STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	PROCURMENT REVIEW PANEL
COUNTY OF RICHLAND	)	CASE NO. 1999-7
	)	
	)	
In re:	)	**ORDER**
Protest of Love Chevrolet Company;	)	
Appeal by Love Chevrolet Company	)	

This case came before the South Carolina Procurement Review Panel (Panel) for a hearing on February 15, 2000 on appeal by Love Chevrolet Company (Love) of a decision by the Chief Procurement Officer upholding the award to Vic Bailey Ford (Bailey) of a contract to provide fleet carry-all trucks and full size 4x4 trucks for statewide term contracts. Present at the hearing were Love, represented by Palmer Freeman, Esquire; Bailey, represented by Sterling Anderson, Esquire; and The Office of General Services of the Budget and Control Board (General Services), represented by Keith McCook, Esquire.

FINDINGS OF FACT

On September 3, 1999, the Materials Management Office (MMO) of the Office of General Services issued an invitation for bids (IFB) for fleet carry-all trucks and full size utility trucks for state wide term contracts. [Record pp. 12-32] Amendment #1 to the IFB was issued on September 15, 1999. [Record pp. 33-36] Four bids from three vendors were opened on September 24, 1999. After Benson Ford's bid was rejected as nonresponsive, Bailey was determined to be the low bidder. [Record pp. 37-38] On October 18, 1999, MMO issued a notice of intent to award the contract to

Bailey. [Record p. 90] On October 25, 1999 the Chief Procurement Officer (CPO) received Love's protest.

The relevant IFB specifications call for vinyl interiors, rear doors to be panel type, vertically swung, capacity/life cycle costing to be determined for certain vehicles and federal yellow as well as standard factory colors. [Record pp. 19-26] Love's protest letter was based on the following three issues: 1) Bailey allegedly being nonresponsive to the IFB specifications by bidding vehicles with cloth seats, 2) by bidding vehicles with tri-panel rear doors with top half lift gates, and 3) by bidding a vehicle to which the life cycle costing (LCC) formula could not be applied.[1] Love raised a fourth issue at the CPO hearing asserting the vehicles bid by Bailey were not available in federal yellow as required by the IFB specifications. The CPO denied Love's protest to the three issues stated in the protest letter and declined to hear the fourth issue based on a lack of jurisdiction.

Love appeals the issues of Bailey's responsiveness to the following IFB specification areas: 1) vinyl interior, 2) rear doors, 3) capacity/life cycle costing, and 4) color. General Services, joined by Bailey, submitted a motion to dismiss on the issue of factory installed vinyl seats, a motion for summary judgment on the issue regarding the applicability of life cycle costing, and a motion to dismiss on the issue of the unavailability of the federal yellow color.

[1] At the hearing before the Panel, Love Chevrolet's second appeal letter was added to the Record. The issue of Capacity/Life Cycle Costing was timely filed on December 13, 1999, but was inadvertently excluded from the Record initially.

CONCLUSIONS OF LAW

MOTION TO DISMISS: FACTORY INSTALLED VINYL SEATS

Love's protest letter alleged that at the time the bid was opened the vehicle bid by Bailey was made with cloth seats and Love's appeal letter further states that the IFB specifications call for vinyl seats to be installed at the factory. General Services asserts that Love's appeal letter raises a new issue by alleging that Bailey could not provide factory installed vinyl seats. General Services further asserts that Love's protest letter did not give notice of this second issue regarding vinyl seats and should be dismissed as untimely in addition to being stricken from Love's appeal letter. The Panel disagrees. The Panel finds that the protested issue of vinyl seat covering and installation were addressed by the CPO (Record pp. 6-8) which thereby established jurisdiction under S.C. Code Ann. § 11-35-4210(2). The CPO conducted a hearing on the merits and such issues as addressed by the CPO extend to the Panel through the timely request for review under S.C. Code Ann. § 11-35-4210(6). The motion to dismiss the issue of factory installed vinyl seats is hereby denied.

MOTION FOR SUMMARY JUDGEMENT: CAPACITY/LIFE CYCLE COSTING

General Services moves for summary judgment on the ground that there is no genuine issue of material fact on the issue of capacity/life cycle costing. The Panel agrees that as a matter of law the vehicle bid by Bailey was not subject to the life cycle costing formula under the capacity specification.

