



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
OFFICE OF THE DIRECTOR

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July 15, 2021

Via Electronic Mail Only alfred@alfredsauctions.com

Alfred J. Finocchiaro CAI GPPA
Alfred's Auction Service LLC
173 Applegarth Rd.
Monroe, NJ 08831

Re: I/M/O Bid Solicitation #20DPP00542 Alfred's Auction Service LLC
Protest of Amended Notice of Intent to Award
T1954 – Professional Auctioneer Services for Vehicles and Heavy Equipment - DSS

Dear Mr. Finocchiaro:

This final agency decision is in response to your e-mail correspondence on behalf of Alfred's Auction Service LLC (Alfred's) which was received by the Division of Purchase and Property's (Division) Hearing Unit on June 23, 2021. In that letter, Alfred's protests the Procurement Bureau's (Bureau) June 16, 2021, Amended Notice of Intent to Award letter (Amended NOI) issued for Bid Solicitation #20DPP00542 - T1954 – Professional Auctioneer Services for Vehicles and Heavy Equipment – DSS (Bid Solicitation).

By way of background, on September 15, 2020, the Bureau issued the Bid Solicitation on behalf of the Department of Treasury – Distribution Support Services. The purpose of the Bid Solicitation was to solicit Quotes for Live Auction Services for Vehicles (primarily sedans and vans), and Heavy Equipment (trucks, buses, boats, highway equipment, assorted machinery and construction equipment), and miscellaneous industrial parts and supplies. Bid Solicitation § 1.1 *Purpose and Intent*. It is the State's intent to award one Master Blanket Purchase Order (Blanket P.O.) to that responsible Vendor {Bidder} whose Quote, conforming to the Bid Solicitation, is most advantageous to the State, price and other factors considered. *Ibid*.

On December 18, 2020, the Division's Proposal Review Unit opened two (2) Quotes submitted by the submission deadline of 2:00 p.m. eastern time. After conducting a preliminary review of the Quotes received for compliance with the mandatory requirements for Quote submission, both Quotes were forwarded to the Bureau for review and evaluation consistent with the requirements of Bid Solicitation Section 6.7 *Evaluation Criteria*.

After completing its review and evaluation, on April 6, 2021, the Bureau prepared a Recommendation Report that recommended that a Blanket P.O. be awarded to Alfred's. On April 23, 2021, the Bureau issued a Notice of Intent to Award (NOI) advising all Vendors {Bidders} that it was the State's intent to award a Blanket P.O. consistent with the April 6, 2021, Recommendation Report.

On April 27, 2021, Lee Fox from Lee M. Fox LLC (Fox) wrote to the Bureau stating that it was protesting the intended award of a Blanket P.O. to Alfred's. In summary, Fox alleged that "The Ownership Disclosure Statement submitted by Alfred's Auction Service LLC in Bid Solicitation 20DPP00542 was not an accurate and truthful Ownership Disclosure Statement." Fox April 27, 2021 protest.

A review of the record of the procurement revealed that on October 20, 2020, Alfred's submitted Quote No. 00004934. With the Quote, Alfred's uploaded the *Ownership Disclosure Form* indicating that there were no 10% or greater owners of the bidding entity, a limited liability company. As part of the same bid submission Alfred's *Disclosure of Investigations and Other Actions Involving the Vendor Form* indicated that Alfred Finocchiaro was the sole "Owner." As such, the Bureau perceived an ambiguity between the *Ownership Disclosure Form* and the other submitted forms which required a clarification. In response to the Bureau's clarification letter, on January 28, 2021, Alfred's stated that Alfred Finocchiaro was the sole "Owner" of Alfred's Auction Service LLC.

