



State of New Jersey
Commission of Investigation

QUESTIONABLE **CONTRACTING**

**No Bids, Lax Oversight
and a Monopoly
in Online Tax Sales**

May 2016

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May 2016

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The State Commission of Investigation, pursuant to N.J.S.A. 52:9M, herewith submits a final report of findings and recommendations stemming from an investigation into questionable circumstances surrounding online (i.e. electronic) tax lien auctions.

Respectfully,

Joseph F. Scancarella
Chair

Robert J. Burzichelli
Commissioner

Frank M. Leanza
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SUMMARY

The Commission undertook an investigation of municipal tax lien sales in New Jersey and found that a private vendor selected under unusual circumstances has effectively monopolized online (i.e. electronic) lien auctions on a statewide scale. Arranged without competitive bidding, the deal has enabled this vendor and a partner company to collect hundreds of thousands of dollars in fees on an annual basis – a revenue stream that is rising as more and more local governments elect to participate in Internet-based lien auctions.

The Commission found that state officials invited the vendor to participate directly in establishing the terms of a lengthy and ongoing pilot program under which the firm and its partner ultimately would benefit. In addition, although the partner company is not the official vendor of record and serves essentially as a subcontractor, it nonetheless conducts the online auctions and thus far has retained most of the revenue. Further, the State failed to conduct more than minimal due diligence, leaving local officials in the dark about the background, corporate structure and ownership of this partner company. Evidence also suggests discrepancies, including apparent conflicts of interest, in the promotion of the partner firm among public officials responsible for tax sales at the local level.

Apart from these and other issues of concern, it appears that, based upon somewhat limited experience to date, the actual online lien auction process can be conducted in a fair and orderly fashion and can exhibit and/or allow for the possibility of certain efficiencies and other attributes that should not be overlooked as action is taken to address the findings of this investigation. The Commission proposes a series of recommendations to address these issues at the conclusion of this report.

Introduction

Each of New Jersey's 565 municipalities is required to conduct a sale at least once every year in an effort to recoup the value of liens filed for delinquent property taxes and for unpaid fees involving municipal services such as water/sewer and garbage collection. In total, at least

\$100 million worth of tax liens are sold annually, enabling municipal governments across the State to recover revenues necessary to fulfill statutory budget obligations.¹

Tax sales traditionally have been conducted via live auctions held in municipal offices. At such auctions, liens on properties in the form of tax sale certificates are offered in person to qualified bidders whose ranks typically include individuals or groups of private investors and representatives of banks, financial institutions and other companies. Bidders can win possession of a tax sale certificate by bidding the lowest interest rate, which is capped at a maximum of 18 percent;² or, if the bid interest rate is less than one percent (e.g. no interest), by offering the highest cash premium. Such premiums are returned to the investor unless the property-owner fails to pay off (i.e. redeem) the debt within five years, or if the property becomes subject to a completed foreclosure proceeding. If there are no bidders for a tax sale certificate, the lien remains in the hands of the municipality at the full interest rate of 18 percent.

The Commission undertook an inquiry after concerns were brought to its attention by State Sen. Shirley Turner, D-Trenton, to the effect that, among other things, the interest rates associated with liens from unpaid residential taxes and municipal fees are exorbitant and unfairly burdensome to property-owners struggling with various economic issues. In addition to the bid interest rates of up to 18 percent on tax sale certificates, municipalities under current law are separately authorized to charge property-owners up to 18 percent interest for any delinquent taxes exceeding \$1,500, an interest surcharge that continues until the lien is sold at a tax sale. The delinquency interest rate maximum was established in 1979 amid inflationary market conditions much different than today. Legislation has been introduced in the State Senate and General Assembly (S-1033, A-1780) to address this issue by requiring that the tax delinquency interest rate maximum be indexed to prevailing market rates and allowed to rise no higher, for example, than three percentage points above essentially the prime interest rate as determined

¹ A significant portion of the liens sold by local governments in New Jersey originate solely from non-tax charges.

² The bid interest rate is applied to the total amount due at the tax sale, which includes the delinquency, any additional charges (e.g. cost associated with the tax sale, mailing fees), and any interest accrued prior to the sale.

by the U.S. Federal Reserve, currently 3.50 percent.³

Beyond this matter, the tax-lien auction sector has generated controversy in other areas in recent years, including vulnerability to bid rigging and other forms of manipulation. In that regard, a federal investigation unrelated to the Commission's inquiry has yielded criminal charges against 21 individuals and companies for collusive bidding during the course of live municipal tax-lien auctions in New Jersey between 1998 and 2009.⁴

Against this backdrop, the Commission broadened its investigation, taking particular note of the emergence of online tax sales and the fact that the number of municipal governments using this approach has begun to surge. Although legislation permitting the online option in New Jersey was enacted more than a decade ago, the first such sale did not occur until 2012. Since then, approximately 90 municipalities have taken the plunge, conducting more than 150 separate online tax sales, and more towns are expected to follow. Indeed, an objective of the partner firm (which, along with the state-approved vendor, controls the online tax-sale marketplace here) is to recruit hundreds of participating municipalities within the next several years. For auctions conducted in 2014 and 2015, the sole approved vendor and its partner firm collectively were paid an estimated \$1.7 million by municipalities to conduct online sales – a revenue stream that will only grow with increased participation and because there is room for vendor auction fees to rise significantly within a price range currently permitted by the State's unofficial guidelines. Although the Commission's inquiry turned up no evidence suggesting criminal misconduct or malfeasance, the unusual manner in which the online auction program was established, coupled with weak or nonexistent oversight, transparency and accountability surrounding its management and administration, raises questions about how to maintain the integrity of the program going forward.

³ As currently written, this legislation would not lower the bid interest rate. However, a winning bidder (i.e. lien holder) can pay for subsequent delinquencies (known as "subs," i.e. unpaid taxes/charges not part of the tax sale) associated with the property and earn interest for these "subs" at the municipality's delinquency interest rate.

⁴ This includes 15 guilty pleas and one conviction at trial, as well as four acquittals and one dismissal. There has also been class-action litigation. See *In re New Jersey Tax Sales Certificates Antitrust Litigation*, 3:12-cv-01893 (D.N.J.). Information related to proposed settlements can be found at: <http://www.njtaxliensettlements.com/>.

KEY FINDINGS

- **Irregularities and Questionable Circumstances in the Establishment of New Jersey’s Online Tax Lien Auction Program**

Legislation enacted in 2001 authorized tax lien sales in New Jersey to be conducted “electronically through the use of any nationally recognized electronic municipal tax lien service . . . in accordance with rules, regulations and procedures promulgated by the Director of the Division of Local Government Services in the Department of Community Affairs.”⁵

Fifteen years later, despite rising use of this option among local governments, DCA has yet to issue any rules, regulations or procedures beyond guidelines for a five-year-old pilot program.⁶ Neither these unofficial guidelines nor any electronic-tax-sale-related information is delineated on the agency’s website. Also, contrary to DCA’s typical practice of officially notifying municipalities about matters potentially affecting them, the agency has issued no local finance notice in this regard. Furthermore, beyond informal contacts with potential vendors, DCA has never publicly sought any applications, issued any requests for proposals or sought any competitive bids for the conduct of online tax lien sales. While the marketplace of available vendors qualified to conduct such auctions was slow to emerge, the State, through DCA, has yet to formally solicit a wider field of possible industry participants. Instead, a lone vendor became positioned to receive an exclusive DCA stamp of approval, and, strangely, despite that designation, it is a company with little direct involvement in the actual conduct of the auctions.

DCA’s authorized vendor is a firm known as R.O.K. Industries, Inc., which does business as NJTaxlieninvestor.com, of Belle Mead, N.J. (“R.O.K.” or “NJTaxlieninvestor”). The firm received the State’s imprimatur in June 2011 via a letter signed by Marc Pfeiffer, then-Deputy Director of DCA’s Division of Local Government Services. Addressed to NJTaxlieninvestor’s president, Igor

⁵ N.J.S.A. 54:5-19.1(a)

⁶ By contrast, online bidding in the area of financial securities (i.e. bonds) is regulated by New Jersey Administrative Code provisions adopted in 2004 – less than one year after the effective date of the applicable statutory amendment that permitted electronic securities bidding.

N.J.S.A. 54:5-19.1(c) provides that the director of DCA’s Division of Local Government Services (DLGS) “may authorize ‘electronic tax lien sale’ pilot programs on a case-by-case basis upon application of individual municipalities prior to the director’s promulgation of rules, regulations and procedures” Although multiple pilot programs are permitted by statute, only one such program has been authorized.

Roitburg, the letter specifically authorized the company to conduct online lien sales pursuant to the enabling statute. It included language to the effect that, pursuant to this goal, NJTaxlieninvestor would use a “partner platform,” but it did not define that term nor did it identify any other entity by name. Evidence developed during this investigation shows that this letter was substantially drafted, not by state officials at DCA or elsewhere, but by NJTaxlieninvestor (though the “partner platform” language emanated from DCA). The launching of the online auction pilot program and the selection by DCA of Roitburg’s firm as the sole vendor for that program marked the culmination of an extensive advocacy effort by Roitburg and his firm’s attorney, Paul P. Josephson, which occurred over a period of more than six years from at least 2005 to 2011.⁷ In particular, email exchanges between Roitburg and Pfeiffer show that NJTaxlieninvestor, through Roitburg, became intimately involved in the actual drafting of the pilot program, including the aforementioned guidelines as well as a template application for submission to DCA by participating municipalities.⁸ Indeed, in an October 24, 2013 email, Roitburg boasted that the company had an inside track:

When (and if) DCA ever decides to convert the Pilots into rules and regs, we’ll know about it and be there at the table. We did, after all, draft the pilot program.

