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Protest Decision

Matter of: Protest of Love Chevrolet Company

Case No.: 2016-116

Posting Date: October 26, 2015

Contracting Entity: State Fiscal Affairs Authority

Project No.: 5400010109

Contract No.: 4400011618

Description: Vehicles – Statewide for Pickups

DIGEST

Under a solicitation to create a state term contract for Pickup Trucks, protest alleging that the 3.5L engine offered does not meet minimum horsepower or torque ratings as required by the solicitation and the alternative engine is not flex fuel capable, sustained where file clearly showed awarded vendor's proposed vehicle does not meet solicitation requirements.

AUTHORITY

The Chief Procurement Officer¹ conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on the evidence and applicable law and precedents.

DECISION

Love Chevrolet Company protests the State Fiscal Accountability Authority's posting of a Notice of Intent to Award of a statewide contract for pickup trucks to Benson Ford Love's letter of protest is incorporated by reference. [Attachment 1] Love alleges the vehicle Benson proposed does not meet the solicitation's requirement for either minimum horsepower or torque, or flex fuel capability for the alternative engine. The protest is granted.

BACKGROUND

The Materials Management Office issued IFB 5400010109 for a statewide term contract for pickup trucks. The solicitation included seven line items. Line item two was for "PU-4: Truck, Pickup, 4x2, 1/2 Ton, Extended Cab, Flex Fuel." Benson Ford offered the low price for this line item and proposed to deliver "Ford F150 XL Supercab." MMO posted its notice of intent to award a contract to Benson Ford for line item two.

DISCUSSION

Love Chevrolet timely protested the intent to award and attached material to its protest indicating the 3.5L engine in the "Ford F150 XL Supercab" offered by Benson Ford does not meet minimum horsepower or torque ratings required by IFB; and the alternative engine was not flex fuel capable. Subsequent to the filing of the protest, the SFAA procurement officer reexamined the Benson Ford bid and determined that:

Inquiry was made by Donald Shumpert with Love Chevrolet regarding the award to Benson Ford for the Ford F150 XL Supercab. Love Chevrolet pointed out that

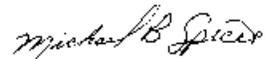
¹ The Interim Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

the 3.5L engine offered in Benson Ford's bid does not meet minimum horsepower or torque ratings as required by the PU-4 vehicle designation. The alternative engine, the 3.5L EcoBoost engine is not flex fuel capable. Being a flex fuel vehicle was a requirement of the solicitation.

After research, Mr. Speakmon (Procurement Manager for this solicitation) found that Mr. Shumpert was correct. Awarding the Ford F150 XL Supercab was an error, and the award should be made to Lynn Cooper, Inc. as the next low responsive and responsible offer for the Dodge Ram 1500 Tradesman Quad Cab.

The protest is granted. Contract number 4400011618 to Benson Ford is cancelled and the solicitation is remanded to MMO for further proceedings in accordance with the Code.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment

From: [Don Shumpert](#)
To: [Protest-MMQ](#)
Subject: Contract #44000011618
Date: Wednesday, October 14, 2015 5:15:27 PM
Attachments: [ford engine specs.pdf](#)

To whom it may concern,

Love Chevrolet intends to protest the award of State Contract #44000011618 to Benson Ford. The 3.5L engine offered in Benson Ford's bid does not meet minimum horsepower or torque ratings as required by the PU-4 vehicle designation. The alternative engine, the 3.5L Ecoboost engine is not flex fuel capable.

The chart below indicates differences. I have attached the engine specs from the Ford website for you to review. If you have any questions, feel free to contact me. Thank you for your help in this matter.

	<u>State Spec.</u>	<u>Ford 3.5L</u>	<u>Difference</u>
Horsepower	285	282	(-3)
Torque	265	253	(-12)

Donald Shumpert

LOVE Chevrolet Co/HINO of Columbia
803-518-1989
dshumpert@loveauto.com

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised September 2015)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.sc.gov>

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 111.1 of the 2015 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. The Request for Filing Fee Waiver form is attached to this Decision. If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1105 Pendleton Street, Suite 209, Columbia, SC 29201**

Name of Requestor

Address

City

State

Zip

Business Phone

1. What is your/your company's monthly income? _____

2. What are your/your company's monthly expenses? _____

3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this

_____ day of _____, 20_____

Notary Public of South Carolina

Requestor/Appellant

My Commission expires: _____

For official use only: _____ Fee Waived _____ Waiver Denied

Chairman or Vice Chairman, SC Procurement Review Panel

This _____ day of _____, 20_____
Columbia, South Carolina

NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.