

GULF STATES PETROLEUM, INC.

IBLA 88-146, 88-147

Decided January 31, 1990

Appeal from decisions of the Wyoming State Office, Bureau of Land Management, rejecting high bids in a competitive oil and gas lease sale. W-107297 and W-107340.

Affirmed.

1. Accounts: Payments--Oil and Gas Leases: Competitive Leases--Payments: Generally

A company check for oil and gas lease bid deposit is not an acceptable form of remittance under 43 CFR 3120.4-1 (1987), which requires remittances to be submitted in the form specified in the competitive sale notice, where that notice requires bidders to submit a bid deposit "by guaranteed remittance, i.e., cash, cashier's check, or money order."

2. Estoppel--Federal Employees and Officers: Authority to Bind Government

An alleged misrepresentation by BLM of a requirement concerning the proper form of remittance for a bid deposit for a competitive oil and gas lease sale is not an appropriate basis for equitable estoppel where the party asserting estoppel could have become aware of the true requirements by reference to Departmental regulations and the notice of competitive lease sale. Furthermore, a claim of estoppel based on appellant's allegation that BLM advised it that a company check would be acceptable for a bid deposit, fails because appellant has not established that BLM made a crucial misstatement in an official decision or otherwise engaged in any "official misconduct."

APPEARANCES: Donald Toms, President, Gulf States Petroleum, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Gulf States Petroleum, Inc. (appellant), appeals from two decisions of the Wyoming State Office, Bureau of Land Management (BLM), dated December 8, 1987, rejecting its competitive oil and gas lease bids for parcels 27 (W-107297) and 70 (W-107340) for failure to submit the required portion of the bid amount in the proper form.

Under 43 CFR 3120.2-4(b) (1987), bidders for competitive oil and gas leases are required to deposit with BLM one-fifth of the amount bid. Citing 43 CFR 3120.4-1 (1987), BLM stated in its decisions that "[r]emittances * * * shall be submitted in the form specified in the sale notice." 1/ BLM referred to the sale notice, which required that the payment be "a guaranteed remittance only, i.e., cash, cashier's check, or money order." Since appellant's remittances for these bids were made by "company checks," BLM rejected the bids.

Appellant bid \$15 per acre (\$622.05 total) for parcel 27 (W-107297) and submitted a check for \$124.41 to cover the required one-fifth bid deposit. Appellant bid \$10 per acre (\$2,292.60 total) for parcel 70 and submitted a check for \$458.52 for the required one-fifth bid deposit for that parcel. The bid deposits were paid by personal checks bearing appellant's name, address, and phone number, printed on the checks. Nothing on these checks suggests that the remittance was guaranteed.

In its statement of reasons, appellant explains that it is not on BLM's regular mailing list, and that it was advised by a BLM employee, prior to an earlier sale, that a company check would be acceptable for the bid deposit. According to appellant, it was not the high bidder on any parcel for that earlier sale, and BLM returned its check with no mention of improper remittance. Appellant suggests that, since BLM was using the same bidding method for the December 2, 1987, sale, its company check should also have been acceptable for it. Appellant also points out that when BLM first notified it that it was the high bidder on these two parcels, it made no mention of any other type of remittance being necessary.

Appellant contends that the mere fact that its bid was in the form of a company check did not affect the competitive nature of the sale. Appellant asserts that it relies on notices from the petroleum news letters as well as other public notices for information regarding the sales, but does not indicate what such notices provided as far as the required form of payment. Finally, appellant points out that Wyoming State Lease Department accepts company checks and directs our attention to the BLM Wyoming State Office's notice of competitive sale for March 29 and 30, 1988. This notice specified that payment could be made by personal check and that payment in the form of a guaranteed remittance was not required.

[1] As BLM held, Departmental regulation 43 CFR 3120.4-1 (1987) provides that "[r]emittances for competitive bids shall be submitted in the

1/ Actually, BLM mistakenly cited "43 CFR 3120.2-1" as the source for this provision.

form specified in the sale notice." The notice of competitive oil and gas lease sale for December 2, 1987, reads in pertinent part as follows: "Bidders must submit with each bid: (1) one-fifth of the amount bid by guaranteed remittance only, i.e., cash, cashier's check, or money order, to the Department of the Interior - BLM."