Aside from the obvious potential conflict of interest in the selection of a vendor to run a for-profit pilot program crafted considerably by that same vendor, two of the program’s rules and how they have been applied raise other questions about the integrity of this arrangement. As noted above, the underlying statute required that a “nationally recognized electronic municipal tax lien service” be utilized.⁹ Meanwhile, the program’s non-statutory rules include a

⁷ At the time, Josephson was both an attorney with the firm of Hill Wallack LLP (where he worked from 2004 to 2013) and a principal for that firm’s public policy and media affiliate, Government Process Solutions LLC, where he was a registered lobbyist from 2007 to 2013. Previously, Josephson was a senior official in the administration of Gov. James E. McGreevey, serving as Chief Counsel (2003) and Deputy Chief Counsel and Chief of Authorities (2002 to 2003). He also served as Director of the State Division of Law in the Office of the Attorney General (2003 to 2004).

⁸ The SCI found that the bulk of this application had already been filled out by the vendor/partner firm before receipt or review by the respective local government officials.

⁹ The non-statutory requirements for the program state that “a vendor shall be deemed a ‘nationally recognized municipal tax lien service’ if it has conducted Internet website based, electronic tax sales in at least (2) states or has conducted electronic tax sales in the past (2) years which included bidders from more than one state.”

requirement that any vendor seeking state approval must demonstrate experience providing some form of tax lien-related services explicitly within the State of New Jersey. While NJTaxlieninvestor met this second requirement, the firm likely would have been excluded under the express terms of the statute because it did not have a record of experience nationally as it had never conducted a single tax sale. Thus, the DCA letter of approval implicitly authorizing the company's use of a "partner platform" was critical to its chances of securing the State's go-ahead.

The entity brought in to fulfill that partnership role for NJTaxlieninvestor was Realauction.com, LLC ("Realauction"), a company based in Plantation, Florida. During this inquiry, the Commission found that the relationship between these two firms began on unusual footing in several respects. Indeed, Pfeiffer testified that, prior to teaming up, the two companies initially were competitors. (As such, they had separate communications with DCA.) Also, as separate companies, neither firm would have been in compliance with the pilot program's ultimate rules. Where NJTaxlieninvestor lacked experience conducting tax sales in any states, Realauction had no explicit tax-lien experience in New Jersey. Together, however, they met the criteria. Furthermore, for all practical purposes, the partnership proceeded in a lopsided manner. Although NJTaxlieninvestor is DCA's approved vendor, it has no employees or personnel beyond Roitburg and another individual who holds an equal ownership share in the firm. Rather, it is Realauction – using its own multiple employees and software exclusively – that provides the manpower and actually performs the online lien auctions for New Jersey municipalities. Realauction has received the lion's share of the proceeds from these online municipal auctions, a 70 percent/30 percent split that continues to the present day.

In addition to helping to orchestrate this unique partnership, DCA granted concessions in at least two key areas: whether to evaluate the pilot program's progress and performance and whether to require competitive bidding by municipalities that opt to participate in the program.

A draft version of the pilot program's requirements included a provision mandating an evaluation by DCA after the first six online auctions were completed. This requirement, however, was deleted at the request of NJTaxlieninvestor. In an October 16, 2009 email to Pfeiffer, Roitburg, the firm's president, noted that since the results of every lien sale would be reported to the agency, "you effectively are evaluating the program all the time." He also complained that

“[a]dding a formal evaluation process will only make unnecessary work and procedural hurdles for us all and not provide [DCA] with any additional control or protection.” Although DCA did issue an informal survey in October 2013 to the first handful of municipalities that held an online tax sale, this was by no means a formal or comprehensive evaluation of the vendor or its partner platform. As it relates to online bid activity, participating municipalities essentially just passed on data that originated, at least in part, with Realauction. Moreover, by all indications, DCA has not been evaluating the program or the vendor on an ongoing basis. Although DCA collects municipal tax sale applications, the agency conducts no substantive review of these items.

DCA also granted Roitburg’s request that, since his company was the sole vendor approved by the State, municipalities interested in arranging for online lien auctions be allowed to bypass the competitive bidding requirements of the Local Public Contracts Law. “[S]ince this is just a pilot [program] and until there is another approved system,” Roitburg wrote in a 2009 email, “we’d like to make it clear that we do not need to go through a formal public bid process.” Thus, the rule as set forth by DCA states:

Notwithstanding anything to the contrary in Local Public Contracts Law, if a vendor’s system has been so approved and no other electronic tax sale system has been approved, the municipality may, during the pilot program, contract with such vendor by informal quotation and without public bid.

This bidding exception, combined with other procedures set forth in the program guidelines, presents impediments to other vendors who may wish to enter the market here. The guidelines include the following language:

Prior to [a municipality] submitting its Application to the Director [of the Division of Local Government Services (DLGS)], the municipality shall arrange for and provide a demonstration of the proposed electronic tax sale program to the Director. The Director shall determine, on a case-by-case basis, whether the proposed tax sale program is, in the Director’s sole discretion, acceptable and, at minimum, consistent with the Pilot Program Requirements set forth herein. The Director shall also determine whether such proposed program is consistent with the goals of the enabling legislation and the Director’s ultimate promulgation of the rules and regulations to be adopted. Once a vendor’s system has been approved, the vendor is authorized to enroll other municipalities for the duration of the Pilot Program.

Based on these rules, municipalities essentially are left with two options when selecting a vendor. The first option would be to use the already-approved vendor NJTaxlieninvestor and its partner Realauction. Alternatively, the municipality would have to embark on a time-consuming process that would include the following:

- (1) The municipality would be required to arrange for and provide to the DLGS director a demonstration of a new vendor's system.
- (2) The director would then make a decision on whether to approve.
- (3) At that point, there would be two or more DCA approved vendors' systems. Accordingly, the aforementioned exception to Local Public Contracts Law (LPCL) would no longer apply. This could then require at least some form of a request for competitive bids, proposals or quotes, depending on the dollar amount of the anticipated contract.¹⁰
- (4) Municipality would then make an award to one of the two approved vendors.
- (5) Even after all of this, the guidelines provide that the municipality would then actually submit its application. Although the municipal applications with the vendor listed as NJTaxlieninvestor/Realauction have been automatically approved, DCA technically has up to 45 days to advise the municipality as to whether the application would be approved.
- (6) Municipality then needs to send the municipal-vendor agreement to DCA no later than 30 days prior to the date the tax sale is first advertised, which is itself weeks prior to the sale date. (Municipal contracts with NJTaxlieninvestor also have been sent to DCA, though this has not always occurred in a timely fashion.)

When the statute was passed in 2001, there was limited, if any, competition in the online tax lien industry. Now, however, there are at least several online tax sale vendors conducting sales in other jurisdictions in the U.S. Accordingly, it is imperative that New Jersey ensure that there be active solicitation for vendors with clear and well publicized procedures. Combining

¹⁰ Options under LPCL include: (a) publically advertised bid process with award to the lowest responsible bidder (see N.J.S.A. 40A:11-4); (b) competitive contracting with DLGS director approval (N.J.S.A. 40A:11-4.1(k)); (c) if value is less than the applicable bid threshold (N.J.S.A. 40A:11-3), of which the current maximum is \$40,000/\$17,500 (with/without a Qualified Purchasing Agent), then proceed by getting two competitive quotations, if practicable, and award to the vendor that is most advantageous, price and other factors considered (N.J.S.A. 40A:11-6.1(a)); or (d) if value is less than 15 percent of bid threshold (i.e. \$6,000/\$2,625), then could award without even getting quotes if authorized by governing body resolution/ordinance (N.J.S.A. 40A:11-6.1(c)). While a municipality could solicit competitive bids before approaching DCA, doing so would require DCA to evaluate and approve any new vendor before the municipality could proceed to a possible contract award.

convoluted DCA procedures (which even DCA personnel have, at times, explained incorrectly to municipal personnel)¹¹ with the fact that tax lien sales in New Jersey are run at the municipal level (in contrast to that of other states, such as in Florida and Maryland, where sales are done at the county level), the notion of waiting for a new vendor to try to sort through the pilot program's idiosyncrasies is not sufficient.

Furthermore, when DCA's guidelines were issued in February 2011 and provided to Roitburg, the then-DLGS Director Marc Pfeiffer wrote to him that DCA would "now accept a limited number of municipalities to participate in the program." Prior to that, Pfeiffer had emailed both Roitburg and his firm's attorney, Josephson, that "if you want to proceed with a pilot program (we'll agree to 3-5 sales as a pilot)" However, the pilot program has since increased to approximately 90 participating municipalities and 150 sales. It should be noted that Pfeiffer retired in early April 2012, nearly seven months before the first online tax sale occurred.

- **Inadequate Due Diligence and Lax Oversight**

The State agreed to the terms of this plan with virtually no knowledge or understanding of the background and corporate structures of the companies in this partnership and their relationship, even though such information may well have raised prudent questions about exactly with whom local governments would be dealing in arranging for online tax auctions. For their part, municipal officials told Commission investigators that they assumed proper vetting occurred at the state level given the fact that DCA had approved the vendor. In fact, the Commission found that personnel at DCA had difficulty in explaining whether NJTaxlieninvestor and Realauktion were one entity or two and in identifying key management and owners/investors involved in the partnership. Prior to approving this vendor/subcontractor arrangement, state officials did not even check the firms' professional references. Furthermore, DCA did not inquire as to either company's ownership structure.

¹¹ For example, in 2013, a DCA employee, apparently without knowledge of the pilot program guidelines, instructed Hamilton Township (Mercer County) that a bid process was required even though there was only one vendor approved.

Complicating matters was that Realauction was not required by DCA to obtain and file the requisite state paperwork that would ultimately have triggered at least some disclosure of basic background information, such as its management/officers. In fact, Realauction did not begin filing such paperwork with the State until after the Commission commenced this investigation. In this regard, the company did not officially register to do business in New Jersey until January 2015, approximately one month after it received an SCI subpoena. Specifically, it did not record conduct of business with the State and its governmental subdivisions, i.e. obtain a “Certificate of Authorization,” until January 7, 2015.¹² Furthermore, Realauction did not submit an application for a Business Registration Certificate until later that month, receiving it effective January 29, 2015.¹³ Similarly, Realauction did not begin filing tax returns with the State of New Jersey until November 2015. During 2014 alone, a period in which Realauction was not officially registered with the State, the NJTaxlieninvestor/Realauction partnership collectively was paid more than \$700,000 in fees for conducting tax sales for 44 New Jersey municipalities, a revenue stream that became approximately \$1 million annually in 2015. Realauction retained the bulk of this revenue based on its contractual relationship with NJTaxlieninvestor.