On May 21, 2021, the Division issued a final agency decision finding that Alfred's submitted *Ownership Disclosure Form* did not comply with the statutory requirements for the submission of statement of ownership. In part, I found that Alfred's response to the Bureau's clarification letter resulted in an impermissible supplementation, change or correction to the submitted Quote; and therefore, was not permitted under *In re Protest of Award of On-Line Games Prod. & Operation Servs. Contract*, Bid No. 95-X-20175, 279 N.J. Super. 566, 597 (App. Div. 1995) (holding that "in clarifying or elaborating on a proposal, a bidder explains or amplifies what is already there. In supplementing, changing or correcting a proposal, the bidder alters what is there. It is the alteration of the original proposal which was interdicted by the RFP".) Notwithstanding Alfred's interest in competing for this procurement, in reviewing a Quote submitted in response to a Bid Solicitation, the Division does not have the power to waive the legislative requirement that a Vendor {Bidder} provide its ownership information prior to or accompanying the Quote submission. Accordingly the Division deemed Alfred's Quote submission as non-responsive and remanded the matter back Bureau for review.¹

As a result of the May 21, 2021 final agency decision, on May 26, 2021 the Division rescinded the original NOI. The Procurement Bureau then reviewed the only other Quote submitted in response to the Bid Solicitation. The Quote submitted by Fox was determined by the Bureau to be responsive to the mandatory requirements of the Bid Solicitation. On June 16, 2021 the Bureau issued an Amended NOI to make a Blanket P.O. award to Fox.

In reply to the June 16, 2021, Amended NOI, Alfred's submitted a protest stating the following:

This is my formal protest letter. First, I find it alarming that he knew so much about my bid, what I did, and did not do. Second, to be penalized for such a miniscule technicality is ridiculous. Third, I believe it should be re-bid, the directions for filling out the bid solicitation should be clearer. Fourth, I made it clear that I am the only owner of my company, no partners, no parent companies, no ties to Iran. What is the problem! I can't see where I should be disqualified!

[Alfred's Auction Service LLC protest, June 23, 2021.]

¹ In response to the May 21, 2021 final agency decision, Alfred's wrote to the Division stating " I think Mr. Fox will continue to do a stellar job."

In consideration of Alfred's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, the relevant statutes, regulations, and case law. This review of the record has provided me with the information necessary to determine the facts of this matter and to render an informed final agency decision on the merits of the protest.

In its protest, Alfred's first questions how Fox knew the details of its submitted Quote. The Bid Solicitation advises potential Vendors {Bidders} that "[a]fter the opening of sealed Quotes, including Quotes submitted through the *NJSTART* electronic process, all information submitted by a Vendor {Bidder} in response to a Bid Solicitation is considered public information notwithstanding any disclaimers to the contrary submitted by a Vendor {Bidder}." Bid Solicitation § 1.4.4 *Contents of Quote*. Accordingly, all documentation and information that was submitted by Alfred's (with limited exceptions) is a matter of public record and is available for review by other Vendors {Bidders} or members of the public after the issuance of the NOI. The NOI reminds Vendors {Bidders} that documents are available for review stating "[t]he Bid Solicitation Award File will be made available by email to Vendors {Bidders} who submit a request in writing." The record reveals that on April 26, 2021, Fox submitted a request to the Bureau in writing for the Bid Solicitation Award File and the Bureau sent a copy of same in reply.

Second, the failure to properly complete the Ownership Disclosure Form is not a minor defect or "miniscule technicality" but a bar to the Vendor {Bidder} being eligible for an award. The New Jersey Courts have consistently held that strict compliance with the ownership disclosure requirements of N.J.S.A. 52:25-24.2 is necessary. A Quote is properly rejected where it contains inaccurate or incomplete ownership information. See, *Impac, Inc. v. City of Paterson*, 178 N.J. Super. 195, 200-01 (App. Div. 1981); *Muirfield Const. Co., Inc. v. Essex County Imp. Authority*, 336 N.J. Super. 126 (App. Div. 2000); See also; *George Harms Construction Co., Inc. v. Borough of Lincoln Park*, 161 N.J. Super. 367 (Law Div. 1978) ("the courts of New Jersey have consistently held that where an error is deemed material, it cannot be cured after bids are opened")

Third, Alfred's requests that the subject procurement be cancelled and re-bid as the directions for filing out the forms were unclear. The subject Bid Solicitation was comprised of the Bid Solicitation, other documents and mandatory forms which were specifically addressed in Bid Solicitation Section 4.0 *Quote Preparation and Submission* which states in pertinent part:

Vendor's {Bidder's} failure to complete, sign and submit the forms in Section 4.4.1.2 shall be cause to reject its Quote as non-responsive.

