

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-218687 **DATE:** May 17, 1985
MATTER OF: Douglas M. Andrews

DIGEST:

1. Bid deposit requirement is a material part of a sale solicitation and cannot be waived. Therefore, the submission of a personal check, rather than cash, a certified or cashier's check, or money order, as specified by the invitation, renders the bid nonresponsive.
2. Sale solicitation is not ambiguous regarding bid deposit form when the general terms and conditions of IFB state acceptable forms of bid deposit, unless otherwise provided, and the special terms and conditions in fact provide otherwise.
3. Alleged erroneous oral advice given by an agency employee as to acceptability of a personal check for a bid deposit cannot estop the agency from rejecting a nonresponsive bid, since it is required to do so by law.

Douglas M. Andrews protests the allegedly improper rejection of his bid for the purchase of real property from the Forest Service, United States Department of Agriculture. The invitation for bids (IFB), No. R1-85-7, was for the purchase and removal of various dwellings and garages, including log cabins, located in Flathead National Forest, Montana. Mr. Andrews was the high bidder for one of the cabins; however, the Forest Service rejected his bid, which was accompanied by a bid deposit in the form of a personal check, because the IFB required that deposits be in the form of cash, certified or cashier's check, or money order.

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We dismiss the protest without obtaining a report from the contracting agency, in accord with our Bid Protest Regulations. See 4 C.F.R. § 21.3(f) (1985).^{1/}

To the extent that Mr. Andrews is contending that the submission of a personal check is a minor informality that should be waived, we have previously held in a case involving a sale similar to this one that a bid deposit requirement is a material part of an IFB, so that the issuing activity must reject as nonresponsive a bid that does not comply with the requirement. See Edward D. Griffith, B-188978, Aug. 29, 1977, 77-2 CPD ¶ 155.

Here, the general terms and conditions of the IFB (Standard Form 114C) stated that, unless otherwise provided, bid deposits were to be in United States currency or any form of credit instrument, other than a promissory note, made payable on demand. The special terms and conditions of the invitation in fact provided otherwise by requiring that the bid deposit be in the form of cash, certified or cashier's check, or money order. As we stated in Griffith, an uncertified personal check, such as the one submitted by Mr. Andrews, is subject to insufficient funds or stop payment orders and does not represent the firm commitment required to form a binding legal contract. Id.

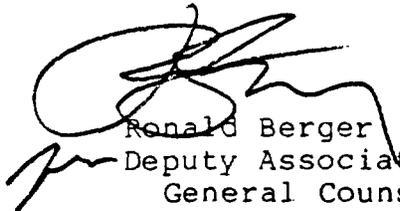
Mr. Andrews specifically contends that he relied on erroneous oral agency advice concerning the form of the bid deposit and that this advice unfairly denied him the opportunity to compete. Before bid opening, Mr. Andrews states, he telephoned the Flathead National Forest supervisor's office in Kalispell, Montana, in an attempt to clarify the required bid deposit form. He was told by a contracting office employee that a personal check was an acceptable form for the bid deposit.

^{1/} While these regulations apply to procurements by federal agencies, 4 C.F.R. § 21.1(a), the Forest Service, by letter dated April 25, 1985, has requested that we consider this sale.

While Mr. Andrews may have received erroneous oral advice regarding the acceptability of a personal check, we have frequently held that bidders rely upon oral advice at their own risk. Inventive Packing Corp., B-213439, Nov. 8, 1983, 83-2 CPD ¶ 544. This is particularly true when, as here, the oral advice is in direct conflict with the special terms and conditions of a solicitation. The general terms stated the acceptable forms of bid deposits "unless otherwise provided" in the invitation. Because the special terms and conditions provided otherwise, the special terms took precedence. For this reason, we cannot agree with Mr. Andrews' alternate argument that the solicitation should be canceled because it is ambiguous concerning the acceptable form for the bid deposit, since there is only one reasonable interpretation, i.e., that the bid deposit had to be in the form of cash, a certified or cashier's check, or a money order.

Finally, to the extent Mr. Andrews contends that the Forest Service is estopped to reject the bid as nonresponsive because of his reliance on the erroneous oral advice, we have held that erroneous advice given by agency officials cannot estop the agency from rejecting a nonresponsive bid, since the agency is required to do so by law. International Waste Industries, B-210500.2, June 13, 1983, 83-1 CPD ¶ 652.

The protest is dismissed.


Ronald Berger
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General Counsel