During this inquiry, the Commission discovered that, at least until quite recently, state and local officials were largely in the dark as to the nature and identity of Realauction’s owners/investors. No agency of state government, including DCA, was found to be in possession of any records delineating the ownership structure. Similarly, pertaining to the local level, available information seemed to range from non-existent to inconsistent. Indeed, aside from what was obtained subsequent to a subpoena served to Realauction, the Commission found only two instances in which the firm was required to disclose its owners. Both occurred at the hands of municipal officials in Hamilton Township, Mercer County, as part of their preparation for tax lien auctions in 2013 and 2014. However, the information obtained from Realauction via the

¹² Although a Certificate of Authorization can be obtained without identifying company management, the business must file with the State an Annual Report by the one-year anniversary of a business being recorded with the State.

¹³ In accordance with the applicable statutory and regulatory requirements, the New Jersey Department of Treasury’s website states that a Business Registration Certificate serves the purpose of providing “proof of valid business registration with the New Jersey Division of Revenue. All contractors and subcontractors must provide this documentation when seeking to do business with the State of New Jersey, and all other public agencies in this state.”

township's requisite Stockholder Disclosure Certification forms did not match up from one year to the next, even though the company's ownership structure had not actually changed.¹⁴

In January 2015, in response to a Commission subpoena, Realauction delineated an ownership profile far afield from its headquarters in Florida. Fully 70 percent of the firm is owned – and has been since at least January 1, 2011 – by an off-shore company, Hatchett Developments Ltd., listed with an address in the British Virgin Islands. That company, in turn, is essentially wholly owned by an individual with an address in Quito, Ecuador.¹⁵ Subsequently, in August 2015, the City of Newark also obtained an ownership disclosure form from Realauction which identified, among others, Hatchett along with the individual listed with the Quito, Ecuador, address. Roitburg testified that his decision to have both NJTaxlieninvestor and Realauction provide such disclosure forms to Newark was “[a]lmost fully affected by” the SCI investigation.

DCA has no record of these affiliations and has never evaluated whether, or to what extent, they would have any bearing on Realauction's suitability to do business here. Moreover, the agency apparently has no records relating to a Florida bankruptcy action involving Realauction.¹⁶ Meanwhile, although it is New Jersey's only approved vendor for online tax lien sales, NJTaxlieninvestor/R.O.K. by its own acknowledgement does not maintain financial information in a form that can be readily obtained and examined by state and local government officials. In response to a Commission subpoena requesting annual reports and periodic financial statements, including balance sheets, profit and loss statements, operating reports, cash receipts and cash disbursement ledgers of the company, R.O.K.'s counsel stated, “No documents exist.”

With regard to oversight, the State has yet to conduct an independent audit or performance evaluation of the ongoing pilot program to determine if it should be adjusted in any way, even though the NJTaxlieninvestor/Realauction customer base in New Jersey now stands at approximately 90 local government entities. As noted above, the agency did conduct a survey of

¹⁴ It should be noted that limited liability companies typically do not have stockholders, and the language in Hamilton's disclosure forms should have been clarified to reflect this. These Hamilton forms also failed to make clear that certain indirect interest(s) must also be disclosed if the direct owner is a company.

¹⁵ This individual owns 99.8 percent of Hatchett Developments and 100 percent of another company based in the British Virgin Islands, Madison Square Development, Inc., which, in turn, owns the remaining 0.2 percent share of Hatchett.

¹⁶ In July 2013, Realauction filed for Chapter 11 bankruptcy protection in United States Bankruptcy Court, Southern District of Florida. In July 2014, Realauction's motion to have the case voluntarily dismissed was granted.

the initial participating municipalities, but the value of that exercise was questionable on two levels: first, it was directed at only a handful of local governments, and second, relevant online bidding-related data collected during the course of it originated, at least in part, with Realauction and was essentially passed through to DCA without apparent objective vetting or evaluation. During this inquiry, the Commission found evidence suggesting that a portion of the auction performance data submitted as part of this 2013 survey was subject to misinterpretation. Subsequently, charts containing questionable statistics were circulated by Realauction to municipalities that had conducted online auctions and also, at least on occasion, provided by the company to prospective municipal customers and obtained by DCA.

By way of background, bidders participating in online tax lien sales can only win at auction if they place a deposit prior to the event being held. Accordingly, only these qualified registered bidders should be considered when measuring the success of online sales.¹⁷ Certain Realauction charts and at least one response to the DCA survey, however, contained counts of purported registered bidders based on data that included one or more of the following:

- Realauction employees;
- Municipal personnel, including tax collectors;
- Multiple entries for the same individual bidder;
- Individuals who registered after the sale;
- Automatic inclusion of prior bidders (actual and purported) in a subsequent auction.¹⁸

The challenge of securing accurate bid data was exacerbated by the fact that the pilot program's prime contractor, R.O.K., does not have routine access to the Realauction system containing the full array of statistics for each auction. In any event, these types of discrepancies

¹⁷ The survey asked for the "Number of Registered Bidders." The Realauction charts contained counts next to the heading "# of bidders."

¹⁸ For instance, the count in the Realauction statistics (and in the survey response to DCA) for an online tax lien sale conducted in the Borough of Red Bank in 2013 is about seven times greater than the number of bidders who actually placed a deposit. Most of this gap reflects entries involving the five categories above, particularly the automatic inclusion of carryovers from the Borough's 2012 sale. Similarly, the count in Realauction's statistics for a tax sale in South Brunswick Township in 2014 is 400 percent greater than the number of bidders who placed deposits. Most of this differential stems from the inclusion of entries for Realauction employees.

demonstrate the need for examining Realauction data to ensure that it is accurately presented, summarized and understood.

- **Confusion Among Participating Municipalities**

Loose administration and oversight of the online auction program by the State has had the effect of sowing unnecessary confusion among local officials as to which company they are doing business with in the actual conduct of the tax sales. Moreover, because there is no competition, inadequate centralized monitoring and only limited control over the fees that can be charged by the vendor/partnership for this service, local governments are vulnerable to the prospect of costs escalating at an unreasonable pace.

Procurement documents reviewed by the Commission, along with sworn statements from municipal officials who have dealt with these issues, turned up numerous examples of municipalities that have struggled to figure out the roles and relationship between R.O.K. and Realauction. Typically, local governments are presented with a standard contract identifying “R.O.K. Industries d/b/a NJTaxlieninvestor.com” as the “Contractor,” but there has been nothing in the body of this document that makes any reference to Realauction. Nonetheless, the contract usually bears the signatures of individuals representing both companies and often is provided to municipalities in this partially-executed form without explanation, leaving local officials in the dark over which is the responsible entity. In November 2015, NJTaxlieninvestor began utilizing a new contract incorporating changes prompted, at least in part, by this inquiry. These changes include the identification of Realauction as the “Approved Auction Platform.” Another new provision expressly prohibits the owners, equity holders and personnel of NJTaxlieninvestor and Realauction from participating as bidders in tax lien sales conducted by the partnership in New Jersey.

Concerns raised during the preparatory arrangements for an online tax sale in 2014 in South Brunswick Township, Middlesex County, are emblematic of this confusion. Asked by the township’s chief financial officer to review the proposed contract with R.O.K., the township’s law director stated he did not understand how the firm met the statutory requirement of being a “nationally recognized electronic municipal tax lien service” given that it seemed to be “operating

out of someone's house." He also raised questions as to why Realauction personnel signed the agreement when that company's role was not delineated in it. Seeking guidance, the law director stated that he searched DCA's website but was unable to find any rules or model contract agreements set forth by the agency in connection with online tax sales. Clouding matters further, the only online auction contact person known to South Brunswick officials was a New Jersey-based marketing representative for Realauction. But when the law director's concerns were forwarded to that individual, a response arrived in the form of an email from someone that the relevant township officials had never spoken to – Igor Roitburg, the president of NJTaxlieninvestor. In an email to South Brunswick's chief financial officer, Roitburg sought to reassure the township by reciting background on the firm's experience with DCA:

To date, DCA has not adopted the rules and regulations. Instead, our company, R.O.K. Industries d/b/a NJTaxlieninvestor.com worked closely (for several years) with the Division of Local Government Services at DCA to promulgate the Pilot Program Rules . . . In June of 2011, our company obtained approval from DCA to provide electronic tax sale services in NJ pursuant to the Pilot Program – i.e., our company and platform have met all of the requirements to provide electronic tax sale services. . . . We are the only company to have obtained this approval. (The "partner platform" mentioned in the letter and approved by the DCA is the RealAuction platform.) With regard to the "model" agreement, DCA did not provide one but the form submitted to you is the same contract form that we have used with about 20 other municipalities and has been approved by DCA.

South Brunswick ultimately proceeded with an online lien auction via this partnership, and it was conducted without incident.

The Commission also found instances in which local procurement documents were altered due to apparent confusion over the identity of the prime contractor stemming from the fact that the names of both firms frequently have been used interchangeably.

For example, in Hamilton Township, Mercer County – for business ultimately worth \$74,130 – Realauction submitted the lone bid for a fall of 2014 tax sale. When it was discovered that the actual vendor of record was to be NJTaxlieninvestor – which had already signed a contract with Hamilton that was executed prior to the bid solicitation – that firm filed a separate response to the township's request for proposals. That response, however, was prepared more than a month after the advertised deadline. To remedy this discrepancy in timing on the

paperwork, a Hamilton official instructed Roitburg to date that RFP response as of the date of the original filing. Accordingly, Roitburg submitted a backdated RFP response to Hamilton with a date matching the earlier submission by Realauction.¹⁹ Similarly, after the fact, officials in the City of Camden sought to re-execute (and ultimately did so) a \$131,925 contract for a tax lien auction in June 2014 due to apparent confusion, as illustrated in this email excerpt from Roitburg to an executive at Realauction on September 18, 2014:

Oh by the way, Camden called and even though they signed the contract, closed the sale, and even paid us, they want to re-execute the contract and mentioned taking RealAuction off the signature page. I tried to explain to her why RA [Realauction] was on and how DCA approved the system specifically, etc. while ROK got the approvals, but I'm not sure I got anywhere. I even suggested we add language to the signature block to explain why both of us are one.²⁰

It also emerged during this investigation that some municipalities have operated under the mistaken assumption that the fees charged by NJTaxlieninvestor/Realauction for conducting online auctions are dictated by the State. In fact, the pilot program guidelines permit a vendor to charge whatever it deems appropriate up to a maximum which can reach \$100 per advertised lien (depending on the overall amount of the lien).²¹ During the pilot program's introductory phase for contracts signed between September 2012 and August 2013, the first participating municipalities were each billed at a flat rate of \$1,000 for a complete auction. Shortly thereafter, the partnership switched to a fee structure and began charging \$15 per lien on the initial advertised list. Based upon that rate, and depending on the number of liens listed for sale in a locality, the cost of an individual auction in 2014 and 2015 averaged approximately \$13,800 but ranged as high as nearly \$132,000.

