

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

DENIED: May 3, 2006

GSBCA 16600

WOOD'S AUTO & TRUCK, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Ashby G. Wood, President of Wood's Auto & Truck, Inc., Clinton, MD, appearing for Appellant.

Gabriel N. Steinberg, Office of Regional Counsel, General Services Administration, Atlanta, GA, counsel for Respondent.

Before Board Judges **PARKER**, **NEILL**, and **GOODMAN**.

GOODMAN, Board Judge.

Appellant, Wood's Auto and Truck, Inc. has appealed the respondent General Services Administration's (GSA) contracting officer's final decision regarding its purchase of a vehicle through GSA's internet auction site.

Factual Background

1. The auction conducted on GSA's internet site was subject to Standard Form 114C, General Sale Terms and Conditions, which contained the following provision:

Oral Statements and Modifications

Any oral statement or representation by any representative of the Government, changing or supplementing the Invitation or contract or any Condition thereof, is unauthorized and shall confer no right upon the Bidder or Purchaser.

Appeal File, Exhibit 1 at 2-3.

2. The auction was also subject to the Sale of Government Property Online Sale Terms and Conditions, Appeal File, Exhibit 2 at 1-2, which contained the following provisions:

Condition of Property

. . . Deficiencies, when known, have been indicated in the property descriptions. However, absence of any indicated deficiencies does not mean that none exists.

Description Warranty

The Government warrants to the original purchaser that the property listed in the GSAAuctions.gov website will conform to its description. If a misdescription is determined before removal of the property, the Government will keep the property and refund any money paid. If a misdescription is determined after removal, the Government will refund any money paid if the purchaser takes the property at his/her expense to a location specified by the contracting officer following the Refund Claim Procedure described below. . . . This warranty is in place of all other guaranties and warranties, expressed or implied.

The Government does not warrant the merchantability of the property or its purpose. The purchaser is not entitled to any payment for loss of profit or any other money damages - special, direct, indirect, or consequential. . . .

Photographs

Photographs may not depict an exact representation of the bid item(s) and should not be relied upon in place of written item descriptions or as a substitute for physical inspection.

Inspection

Bidders are invited, urged and cautioned to inspect the property prior to bidding.

3. On March 4, 2004, GSA offered vehicles for sale on the internet auction site, including the vehicle which was purchased by appellant. The vehicle was described as follows:
1992 DODGE RAM 350 VAN, VIN 2B5WB35Z4NK148812 8 CYL,
AT,PS,AC,RA, 15 PASSENGER, MILEAGE 44673, NEEDS BATTERY,
SIDE MIRRORS & TIRES. OTHER REPAIRS MAY BE REQUIRED
FROM WHAT IS LISTED IN THE DESCRIPTION. REPORT
1510064034-0001.

Appellant's Record Submission, Contracting Officer Memorandum of Position at 2.

4. A picture of the vehicle was posted on the auction site. Appellant's Record Submission, Attachment A.
5. Appellant states that before submitting a bid, a representative called the GSA custodian to assess the vehicle's condition. According to appellant, a person identifying himself as Mr. Ruest "confirmed the van's mileage and that it needed mirrors, tires and a battery, and stated that van had just come out of service and ran fine." Appellant's Record Submission at 1. Respondent, citing its responses to appellant's discovery requests, asserts that Mr. Ruest denies stating that the van had come out of service and ran fine. Respondent's Record Submission at 2.
6. Appellant was the successful bidder for the vehicle, and on March 11, 2004, it was awarded the contract of purchase in the amount of \$1725. Appeal File, Exhibit 4.
7. On March 15, 2004, appellant's payment was received. Appeal File, Exhibit 5.
8. On March 22, 2004, the vehicle was removed by appellant. Appeal File, Exhibit 6.
9. On March 30, 2004, the contracting officer received from appellant an undated letter via fax, that stated:
10. By letter dated March 31, 2004, the contracting officer denied appellant's claim, stating that the vehicle had been described as needing a battery and that "[o]ther repairs may be required from what is listed in the description." Appeal File, Exhibit 8.
11. On September 17, 2004, the contracting officer received another letter by fax from appellant which stated that the government custodian had informed appellant before purchase

that the vehicle had just come out of service and the vehicle “ran fine.” Appeal File, Exhibit 9. Additionally the letter stated:

We hired a local auction company to remove the van from [the GSA] facility and resell it. This was when we were first made aware the van did not run and was missing (among other items) the electronic control unit.

