bid to provide advertising, marketing and public relations services for the Office of the Arkansas Lottery (“OAL”). Pursuant to Ark. Code Ann. § 19-11-244, and for the reasons set forth herein, Ghidotti-Vines hereby submits its formal protest to you regarding the OAL awarding Bid No. SP-17-0033 to CJRW, Inc. (“CJRW”).

I. Mandatory Requirement to Disclose Conflicts of Interest

On September 15, 2016, the OAL published a Request for Qualification Bid Solicitation Document for Bid No. SP-17-0033 (“RFQ”). A copy of the RFQ is attached hereto as Exhibit “1.” The RFQ included OAL’s 5 Year Business Plan as an attachment. A copy of OAL’s 5 Year Business Plan is attached hereto as Exhibit “2.”

Section 1.5.A. of the RFQ provides that “[t]he words “**must**” and “**shall**” signify a Requirement of this solicitation and that vendor’s agreement to and compliance with that item is mandatory.” (emphasis in original). Failure to comply with requirements of the RFP “**shall** cause the vendor’s response to be disqualified.” *See* RFQ at Section 1.5.B. (emphasis in original). Further, Section 2.5.G. of the RFQ states that “[t]he vendor **must** disclose any litigation or conflicts of interest to the OAL in writing within 15 days of occurrence.” (emphasis in original).

On September 30, 2016, the OAL published a revised Response Packet, Addendum 1, and Written Questions and Answers for the RFQ. Copies of the Response Packet, Addendum 1, and Written Questions and Answers are attached hereto as Exhibits “3,” “4,” and “5.” In Written Questions and Answers No. 9, the following question is asked and answered:

Q. Can you tell us specifically what is construed as a conflict of interest? Should the list of identified competitors impacting the lottery’s future success outlined in the Camelot Five-Year Business Plan be used as a guideline for identifying conflicts? If so, is this list definitive or are there other account conflicts that should be identified?

A. See Addendum 1 – *Additional Specifications* for Section 2.5.H and 2.5.H.1

Addendum 1 adds Section 2.5.H. to the RFQ, which states as follows:

Any incompatibility between the OAL and one or more of the successful vendor’s clients, which inhibits or has the potential to inhibit the successful vendor of this RFQ from placing the interests of the OAL first **must** be disclosed as a conflict of interest on an ongoing basis. The vendor **must** disclose any conflict of interest to the OAL in writing within 15 days of knowledge of such conflict.

1. The vendor may use the list of competitors identified in the OAL’s 5 Year Business Plan as a guide in determining potential conflicts of interest. However, the vendor **shall** identify all conflicts of interest whether they are identified in the OAL’s 5 Year Business Plan or not.

(emphasis in original).

Sections 1.5.A., 2.5.G., and 2.5.H. of the RFQ mandate that a vendor submitting a response to the RFQ must disclose in writing all potential conflicts of interest. Moreover, failure to disclose all potential conflicts of interest results in a vendor’s bid being disqualified. *See* RFQ at Section 1.5.B.

II. CJRW’s Failure to Disclose Conflicts of Interest

Oaklawn Racing & Gaming (“Oaklawn”) is a client of CJRW. Oaklawn’s website provides the following:

Oaklawn Racing & Gaming has a history of good times stretching back more than a century. . . . Live thoroughbred racing from January-April is just the ticket for high pulse rates and high purses. Oaklawn Gaming is home to year-round good times with a High Limits area, Poker Room, all your favorite Vegas-style games and great food and drink. Oaklawn Gaming now offers more games and more fun.

From the beginning, Oaklawn has competed with, and opposed, the Arkansas Scholarship Lottery. The following media excerpts evidence the ongoing conflict between Oaklawn and the OAL:

“Oaklawn considers the state of Arkansas a competitor. ‘We are not the only game in town anymore,’ [an Oaklawn official] said. ‘Arkansas is in the lottery business now, and so we have to offer a better experience.’” (emphasis added).

- Wayne Bryan, *Oaklawn Opens 106th Season*, Arkansas Democrat-Gazette, January 14, 2010. A copy is attached hereto as Exhibit “6.”

“A very testy disagreement has developed in Arkansas this year between Oaklawn Park, the casino and racetrack in Hot Springs, and the Arkansas Lottery Commission. The issue is whether the Lottery Commission will be allowed to begin monitor games inside retail establishments around the state in order to raise money to fund more higher education scholarships. Oaklawn considers this action as competition to their own offerings of a similar nature to the citizens of our state.” (emphasis added).

- Max Brantley, *Lottery Battle at Halftime, Lottery Commissioner Engstrom Says*, Arkansas Times, July 2, 2014 (quoting Commissioner Bruce Engstrom). A copy is attached hereto as Exhibit “7.”

“Oaklawn’s lobbyists have been working with lawmakers opposed to the lottery offering electronic monitor games, such as keno or quick-draw, that could compete for gamblers’ bucks.” (emphasis added).

- Michael R. Wickline, *Bill Proposed to Halt Online Oaklawn Bets It’s Seen as Shot Across Bow for Opposing Lottery Games*, Arkansas-Democrat Gazette, June 27, 2014. A copy is attached hereto as Exhibit “8.”

Furthermore, the OAL’s 5 Year Business Plan identifies the “[i]ncreasing competition from racinos” as a threat to the Arkansas Lottery. See Exhibit 2 at Section 3.4. OAL’s 5 Year Business Plan also provides that “[g]aming competition is growing and competes for disposable income” and specifically notes that “Oaklawn launched Phase 1 of its \$20m expansion program, which increases capacity by 50%. Given this, we expect the number of recorded machines to grow significantly in 2016.”

Clearly, Oaklawn’s actions and words evidence that it is a direct competitor of the OAL. In addition, the OAL has identified Oaklawn as a competitor for disposable income and threat to the success of the Arkansas Scholarship Lottery. As a result, CJRW’s representation of Oaklawn is a conflict of interest to its representation of the OAL.

CJRW never disclosed in writing any conflicts of interest in its response to the RFQ. Therefore, because CJRW was required by Section 2.5.H. of the RFQ to disclose in writing any

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existing or potential conflict of interest and because it failed to do so, CJRW's response to the RFQ must be disqualified pursuant to Section 1.5.B. As a result of CJRW's disqualification, the OAL should award the bid to the vendor with the next highest score, which is Ghidotti-Vines.

Sincerely,

STEEL, WRIGHT, GRAY
& HUTCHINSON, PLLC

By 
Alex T. Gray