

**DECISION**

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

**FILE:** B-211269**DATE:** April 22, 1983**MATTER OF:** Intermountain Paper Stock, Inc.**DIGEST:**

Defense Disposal Manual, covering sale of surplus property, provides that bid deposits may be in any one or a combination of forms, specifically including personal checks, and does not require contracting officers to attempt to determine whether such checks are covered by sufficient funds. Protester therefore has no legal basis to challenge award of sales contract to firm submitting personal check that allegedly will be dishonored.

Intermountain Paper Stock, Inc., protests the award of a sales contract to B&J Paper Company, the high bidder on item No. 11 of solicitation No. 41-3211, issued by the Defense Property Disposal Service (DPDS). The item covered removal of approximately 1,000 tons of scrap paper on a weekly basis. Intermountain was the second-highest bidder. We deny its protest.

Intermountain alleges that the personal check submitted by B&J as a bid deposit was not covered by sufficient funds. The check, in the amount of \$8,600, was more than the required minimum deposit of \$6,883.20 (20 percent of the sale price), but according to Intermountain, the payroll account on which it was drawn contained less than \$5,000.

Intermountain argues that the publication, "Sale by Reference," containing terms and conditions that apply to all surplus personal property offered for sale by DPDS, requires bid deposit checks to be payable on demand, so that the agency can obtain the funds necessary to secure performance. If they are not, Intermountain continues, bidders will be able to wait until notice of award to cover their checks, to substitute performance bonds, or even to default, avoiding forfeiture of the checks as liquidated damages. This is unfair to bidders who deposit checks that are fully negotiable, Intermountain concludes.

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The firm protested unsuccessfully on this basis to the contracting officer before the March 17, 1983, award to B&J, arguing that the bid should be rejected as nonresponsive.

Our Office recently has considered the use of personal checks as bid deposits in the sale of Department of Defense surplus personal property. See Marine Power and Equipment Company, Inc., B-208393, December 7, 1982, 62 Comp. Gen. \_\_\_\_\_, 82-2 CPD 514. In that case, the protester also alleged that the check tendered by an agent of the bidder was not covered by sufficient funds and that the sales contracting officer either knew or should have known that it would be dishonored. Marine Power implied that the contracting officer had an affirmative duty to determine that the check was backed by sufficient funds before making an award.

We questioned whether the contracting officer would have been able to make such a determination, since the Right to Financial Privacy Act of 1978, 12 U.S.C. § 3402 (Supp. IV 1980), prohibits disclosure of this type of information without the express authorization of the bidder. We also found that there was nothing in the Defense Disposal Manual, which implements the Federal Property and Administrative Services Act of 1949, that requires this type of determination. Rather, the manual provides that deposits on surplus personal property sold by the Department of Defense may be in any one or a combination of forms, specifically including personal checks. See DOD 4160.21M, Ch. 3, para. M.4. (July 1979).

We noted, however, that both Defense Acquisition Regulation § 7-2003.25 (DAC 76-26, December 15, 1980) and Federal Procurement Regulations § 1-10.102.2 (amend. 184, October 1977) require cashier's or certified checks for bid guarantees. We suggested that, at least for sealed bid sales, DPDS consider adopting a similar policy for bid deposits.

By letter dated February 18, 1983--approximately a month before the date of the award involved in this protest--the Defense Logistics Agency responded to our suggestion. The agency indicated that personal checks had long presented problems when used for final contract payments and for bid deposits. Before 1963, the agency

states, only certified instruments, cash, Government checks, or Western Union or postal money orders were acceptable as bid deposits or final payments. Bid bonds also were acceptable for deposits only. Many bidders, however, failed to submit acceptable deposits, and bids were rejected as nonresponsive for this reason at almost every sale. In 1963, the agency continues, it decided as a matter of policy to accept all negotiable instruments except promissory notes for both deposits and final payment; this was consistent with the General Services Administration's procedures for surplus sales. In addition, the agency established a list of contractors who were indebted to DPDS or whose checks had been dishonored, and refused to accept uncertified checks from them.

In 1974, DPDS tried eliminating the requirement for bid deposits entirely, requiring guaranteed instruments for final payment. The results were not very favorable, the agency states; it found that there was a "dramatic" increase in terminations and defaults and that bidders were submitting bids under fictitious names. It therefore went back to requiring bid deposits but accepting personal checks.

The agency concludes that the dishonoring of personal checks should be considered in determining a bidder's responsibility. In describing the broader problem with personal checks, it states that between November 1978 and December 1981, DPDS received 760 bad checks, totaling \$2.2 million, on total sales of \$279 million. Of these losses, it recovered only \$1.5 million.

In an attempt to reduce losses on both bid deposits and final payments, DPDS, during development of the Marine Power protest, instituted new procedures. On national sales of \$5,000 or more, purchasers now are required to pay the entire contract amount in cash or by a guaranteed instrument. If an unguaranteed bid deposit has been submitted, it is held until final payment, then returned to

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the bidder. On local sales, similar procedures are followed for contracts of more than \$500. The agency's February 18, 1983 letter states that it would like to test these changes before implementing our suggestion regarding use of cashier's or certified checks as bid deposits.

In view of the relatively brief time that has elapsed since DPDS instituted these new procedures, we believe it would be appropriate to allow the agency an opportunity to evaluate them and to generate additional data on their effect, if any, on the number of dishonored bid deposit checks or defaults on final payment before further action is taken.

In the interim, since the Defense Disposal Manual specifically permits the use of personal checks as bid deposits, and does not require the contracting officer to determine whether such checks are covered by sufficient funds, Intermountain has no legal basis to challenge the award to B&J.

The protest is summarily denied.

for *Harry R. Van Cleave*  
Comptroller General  
of the United States