

MORGAN RICHARDSON OPERATING CO.

IBLA 90-190

Decided June 16, 1993

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting competitive oil and gas lease offer WYW 118472.

Affirmed.

1. Oil and Gas Leases: Competitive Leases

Failure by a successful bidder at a competitive lease sale to pay BLM the balance of the bonus bid due within 10 working days of the sale pursuant to provision of 43 CFR 3120.5-2(c) properly resulted in bid rejection and forfeiture of monies previously tendered. See 43 CFR 3120.5-3(a). An assertion that payment was timely mailed in order to comply with the regulatory deadline is not sufficient to establish that payment was timely received by BLM.

APPEARANCES: Peter A. Gowan, Denver, Colorado, Land Manager, for Morgan Richardson Operating Company.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Morgan Richardson Operating Company (Morgan) has appealed from a January 2, 1990, decision by the Wyoming State Office, Bureau of Land Management (BLM), rejecting competitive oil and gas lease offer WYW 118472 for failure to pay the balance of the bonus bid owed on the successful bid within 10 working days of the competitive lease sale. Morgan was the high bidder for parcel WY-8912-032 at an oil and gas lease sale held on December 5, 1989, in Cheyenne, Wyoming. Morgan's competitive oil and gas lease bid receipt, BLM form WY 3120-10 (August 1988), indicates that Morgan submitted a "minimum due" of \$215 on the sale day and that a balance of \$600 was due within 10 working days, or not later than December 19, 1989. The payment had not been received by BLM on January 2, 1990, when the decision here under review was issued.

Together with the receipt submitted on appeal by Morgan, a statement of reasons (SOR) filed in support of Morgan's appeal includes a copy of a Morgan company check in the amount of \$600 made payable to "Bureau of

Land Management" and dated "12-14 1989" with the notation "For Lease # 118472 Parcel #32." It is explained in the SOR that there "appears to be a failure by the United States Post Office to deliver the check which we mailed to the Bureau of Land Management on December 14, 1989 for the balance due." See id. at 1. Stating that the company was unaware that payment had not been delivered timely to BLM before the decision to reject the bid was received, Morgan requests "reinstatement of this lease." Id.

[1] Departmental regulations governing competitive lease sales provide that a successful bidder must submit a minimum bonus bid, the first yearly rental, and an administrative fee on the date of the sale. 43 CFR 3120.5-2(b). The balance owing of the bonus bid at the sale must be submitted within 10 working days after the sale. 43 CFR 3120.5-2(c). Failure to submit the balance of the bonus bid within the 10-day deadline "shall result in rejection of the bid and forfeiture of the monies submitted under § 3120.5-2(b)." 43 CFR 3120.5-3(a). See Eastern American Energy Corp., 123 IBLA 300, 301 (1992); Partnership One, Inc., 119 IBLA 7, 10 (1991). The payment requirement imposed by these regulations is strictly applied. Id.

The argument advanced by Morgan in support of the appeal taken in this case is self-defeating: it is admitted that the check for the balance due was never received by BLM. Assuming that, as Morgan states, the check was mailed on December 14, 1989, 5 days before it was due at BLM, it was apparently not timely delivered to BLM. Morgan argues that there was a "failure" by the Post Service to deliver as it should have done, and that the consequence of that failure should be born by the United States rather than by Morgan in this case. Nonetheless, one who chooses a means of delivery thereby assumes the risk that his chosen agent may not deliver the thing that was sent. See Amanda Mining & Manufacturing Association, 42 IBLA 144, 146 (1979), and cases cited therein. Assuming in this case that there was timely transmission of the payment, the loss caused by the failure to make timely delivery must be borne by Morgan, who chose to send the payment by an ineffective means. Moreover, the naked assertion that payment was timely submitted but lost in the mail does not excuse failure to comply with the mandatory deadline set by regulation for payment of the balance of the amount owed in this case. Id.; and see Eastern American Energy Corp., supra at 301 (timely payment of bonus balance due not subject to waiver under Departmental regulations implementing the Federal Onshore Oil and Gas Leasing Reform Act of 1987, P.L. 100-203, 101 Stat. 1330-256 (Dec. 22, 1987, amending section 17(b) of the Mineral Leasing Act, 30 U.S.C. § 226(b) (1988)).

We conclude, therefore, that Morgan violated 43 CFR 3120.5-2(c) by failing to make timely payment of the balance due of the bonus bid at the December 5, 1989, competitive sale. As a consequence, BLM correctly rejected the bid and forfeited the monies previously paid on the account. See 43 CFR 3120.5-3(a).

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.

Franklin D. Arness
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge