

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS

THE DIVISION OF PROCUREMENT SERVICES
DELBERT H. SINGLETON, JR.
DIVISION DIRECTOR
(803) 734-8018

MICHAEL B. SPICER
INFORMATION TECHNOLOGY MANAGEMENT OFFICER
(803) 737-0600
FAX: (803) 737-0639

Cancellation of a Contract After Award but Prior to Performance

Case No.: 2016-117

Posting Date: October 28, 2015

Contracting Entity: State Fiscal Accountability Authority

Project No.: 5400010161

Contract No.: 44000011591

Description: Full Size, All Wheel Drive, Flex Fuel Law Enforcement Sedan

WRITTEN DETERMINATION

The State Fiscal Accountability Authority (SFAA) requested cancellation, after award but prior to performance, of a contract awarded to Benson Ford for the Full Size, All Wheel Drive, Flex Fuel Law Enforcement Sedan due to an administrative error. SFAA's request to cancel is incorporated by reference. [Attachment 1]

The Materials Management Office issued IFB 5400010161 for a statewide term contract for law enforcement vehicles. The solicitation included four line items. Line item two was for "LE-6: Law Enforcement Sedan- Full Size, All Wheel Drive, Flex Fuel." MMO posted its notice of intent to award a contract to Benson Ford for line item two. [Attachment 2]

After posting the Intent to Award to Benson Ford, SFAA was alerted to a possible mistake in the determination of the lowest responsive and responsible bidder. In reviewing the bids for this lot, the procurement officer discovered a clerical error in the calculation of the low bid.

Inquiry was made by David Vetter with Vic Bailey Ford regarding the award to Benson Ford for the Ford Police Interceptor SUV. Mr. Vetter pointed out that his pricing was lower than that of Benson Ford.

After research, I found that Mr. Vetter was correct; a keying error had occurred during the Evaluated Price calculations for this vehicle. Awarding the Ford Police Interceptor SUV to Benson Ford was an error and the award should be made to Vic Bailey Ford for this same vehicle.

SFAA requested cancellation of the contract after award but prior to performance under Regulation 19-445.2095(C) which states:

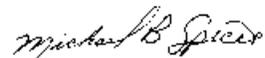
C. Cancellation Of Award Prior To Performance.

After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled and either re-awarded or a new solicitation issued or the existing solicitation canceled, if the Chief Procurement Officer determines in writing that:

(7) Administrative error of the purchasing agency discovered prior to performance,

Contract number 44000011591 to Benson Ford is cancelled due to the discovery of an administrative error in determining the lowest responsive and responsible bidder.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

	State of South Carolina Memorandum for Record <i>Request for Amended Award</i>	Procurement Manager	Stacy Adams, CPPB
		Solicitation Number	5400010107, 5400010161, & 5400010109
		Solicitation Description	Statewide Term Contracts-Vehicles
		Date of Memo	October 19, 2015

Notice of Intent to Award for the above-referenced solicitation was issued on October 13, 2015. Since that time, I have received inquiries from participants regarding the award and request the following changes be approved:

Request 1 – Protest filed by Love Chevrolet – Contract # 4400011557, IFB 5400010107	
	<p>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.</p> <p>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.</p> <p>Summary of Suggested Changes: Cancel award of contract 4400011557 for the Ford Expedition from Vic Bailey Ford. Issue the award of the Chevrolet Tahoe to Love Chevrolet.</p>
Request 2 – Protest filed by Love Chevrolet – Contract # 4400011618, IFB 5400010109	
	<p>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 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.</p> <p>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.</p> <p>Summary of Suggested Change: Cancel award of contract 4400011618 for the Ford F150 XL Supercab from Benson Ford. Issue the award of the Dodge Ram 1500 Tradesman Quad Cab to Lynn Cooper, Inc.</p>
Request 3 – Inquiry by Vic Bailey Ford – Contract # 4400011591, IFB 5400010161	
	<p>Inquiry was made by David Vetter with Vic Bailey Ford regarding the award to Benson Ford for the Ford Police Interceptor SUV. Mr. Vetter pointed out that his pricing was lower than that of Benson Ford.</p> <p>After research, I found that Mr. Vetter was correct; a keying error had occurred during the Evaluated Price calculations for this vehicle. Awarding the Ford Police Interceptor SUV to Benson Ford was an error and the award should be made to Vic Bailey Ford for this same vehicle.</p> <p>Summary of Suggested Change: Cancel award of contract 44000116591 for the Ford Police Interceptor SUV from Benson Ford. Issue the award of the Ford Police Interceptor SUV to Vic Bailey Ford.</p>

