

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 COMMITTEE  
GRANT GILLESPIE  
EXECUTIVE DIRECTOR

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

## Protest Decision

**Matter of:** Butler Chrysler Dodge Jeep, LLC

**Case No.:** 2017-119

**Posting Date:** December 9, 2016

**Contracting Entity:** State Fiscal Accountability Authority

**Solicitation No.:** 5400011774

**Description:** Vehicles - Statewide Contract for Law Enforcement

### DIGEST

Protest of an award alleging successful bidder failed to meet a material requirement of the solicitation is denied. Butler Chrysler Dodge Jeep's (Butler) letter of protest is included by reference. [Attachment 1]

### AUTHORITY

The Chief Procurement Officer<sup>1</sup> 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.

---

<sup>1</sup> The Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

## BACKGROUND

<i>Event</i>	<i>Date</i>
Solicitation Issued	08/18/2016
Amendment 1 Issued	09/08/2016
Amendment 2 Issued	09/21/2016
Draft Intent to Award Posted	10/17/2016
Intent to Award Posted	10/18/2016
Protest Received	10/21/2016

## ANALYSIS

This Invitation for Bids was issued by the State Fiscal Accountability Authority to establish a statewide term contract for law enforcement vehicles. Five (5) bids were received on October 4, 2016.

Butler protests that Performance Automotive Group, LLC (Performance) failed to meet a solicitation requirement that all optional equipment be factory installed found in section VII. Terms and Conditions – B - Special – (2)(B).

The solicitation required that the base price of the vehicle include a Roof Wire Kit (8 or 10) wire and the option to deduct the Roof Wire Kit. Butler argues that the Roof Wire Kit is not a standard feature of the Dodge Charger bid by Performance and the factory installed option for this feature is the AYW – Patrol Package Wiring Prep Package and costs \$1024.00. Butler argues that the base price bid by Performance could not include the factory installed option. In support of its argument, Butler points out that the factory installed option costs \$1024.00 but Performance only allowed for a deduction of \$275.00.

The specifications for each vehicle type were found in a spreadsheet attached to the solicitation. The requirement in question is found in the Amend2Spec Performance spreadsheet as follows:

<b>Roof Wire Kit (8 or 10 Wire)</b>	REQUIRED w/option to deduct
-------------------------------------	-----------------------------

The solicitation included a requirement that this equipment be factory installed:

B. All optional equipment shall be factory installed unless specified otherwise herein.

[Solicitation, Page 27]

Performance responded to this issue of protest as follows:

During our review and subsequent pricing, we determined that the base vehicle would require a "Roof Wire Kit (8 or 10 wire)" with an option to deduct. ... Ms. Neill is correct when she determined that the AYW package includes a wire run from the C Pillar to the trunk compartment. However, this package includes several other options not required by specification, and thus forcing agencies to pay for these unspecified items would place an undue burden on the taxpayers of South Carolina.

Chrysler's upfit center is located in Brampton, Ontario and is run under contract by Ground Effects, Ltd. (GFX). GFX manufactures and installs the Wire Prep Package (AYW) and the Base Prep Package (AYE) on the law enforcement versions of the Dodge Charger Pursuit. This law enforcement upfit center is located adjacent to the Brampton Dodge Charger assembly building and all factory law enforcement equipment is installed at this facility. Therefore, all items installed at this facility are defacto deemed factory installed. Ms. Neill concurs with this by promoting the AYW as a suitable factory installed option.

Based on our fiduciary responsibility to the tax payers of South Carolina, it is our position that forcing agencies to purchase items that are not required by contract specification would not be in their best interests. Subsequently, we requested and received pricing from Ground Effects, Ltd to install the roof wiring kit required by specification as a factory installed option at the Chrysler Brampton upfit center. We have included a copy of this agreement to this response and contend that this item meets the contract specifications and thus makes this protest invalid.

(Attachment 2)

The solicitation did not specify which wiring harness part number was required to be compliant. The only requirement was that it be factory installed. The sales agreement between Performance and Ground Effects, Ltd. to provide the alternate wiring harness included the following statement:

6. All items will be included with the vehicle as part of the delivery program provided by Chrysler LLC. For extraordinary deliveries, all shipment related

charges are FOB GFX in Bolton Ontario and the responsibility of the purchaser unless otherwise noted in our catalog, price sheets, or written quotation.

(emphasis added)(Attachment 2) Performance provided a factory installed wiring harness meeting the requirement of the solicitation and this issue of protest is denied.