This Board has held that the failure to submit the deposit in the form required by the bid notice must result in the rejection of the competitive bid. George H. Fentress, 99 IBLA 184 (1987); Belco Petroleum Corp., 57 IBLA 3 (1981); Mesa Petroleum Co., 37 IBLA 103 (1978). Appellant did not submit its remittance in the form specified in the sale notice, as 43 CFR 3120.4-1 (1987) requires. Therefore, BLM properly rejected appellant's bids and returned its company checks. ^{2/}

Appellant contends that the fact that its bid was in the form of a company check did not affect the competitive nature of the sale. However, as we concluded in Mesa Petroleum, *supra*, using a "sight draft" payment allows a bidder to retain use and control of funds until the draft is accepted and paid by the bank on which it is drawn. This procedure does give the bidder an unfair advantage over other bidders who submit guaranteed remittances as required, because the latter lose control of their funds. A personal check is a type of sight draft, payable on demand, but revocable until paid or accepted for payment. See U.C.C. §§ 3-104, 3-409(1); 5 Anderson, Uniform Commercial Code, 214 (3rd Ed. 1984). As we held in William E. Jeffers, Jr., 46 IBLA 322 (1980):

Under section 3-409(1) of the Uniform Commercial Code the drawee is not liable on a sight draft until he accepts it. This differs from a money order, bank draft, or bank cashier's check most significantly in that it commits no particular fund to the satisfaction of a debt until it is presented and accepted for payment.

Id. at 323; see 6 Anderson, Uniform Commercial Code, 271-274 (3rd Ed. 1984). There is nothing in the record to indicate that the checks in this case, which were evidently drawn on appellant's corporate bank accounts in the manner of any personal bank account, were distinguishable from personal checks.

[2] Appellant does not dispute the fact that a company check was not specified as a guaranteed form of remittance in the oil and gas lease sale notice of December 2, 1987. However, it alleges that it acted on the advice of BLM that a company check would be acceptable for the bid

^{2/} We note that appellant's bids were date stamped with BLM on Dec. 2, 1987. The sales notice provided: "All bid forms must be submitted to the Bureau of Land Management, Wyoming State Office, Cheyenne, Wyoming, on or before 4:30 p.m. December 1, 1987. Bids received after that time will not be considered. Withdrawal of a bid prior to that time will be permitted." (Emphasis in original.) It is not necessary to consider the issue of whether appellant's bids were timely submitted since the improper remittance issue is dispositive of this appeal. However, it does appear that appellant failed to comply with the time requirement.

deposit. Appellant thus suggests that BLM is estopped from rejecting its bids because it acted on instruction from a BLM employee.

We recently noted in Terra Resources, Inc., 107 IBLA 10, 13 (1989), that claims of estoppel are considered on the basis of four elements, which are described in United States v. Georgia-Pacific Co., 421 F.2d 92, 96 (9th Cir. 1970): (1) the party to be estopped must know the facts; (2) the party to be estopped must intend that his conduct shall be acted on or must so act that the party asserting estoppel has a right to believe that it is so intended; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting estoppel must detrimentally rely on the conduct of the party to be estopped. We further noted that estoppel is an extraordinary remedy, especially as it relates to public lands; that estoppel must be based upon affirmative misconduct by BLM; and that, while estoppel may lie if reliance on BLM's statements deprived an individual of a right which he could have acquired, it does not lie if the effect of such action would be to grant an interest not authorized by law. See also Henry E. Krizman, 104 IBLA 9 (1988); Enfield Resources, 101 IBLA 120, 122 (1988); Ptarmigan Co., 91 IBLA 113, 117 (1986).

Under these standards, the doctrine of estoppel does not apply in the present case. Assuming, arguendo, that the first two requirements described in Georgia-Pacific were met, appellant cannot be held to have been ignorant of what the requirements for payment of competitive bid deposits were. Appellant had constructive knowledge of these requirements due to their publication in Departmental regulations at 43 CFR 3120.4-1 (1987). Persons dealing with the Government are chargeable with knowledge of statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947).

Furthermore, estoppel against the Government in matters concerning the public lands must be based upon "affirmative misconduct" such as misrepresentation or concealment of material facts. United States v. Ruby Co., 588 F.2d 697, 703-04 (9th Cir. 1978); D. F. Colson, 63 IBLA 221 (1982); Arpee Jones, 61 IBLA 149 (1982). Appellant makes only a general allegation that it was acting on advice from BLM. No proof of misrepresentation in an official BLM decision has been proffered. This Board has expressly ruled that, as a precondition for invoking estoppel, the erroneous advice upon which reliance is predicated must be "in the form of a crucial misstatement in an official decision." Henry E. Krizman, supra; United States v. Morris, 19 IBLA 350, 377, 82 I.D. 146, 159 (1975) (quoting Marathon Oil Co., 16 IBLA 298, 316, 81 I.D. 447, 455 (1974)). Since appellant has pointed to no such official decision, estoppel is not appropriate here.