¹⁹ Subsequently, the rights of the RFP were assigned from Realauction to NJTaxlieninvestor which then continued to utilize Realauction essentially as a subcontractor. The backdating and assignment occurred while the auction was in progress.

²⁰ Roitburg testified that the phrase "both of us are one" contained an inadvertent typographical error and that he meant to write "both of us are on" the signature page.

²¹ The guidelines provide that the vendor's fee shall not exceed the statutory cost of the sale (per N.J.S.A. 54:5-38) collected by the tax collector, which is two percent of the lien but not less than \$15 or more than \$100.

- **Conflicts of Interest**

Realauction's primary marketing consultant in New Jersey is Alice Anne Pareti, a former longtime local tax official well-known in tax collection circles across the State. She has used those connections well. Since she began consulting for the company in 2012, Pareti has introduced its online auction platform to more than 100 municipalities, many of which have retained the firm's services through its partnership with R.O.K.²² The Commission found that the line separating Pareti's dual roles – as both a municipal tax sale consultant and a vendor advocate – has sometimes been blurred. Further, Pareti's marketing work has intertwined with the professional activities of her daughter, Constance Ludden, who also has been employed by multiple municipalities that retained R.O.K./Realauction to conduct online tax sales.

In December 2012, a period in which Pareti was working as a paid part-time tax collection consultant for the Borough of Highland Park, she performed a demonstration on behalf of Realauction's system as Borough officials there were considering switching from in-person to online lien sales.²³ Pareti testified that the demonstration "was not on the hourly time that I was working for Highland Park as a consultant." Pareti further testified that she never told local officials they could consider another online vendor. She explained her rationale as follows: "If you were selling Chevrolets, would you tell someone they could buy a Ford[?]" She stated she does not feel her role as a consultant for Highland Park conflicted with her role as a consultant for Realauction and further testified, "I was a consultant in Highland Park to run a tax sale the way they wanted it." Highland Park held its first online tax lien sale in December 2013, utilizing the NJTaxlieninvestor/Realauction partnership.

Ludden became the tax and utility fee collector for the Borough of Red Bank in June 2012. She occupied that position when, in October of that year, Red Bank became the first New Jersey municipality to hold an electronic tax sale (via the pilot program) and, again, when Red Bank hosted a second one in 2013. Both were conducted by Realauction. The Commission found that

²² Although retired from full-time government service, Pareti currently works as the part-time tax collector for Bethlehem Township (Hunterdon County). Until recently, she also served as the part-time tax collector for Franklin Township (Hunterdon County). Neither of these municipalities has done online tax sales.

²³ TAP Associates, a name utilized by Pareti, was retained via resolutions adopted by the Highland Park Council to oversee the Borough's December 2012 and December 2013 tax lien sales.

Ludden began touting the merits of online tax sales to Red Bank before she even arrived. In August 2012, she forwarded Red Bank's application and municipal resolution for an online sale to DCA, which approved the paperwork that same month. Ludden's email to the agency, including the application and resolution, was copied to Pareti. The Borough's vendor contract, signed by representatives of Red Bank, R.O.K. and Realauction, called for Red Bank to be charged a flat rate of \$1,000. It should be noted that Red Bank is the only municipality to have received that rate for more than one year.

Ludden resigned from her Red Bank position in December 2013. Subsequently, she held positions in two other municipalities that went on to utilize Realauction for online tax lien sales in multiple years. In 2014, Ludden was hired by the Borough of North Plainfield to do tax and utility-related work on a part-time basis. Shortly thereafter, she sought and gained DCA and municipal governing board approval for North Plainfield to conduct its first electronic tax sale, which was held in October 2014. Ludden has remained employed by North Plainfield, which again used Realauction in 2015. Also, in November 2014, Ludden was hired as a paid tax consultant to assist Highland Park in the run-up to an online sale. In the prior month, Highland Park had gained approval for the sale. In 2015, Ludden was again hired by Highland Park, which arranged yet another sale conducted by Realauction. Along these lines, Ludden also has provided informal guidance to other municipalities in connection with their plans for online tax sales.

The Commission examined numerous email communications that demonstrate Ludden's informal role in promoting Realauction. There have also been instances in which she was treated to meals by Realauction personnel. More broadly, she and other municipal personnel have been hosted by Realauction at its "users group" meetings. In one such gathering at the Palm in Atlantic City in May 2014, the company picked up the tab for cocktails, food and entertainment by a magician. These types of interactions with a vendor that has a stake in gaining municipal business can raise further questions about the integrity of the ongoing pilot program.

REFERRALS and RECOMMENDATIONS

The Commission refers the findings of this inquiry to the following government agencies for whatever action is deemed appropriate:

- New Jersey Department of Community Affairs – Division of Local Government Services
- New Jersey Department of the Treasury – Division of Taxation, Division of Revenue and Enterprise Services, and Division of Purchase and Property

* * *

Tax sales conducted online offer the prospect of a modern and innovative solution to an age-old problem, and the Commission is cognizant that the use of this technique in New Jersey thus far apparently has enabled multiple local governments to meet statutory responsibilities with greater efficiency. During this inquiry, municipal personnel expressed general satisfaction with this Internet-based technology, noting that in many instances it appears to have saved time, reduced advertising costs, cut down on paperwork, streamlined record-keeping and brought more order to an auction process traditionally reliant on gathering people together in one place at one time for face-to-face bidding. Perhaps most importantly, these sales seem to be successful in terms of the proportion of liens being sold and the prices obtained (i.e. often at premiums).

That said, the findings of this inquiry demonstrate the need for significant reforms in order to ensure the integrity of this process and to safeguard the best interests of the State, its local government units and the taxpayers at large. Pursuant to those goals, the Commission makes the following statutory, regulatory and programmatic recommendations to the Governor, the Legislature and other responsible entities:

1. Immediate Evaluation of the Online Auction Pilot Program

Online tax lien auctions continue to be conducted in New Jersey based on the terms of an unusually extended pilot program that has never been subjected to any sort of comprehensive performance evaluation during the more than five years it has been in place. Anecdotal accounts depicting smooth operations with few obvious problems are impressive, but they are not

sufficient to draw definitive conclusions – especially given evidence presented herein of discrepancies in data surrounding the number of legitimate bidders that actually have participated in local online auctions. Thus, with increasing numbers of municipalities opting for online lien sales, the State, through the Department of Community Affairs, should immediately formulate a process for conducting a thorough and objective review to:

- (1) Evaluate and, as necessary, restructure and/or enhance the existing pilot program guidelines – particularly as they relate to seeking vendor competition – so that the program can continue on a temporary basis while permanent electronic tax sale provisions are developed;
- (2) Establish permanent rules, regulations and procedures as contemplated by the 2001 statute and end the pilot program;²⁴
- (3) Assess the performance of the NJTaxlieninvestor/Realauction vendor partnership; and
- (4) Evaluate the true costs and benefits associated with online auctions as conducted under the current program rules.

2. Require Open Competition for Online Auction Vendor Approvals and Contracts

The Commission recognizes that when the online tax sale legislation was enacted more than a decade ago, the availability of prospective vendors qualified to do the job was sparse. As noted in this report, there are now at least several firms in the U.S. that do this kind of work and potentially could satisfy the terms of New Jersey’s statutory requirements for conducting online auctions here. Thus, the State, through DCA, should undertake a renewed evaluation of the vendor marketplace to invest the process with proper transparency and accountability and,

²⁴ In fact, legislation has recently been introduced in the General Assembly (A-2887) that would effectively eliminate DCA’s pilot program by amending the 2001 electronic tax sale enabling statute such that pilot programs would no longer be permitted. As currently written, the proposed legislation would leave intact the portion of the state statute that authorizes electronic tax liens sales “through the use of any nationally recognized electronic municipal tax lien service . . . in accordance with rules, regulations and procedures promulgated by the Director of the Division of Local Government Services in [DCA].” Accordingly, this legislation underscores the importance and necessity for DCA to efficiently establish such rules, regulations and procedures.

ultimately, so that municipalities have the most reasonable and advantageous deal going forward with vendor(s) that can provide a technically sound service.

One option would be to issue a publicly advertised solicitation so that vendors nationwide could compete on becoming an approved pilot program vendor. A determination should be made by DCA as to whether such solicitation would just be to qualify the potential vendors, or whether it also should include a price component. While precise details would need to be formulated by DCA, this exercise conceivably could be akin to the State's Cooperative Purchasing Program, whereby municipalities could ultimately procure from any number of approved vendors. However, in this case, only the municipalities, not the State, would be making purchases. DCA should consult with the Department of the Treasury's Division of Purchase and Property to help DCA evaluate possible options so that best practices can be utilized. When the pilot program ends (and DCA promulgates appropriate rules, regulations and procedures), then DCA will need to already have determined whether it will be involved in the vendor qualification process. If DCA were to choose not to be involved, then municipalities would be free to publicly advertise for bids from any nationally recognized vendor without having to certify that the winning bidder had been approved by DCA.²⁵ Under this scenario, simple and straightforward competition would then shape the online tax sale marketplace in New Jersey.

