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Protest Decision

Matter of: Protest of Love Chevrolet Company

Case No.: 2016-115

Posting Date: October 26, 2015

Contracting Entity: State Fiscal Affairs Authority

Project No.: 5400010107

Contract No.: 4400011557

Description: Vehicles – Statewide for Utilities (SUVS)

DIGEST

Under a solicitation to create a state term contract for Sport Utility Vehicles, protest alleging that vehicle offered did not meet solicitation requirement of vehicles with flex fuel capable engines sustained where file clearly showed awarded vendor's proposed vehicle is not flex fuel capable.

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.

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

DECISION

Love Chevrolet Company protests the State Fiscal Accountability Authority's posting of a Notice of Intent to Award of a statewide contract for Sport Utility Vehicles to Vic Bailey Ford, Inc. Love's letter of protest is incorporated by reference. [Attachment 1] Love alleges the vehicle Vic Bailey Ford proposed does not meet the solicitation's requirement for flex fuel capability. The protest is granted.

BACKGROUND

The Materials Management Office issued IFB 5400010107 for a statewide term contract for utility vehicles. The solicitation included three line items. Line item two was for "SUV-4: Utility, 4x2/4x4, Full Size, Four-Door Flex Fuel." Vic Bailey Ford offered the low price for this line item and proposed to deliver "Ford Expedition U1F." MMO posted its notice of intent to award a contract to Vic Bailey Ford for line item two.

DISCUSSION

Love Chevrolet timely protested the intent to award and attached material to its protest indicating the "Ford Expedition U1F" was not flex fuel capable. Subsequent to the filing of the protest, the SFAA procurement officer reexamined the Vic Bailey bid and determined that:

Inquiry was made by Donald Shumpert with Love Chevrolet regarding the award to Vic Bailey Ford for the Ford Expedition. Love Chevrolet pointed out that the Expedition offered by Ford only comes with the standard 3.5L Ecoboost engine which is not flex fuel capable. Being a flex fuel vehicle was a requirement of the solicitation.

After research, I found that Mr. Shumpert was correct. Awarding the Expedition was an error and the award should be made to Love Chevrolet as the only responsive offer for the Chevrolet Tahoe. Vic Bailey Ford had responded within the header level of SCEIS when completing their online offer that "The vehicle offered for the full size SUV is not flex fuel." That comment at the header level was inadvertently overlooked and made the offer on that vehicle from Vic Bailey non-responsive.

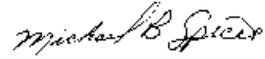
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The protest is granted. Contract number 4400011557 to Vic Bailey Ford is cancelled and the solicitation is remanded to MMO for further proceedings in accordance with the Code.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment

From: [Don Shumpert](#)
To: [Protest-MMQ](#)
Subject: Contract #44000011557
Date: Tuesday, October 13, 2015 5:46:29 PM
Attachments: [Engine Specifications.docx](#)

This is to inform you that Love Chevrolet will be protesting the award of Contract Number: 44000011557 to Vic Bailey Ford. The Expedition offered by Ford only comes with the standard 3.5L Ecoboost engine which is not flex fuel capable. I have attached the engine specifications taken from the Ford website. Please feel free to contact me with questions regarding this matter.

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.