Since the van was inoperable, we hired another party to transport it to its facility in Clinton, MD. . . .

Over the years we have been in business, we have purchased literally hundreds of vehicles from governmental sources, but nothing could have prepared us for what we saw when the van finally arrived at our dealership. It was nowhere near the condition represented in the photographs or verbally.

The paint is off all three doors and much of the right side body, the left fender, and the rusting roof. In short, the vehicle needs to be stripped and repainted.

The left front inner-fender is severely rusted, one of the holes larger than one’s fist.

The heater hoses have been routed and spliced in order to bypass the heater core. This would indicate that some one was aware of leaks and /or other problems with the heating/cooling system.

It is missing the ECU computer and possibly other necessary parts.

The letter concluded by claiming misdescription of the condition of the vehicle, asserting that the vehicle was grossly misrepresented in its photographic images and written and verbal descriptions. Appellant requested a full refund of the purchase price and reimbursement for all additional money invested. Appeal File, Exhibit 9.

12. Appellant also asserts that the interior of the vehicle has been altered, with cage dividers and steel bars riveted across the windows. Appellant’s Record Submission at 2.

13. The contracting officer issued a final decision dated November 22, 2004, concluding that no misdescription had occurred and denying the claim. Appeal File, Exhibit 13.

14. Appellant filed a Notice of Appeal dated February 12, 2005, requesting a full refund of the purchase price and reimbursement of \$2800 that it subsequently spent for repairs.

15. The parties elected to proceed on the written record and filed record submissions.

Discussion

GSAAuctions, like other on-line auctions, are governed by rules prescribed by the organization which conducts them. The rules of this auction are contained in the terms and conditions promulgated by GSA. When GSA accepted appellant's bid, these rules became the terms and conditions of the contract between the agency and the buyer. *Larry J. McKinney v. General Services Administration*, GSBCA 16720, 05-2 BCA ¶ 33,119; *Darren R. Gentilquore v. General Services Administration*, GSBCA 16705, 05-2 BCA ¶ 33,117.

Appellant maintains that he is entitled to rely on the auction catalog photograph of the vehicle he purchased and the GSA custodian's alleged statement that the vehicle had just come out of service and "ran fine." The GSA custodian asserts that he did not make this statement.

The terms and conditions of the auction made plain that a prospective bidder could not rely on either photographs or oral statements of government representatives as to the condition of an item offered for sale. Actual physical inspection of such items was recommended and invited by the agency. Appellant did not make such an inspection, which would have revealed the matters about which he complained. *See Danny R. Mitchell v. General Services Administration*, GSBCA 16209, 04-1 BCA ¶ 32,551, at 160,995. As appellant was informed of these matters of by a third party hired to remove the vehicle, they were clearly visible and would have been discovered by appellant, an auto and truck dealer, had it inspected the vehicle before the auction.

Appellant also asserts that the vehicle was misdescribed. The terms and conditions warrant "that the property listed in the GSAAuctions.gov website will conform to its description." The description on the website may have been incomplete, but it was not a misdescription. The website said only that the vehicle was a Dodge Van with a certain vehicle identification number, eight cylinder engine, 44673 miles, needing a battery, side mirrors and tires, and other repairs may be required.

Appellant does not allege that any element within this description is inaccurate. Thus, the website description - the only thing that GSA warranted - was not a misdescription. *McKinney*; *See Kenneth G. Hanke v. General Services Administration*, GSBCA 14097, 97-2 BCA ¶ 29,247, at 145,490-91.

Decision

The appeal is **DENIED**.

ALLAN H. GOODMAN
Board Judge

We concur:

ROBERT W. PARKER
Board Judge

CATHERINE B. HYATT
Board Judge