



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: August 20, 2020

CBCA 6724

3 DAUGHTERS PAINTING COMPANY, LLC,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Erik LaSalle of 3 Daughters Painting Company, LLC, Flower Mound, TX, appearing for Appellant.

Kathleen K. Barksdale, Office of Regional Counsel, General Services Administration, Philadelphia, PA, counsel for Respondent.

Before Board Judges **VERGILIO**, **DRUMMOND**, and **LESTER**.

DRUMMOND, Board Judge.

This appeal arises out of the purchase of a truck by appellant at an online auction conducted by respondent, the General Services Administration (GSA). Appellant seeks relief from GSA's default determination and effort to collect \$12,650 that appellant bid pursuant to GSA's auction of a Ford F250SD truck. We deny the appeal as GSA has demonstrated that appellant was in default and has failed to prove grounds for relief.

Findings of Fact

In March 2019, GSA gave notice of an auction for a used vehicle via its online platform *GSA Auctions*. Exhibit 1 at 1. GSA posted a descriptive paragraph with its listing that itemized many of the truck's features and defects. *Id.* GSA's listing included a warranty and disclaimer, which read in relevant part:

Inspection of Property

Bidders agree to physically inspect the property upon which they bid or thereby waive the opportunity to conduct a physical inspection. In waiving their inspection rights, bidders bear the risk for any gross omissions regarding the functionality of items, failures to cite major missing parts and/or restrictions with regards to usage that would have been revealed by physical inspection. There are times when access to the property may be limited due to property being located in a restricted area. GSA will do all that it can to ensure that photos and detailed descriptions are provided in these instances.

....

Description Warranty & Refunds

The Government warrants to the original purchaser that the property listed on GSA Auctions.gov will conform to its written description. Features, characteristics, deficiencies, etc. not addressed in the description are excluded from the warranty. GSA further cautions bidders that GSA's written description represents GSA's best effort to describe the item based on the information provided to it by the owning agency. Therefore, gross omissions regarding the functionality of items, failures to cite major missing parts and/or restrictions with regard to usage may occur.

Claims of Mis-description

If items have been awarded but not paid for and the successful bidder feels that the property is mis-described, he/she must follow these procedures: A written claim needs to be submitted to the Sales Contracting Officer within 15 calendar days from the date of award requesting release of contractual obligation for reasons satisfying that of a mis-description. No verbal contact with the custodian or the Sales Contracting Officer or any other federal official will constitute a notice of mis-description.

Appeal at 4.

By registering with *GSA Auctions*, appellant became bound by GSA's terms and conditions, including a requirement that he tender payment in the event that he successfully bid on an item. Answer at 2. Appellant claims that he called the listing office and made several attempts to schedule an inspection during the bidding process but did not receive a return call from the listing officer until the final day of the auction. Complaint at 1. Appellant asserts that the listing officer assured him that GSA's description of the vehicle was accurate to the best of his knowledge. *Id.* Appellant chose to submit a \$12,650 bid for the vehicle without personally conducting an inspection. Appeal at 1-2.

On March 13, 2019, GSA selected appellant's bid and awarded appellant contract GS02F19FBE0970 for the purchase of the vehicle. Notice of Appeal at 3. Appellant subsequently alleged that the truck's dimensions were unsuitable for its purposes and claimed that GSA's description of the item was incorrect. Complaint at 1. Though appellant claims that it spoke with GSA's contracting officer about the situation, appellant did not mail a written claim of the alleged mis-description to GSA until December 20, 2019. Appellant's Response at 1; Appeal at 3. GSA's contracting officer issued a decision denying appellant's claim on January 2, 2020. Appeal at 4. Appellant timely filed an appeal with the Board.

Discussion

Appellant breached his contract with GSA by failing to pay for the vehicle it was awarded according to the terms and conditions established by the auction. *See Ghulam H. Syed v. General Services Administration*, CBCA 426, 07-1 BCA ¶ 33,516 (finding breach and applying liquidated damages where highest bidder for computer components failed to provide payment). This breach provides sufficient grounds for the default termination.

We acknowledge that appellant was given a very limited opportunity to inspect the vehicle prior to submitting his final bid. GSA warned in its warranty that "access to the property may be limited due to property being located in a restricted area," and that "GSA's written description represents GSA's best effort to describe the item based on the information provided to it by the owning agency." Appeal at 4. When appellant chose to place a bid without inspecting the vehicle he waived his right to assert that the vehicle was mis-described. *See T.K. Hughes Auto Sales, Inc., v. General Services Administration*, CBCA 5397, 17-1 BCA ¶ 36,747 ("The Board will deny relief for a mis-description where 'a bidder conducts an inspection and fails to notice a problem, and when a bidder decides not to conduct an inspection and so does not see a problem.'" (quoting *Hanke v. General Services Administration*, GSBCA 14097, 97-2 BCA ¶ 29,247)).

Decision

The appeal is **DENIED**.

Jerome M. Drummond
JEROME M. DRUMMOND
Board Judge

We concur:

Joseph A. Vergilio
JOSEPH A. VERGILIO
Board Judge

Harold D. Lester, Jr.
HAROLD D. LESTER, JR.
Board Judge