



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: December 19, 2013

CBCA 3611

WALTERBORO MOTOR SALES CO.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Cortland M. Rizer, Jr., Vice President, of Walterboro Motor Sales Co., Walterboro, SC, appearing for Appellant.

Jenny M. Matte, Office of Regional Counsel, General Services Administration, Atlanta, GA, counsel for Respondent.

Before Board Judges **SOMERS**, **VERGILIO**, and **KULLBERG**.

VERGILIO, Board Judge.

On November 12, 2013, the Board received a notice of appeal from Walterboro Motor Sales Co. (purchaser) disputing the contracting officer's denial of its claim to recover for alleged misdescriptions in an auction of a vehicle owned by the respondent, the General Services Administration (agency). The purchaser retained the vehicle and seeks damages relating to its costs of repairs. The purchaser has not demonstrated that the vehicle was misdescribed. Even if a misdescription occurred, there would be no relief because the purchaser did not abide by the terms and conditions of the contract, which require that the vehicle be returned in the condition purchased. Accordingly, the Board denies the appeal.

Findings of Fact

1. The agency sold fleet vehicles through a public auction held on September 10, 2013. Exhibit 2 (all exhibits are in the appeal file). Express terms and conditions of the sale are reflected in the Limited Description Warranty clause:

The Government warrants to the original purchaser that the property listed in the Invitation for Bids will conform to its description. Condition is not guaranteed. If a mis-description is determined before removal, the Government will refund any money paid if the purchaser takes the property at his or her expense to a location specified by the contracting officer. No refund will be made unless the purchaser submits a written notice, claiming a mi[s]-description, to the contracting officer within **15 calendar days** of the date of [sic] specified for removal and maintains the property in the same condition as when removed. Bidders may be required to submit an independent estimate of repairs from a reputable repair facility as part of their written notice to the contracting officer. . . . This warranty is in place of all other guarantees and warranties express or implied. The Government does not warrant the merchantability of the property or its fitness for any use or purpose. The amount of recovery under this provision is limited to the purchase price of the mis-described property. The purchaser is not entitled to any payment for loss of profit or any other money damages, special, direct, indirect, or consequential.

Exhibit 2 at 3.

2. The purchaser participated in the auction on-line, having neither attended the auction in person nor looked at the condition of the vehicle. Exhibit 9 (Notice of Appeal). A pre-sale announcement (available for those participating through the internet) highlighted that vehicles were warranted as to description only, with the condition not guaranteed. The announcement specified that repairs may be required and the absence of mention of defects does not mean that there are none. The purchaser was the high bidder (\$6000) for the vehicle described in the sale information. The sale documentation specifies that all vehicles are sold without warranty and establishes the date of sale as September 10, 2013. Exhibits 1, 4.

3. On October 24, 2013, more than fifteen days after the date set for the removal of the property, the purchaser contacted the agency concerning the vehicle. Exhibit 5. Asserting misdescription, the purchaser submitted a claim seeking \$2281.12 as its repair costs. The items are for an air conditioning knob, headliner replacement, paint repairs (left

and right quarter panels, hood, top, and right, rear door), throttle, and front and rear brake pads. The purchaser proposed splitting these expenses with the agency. Exhibit 6.

4. By issuance of October 30, 2013, the contracting officer denied the claim. The decision concluded that the items are not misdescribed in the sales information, the condition was not guaranteed, and the claim was not timely submitted. Exhibit 7.

5. The description and photographs of the vehicle were silent with respect to the air conditioning knob, headliner, throttle, and brakes. As to the condition of the paint, there were photographs of the left and right of the vehicle, and the hood. The left and right quarter panels are described as chipped, the hood as rusty, and the right rear door as peeling. The top is not described. Exhibits 1, 11. The solicitation is not misleading with respect to any described item, and there is no indication that the agency was aware of any of the defects now alleged by the purchaser. The vehicle conformed to the description.

Discussion

The purchaser says it has expended \$2281.12 in repairs. It seeks to recover this amount, or any portion thereof, based upon alleged misdescriptions by the agency.

Factually and legally, the purchaser has not demonstrated entitlement to relief. The vehicle was not misdescribed. The condition of the vehicle regarding each item raised by the purchaser was not other than as described in the solicitation for sale.

Were a misdescription found, the purchaser would not gain relief because it has retained and made repairs to the vehicle. The purchaser failed to notify the agency of the alleged misdescriptions and to return the vehicle. The contract establishes the obligations of the parties and here forecloses the relief requested by the purchaser.

Decision

The Board **DENIES** the claim of the purchaser.

JOSEPH A. VERGILIO
Board Judge

We concur:

JERI K. SOMERS
Board Judge

H. CHUCK KULLBERG
Board Judge