



## State of New Jersey

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

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May 21, 2021

*Via Electronic Mail Only* [foxauctions@verizon.net](mailto:foxauctions@verizon.net)

Lee Fox  
Lee M Fox LLC  
670 Delsea Drive  
Pitman, NJ 08071

Re: I/M/O Bid Solicitation #20DPP00542 Lee M Fox LLC  
Protest of Notice of Intent to Award  
T1954 – Professional Auctioneer Services for Vehicles and Heavy Equipment - DSS

Dear Mr. Fox:

This final agency decision is in response to your letter on behalf of Lee M Fox LLC (Fox) which was received by the Division of Purchase and Property's (Division) Hearing Unit on April 27, 2021. In that letter, Fox protests the Procurement Bureau's (Bureau) April 23, 2021, Notice of Intent to Award letter (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 Auctions (Alfred's). On April 23, 2021, the Bureau issued the 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, Fox wrote to the Bureau stating that it was protesting the intended award of a Blanket P.O. to Alfred's. That protest was forwarded to the Division's Hearing Unit. In summary, Fox alleges that Alfred's: (1) did not "submit an accurate and truthful Ownership Disclosure Statement;" (2) was operating the company without the required worker's compensation insurance; and, (3) did not comply with the requirements of Bid Solicitation Section 3.5 Auction Equipment and Supplies. Fox April 27, 2021, protest. Further, Fox questions Alfred's ability to successfully complete the Scope of work required and questions why the State did not engage in multiple rounds of negotiations. *Ibid.* Alfred's was provided the opportunity to respond to the protest and submitted a response to the Division's Hearing Unit on April 30, 2021.

In consideration of Fox's protest, I have reviewed the record of this procurement, including the Bid Solicitation, the Quotes received, Fox's protest, Alfred's response, 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.

Fox alleges that "The Ownership Disclosure Statement submitted by Alfred's Auction Service LLC in Bid Solicitation 20DPP00542 is not an accurate and truthful Ownership Disclosure Statement." Fox April 27, 2021 protest.

As set forth in Bid Solicitation Section 4.4 *Quote Content*, the subject procurement required the submission of the following information in order for the Vendor {Bidder} to be eligible for an award:

- Section 1 - Forms (Sections 4.4.1 and 4.4.2).
- Section 2 - Vendor {Bidder} Demonstration of its Ability to Complete the Scope of Work (Section 4.4.3);
- Section 3 - Financial Capability of the Vendor {Bidder} (Section 4.4.4);
- Section 4 - Any other miscellaneous documents to be included by the Vendor {Bidder} and
- Section 5 - State-Supplied Price Sheet (Section 4.4.5).

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.

In the alternative, to comply with this section, a Vendor {Bidder} with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.

Vendors {Bidders} using **NJSTART** to submit a Quote shall make the appropriate certification on the "Maintain Terms and Categories" Tab within its profile by checking the applicable box and, if required, completing and attaching the shortened Ownership Disclosure Form. Vendors {Bidders} not using **NJSTART** to submit a Quote must complete the full Ownership Disclosure Form located on the Division's website.

In order to make this process of certifying easier, the Division provides to the bidding community the *Ownership Disclosure Form* to be completed in order for Vendor {Bidder} to comply with the statutory requirements.

A review of the record of this procurement reveals that on October 20, 2020, Alfred's submitted Quote No. 00004934. With the Quote, Alfred's uploaded the *Ownership Disclosure Form*. As shown on the screenshot below, the submitted *Ownership Disclosure Form* indicated that there were no 10% or greater owners of the Vendor {Bidder}, a limited liability company.

	<b>STATE OF NEW JERSEY</b> <b>DEPARTMENT OF THE TREASURY</b> <b>DIVISION OF PURCHASE AND PROPERTY</b> 33 WEST STATE STREET, P.O. BOX 230 TRENTON, NEW JERSEY 08625-0230
	<b>OWNERSHIP DISCLOSURE FORM</b>
BID SOLICITATION #: <u>20DPP00542</u> VENDOR (BIDDER): <u>ALFRED'S AUCTION SERVICE LLC</u>	
ALL PARTIES ENTERING INTO A CONTRACT WITH THE STATE ARE REQUIRED TO PROVIDE THE INFORMATION REQUESTED PURSUANT TO <u>N.J.S.A. 52:25-24.2</u> . PLEASE NOTE THAT IF THE VENDOR/BIDDER IS A NON-PROFIT ENTITY, THIS FORM IS NOT REQUIRED.	
<b>PART 1</b>	
Are there any individuals, partners, members, stockholders, corporations, partnerships, or limited liability companies owning a 10% or greater interest in the Vendor (Bidder)?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
If you answered, "YES" above, you must disclose the following: (a) the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class; (b) all individual partners in the partnership who own a 10 percent or greater interest therein; or, (c) all members in the limited liability company who own a 10 percent or greater interest therein.	
NAME _____ ADDRESS 1 _____ ADDRESS 2 _____ CITY _____ STATE _____ ZIP _____	

As an alternative to the submission of the *Ownership Disclosure Form*, Vendors {Bidders} using *NJSTART* to submit a Quote are able to make the appropriate certification regarding ownership disclosure on the "Maintain Terms and Categories" Tab within its *NJSTART* Vendor profile. Bid Solicitation Section § 4.4.1.2.1. Alfred's did not complete the Ownership Disclosure category in its *NJSTART* Vendor profile.