In the alternative, Butler protests that

If Performance CDJ proves that it has included in the base price the "Factory Installed" roof wiring specification, then we would like to invoke: **(2)(A)** - Prices bid for the most popular optional equipment (Add & Deduct) will be entered in the questionnaire and returned with your bid and the State will consider these prices in its overall evaluation of the bid. The right is reserved by the State to reject any bid for which it finds the option prices not satisfactory (inconsistent or unrealistic when compared with other prices).

The solicitation included the following statement:

2. OPTIONAL ITEMS:

A Prices bid for the most popular optional equipment (Add & Deduct) will be entered in the questionnaire and returned with your bid and the State will consider these prices in its overall evaluation of the bid. The right is reserved by the State to reject any bid for which it finds the option prices not satisfactory (inconsistent or unrealistic when compared with others prices).

[Solicitation, Page 27]

Performance responds to this issue of protest as follows:

Ms. Neill requests that the State not award to Performance CDJR because our pricing was unrealistic. However, based on the abovementioned items, not only is our pricing realistic, the substantial savings generated from this contract are passed along to the end users, and thus our proposal meets the contract specifications and also represents the best value for the taxpayers of South Carolina. Performance should not be penalized because other bidders lacked the diligence to provide the most efficient solution for this specification. (Attachment 2)

Protest Decision, page 5

Case No. 2017-119

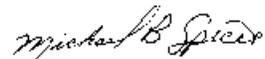
December 9, 2016

The price bid by Performance is not unreasonable, and there is no discrepancy between the cost to Performance for the wiring harness and the price included as a deduction. This issue of protest is denied.

**DECISION**

For the reasons stated above, the protest of Butler Chrysler Dodge Jeep, LLC is denied.

For the Materials Management Office



---

Michael B. Spicer  
Chief Procurement Officer

## Attachment 1

# Butler

CHRYSLER



DODGE

# Jeep

1555 SALEM ROAD • BEAUFORT, SC 29902 • 843-522-9696 • 1-800-995-9696 • FAX 843-525-0365

October 26, 2016

**Chief Procurement Officer**

**Materials Management Office**

**RE: Intent to Award Contract 4400014504**

Butler Chrysler Dodge Jeep is protesting the "Intent to Award" to Performance Chrysler Dodge Jeep due specifically to: **VII. Terms and Conditions – B. Special – (2)(B)** - "All OPTIONAL equipment shall be **FACTORY** installed unless specified otherwise herein." Performance CDJ's bid proposal shows that it is not "Optional Factory Installed equipment" proven by the spreadsheet submitted, specifically the optional equipment deductions value concerning the Roof Wiring (8 or 10 wire). The second bid, received by Santee CDJ, states the optional equipment deduction is "Factory Standard" and can be proven that it is not a standard feature in the Dodge Charger Police Package vehicle. If Performance CDJ proves that it has included in the base price the "Factory Installed" roof wiring specification, then we would like to invoke: **(2)(A)** – Prices bid for the most popular optional equipment (Add & Deduct) will be entered in the questionnaire and returned with your bid and the State will consider these prices in its overall evaluation of the bid. The right is reserved by the State to reject any bid for which it finds the option prices not satisfactory (inconsistent or unrealistic when compared with other prices).

The "spec" that we are protesting in the bid submitted by Performance Chrysler Dodge Jeep is the "Roof Wire Kit (8 or 10 wire)" that was a must have on tabulating the base vehicle and then was given as an option to deduct. The standard Dodge Charger DOES NOT come with "roof wiring" without adding a wiring package. The wiring package that will satisfy the "spec" and is **FACTORY** installed is the "AYW – Patrol Package Wiring Prep Package" option. This package installs the Mopar Wire Harness and Power Distribution Center (PDC) at the factory and interfaces with the vehicle's Vehicle Systems Interface Module (VSIM). The Mopar Wire Harness also provides a convenient method of adding roof top and perimeter lights to the vehicle and to activate the built in Headlamps and Tail lamps Flasher system. There are eight (8) locations that are pre-wired to accept L.E.D. lighting. The 10 leads are run to the trunk for customer connection to a lighting control system. This will ensure that the manufacturer's standard warranty will not be compromised and is in compliance with the National Highway Traffic Safety Administration.

Upon review of the bid submitted by Performance, the above wiring package (AYW) could not have been included in the base vehicle due to the cost of the option and especially in the "Optional Equipment Deductions" category. How the option AYW could cost \$1024.00 and then the option to deduct is only \$275.00 does not compute. The attached Manufacturers "Build Sheets" (Confidential Information) will show the contract vehicle with the AYW package and the contract vehicle without the AYW package. As evidence in the attached, either Performance will provide the optional "Factory

Installed Equipment" at a significant loss or it will provide non factory installed wiring without regard to the clearly stated terms and conditions of the guidelines presented by the Bid Solicitation.

