DON KELLAND MATERIALS, INC.

IBLA 78-113 Decided May 22, 1978

Appeal from decision of the Yuma, Arizona, District Office, Bureau of Land Management, denying an application for extension of mineral material sales contract Y-0156.

Set aside and remanded.

1. Applications and Entries: Filing -- Materials Act

A decision by a Bureau of Land Management District Office rejecting an application for an extension of a mineral materials sale contract solely for the reason it was not timely filed in accordance with 43 CFR 3610.7 will be set aside and remanded for the authorized officer to determine whether the application may be considered as timely pursuant to 43 CFR 1821.2-2(g). This section permits the authorized officer to consider a document as being timely filed except where the law does not permit him to do so, the rights of a third party or parties have intervened, or the authorized officer determines that further consideration of the document would unduly interfere with the orderly conduct of business.

APPEARANCES: R. W. MacFarlane, Office Manager, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Don Kelland Materials, Inc., appeals from the December 7, 1977, decision of the Yuma, Arizona, District Office, Bureau of Land Management (BLM), denying its application for extension of mineral materials sale contract Y-0156. Appellant purchased the contract through competitive bidding pursuant to the Materials Act of July 31, 1947, as amended, 30 U.S.C. § 601 et seq. (1970). The contract was for 8,000 tons of sand and gravel and had a term of 2 years.

The BLM District Office rejected appellant's extension application pursuant to 43 CFR 3610.7 and section 12 of the contract because it was received less than 30 days before the expiration date of the contract. The contract expired December 7, 1977. The extension application, although dated November 7, 1977, was postmarked November 16, 1977, and was received by the District Office on November 17, 1977.

Appellant's basis for appeal is that the extension application was denied "strictly on a technicality, and one that does not have to be rigidly adhered to." It makes other arguments to support its request for the extension.

[1] The Materials Act of July 31, 1947, as amended, 30 U.S.C. § 601 et seq. (1970), does not specify the procedures for administering materials sale contracts, but authorizes the Secretary of the Interior to issue rules and regulations for that purpose. Regulations governing mineral materials sale contracts are set out in 43 CFR Part 3610. Extensions of time are allowed by 43 CFR 3610.7, which states:

> If the purchaser shows that his delay in removal was due to causes beyond his control and without his fault or negligence, the authorized officer may grant an extension of time, not to exceed one year, upon written request of the purchaser. Such written request must be received not later than 30 days prior to the expiration date of the time for removal but not earlier than 90 days prior thereto. * * * No extension may be granted without reappraisal as provided in § 3610.8.

A similar provision is also set out in appellant's contract as section 12. 1/

If there were no other applicable regulations, the BLM decision in this case would be correct. However, regulations setting time limits for filing documents are subject to 43 CFR 1821.2-2(g) as follows:

> When the regulations of this chapter provide that a document must be filed or a payment made within a specified period of time, the filing of the document or the making of the payment after the expiration of

1/ Section 12 of the contract refers to 43 CFR 3611.8-6. That regulation contained the identical extension of time provisions which are now codified as 43 CFR 3610.7.

that period will not prevent the authorized officer from considering the document as being timely filed or the payment as being timely made except where:

1. the law does not permit him to do so.

2. The rights of a third party or parties have intervened.

3. The authorized officer determines that further consideration of the document or acceptance of the payment would unduly interfere with the orderly conduct of business.

There is no indication that the BLM District Office took into account the authority in this regulation to consider appellant's extension application as being timely filed. It is appropriate, therefore, to set aside the decision and remand the case to BLM for the authorized officer, in the first instance, to determine whether the application may be considered as timely filed pursuant to 43 CFR 1821.2-2(g). He must decide whether one of the exceptions in that regulation precludes consideration of the application. If so, a decision to that effect should issue. If he decides the application may be considered as timely filed under that regulation, then he must determine whether the application for extension should be granted under 43 CFR 3610.7. This would include deciding if the applicant has shown that the delay in removal of the materials was due to causes beyond the applicant's control and without his fault or negligence and, if shown, exercising the discretionary authority to grant or deny the application. 2/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the

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2/ Our conclusion that this case must be remanded for the above determinations should not be read as indicating any view on the merits of such determinations.

decision appealed from is set aside and the case remanded for further consideration.

Joan B. Thompson
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Frederick Fishman
Administrative Judge