In performing its review of the submitted Quote, including the *Disclosure of Investigations and Other Actions Involving the Vendor Form* shown on the screenshot below, the Bureau found that Alfred's had indicated that Alfred Finocchiaro was the "Owner".

	<b>STATE OF NEW JERSEY</b> <b>DEPARTMENT OF THE TREASURY</b> <b>DIVISION OF PURCHASE AND PROPERTY</b> 33 WEST STATE STREET, P.O. BOX 230 TRENTON, NEW JERSEY 08625-0230
	<b>DISCLOSURE OF INVESTIGATIONS AND OTHER ACTIONS INVOLVING THE VENDOR FORM</b>
BID SOLICITATION #: <u>20 DPP00542</u> VENDOR: <u>ALFRED'S AUCTION SERVICE</u>	
<b>PART 1</b> PLEASE LIST ALL OFFICERS/DIRECTORS OF THE VENDOR BELOW. IN PART 2 OF THIS FORM, YOU WILL BE REQUIRED TO ANSWER QUESTIONS REGARDING THESE INDIVIDUALS.	
<b>OFFICERS/DIRECTORS</b>	
NAME <u>ALFRED J. FINOCCHIARO</u> TITLE <u>AUCTIONEER/OWNER</u> ADDRESS 1 <u>173 APPLE GARTH RD</u> ADDRESS 2 _____ CITY <u>MONROE TWP</u> STATE <u>NEW JERSEY</u> ZIP <u>08831</u>	

As such, the Bureau perceived an ambiguity between the *Ownership Disclosure Form* and the other submitted forms which required a clarification.<sup>1</sup> Accordingly, on January 26, 2021, as permitted by Bid Solicitation Section 6.4 *Clarification of Quote / State's Right to Request Further Information* the Bureau wrote to Alfred's seeking to resolve this ambiguity.

<sup>1</sup> No other statement of ownership of the Vendor {Bidder} was included with the Quote.

As part of its Quote, your firm answered “No” to Question #1 on its Ownership Disclosure Form, indicating that there are no individuals, corporations, partnerships, or limited liability companies owning a 10% or greater interest in the Company. However, your firm’s Offer and Acceptance Page, Disclosure of Investment Activities in Iran Form, and Disclosure of Investigations and Other Actions Involving the Vendor Form submitted with the Quote identifies Alfred Finocchiaro as “Owner”. The Procurement Bureau is requesting that your Company clarify this ambiguity.

Please confirm whether or not Alfred Finocchiaro owns a 10% or greater interest in the Company. Additionally, please confirm whether or not there are any additional individuals, corporations, partnerships, or limited liability companies owning a 10% or greater interest in the Company.

On January 28, 2021, Alfred’s responded stating:

Clarification – Bid Solicitation 20DPP00542. In response to your question, I have 100% ownership in Alfred's Auction Service LLC. I became an auctioneer May 1, 1980, incorporated as Alfred's Auctions Inc. in 1992 and change business status to Alfred's Auction Service LLC March 2017. I have always been the owner 100% of the time. No one besides myself has a share of Alfred's Auctions Inc., Alfred's Auction Service LLC or (dba) Alfred's Auctions. If I mistakenly placed that information in the wrong place I apologize.

The Bureau accepted Alfred’s response as a statement clarifying the ambiguity between the *Ownership Disclosure Form* and the other submitted forms.

I disagree with Bureau’s conclusion that Alfred’s January 28, 2021, response was a permissible clarification. Rather I find that Alfred’s response was an impermissible supplementation, change or correction to the submitted Quote; and therefore, not permitted under as permitted by *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”.)

In reviewing the Bureau’s clarification letter, it appears that the Bureau read Alfred Finocchiaro’s title as equivalent to a statement of ownership; and therefore believed that there was ambiguity between Alfred’s submitted *Ownership Disclosure Form* which indicated that there were no 10% or greater owners, and the notation of Alfred Finocchiaro as an “Owner” on other submitted documents.<sup>2</sup> However, it is possible to read those documents together. To do so, Mr. Finocchiaro title of “Owner” would mean that he was a member having a less than 10% of the of the limited liability company, and that there were several other members of the limited liability company, such that all members of the limited liability company, held less than a 10% interest in the bidding entity.

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<sup>2</sup> In each instance where Alfred Finocchiaro’s title was listed as “Owner” or “Auctioneer/Owner,” there was no indication or statement regarding the ownership structure of the bidding entity.

In response to the clarification letter, Alfred's indicated that Alfred Finocchiaro was the 100% owner of the bidding entity.<sup>3</sup> This was new information; and therefore, was an impermissible change or correction to the submitted Quote which the Division cannot allow as doing so would be contrary to the Court's holding in *On-Line Games*.

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. 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. 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.

Based upon the foregoing, I find that Alfred's is not eligible for an award. Because I have concluded that Alfred's is not eligible for an award, I need not address the remaining protest points raised by Fox. I remand this matter back to the Bureau for the issuance of an amended NOI. This is my final agency decision with respect to the protest submitted by Fox.

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](http://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. This is my final agency decision on this matter.

Sincerely,



Maurice A. Griffin  
Acting Director

MAG: RUD

c: M. Dunn  
R. Regan  
K. Popso  
Alfred's Auctions

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<sup>3</sup> Alfred's response to the protest confirms that Alfred Finocchiaro is the 100% owner of Alfred's.