In conclusion, we protest the award based on rule (2)(B), which was not followed and if denied by Performance CDJ, that they are in fact using the "Factory Option" then on rule (2)(a), Unrealistic Pricing of the spec "Roof Wire (8-10 wire)". If descriptive literature is needed in order for Butler Chrysler Dodge Jeep to justify this protest, we will forward our research and due diligence as requested.

We will look forward to your response in this matter.

Respectively,

Tina Neill, Fleet Manager

Butler Chrysler Dodge Jeep LLC



BUTLER CHRYSLER DODGE JEEP/FLEET  
 1555 SALEM RD  
 BEAUFORT, SC 299025235

Configuration Preview

Date Printed: 2016-10-24 3:13 PM  
 Estimated Ship Date:

VIN:  
 VON:

Quantity: 1  
 Status: BA - Pending order  
 FAN 1: 48802 State of South Carolina  
 FAN 2:  
 Client Code:  
 Bid Number: TB7220  
 PO Number:

Sold to:  
 BUTLER CHRYSLER DODGE JEEP/FLEET  
 (69907)  
 1555 SALEM RD  
 BEAUFORT, SC 299025235

Ship to:  
 BUTLER CHRYSLER DODGE JEEP/FLEET (69907)  
 1555 SALEM RD  
 BEAUFORT, SC 299025235

Vehicle: 2017 CHARGER POLICE RWD (LDDE48)

	Sales Code	Description	MSRP(USD)	FWP(USD)
Model:	LDDE48	CHARGER POLICE RWD	31,645	31,051
Package:	29A	Customer Preferred Package 29A	0	0
	EZH	5.7L V8 HEMI MDS VVT Engine	2,230	
	DGJ	5-Speed Auto W5A580 Transmission	0	0
Paint/Seat/Trim:	PS2	Bright Silver Metallic Clear Coat	0	0
	APA	Monotone Paint	0	0
	*C8	HD Cloth Bucket & Rear Bench Seats	0	0
	-X9	Black	0	0
Options:	MAF	Fleet Purchase Incentive	0	
	XFX	Equipment Mounting Bracket	0	0
	LNF	Black Left Spot Lamp	210	
	LBG	Front Reading/Map Lamps	75	
	CKD	Floor Carpet	125	
	W8A	18" Wheel Covers	40	
	4DH	Prepaid Holdback	0	
	4ES	Delivery Allowance Credit	0	
	5N6	Easy Order	0	0
	4FM	Fleet Option Editor	0	0
	4FT	Fleet Sales Order	0	0
	166	Zone 66-Orlando	0	0
	4EA	Sold Vehicle	0	0
Non Equipment:	4FA	Special Bid-Ineligible For Incentive	0	0
Bid Number:	TB7220	Government Incentives	0	
Discounts:	YGF	8 Additional Gallons of Gas	0	
Destination Fees:			995	1,095-
			<b>Total Price:</b>	<b>35,420</b>

23,252  
 - 1321  
 23,152 ✓

Order Type: Fleet  
 Scheduling Priority: 1-Sold Order  
 Customer Name:  
 Customer Address: USA  
 Instructions:

PSP Month/Week:  
 Build Priority: 99

BASE VEHICLE  
 With option to  
 deduct "ATW"  
 Wiring package

BASE Bid submitted  
 by Performance  
 \$ 23,640.00

Note: This is not an invoice. The prices and equipment shown on this priced order confirmation are tentative and subject to change or correction without prior notice. No claims against the content listed or prices quoted will be accepted. Refer to the vehicle invoice for final vehicle content and pricing. Orders are accepted only when the vehicle is shipped by the factory.



October 26, 2016

Mr. Rob Malpass  
Procurement Manager  
Materials Management Office  
Division of Procurement Services  
State Fiscal Accountability Authority  
1201 Main Street, Suite 600  
Columbia, South Carolina 29201

RE: Solicitation 5400011774  
South Carolina Vehicle Procurement Contract  
Protest Response, Specification LE-4

Mr. Malpass,

We appreciate the opportunity to provide pricing to the State of South Carolina for their vehicle procurement needs, and we look forward to working with you in the coming year. As a government contractor by trade, I appreciate the difficulty in organizing such a large bid process, and I also appreciate the thorough, albeit inaccurate, nature of Ms. Neill's interpretation of our bid.