The IFB provides for the following:

> CAPACITY: The suburban type vehicle shall have a **minimum** gross vehicle weight rating (GVWR) of not less than 6,800 lb., Minimum 6 passenger. [Record p.25]

The IFB further provides the following:

> Fuel cost shall be based upon the current EPA Fuel Economy Guide, Est. Hwy. Mileage for the vehicle bid and the below projected annual prices per gallon. (This part of the LCC evaluation does not apply to Patrol Vehicles or vehicles with a GVWR rating of 8,500 lb. or more). [Record p. 19]

It is clear from the record that the vehicle bid by Bailey has a GVWR of 8,600 lb. and is therefore exempt from the life cycle costing requirement of the IFB. The motion for summary judgment is hereby granted.

MOTION TO DISMISS: FACTORY APPLIED FEDERAL YELLOW PAINT

The Panel rejects Love's argument that color is inclusive under the issue of capacity/life cycle costing because the IFB clearly sets forth a separate specification for color. [Record p. 25] The panel finds that the issue of non-responsiveness to the color specification was not timely raised in the initial protest letter. The motion to dismiss the issue of factory applied federal yellow paint is hereby granted.

ISSUE ONE: VINYL INTERIOR

Love contends that Bailey's bid was non-responsive because the vehicles it proposed to supply to the State do not meet the vinyl interior specification of the IFB in the following particulars: 1) At the time the bid was opened, the Excursion (the vehicle bid by Bailey) was made with cloth seats.

Paul K. All, a practitioner in the upholstering of the interior of motor vehicles, testified regarding what would be required to install vinyl seats locally as opposed to in a factory.[2]

The IFB specifications called for the interior of the vehicles to be vinyl. The IFB specifications also includes an itemized list of options under the heading "Factory Installed Options." [Record pp. 25-26] Vinyl interior does not appear under that heading. The bid submitted by Bailey includes the specification of vinyl interiors and does not make any exception thereto. Love has failed to prove by a preponderance of the evidence that Bailey is non-responsive to the interior specification of the IFB. The Panel finds that Bailey's bid is responsive to the interior specification.

ISSUE TWO: REAR DOORS

The IFB provides for "rear doors to be of panel type, vertically swung." [Record p. 26] In it's questionnaire, returned with the bid, Bailey responded that the Excursion had rear doors of panel type, vertically swung with a swinging up rear door glass. [Record p. 58] Love argues that Bailey's bid is non-responsive because the rear doors on the Excursion are tri-fold combining a rear window that lifts up with two doors that swing open vertically (See Record p. 96).

[2] This testimony would have been significant on the quality of vinyl seating if not factory installed, on the issue of the vehicle condition being new, and on the issue of each unit carrying the manufacturer's standard warranty. [Record pp. 20-22] However, these issues were not properly raised in Love's initial protest letter and they are not properly before the Panel in this case.

James Harold French, a fleet commercial specialist for Love with 18 years of experience in bidding on state contracts, testified that the Suburban (the vehicle bid by Love) has rear doors of panel type that are vertically swung (a picture of the Suburban depicting the same was introduced into evidence). Mr. French further testified that the Excursion has a rear lift gate and two doors (a picture of the Excursion depicting the same was introduced into evidence) which does not conform to the IFB specifications in his opinion. The Panel disagrees.

Any failure by Bailey to conform exactly to the IFB specification is an immaterial variation from the exact requirements of the IFB under S.C. Code Ann. § 11-35-1520 (13), which provides, in part, the following:

> A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the waiver of which would not be prejudicial to bidders.

There was no showing at the hearing before the Panel that this variation in Bailey's bid effects total bid price, quality, quantity, delivery, performance of the contract, or that waiver of such would be prejudicial to bidders. The Panel finds that Bailey's bid is responsive to the rear door specification.[3]

[3] In a previous case, *In re: Protest of Blue Bird Corporation*, Case No. 1994 -15, the Panel determined that a minor variation which produces no deficiency to cure is an immaterial variation and may be properly waived by the State.

CONCLUSION

General Services, joined by Bailey, made a motion for a directed verdict which the Panel treats as a motion to dismiss.[4] For the foregoing reasons, the Panel finds that Love has not met it's burden of proof, and Love's appeal is hereby dismissed.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

BY: _____
Gus J. Roberts, Chairman

Columbia, SC
March 10
_____,2000

[4] A motion for Directed Verdict was made, which the Panel treats as a Motion to Dismiss for failure to meet the burden of proof.