3. Provide Adequate Guidance to Local Governments

Throughout this inquiry, municipal officials repeatedly stated that they were operating under the mistaken assumption that the State had adequately evaluated the vendor as well as contract terms under which online tax sales are conducted. Consequently, many municipal personnel have not given these items the type of scrutiny they otherwise would receive if there was no perceived state role in this regard.

²⁵ Absent a statutory change, any vendor would have to be a "nationally recognized electronic municipal tax lien service." In DCA's ultimate promulgation of rules, regulations and procedures, the agency would have to decide whether to include a definition of this term and, if so, whether such definition would match that currently used under the pilot program. Ultimately, there should be legislative evaluation regarding the necessity of and/or alternatives to the "nationally recognized" requirement, which inherently restricts competition.

Thus, to the extent online tax sales remain in the pilot program phase, DCA should take the lead in conducting due diligence and vetting as it relates to approval of any vendor and its subcontractor(s). As elaborated in the recommendation that follows, this should include obtaining information related to ownership structure. Furthermore, DCA should ensure that the vendor and its subcontractor(s) understand the State's business registration requirements.

Regarding contracts, DCA should review the municipal-vendor contracts it has collected to date from municipalities as part of the program. DCA should provide guidance to municipalities related to contract terms, while still emphasizing that municipalities could and should negotiate provisions that are in their own best interests. Topic areas that should be reviewed by DCA include: contract duration, permissibility of assignment to another vendor, fees, indemnification, warranties, disclosure of any subcontractors and language assuring that vendors/subcontractors do not themselves participate as bidders in tax lien sales. (To some extent, language addressing these last two points has been incorporated into recent municipal tax sale contracts – prompted, at least in part, by this inquiry.)

In addition, DCA should consider providing guidance related to general bidding rules that should be in force during actual online tax sales. Certain topic areas include: (1) protocol to ensure that only legitimate bidders register; (2) obtaining non-collusion affidavits that are consistent with federal and state antitrust laws, particularly due to the extensive criminal conduct that apparently occurred at live auctions for years;²⁶ (3) prohibition against bidders actually or effectively bidding against themselves; and (4) the actual operation of the sale, such as, the process for selecting winners, sale duration and whether bidding is transparent or blind (i.e. no disclosure of bid amounts during sale).

Most importantly as the tax sale arena continues to evolve, DCA and the State's municipalities should be on the same page when it comes to understanding what DCA's role includes and what it does not.

²⁶ There should also be legislation considered in this area with respect to all tax sales (live and online) in an effort to lessen the likelihood of collusion and other problematic bidding behavior. Statutory language aimed at preventing bid rigging and other types of collusive activity can be found pertaining to Washington, D.C. tax sales: D.C. Code § 47-1346 (which also reflects a 2015 amendment that prohibits bidding by those convicted of a felony for, among other things, fraud or anti-competitive behavior).

4. Require Disclosure of Contract Vendor/Subcontractor Ownership

During this investigation, the Commission encountered difficulty in gaining ready access to information setting forth the ownership structure of Realauction, the firm conducting online tax sales here essentially as a subcontractor to the State's approved vendor of record. No agency of state government was found to be in possession of any records delineating Realauction's owners and/or investors, and the availability of relevant information pertaining to the municipal level seemed to range from non-existent to inconsistent. This type of circumstance runs counter to the importance of ensuring proper and adequate transparency and accountability in New Jersey's public contract procurement system. Currently, there are a variety of ownership disclosure forms being utilized by local and state government entities, with certain forms explicitly calling for information that would satisfy existing statutory requirements while other forms do not.

Therefore, the Commission recommends that the relevant public contracting and ownership disclosure statutes be amended to explicitly require not only vendors, but also significant subcontractors – e.g. those expected to receive 50 percent or more of estimated contract revenue – to disclose their ownership structure during any procurement or vendor approval process, even in situations where there are not bids or proposals submitted.²⁷ In particular, to the extent that the State is approving a vendor to be used by local authorities, ownership disclosures as described above should be provided to both the State (in the approval phase) and local authorities (in the contracting phase.) Thus, in a case such as occurred here, where DCA approved a vendor (and implicitly a significant subcontractor) and set forth a public bidding exemption, ownership disclosures still would be mandated.

More broadly, there should be a uniform and standard ownership disclosure form for use by governmental entities that, at a minimum, explicitly includes on the form itself: (1) a clear statement that those holding a 10 percent or greater interest (direct or indirect) must be disclosed, even if the vendor/subcontractor and/or certain interest holders are limited liability companies or partnerships (thus, the form should reference "interest," not just "stock"), and (2)

²⁷ At the local level, this requirement should remain essentially subject to a monetary minimum/threshold. However, to the extent that the State approves a vendor for use by other (e.g. local) authorities, the State should always obtain ownership disclosures (and business registration certifications).

a request for a sworn certification and an acknowledgement that it is both a criminal offense to make a false statement or misrepresentation in such certification and a breach of the contract to do so.²⁸

Along these lines, relevant public procurement statutes should be amended such that if a subcontractor is expected to receive more than a significant portion (e.g. 50 percent or more) of the estimated revenue from the potential contract(s), this information must be disclosed in writing, regardless of the type of product/service or governmental entity, during any procurement or vendor approval process. This should apply to both state and local contracting entities (and even if the State is merely approving the vendor rather than contracting directly). Such legislation should supplement, not replace or lessen, existing subcontracting-related requirements and restrictions.

5. Possible Improvements in the Conduct of Tax Lien Sales

Beyond the core findings of this inquiry, the Commission has identified areas that nonetheless deserve consideration in the context of possible improvements relating to the actual conduct of tax sales generally in New Jersey, as follows:

- **Tax Sales at the County Level**

A study should be conducted to determine whether tax sales should be carried out at the county rather than municipal level, as is done in other jurisdictions in the nation. As detailed in this report, municipal officials here unwittingly delegated the running of online tax sales to a subcontractor lacking official scrutiny and registration and having a majority ownership based out of two foreign countries – a circumstance that could be replicated more than 500 times given the multitude of local governments in this

²⁸ On a related topic, to facilitate compliance with political contribution disclosure rules, DCA already has been recommending that local authorities obtain ownership disclosures in certain non-competitively bid situations (i.e. when there is not a fair and open process). However, this investigation revealed an instance where a municipality utilized two separate ownership disclosure forms (essentially, one related to local public contracting rules and the other for political contribution purposes), each with different verbiage. Subsequently, the municipality received two different ownership disclosure responses pertaining to the same company. Accordingly, any changes made with respect to statutes/forms for Local Public Contracts Law purposes should not occur without a corresponding evaluation of political contribution-related ownership disclosures.

State. Indeed, it has come to the Commission's attention that at least one potential competing vendor has avoided entering New Jersey's online tax sale market, in part, because it is so decentralized. Home rule and other parochial strictures aside, there are reasons why consolidating such periodic sales within each of New Jersey's counties is worth considering.

First, sheer numbers: there are only 21 counties compared to the scattering of 565 municipalities across the State. Cutting the number of sales down to size could save significant time and resources devoted to this mandatory undertaking. Second, though county-run sales would involve significantly more participants and property liens than the current municipal approach, such consolidation may lend itself to better monitoring and oversight. Third, county-wide sales potentially could lead to other efficiencies in the way tax sales are run. Factors to consider would include: (1) the costs (possible in-house and vendor) of running municipal versus county sales, (2) the likelihood that liens would be sold at a county-wide sale, including comparisons of rural, urban and suburban municipalities in different geographic areas in the State, (3) the timing of the sales, since sales in New Jersey are conducted virtually throughout the year, and (4) the level of interest of prospective bidders regarding county sales.

- **Protections for Property Owners**

1. Statutory change to require notice to be sent to property owners upon sale of lien at a tax sale

Currently, there is no statutory requirement that a property owner be notified that a lien on his/her property actually was sold at a tax sale. Such notice should be provided, along with a description of how the property owner can pay off the debt and a clear disclosure of the consequences of the lien being sold. This disclosure should not only include the possibility of foreclosure, but also the ability of the investor (i.e. lien holder) to pay off subsequent delinquencies ("subs"). Even if the tax sale certificate is sold at no interest (e.g. premium), investors are due interest at the delinquency interest rate (i.e. up to 18 percent) for any "subs" paid for by the investor. Consequently, the sale

of even a very small lien at tax sale at no interest can lead to exorbitant interest rates on future debt.

Moreover, with respect to “standard” tax sales (which are for prior year delinquencies, i.e. a 2016 standard sale is for debts originating in 2015)²⁹ there can be current-year delinquencies which exist at the time of the tax sale. Consequently, “subs” associated with a given property can already exist at the time of the sale. Thus, it is important that any post-sale notice occur in a timely fashion.³⁰

2. Evaluation as to whether certain delinquencies should not go to a tax sale

It has been reported that New Jersey, as compared to other states, ranks near the top of the list when it comes to the total number of liens sold per year.³¹ A factor related to this high ranking is that, in New Jersey, there is no mandatory monetary minimum for which delinquencies would lead to a lien being sold at tax sale.³² Given the serious consequences that can occur when a tax sale ultimately leads to a subsequent foreclosure proceeding, consideration should be given to implementing a modest mandatory minimum that needs to be met before a lien is sold at tax sale. This step could also reduce the cost of any vendor-run tax sale. Certain other jurisdictions, including the City of Baltimore, Md., and Washington, D.C., have requirements along these lines. A related issue is that solely non-tax items (e.g. water/sewer debts) make up a significant portion of the liens being sold at “tax” sales. Any evaluation of a possible statutory minimum

²⁹ Alternatively, municipalities can have accelerated tax sales which are for current-year delinquencies (i.e. a 2016 accelerated sale is for debts originating in 2016).

³⁰ In the 2014-2015 state legislative session, two bills (A-4589 and A-4590) passed by the General Assembly related to ensuring notice and awareness of liens/tax sales in certain situations. To the extent that these measures are further considered, the sending of post-sale notifications should be evaluated.

³¹ See *Towns Make Millions from Tax Misery*, Asbury Park Press, October 16, 2015, reporting that, on a *per capita* basis, New Jersey sells more liens than any other state, with 146,000 sold in 2014 alone, based on data from the National Tax Lien Association. Also, see *Local Laws Do Little to Protect Homeowners*, The Washington Post, December 8, 2013. This article is accompanied by a chart ranking New Jersey’s more than 154,000 liens sold in 2012 as being second only to Florida.

