

ROY BLAKE

IBLA 78-627

Decided December 5, 1978

Appeal from decision of the Area Manager, Barstow Resource Area, California, Bureau of Land Management, denying protest against issuance of materials sale contract to highest bidder. CA-060-MP8-10.

Affirmed.

1. Contracts: Formation and Validity: Bid Award— Materials Act—Rules of Practice:
Protests—Surface Resources Act: Generally

In a competitive materials sale, submission of the required 10 percent deposit in cash with the sealed bid is permissible under the regulations and not a ground for rejection of the highest bid. Therefore, a protest against acceptance of the bid for that reason is properly denied.

APPEARANCES: Roy Blake, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Roy Blake appeals from a decision dated June 27, 1978, by the Area Manager, Barstow Resource Area, California, Bureau of Land Management (BLM), denying his protest against the issuance of a materials sales contract for tufa (decorative stone) to the highest bidder at the June 14, 1978, sale in Riverside, California. The highest bid was for a total of \$1,700. Appellant's total bid was \$1,420.

In his Statement of Reasons for Appeal appellant asserts that the notice of sale stated that payment of the deposit was to be by cashier's or certified check, bank draft or money order. The highest bidder submitted cash; therefore, appellant reasons, that bid should be rejected. Appellant states that he was "deprived of the opportunity to present a cash bid." Appellant also asserts that he surrendered his mining claims in the area "based on a gentleman's agreement that in return, I would receive a tufa contract every year thereafter."

The Materials Act of July 31, 1947, as amended by the Surface Resources Act of July 23, 1955, 30 U.S.C. §§ 601, 602 (1976), authorizes the Secretary of the Interior to dispose of materials to the highest responsible bidder, requiring competitive bidding unless the materials are to be used in a public works improvement program or it is impracticable to obtain competition. 43 CFR 3611.1, 3611.2. Regulation 43 CFR 3612.4(d) states: "Deposits may be in the form of cash, money orders, bank drafts, cashier's or certified checks * * *." The notice of sale clearly provided: "This sale is made under and subject to provisions of the Materials Act of July 31, 1947, as amended, 43 CFR Part 3600 and 43 CFR Part 23."

[1] While the notice of sale did not specify that a cash deposit would be accepted, it incorporates by reference the regulation which does. Participants in Government mineral sales are presumed cognizant of, and held responsible for complying with, the pertinent regulations. The fact that the notice did not include cash as an acceptable form of remittance does not afford appellant any rights. In the absence of a particular statute precluding acceptance of cash payment, it would be improper for BLM to refuse to accept cash. A general statute of the United States clearly provides that United States currency is legal tender for all debts, public and private, within the United States. 31 U.S.C. §§ 451 et seq. (1976). This means coins or currency, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations. 31 U.S.C. § 463(b) (1976). Submission of the required 10 percent deposit in cash with the sealed bid is permissible under the regulations and statutory law and is not a ground for rejection of the highest bid. Therefore, appellant's protest against acceptance of the bid for that reason is properly denied. There was no unfairness to other bidders by the high bidder's use of cash. Cf. Mesa Petroleum Co., 37 IBLA 103 (1978).

As for appellant's assertion that he surrendered his mining claims in reliance on a promise by a BLM employee that he would receive a tufa contract every year, appellant has submitted no evidence on this point. BLM employees have stated no such commitment was ever made. ^{1/} Furthermore, 43 CFR 1810.3 provides that the United States is not bound by the acts or information provided by its officers when they enter agreements not sanctioned or permitted by the law. No BLM official would be authorized to promise a claimant that he could purchase material where there could be competition for the material in view of the requirement in the Materials Act for competitive bidding.

^{1/} Billy Templeton, BLM, Washington, D.C., and David Cone, Bureau of Reclamation, Klamath Falls, Oregon, both formerly of the Barstow Office, denied appellant's allegations in separate telephone conversations with Ken Moore of the Barstow Resource Area Office, BLM, Barstow, California.

Appellant has made various other general assertions and objections, but none of these goes to the decisive issue in this appeal, namely whether the cash deposit of the high bidder was proper. 2/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Frederick Fishman
Administrative Judge

2/ The high bidder was not listed in the BLM decision as an adverse party who must be served with copies of appeal documents. In the future, the BLM should list the adverse party in the decision. The omission in this case, however, cannot help appellant.