The protest to our award seems to be centered around two caveats: 1. The vehicle that we provided pricing for did not meet the specifications of the solicitation, and 2. Because of the supposed deficiency, our pricing was unrealistic.

**Response to Item 1:**

During our review and subsequent pricing, we determined that the base vehicle would require a "Roof Wire Kit (8 or 10 wire)" with an option to deduct. See below:

Roof Wire Kit (8 or 10 Wire)	REQUIRED w/option to deduct
------------------------------	-----------------------------

Ms. Neill is correct when she determined that the AYW package includes a wire run from the C Pillar to the trunk compartment. However, this package includes several other options not required by specification, and thus forcing agencies to pay for these unspecified items would place an undue burden on the taxpayers of South Carolina.

Chrysler's upfit center is located in Brampton, Ontario and is run under contract by Ground Effects, Ltd. (GFX). GFX manufactures and installs the Wire Prep Package (AYW) and the Base Prep Package (AYE) on the law enforcement versions of the Dodge Charger Pursuit. This law enforcement upfit center is located adjacent to the Brampton Dodge Charger assembly building and all factory law enforcement equipment is installed at this facility. Therefore, all items installed at this facility are defacto deemed factory installed. Ms. Neill concurs with this by promoting the AYW as a suitable factory installed option.

Based on our fiduciary responsibility to the tax payers of South Carolina, it is our position that forcing agencies to purchase items that are not required by contract specification would not be in their best interests. Subsequently, we requested and received pricing from Ground Effects, Ltd to install the roof wiring kit required by specification as a factory installed option at the Chrysler Brampton upfit center. We have included a copy of this agreement to this response and contend that this item meets the contract specifications and thus makes this protest invalid.

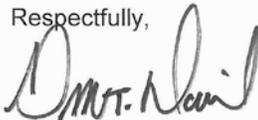
**Response to Item 2:**

Ms. Neill requests that the State not award to Performance CDJR because our pricing was unrealistic. However, based on the abovementioned items, not only is our pricing realistic, the substantial savings generated from this contract are passed along to the end users, and thus our proposal meets the contract specifications and also represents the best value for the taxpayers of South Carolina. Performance should not be penalized because other bidders lacked the diligence to provide the most efficient solution for this specification.

We contend that our pricing and bid submission for specification LE-4 on Contract number 4400014504 in fact meets the specifications as submitted, is responsive, and provides best value pricing for this vehicle. Subsequently, we respectfully request that the State of South Carolina deem the protest to the Intent to Award invalid and award Specification LE-4 to Performance Automotive Group, Inc. as stated in the Intent to Award.

Also, we consider our bidding methods, cost structures and vendors to be proprietary in nature and thus we would appreciate the State's confidentiality with regards to this information in their discussions with our competitors.

Respectfully,



Gene T. Daniel  
Commercial & Government Sales Manager  
Performance Automotive Group, Inc.



valid order.  
Please see credit terms outlined below.



**Ground Effects Ltd.**  
Windsor, Ontario, N8W 5R8  
Phone 519-944-3800  
Fax 519-944-5334

*Quote Date:* 10/4/2016  
*Quote Number:* 1187  
*Page:* 2

## Terms & Conditions of Sale/Extension of Credit

1. Payment terms are subject to credit approval. Payment to be made within 30 days of final invoice.
2. All late payments are subject to a 2% late charge per month on the outstanding balance for each month the balance remains outstanding.
3. Authorized returns are subject to a 15% restocking charge. Unauthorized returns will not be accepted.
4. Any order discrepancies or shortages must be reported to Ground Effects Ltd. (GFX) within 15 days after receipt.
5. Any obvious freight damage must be noted on carrier delivery receipt upon receipt of goods. If hidden damage is suspected due to crushing or torn packaging, please note this also on receipt.
6. All items will be included with the vehicle as part of the delivery program provided by Chrysler LLC. For extraordinary deliveries, all shipment related charges are FOB GFX in Bolton Ontario and the responsibility of the purchaser unless otherwise noted in our catalog, price sheets, or written quotation.
7. The customer is responsible for all costs of collection, legal expenses, and attorney fees incurred by GFX in collecting amounts legally due.
8. Lead times and completion dates may vary from stated estimates. Ground Effects Ltd. is not to be held liable for delays which are beyond its control. These may include; however, are not limited to, weather, labor disruptions, supplier delays, and shipping delays. Every effort will be made to ensure timely delivery.



**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**

*Protest Appeal Notice (Revised November 2016)*

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 2016 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  
1205 Pendleton Street, Suite 473, 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.**