³² Municipalities have the option to cancel delinquencies of less than \$10 and also the discretion as to whether to include delinquencies that, combined with other charges (e.g. interest costs, advertising), would amount to less than \$100.

dollar requirement should also factor in whether there should be any limitation with respect to tax and/or non-tax items.

Another factor is that New Jersey provides property owners with very minimal protection in terms of duration before a delinquency can be sold. A delinquency in New Jersey can turn into a lien sold at a tax sale very quickly. As an example, with respect to municipalities (with a calendar fiscal year) holding accelerated sales, if a homeowner does not pay taxes due on November 1 within a 10-day grace period, then the debt must be included in the advertised list for the December tax sale of that same year.

That being said, there is a wide variety of factors to consider and the benefits of the current setup should not be overlooked. For example, delinquencies in New Jersey frequently are paid off between the time of the first advertisement of the tax sale and the actual close of the tax sale. If liens are paid off when the debt is small, this not only helps a municipality get much needed revenue more quickly, but it also helps prevent liens from continuing to accrue interest and ultimately becoming much larger debts. Yet, the potential negative ramifications of the tax sale and potential subsequent foreclosure make this an important issue.

3. Statutory bid interest rate should be re-examined

As noted at the outset of this report, legislation has been introduced in the State Senate and General Assembly which would require that the tax delinquency interest rate maximum be indexed to prevailing market rates. As currently written, however, this legislation would not lower the peak bid interest rate. At the present time, bids at live and online sales are often won at premiums (rather than interest rates). That being said, if the delinquency interest rate cap is to be changed, then an evaluation should be performed as to whether there also should be a change to the bid interest rate maximum (currently 18 percent), which is set forth in N.J.S.A. 54:5-32.

Not evaluating both rates simultaneously could result in unintended consequences. First, if only the delinquency rate were to be changed, then a property owner theoretically could face a much lower pre-sale interest rate than would be in effect

post-sale (though this situation already exists when delinquencies are \$1,500 or less). Second, premiums are bid, at least in part, because bidders will benefit from a profitable delinquency rate when they buy the “subs.” Thus, a lower delinquency rate could diminish the incentive for bidders to bid competitively (e.g. at premiums).

APPENDIX

N.J.S.A. 52:9M-12.2 provides that:

- a. The Commission shall make a good faith effort to notify any person whose conduct it intends to criticize in a proposed report.*
- b. The notice required under subsection a. of this section shall describe the general nature and the context of the criticism, but need not include any portion of the proposed report or any testimony or evidence upon which the report is based.*
- c. Any person receiving notice under subsection a. of this section shall have 15 days to submit a response, signed by that person under oath or affirmation. Thereafter the Commission shall consider the response and shall include the response in the report together with any relevant evidence submitted by that person; except that the Commission may redact from the response any discussion or reference to a person who has not received notice under subsection a. of this section.*
- d. Nothing in this section shall be construed to prevent the Commission from granting such further rights and privileges, as it may determine, to any person whose conduct it intends to criticize in a proposed report.*
- e. Notwithstanding the provisions of R.S. 1:1-2, nothing in this section shall be deemed to apply to any entity other than a natural person.*

The following material was submitted pursuant to those statutory requirements.

CONSTANCE S. LUDDEN
P.O. BOX 404
FLEMINGTON, NJ 08822
(908) 623-0811 queenludden@yahoo.com

RECEIVED

2016 APR 25 AM 10:03

STATE OF NEW JERSEY
INVESTIGATIVE

April 18, 2016

State of NJ
Commission of Investigation
28 W State St.
Trenton, NJ 08625

Dear Sirs:

In response to your letter/notice of proposed report dissemination describing my alleged "Conflicts of Interest", I wish to provide the following response and would like same to be included as my response:

I have been employed by multiple municipalities that have retained R.O.K./Realauction to conduct online tax sales as they are currently the only approved vendor able to provide such a service in NJ. There are many other Tax Collectors employed by more than 1 municipality that has utilized said services, i.e. Lindenwold, Washington Twp (both Gloucester and Warren County), Carteret, Highlands, Elmer, Elinsboro, etc. There is nothing unique or otherwise odd about my working in multiple municipalities conducting online tax sales. Many Tax Collectors serve more than one municipality and/or have changed municipalities and have conducted online tax sales with R.O.K./Realauction.

I began exploring the online tax sale process and was a proponent of that type of a program in 2005-2006. I am a progressive professional who embraces new technology and methodology. I began "touting" the merits of online tax sales to Red Bank and to most every Tax Collector I encountered as soon as I was aware that the Pilot Program had been authorized by DLGS, and I continue to do so today. After all of the collusion and law suits over bidding at live sales in NJ, I

recognized many benefits that I felt the online tax sale process afforded a Tax Collector and her municipality. In addition to the elimination of collusion, online sales greatly reduce paperwork in the Tax Collector's office and dramatically increase the premiums received by municipalities. I am extremely proud of the fact that I was the 1st municipality to hold an online tax sale and that I was able to negotiate with [REDACTED] of Realauction for Red Bank to receive the same \$1,000.00 rate twice within a 12 month period.

As I have mentioned, I am not the only Tax Collector to hold an online tax sale in more than one municipality. I am happy to assist fellow Tax Collectors by providing informal guidance regarding my personal experiences throughout the online tax sale process. Tax Collectors are a small, close group. Other Tax Collectors also provide guidance regarding their experiences, including [REDACTED] (Toms River), [REDACTED] (Voorhees), and [REDACTED] (Lacey). I'm sure there are many others. We discuss the merits and detractions of online sales at meetings, seminars, conferences and conventions. Most, if not all Tax Collectors think online tax sales are AWESOME and the premiums we receive for our municipalities continue to exceed our expectations!

Realauction isn't the only company that hosts user group meetings. In fact, I will be attending a user group meeting next week @ The Westin Princeton at Forrestal Village hosted by Edmunds and Associates. Refreshments will be served. This practice is typical in the Tax Collection world. These type of user group meetings are not only for existing clients, but they also include prospective clients and there is not usually a fee charged to the participants. Frequently participants are given a small gift for their attendance as well. I am certainly not the only Tax Collector who has had a meal paid for by Realauction; i.e. [REDACTED]-Linden, [REDACTED]-Asbury Park, [REDACTED]-Union Beach, etc. I am also sure that Realauction is not the only vendor that has ever paid for a meal or refreshments on my behalf; i.e. [REDACTED]-Municipal Software, [REDACTED]-First Byte, [REDACTED]-MGL, etc. Again, a common practice in the Tax Collection world.

The ability to conduct an online tax sale is currently only allowed through the Pilot program and the rules and regulations set forth by the Director of DLGS. Until such time as the online tax sale process is removed from the current Pilot program, I will continue to utilize the Pilot program and follow all of the rules

Page 3 of 3

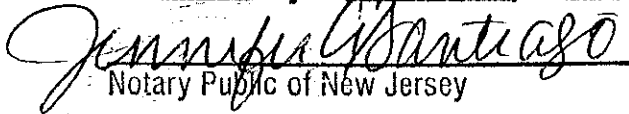
and regulations (as I have been doing for the past 4 years) as set forth by the Director to facilitate on online tax sale in my municipalitie(s). I would love to see the online tax sale process formalized and removed from the Pilot program in the hopes of competitive companies and a reduction of the fees my municipalities are currently paying for said services.

I do hereby swear and affirm that all of the statements made herein are true.


Constance S. Ludden 4/18/16

Notarized:

Sworn and Subscribed before me
this 18 day of April, 2016


Notary Public of New Jersey

JENNIFER A. SANTIAGO
NOTARY PUBLIC OF NEW JERSEY
I.D. No: 2257862
My Commission Expires Aug. 3, 2020

Re: DISSEMINATION No. 16-03-004
RECEIVED

2016 APR 20 AM 10: 22

ALICE ANNE PARETI

STATE COMMISSION
INVESTIGATION
513A County Road 523, Whitehouse Station, NJ 08889

April 12, 2016

Dear Mr. Parker:

Your letter of March 31, 2016, indicates that I may respond, but did not indicate what form my response should take. I recognize that my statements are the equivalent of an oath.

After 40+ years in the industry, I know many collectors. Although there are 565 municipalities in NJ, there are only approximately 400 collectors since many collectors serve more than one municipality. In addition to being a municipal employee for 40+ years, I was also the first "Tax Collection Specialist" hired by DLGS and wrote the first State Examination for the Certified Tax Collector License in New Jersey. After authoring two manuals used in State-required Rutgers Tax Collection Courses and being an adjunct professor at Rutgers, teaching those classes for the better part of 25 years, I have probably encountered in excess of 500 students. In addition, I have frequently been invited to be a speaker at seminars, conferences and conventions. Therefore, your statement that I am well-known in tax collection circles across the State is very accurate.

The Commission is also correct to indicate that since I began consulting for Realauction in 2012 I have introduced Realauction's online tax sale to more than 100 municipalities, many of which have retained the firm's services through its partnership with R.O.K. Most of the Tax Collectors with whom I conducted demonstrations either sought me out to schedule a demo (by email, phone or at a conference/seminar), were already the collector in another municipality or were a referral to me from Realauction from an inquiry they had received. What the Commission does not indicate is that the demonstrations I conducted were typically with the Tax Collector and/or CFO and occasionally a Municipal Manager or Administrator. None of these officials can authorize holding an online tax sale in New Jersey; they may only make recommendations to the governing body. Only the governing body may authorize participation in the Pilot Program. I have *never* performed a demonstration with a governing body. The Commission fails to mention that my compensation from Realauction is not based on a sale. My compensation is solely for performing a demonstration of the system, regardless of whether or not the municipality eventually chooses to retain Realauction's services. I am not a salesperson – I simply demonstrate how the system functions. Of course my "marketing work" has intertwined with the professional activities of my daughter. She is one of those 400+ Tax Collectors in New Jersey as am I. One could accurately say that my "marketing work" has intertwined with the professional activities of many Tax Collectors. For example, the Tax Collectors in Toms River and Lacey have become unpaid "vendor advocates" as well. They have attended seminars, User Group Meetings

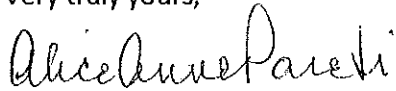
and other functions where the cost was paid by Realauction. They mention Realauction and the online tax sale process when they teach classes and/or speak at seminars. As mentioned above, it's a fairly small group. The Commission mentions that my daughter has also been employed by multiple municipalities that retained R.O.K./Realauction to conduct online tax sales. Among the 90+ clients of Realauction there are many examples of tax collectors being employed by more than one municipality including Lindenwold, Washington Township (Gloucester), Elmer, Elsinboro, Gloucester City, Gallaway, Egg Harbor, Hazlet, Highlands, Carteret, North Plainfield, Hopewell Twp. (Cumberland), Lakewood, Mansfield (Warren), Manville, Oxford, and perhaps others of which I may not be aware.