	<p>State of South Carolina Memorandum for Record <i>Request for Amended Award</i></p>	<p>Procurement Manager Stacy Adams, CPPB Solicitation Number 5400010107, 5400010161, & 5400010109 Solicitation Description Statewide Term Contracts-Vehicles Date of Memo October 19, 2015</p>
---	--	---

SC Code Regulation 19-445.2085(C)(7) authorizes cancellation of an award prior to performance in the cases of "administrative error of the purchasing agency discovered prior to performance." This provision requires the written approval of the Chief Procurement Officer to cancel an award prior to performance. Based on the administrative errors cited above, I request the cancellation of contracts 4400011557, 4400011618, and 4400011591 and the reissuance of new contracts respectively. If this request is granted, the request will be made to Love Chevrolet asking they withdraw their protests in order for the existing awards to be cancelled and new awards issued in their place in accordance with the consolidated Procurement Code.

Attachment 2

STATE OF SOUTH CAROLINA
SFAA, DIV. OF PROCUREMENT SERVICES, MMO
1201 MAIN STREET, SUITE 600
COLUMBIA SC 29201

Intent to Award

Posting Date: October 13, 2015

Solicitation: 5400010161

Description: VEHICLES - STATEWIDE FOR LAW ENFORCEMENT

Agency: Statewide Term Contract

The State intends to award contract(s) noted below. Unless otherwise suspended or canceled, this document becomes the final Statement of Award effective **08:00 A.M., October 26, 2015**. Unless otherwise provided in the solicitation, the final statement of award serves as acceptance of your offer.

Contractor should not perform work on or incur any costs associated with the contract prior to the effective date of the contract. Contractor should not perform any work prior to the receipt of a purchase order from the using governmental unit. The State assumes no liability for any expenses incurred prior to the effective date of the contract and issuance of a purchase order.

NO AWARD IS MADE ON ITEM(S): One: LE-1: Law Enforcement Cruiser Motorcycle HD. NO BIDS RECEIVED.

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. [Section 11-35- 4210]

PROTEST - CPO ADDRESS - MMO: Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing

(a) by email to protest-mmo@mmo.sc.gov ,

(b) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201.

Contract Number: 4400011590

Awarded To: BENSON FORD (7000216941)
4701 CALHOUN MEMORIAL HIGHWAY
EASLEY SC 29640

Total Potential Value: \$ 525,000.00

Maximum Contract Period: November 01, 2015 through October 31, 2017

Item	Description	Unit Price	Total
00001	LE-6: Law Enforcement Sedan- Full Size, All Wheel Drive, Flex Fuel Ford Police Interceptor Sedan	\$ 24,321.00	\$ 243,210.00

Contract Number: 4400011591

Awarded To: BENSON FORD (7000216941)
4701 CALHOUN MEMORIAL HIGHWAY
EASLEY SC 29640

Total Potential Value: \$ 550,000.00

Maximum Contract Period: November 01, 2015 through October 31, 2017

Item	Description	Unit Price	Total
00002	LE-7: Law Enforcement Utility- Intermediate, Four Door, All Wheel Drive Ford Police Interceptor SUV	\$ 26,939.00	\$ 269,390.00

Contract Number: 4400011559

Awarded To: LOVE CHEVROLET COMPANY (7000044959)
C/O ALLY
P.O. Box 8387
COLUMBIA SC 29202

Total Potential Value: \$ 750,000.00

Maximum Contract Period: November 01, 2015 through October 31, 2017

Item	Description	Unit Price	Total
00001	LE-8: Law Enforcement Utility-4x2 SUV, Full Size, Four-Door, Flex Fuel Chevrolet Tahoe PPV	\$ 33,471.00	\$ 334,710.00

Procurement Officer

Stacy Adams

STACY ADAMS

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Written Determination Appeal Notice (Revised September 2015)

The South Carolina Procurement Code, in Section 11-35-4410, subsection (1)(b) states:

- (1) Creation. There is hereby created the South Carolina Procurement Review Panel which shall be charged with the responsibility to review and determine de novo:
- (b) requests for review of other written determinations, decisions, policies, and procedures arising from or concerning the procurement of supplies, services, information technology, or construction procured in accordance with the provisions of this code and the ensuing regulations; except that a matter which could have been brought before the chief procurement officers in a timely and appropriate manner pursuant to Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, must not be the subject of review under this paragraph. Requests for review pursuant to this paragraph must be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of the written determinations, decisions, policies, and procedures.

Copies of the Panel’s decisions and additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Requests 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 hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived.” 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.