[Bid Solicitation § 4.4.1.2 *NJ Standard Bid Solicitation Forms Required With The Quote.*]

Among those forms required to be submitted with the Quote is the *Ownership Disclosure Form*. With respect to ownership, the New Jersey Legislature, in implementing N.J.S.A. 52:25-24.2, mandated that a Vendor {Bidder} must supply its ownership information, prior to or with its Quote, to be eligible to enter into a Blanket P.O. with the State. N.J.S.A. 52:25-24.2 states in pertinent part:

No corporations, partnership, or limited liability company shall be awarded any [Blanket P.O] nor shall any agreement be entered into for the performance of any work or the furnishing of any materials or supplies, the cost of which is to be paid with or out of any public funds, by the State, or any county, municipality or school district, or any subsidiary agency of the State, or of any county, municipality or school district, or by any authority, board, or commission which exercises governmental functions, unless prior to the receipt of the bid or accompanying the bid, of said

corporation, said partnership, or said limited liability company there is submitted a statement setting forth the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein as the case may be, shall also be listed. The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member exceeding the 10 percent ownership criteria established in this act, has been listed.

[Emphasis added.]

The *Ownership Disclosure Form* is specifically discussed in Bid Solicitation Section § 4.4.1.2.1 which states in relevant part:

Pursuant to N.J.S.A. 52:25-24.2, in the event the Vendor {Bidder} is a corporation, partnership or limited liability company, the Vendor {Bidder} must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Quote. A Vendor's {Bidder's} failure to submit the completed and signed form with its Quote will result in the rejection of the Quote as non-responsive and preclude the award of a Blanket P.O. to said Vendor {Bidder} unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Quote submission deadline for this procurement. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote.

Unfortunately, Alfred's did not comply with any of the options available to it for the submission of a complete and accurate statement of ownership with the Quote. The failure of one Vendor to properly complete and submit all mandatory Quote documents which results in that Vendor's Quote submission being ineligible is not a reason to cancel a procurement and re-bid as the Division did receive a Quote which was responsive to the requirements of the Bid Solicitation. The Courts have emphasized that "once the bids have . . . been opened and each bidder's competitive position has been exposed, rejection of all bids should only occur for cogent or compelling reasons." *In re Failure to Award to the Lowest Responsible Bidder RFP 09-X-20513 Contract T0002 for Provision of Bottled Water Servs.*, No. A-2747-08T2, 2010 N.J. Super. Unpub. LEXIS 1641, at *7 (Super. Ct. App. Div. July 2, 2010) citing; *Bodies by Lembo v. Middlesex County*, 286 N.J. Super. 298, 309, 669 A.2d 254 (App. Div. 1996).

Notwithstanding Alfred's interest in competing for this procurement, in reviewing a Quote submitted in response to a Bid Solicitation, the Division does not have the power to waive the legislative requirement that a Vendor {Bidder} provide its ownership information prior to or accompanying the Quote submission. Only the New Jersey Legislature can change a requirement it has mandated. This is an unfortunate situation for the State as the Division encourages competition and appreciates the time and effort put forth in preparing and submitting the Quote. However, based upon the foregoing, I find that Alfred's is not eligible for an award. I sustain the June 16, 2021, Amended NOI. This is my final agency decision with respect to the protest submitted by Alfred's.

Thank you for your company's continuing interest in doing business with the State of New Jersey and for registering your business with **NJSTART** at www.njstart.gov. I encourage you to log into **NJSTART** to select any and all commodity codes for procurements you may be interested in submitting a Quote for so that you may receive notification of future bidding opportunities.

Sincerely,


Maurice A. Griffin
Acting Director

MAG: RUD/DK

c: M. Dunn
R. Regan
K. Popso
Lee M. Fox, LLC