The scope of my services in Highland Park was to oversee the duties of the Tax Collector during the tax sale. Not only was it **not** a conflict that I mentioned online tax sales but, rather, I would have been remiss in performing my contracted responsibilities had I **not** mentioned online tax sales! There were not "Borough officials" who were considering switching from in-person to online lien sales. It was one person - the Tax Collector/CFO to whom I reported. I wish to point out that the Commission is mistaken to state that I "performed a demonstration on behalf of Realauction's system." I specifically testified that I **did not** perform that demonstration. I made an introduction and was present at the demonstration, but did not perform the demonstration for Highland Park. (I did not begin conducting demonstrations until mid-2013). Once again, I wish to emphasize that neither the Tax Collector, the CFO or any other municipal official other than the governing body may authorize the Tax Collector to conduct an online tax sale. Upon occasion (once during a seminar in Glassboro and a few times during demos) I have been asked if there were other firms which provide an online tax sale service. I truthfully indicated that there were other firms, none of which had received approval from DCA to perform online tax sales in New Jersey. Furthermore, the State requirements (issued by DLGS) indicate that if a vendor's system has been approved and no other electronic tax sale system has been approved, the municipality may, during the pilot program, contract with such vendor by informal quotation and without public bid. Since DLGS has approved only one vendor, why would I suggest that a municipality consider another vendor?

With respect to the paragraph regarding the flat rate of \$1,000 charged to Red Bank, I'm not sure why it is mentioned as a conflict of interest with my conduct. I have testified that I have nothing to do with establishing pricing for contracts. I am not an employee of either R.O.K. or Realauction. I pass along the information about pricing as I am instructed by Realauction. I serve only as a conduit with regard to pricing. I am aware that some municipalities have wished to negotiate the price and at that point I have given them [REDACTED]'s name and contact information (Red Bank, Newark, Vantor, etc.). My understanding is that every municipality using the online tax sale during the first twelve months +/- was charged that same amount, i.e., \$1,000. I believe those municipalities were Red Bank, Neptune, Evesham, Pleasantville, Clifton, Linden, Trenton and Toms River.

I hope that the Commission will take the same time and effort that was used in formulating its criticism of my conduct to validate the additional information I have offered and subsequently remove its complaint of my conduct.

Very truly yours,



Alice Anne Pareti

STATE OF NEW JERSEY

COUNTY OF HUNTERDON

BEFORE ME, the undersigned Notary Public in and for the State of New Jersey, on this day personally appeared Alice Anne Pareti, known to me to be the person whose name is subscribed to the foregoing instrument, by showing me valid identification, who, after being duly sworn, on oath states that she has prepared and acknowledges that she signed, sealed, and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 12th day of April, 2016.



NOTARY PUBLIC IN AND FOR THE
STATE OF NEW JERSEY

LOLA C. BURD
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires September 7, 2019

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April 18, 2016

SENT FEDERAL EXPRESS AND EMAIL

Chairman and Commissioners
State of New Jersey
Commission of Investigation
28 West State Street
PO Box 045
Trenton, New Jersey 08625-0045

**Re: R.O.K. Industries, Inc. Response
Notice of Proposed Report
Dissemination No .16-03-007**

Dear Chairman and Commissioners:

This firm represents R.O.K. Industries, Inc. a New Jersey-based small business doing business as NJTaxlieninvestor.com (“ROK”), with respect to the Commission’s investigation into the manner in which property tax liens are sold in New Jersey. As well, Paul Josephson, Esq., a partner of this law firm, represented ROK while affiliated with a prior law firm in seeking regulations or a pilot program to implement the online tax lien sales authorized by the Legislature in P.L. 2001, ch. 160, codified at N.J.S.A. 54:5-19.1. This letter constitutes the response to the portions of the Commission’s proposed report on this topic supplied to ROK’s Chief Executive Officer, Igor Roitburg, Esq., and to Mr. Josephson.

ROK shares the Commission’s interest in a free and unfettered market for the sale of municipal property tax liens. ROK was founded by two attorneys frustrated by the inefficiencies and rampant bid rigging of tax lien sales in New Jersey that has been well-documented over the past decade. Mr. Roitburg and his partner, Peter Kim, Esq., invested exceptional amounts of time and personal resources to work collaboratively with the Department of Community Affairs (“DCA”) to develop an online tax lien auction program that would make New Jersey’s tax lien auctions fair, efficient and transparent.

DUANE MORRIS LLP

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Developing a workable and fair online method of selling and bidding for tax liens was a substantial undertaking beyond DCA's internal resources and expertise. DCA appropriately worked with the two (and to the best of our knowledge the only two) vendors who expressed an interest in working with DCA to develop online auction rules that would both comply with New Jersey's antiquated and decentralized tax lien sales laws and result in a competitive, commercially viable online auction process that would actually serve all stakeholders in the tax lien sales process.

Most important, and overlooked by the draft report, *DCA and ROK developed a program open to any vendor willing to demonstrate its qualifications and auction platform to DCA.* This is hardly an onerous or unusual predicate to any regulatory approval process in New Jersey, and one that ROK itself was subject to.

It is unfortunate that the Commission's draft report casts this collaborative regulatory effort in a nefarious light simply because ROK shouldered the ministerial responsibility of documenting the draft policies and business rules that DCA approved. DCA at all times retained sole authority to determine the appropriate protocols. DCA made each and every decision embodied in the current pilot program requirements after extensively studying, over a five-year period, the interests of the state, its municipalities, taxpayers, and tax lien investors, the experiences of other taxing jurisdictions that conduct online tax lien auctions, and the perspectives of potential online auction providers in providing these services within New Jersey's municipally-based tax lien system and in compliance with its statutory framework for tax lien sales.

DCA at all times ensured the public's interest would be served and protected as auctions were transferred to an online auction platform. ROK worked assiduously to document the bidding rules, protocols and programmatic policies approved by DCA – and to then develop the programming, software and back office support needed to comply with New Jersey's unique and stringent requirements.

The responsibilities of the Division of Local Government Services ("DLGS") over virtually all aspects of municipal finance are myriad. DLGS resources must by necessity be prioritized in favor of ongoing state and local budget and financing processes, and ensuring that municipal business is being conducted in accordance with the law. DLGS employees simply do not have the time to devote to intensive, more esoteric projects like conceiving and documenting an entirely new framework from scratch, as was required to implement online tax lien auctions.

In this case, it was entirely appropriate for DCA to allow the regulated community to present suggestions and shoulder the mechanical drafting responsibilities; at no time in the process of developing this pilot program did DCA abdicate its responsibility to be the final arbiter of any question of policy or process. Indeed, the process of soliciting and adopting market participant input is often done by federal regulators like the SEC. DCA staff simply did not have, nor should they have been expected to have, the expertise or resources to research what

sort of auction rules had been implemented elsewhere and how to ensure the program it ultimately authorized would actually prove superior to in-person auctions. As reflected by the record however, DCA closely questioned ROK about its proposal over many meetings, and modified ROK's proposal extensively to protect what DCA deemed to be the public's interest.

To comply with New Jersey's statutory requirements and decentralized system of tax lien sales at the municipal level, and not county level, vendors needed to create New Jersey-specific software and processes. Thus, when two firms interested in implementing online auctions in New Jersey presented themselves to DCA and sought guidance so they could begin developing New Jersey-specific software -- one with demonstrated experience in and expert knowledge of the New Jersey tax lien market (ROK), and the other with national experience conducting online tax lien auctions (RealAuction), it was appropriate for DCA to suggest the two companies confer and consider working together to propose a workable model for New Jersey for DCA to review. DCA's interest in conducting one set of discussions rather than duplicating effort to develop two competing pilot projects was eminently reasonable and understandable.

To the extent that there may exist other vendors interested in conducting online tax lien auctions for New Jersey municipalities, as intimated by the draft report, absolutely nothing stopped them at that time from participating with DCA in developing the regulatory framework promulgated in the pilot program. Equally important, nothing stops them now from taking full advantage of ROK's extensive spade work and serving New Jersey municipalities upon satisfying the same reasonable requirements DCA imposed on ROK. Frankly, because ROK was the first to blaze a path toward conducting successful online tax lien auctions under DCA's requirements, other vendors desiring to conduct online tax lien auctions now have a roadmap to follow.

DCA's pilot program imposes no unusual or unique barriers to entering the market and competing with ROK.

Rather, the primary (and substantial) barrier to entering New Jersey is the municipally-based system of tax lien sales established by statute, which imposes high costs of marketing to and customizing services for each of New Jersey's 565 municipalities, combined with the low rate of reimbursement (\$15 per lien) and the limited number of liens sold at any given auction by all but the largest municipalities. (More than 40 auctions conducted by ROK during 2015 contained less than 300 tax liens).

ROK's Extensive New Jersey Tax Lien Background

In an effort to make tax lien information more readily available to individual investors who did not have the resources and access to information enjoyed by institutional investors who dominated in-person tax lien auctions held in each of New Jersey's 565 municipalities, ROK initially began a subscription service for tax lien investors that gathered and republished notices of municipal tax lien sales published in many different locations, including local newspapers of

record, web sites, and related information. Started in 2002, ROK's subscription service, NJTaxlieninvestor.com, has been a definitive source of New Jersey tax lien sale information for over a thousand subscribers.