Furthermore, Departmental regulation 43 CFR 1810.3(c) provides this warning: "Reliance upon information or opinion of any officer, agent or employee or on records maintained by land offices cannot operate to vest any right not authorized by law." This regulation was applied in Burton/Hawks, Inc. v. United States, 553 F. Supp. 86, 92 (D. Utah 1982):

Section 1810.3 establishes the principle that plaintiff's reliance on the erroneous statements of the district engineer could not estop the IBLA from denying a two-year extension of the

lease where the lease did not qualify for the extension under the terms of the agreement or the [Mineral Lands Leasing Act]. The proposition that the erroneous statements of its employees do not bind the United States is well accepted in the case law. E.g., Federal Crop Ins. v. Merrill, 332 U.S. 380, 384 (1947); United States v. California, 332 U.S. 19, 39 (1947); [3/] Clair R. Caldwell, et al., 42 IBLA 139, 141 (1979); Paul S. Coupey, 35 IBLA 112, 116 (1978). Thus, despite plaintiff's reliance on assurances made by the USGS district engineer, the IBLA was free to reach an independent decision on whether or not the lease expired by operation of law.

Appellant also points to the fact that BLM assertedly failed to inform it that a company check was not a proper form of remittance when it returned a company check submitted in an earlier sale. Although BLM may not have undertaken to correct appellant's payment procedures after an earlier sale, we can find no basis for faulting BLM for such failure. First, it is unlikely that BLM would have noticed this earlier shortcoming, as it probably did not review each remittance as it returned them to unsuccessful bidders. In view of the fact, as discussed above, that bidders were required to submit payments that deprived them of the use of the funds covered by their payments, BLM may certainly be excused for expediting the return of these payments.

Second, the volume of work facing BLM in oil and gas leasing is substantial, and it cannot reasonably be expected that BLM will be able to give notice of difficulties it might notice in the course of handling oil and gas lease bids. Rather, it is by the publication of regulations that the Department makes parties aware of BLM's operating procedures. The regulation in question, along with BLM's notice of competitive bidding, left no doubt as to what procedures were required here.

Appellant also suggests that it was harmed because BLM made no mention of any other type of remittance being necessary when it first notified appellant that it was the high bidder on these two parcels. We presume that appellant refers to BLM's Competitive Oil and Gas Lease Sale Results, which lists appellant as the high bidder for Parcels 27 and 70. However, this list merely served to give notice of the high bids and created no right to receive a lease. No bids are accepted or rejected when they are opened; rather, BLM must review the bids to determine whether the bidder is qualified. See 43 CFR 3120.5 (1987). If the high bidder has not complied with the regulations in 43 CFR Subpart 3120 (1987), including 43 CFR 3120.2-4(b) (1987), its bid is properly rejected. 43 CFR 3120.6 (1987). In fact, BLM took swift action here to reject appellant's bids. Its failure to mention in its notice of sale results that another type of remittance was necessary did not prejudice appellant, as it was too late by that time to remedy its failure.

In any event, even presuming (which we do not find) that BLM's failure to inform appellant of the inadequacy of its method of payment could

3/ Parallel citations omitted.

be regarded as "neglect of duty," it is established as a matter of law that the authority of the United States to enforce a public right or to protect a public interest is not vitiated or lost by laches, neglect of duty, failure to act or delays in the performance of duties. Mallon Oil Co., 107 IBLA 150 (1989); REO Broadcast Management Co., 98 IBLA 139 (1987); Alyson A. Allison, 72 IBLA 333 (1983). Appellant's bid deposits were not properly submitted, and BLM was therefore required by law to reject its bid. 43 CFR 3120.6 (1987).

Finally, the fact that the State of Wyoming and BLM, in a later sale, allowed payment by personal check is of no help to appellant here. As discussed above, failure to apply the requirements for proper payment uniformly would work to the detriment of those parties which complied with them. The import of 43 CFR 3120.4-1 (1987) was clear: the bidder's remittance must be made as specified in the sale notice to which the bidder was responding. In this case, the requirements of the sale notice of December 2, 1987, were not met, and BLM therefore properly rejected the bids.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

David L. Hughes
Administrative Judge

I concur:

James L. Byrnes
Administrative Judge