ROK's work in making more investors aware of the existence and timing of tax lien sales, and the properties on which liens were being sold, brought it into close contact with municipal tax collectors and tax lien investors. The well-documented bid rigging among certain investors in town hall auctions throughout the state that has since been extensively prosecuted led ROK to consider developing a transparent, online auction process that would provide greater access to tax lien auctions for investors large and small, both in and outside New Jersey; thereby leveling the playing field for everyone. Seeking a more open and transparent means of selling and buying tax liens that would yield the best results for municipalities and their taxpayers, ROK discovered the Legislature had in 2001 amended the tax lien law to authorize municipalities to conduct tax lien sales online in lieu of in-person sales. The legislation required the DCA commissioner to establish the rules for online tax lien sales by regulation or pilot program.

When ROK first began meeting with DCA, ROK sought DCA's implementation of online tax lien auction regulations (not a pilot program) in order to develop its software and auction platform. It was not until several years later when it became clear that those regulations would not be forthcoming in the foreseeable future, while other states and vendors had already developed, tested and deployed online tax lien platforms, that DCA informed ROK that another interested vendor, RealAuction, had made similar inquiries of DCA and suggested they discuss their mutual interest so DCA could deal with both interested parties together.

ROK's Work with RealAuction

After ROK and RealAuction discussed their mutual interests in developing a New Jersey-compliant online auction platform, it was apparent that each company possessed a strength the other did not. ROK, being on the ground in New Jersey, understood the New Jersey-specific laws, policies and practices but needed to build its technology from the ground up. ROK's subscription service, NJTaxlieninvestor.com, had and continues to have an established subscriber base, brand and credibility in New Jersey. ROK's ability to drive its subscriber base to online tax lien auctions is a valuable asset that ROK brought to the table. In recognition of ROK's leading position for tax lien sale information in New Jersey, for many years the Tax Collectors and Treasurers Association of New Jersey (TCTANJ) listed NJTaxlieninvestor.com as the go to web site for all tax lien sale information in New Jersey.

RealAuction had a viable online auction platform, as well as back office staffing to conduct auctions, that had been used in many other states and counties but would need to be significantly modified to comply with New Jersey laws, but limited New Jersey presence and experience with New Jersey municipal tax lien laws.

It was thus entirely reasonable and appropriate for ROK and RealAuction to pool their expertise and efforts to serve New Jersey municipalities. They agreed to pool their efforts, and developed a revenue sharing formula commensurate with their respective contributions: ROK would secure the New Jersey approvals to operate an online tax lien auction and provide all of the non-auction platform related services (i.e., drafting and negotiating contracts with participating municipalities, compliance with New Jersey's regulatory requirements, billing and collections, insurance coverage); RealAuction would develop the software, market auctions to municipalities, and provide auction platform-related services once contracted.

ROK ultimately devoted six years to securing DCA's implementation of online tax lien auction regulations, and then pilot program rules when DCA ultimately decided to implement a pilot program. ROK invested considerable resources to do so, both in its own time and to retain counsel experienced in New Jersey administrative law and process to advise it in this complex area.

The relationship between ROK and RealAuction is entirely appropriate, and in view of their respective contributions, commercially reasonable. The nature of their collaboration is common practice among web-based service providers, who partner with technology companies that possess the software and other services needed to bring a concept to market. ROK vigorously contests any suggestion to the contrary in the draft report.

Exemption from Bidding Rules

There was nothing irregular or inappropriate about ROK's request that so long as it was the sole vendor authorized by DCA to conduct online tax lien auctions, municipalities should be exempted from public advertising requirements that might otherwise apply under the Local Public Contracts Law ("LPCL"). Under the LPCL, where a good or service can only be obtained from one company, a public entity is not required to publicly advertise and seek bids, because this would be a pointless exercise. Thus all public entities are allowed to bypass usual bidding rules on the basis of a "sole source exception." DCA, and in particular the DLGS, are responsible for advising municipalities and counties on compliance with the LPCL, including sole source contracting. Because DCA and DLGS were also responsible for approving online tax lien auction platforms, it was reasonable and appropriate for ROK to request that DCA streamline the municipal procurement process by recognizing ROK as a sole source vendor until another vendor was approved to provide online tax lien auctions in New Jersey. Doing so eliminated the need for every municipality to draft its own sole source documentation, and saved both municipalities and DCA considerable time that would have otherwise been needed to make pro forma sole source determinations.

DCA's decision to authorize sole source contracting with ROK in advance, at least until a competitor demonstrated interest in serving New Jersey municipalities, was in full accord with the letter and spirit of the LPCL. This decision was an appropriate means of streamlining

procurement and encouraging municipalities to pilot online auctions to determine if they were superior to in-person auctions.

The pilot program provisions were designed to encourage other vendors to enter the New Jersey market, not to discourage them as suggested in the draft report. Indeed, the program rules created a clear process for other vendors to seek to provide online auction services to municipalities. Upon any vendor demonstrating its auction platform to DLGS (just like ROK) and securing DLGS approval, thereafter every municipality will have to publicly advertise for proposals for these services. And once the municipality does so and selects its preferred vendor, the resulting agreement - whether with ROK or a competitor - is subject to DCA approval before an auction can be conducted. ROK's approved agreements with municipalities are a matter of public record and can be easily adopted by any competitor. ROK enjoys no advantage whatsoever over any competitor in this process.

There are no "idiosyncrasies" here, as the draft report suggests. This is a standard method of procurement. First a vendor is approved to provide its services to public entities, and once so approved, its resulting agreement must be approved as well.

Improving the Online Tax Lien Auction Program

Even though pilot program tax lien auctions have been extremely successful on every level, including the inaugural auction held for the Borough of Red Bank, New Jersey on October 29, 2012 while hurricane Sandy was bearing down on New Jersey, ROK believes that the public and municipalities may be best served if DCA were to convert the current pilot program into formal regulations promulgated pursuant to the Administrative Procedures Act ("APA"). Indeed, the record and evidence ROK provided the Commission clearly establish that ROK initially asked DCA to promulgate permanent rules rather than a pilot program.

DCA, not without justification, preferred to proceed by way of pilot program so that it could quickly terminate online auctions if they proved inimical to the public interest, or modify program rules more quickly than can be achieved via APA rulemaking, a process that generally takes a minimum of 6 to 9 months from proposal to promulgation. ROK has never objected to the promulgation of permanent rules, and the Commission has provided no information to the contrary. ROK has and continues to follow the clear language of the statute and the pilot program implemented by DCA pursuant thereto.

ROK also recognizes that municipalities were unclear about the relationship between ROK and RealAuction. However, ROK rejects the Commission's criticism in this regard. ROK did not at any time seek to hide or mischaracterize RealAuction's substantial responsibilities for providing ROK's online auction platform and related servicing tasks. DCA was fully aware that RealAuction's auction platform and related servicing tasks were essential to ROK's service, and RealAuction representatives met directly with DCA on several occasions to demonstrate its capabilities and qualifications. In fact, to ensure that municipalities were both aware of and

assured of RealAuction's responsibilities to perform many of the auction tasks, ROK made RealAuction a signatory to ROK's contracts with municipalities and explained its relationship with RealAuction to municipalities.

When the Commission presented its questions about the respective roles of the companies, ROK made every document concerning that relationship available to Commission staff and did not exercise any privileges or claims of proprietary information. Further, ROK changed its contracts with municipalities to clarify that RealAuction serves as the DCA-approved online auction platform for NJTaxLienInvestor.com, and to confirm that both ROK and RealAuction are responsible for performing the contracted services.

Conclusion

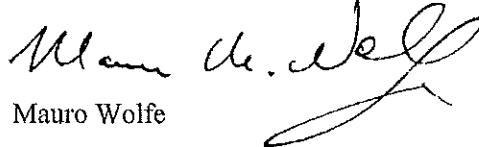
As a New Jersey-based small business that has made a tremendous investment of time and resources to solve a vexing problem for municipalities -- rampant bid rigging in the sale of tax liens -- ROK disagrees with the tone of those portions of the draft report it has been provided. ROK respectfully requests that the Commission revisit its draft report to revise its tone and eliminate the unfortunate insinuations about both ROK and its good faith, arms-length dealings with DCA.

Nevertheless, ROK appreciates the Commission's shared interest in improving New Jersey's online tax lien auction process. ROK first contacted DCA to help solve a badly broken and corrupted in-person tax lien auction process. ROK believes online tax lien auctions are an important means of increasing participation in tax lien sales and reducing bid rigging by moving New Jersey's tax lien sales from insider-dominated proceedings held in 565 town halls on varying dates and times to online auction marketplaces open for all interested parties to observe and to participate in.

As demonstrated by its lengthy pursuit of DCA approval and intense dedication to developing a New Jersey-compliant online auction platform and service, ROK is a New Jersey-based small business that has made a significant investment to develop a solution of value to all stakeholders in the tax lien sale process in New Jersey. ROK supports formal regulations to govern online auctions, and looks forward to reviewing the Commission's full report and recommendations for other potential enhancements that may improve and increase the use of online tax lien auctions.

Respectfully submitted,

DUANE MORRIS LLP



Mauro Wolfe

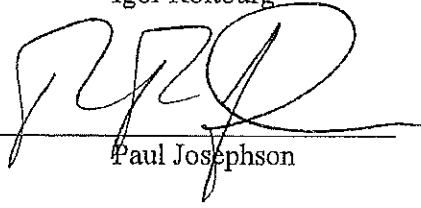
cc: Jeffrey C. Parker, Counsel (Via email)

CERTIFICATION

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: April 18, 2016

Igor Roitburg

A handwritten signature in black ink, appearing to read 'PJ', is written over a horizontal line. The signature is stylized and somewhat illegible.

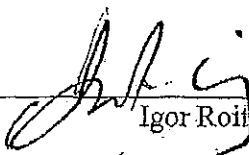
Paul Josephson

Dated: April 18, 2016

CERTIFICATION

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: April 18, 2016


Igor Roiburg

Dated: April 18, 2016

Paul Josephson



***State of New Jersey
Commission of Investigation***