

CARLYLE, INC.

IBLA 2002-260

Decided December 16, 2004

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting competitive oil and gas lease bid. WYW 155007.

Affirmed.

1. Administrative Authority: Estoppel--Estoppel--Federal Employees and Officers: Authority to Bind Government-- Oil and Gas Leases: Competitive Leases

A party claiming reliance upon a misrepresentation by a Department employee must be ignorant of the true facts. When a party successfully bidding at an oil and gas lease sale receives a bidder's receipt stating monies owing, the bidder cannot claim ignorance of the fact that such monies are due.

2. Oil and Gas Leases: Competitive Leases

Departmental regulations governing competitive lease sales provide that the balance of a bonus bid must be submitted within 10 working days after a competitive lease sale date. 43 CFR 3120.5-2(c). Failure to timely submit the full amount of the required payment will result in bid rejection and forfeiture of monies previously tendered. 43 CFR 3120.5-3(a).

APPEARANCES: Carlyle, Inc., Scottsdale, Arizona, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

Carlyle, Inc. (Carlyle), appeals from a March 6, 2002, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting its bid for an oil and gas lease submitted at a competitive oil and gas lease sale held in Cheyenne,

Wyoming, on December 4, 2001. The lease is identified as number WYW 155007 and is located on Parcel 109, WY-0112-109, located in the SE1/4SE1/4 sec. 3, T. 12 N., R. 10 W., Sixth Principal Meridian, Sweetwater County, Wyoming.

Carlyle was the high bidder at the December 4, 2001, sale for this lease, bidding \$8 per acre for a 40-acre parcel, for a total bonus bid of \$320. (Dec. 4, 2001, BLM Competitive Oil and Gas Lease Bid Receipt for parcel 109, lease serial number WYW 155007.) Under the terms of BLM regulations at 43 CFR 3120.5-2(b), Carlyle was obligated to pay \$2 per acre (\$80) for a minimum bonus, \$1.50 per acre (\$60) for advance rental, and an administrative fee of \$75. Carlyle properly paid the portion of the bonus bid due on December 4, 2001. This amount was \$215.00 which represents the sum of the minimum bonus, advance rental and administrative fees. Id. Under the terms of 43 CFR 3120.5-2(c), Carlyle was required to submit the balance of the bonus bid to BLM within 10 working days after the auction. Excluding weekends, the balance of the bonus bid was due in the BLM office by Tuesday, December 18, 2001, in the amount of \$240.00. See Dec. 4, 2001, BLM Competitive Oil and Gas Lease Bid Receipt for parcel 109, lease serial number WYW 155007 (line item "additional bonus" with sum of \$240.00 noted on receipt issued to Carlyle).

The record reflects that on December 4, Carlyle also submitted bids and paid appropriate fees for eight additional leases, one of which was serialized as WYW 154947. For this 40-acre lease, Carlyle also paid the minimum bid of \$80, the advanced rental of \$60, and the administrative fee of \$75. (Receipt No. 417933, BLM Division of Support Services, dated, Dec. 4, 2001 (reproduced from electronic record on Feb. 14, 2002).) Though it is not clear from the record, it would appear that Carlyle won this bid which was for \$6 per acre, leaving a balance due for the bonus bid of \$160 on December 18, 2001.

Carlyle sent a check in the amount of \$396.50 by overnight mail postmarked December 18, 2001, to the BLM office in Cheyenne, Wyoming. Of this \$396.50, BLM allocated \$236.50 to the balance of the bonus bid owed on lease WYW 155007, the subject of this appeal, and \$160.00 to lease WYW 154947. See Receipt Nos. 423541 and 417933, BLM Division of Support Services, dated, respectively, Dec. 20, 2001, and Dec. 4, 2001 (reproduced from electronic record on Feb. 14, 2002).

On March 6, 2002, BLM issued its decision rejecting Carlyle's bid for failing to pay the total additional bonus bid on lease WYW 155007. BLM notified Carlyle that the monies submitted on the day of the sale with respect to WYW 155007 were forfeited. <sup>1/</sup> (Decision at 1.)

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<sup>1/</sup> The decision states: "Your company was the high bidder on parcel WY-0112-109 (WYW 155007). Your bid for this parcel was \$8.00 per acre, for a total bonus bid of (continued...)"

Carlyle timely appealed. Carlyle acknowledges the shortfall in monies paid, but argues that shortly after the December 4, 2001, sale, its personnel contacted “a person (female) in the cashier department at the Cheyenne, Wyoming, [BLM]” and were advised “that the amount still due for our bonus payment was \$396.50,” which Carlyle then promptly remitted to BLM. (Notice of Appeal and Statement of Reasons (SOR) at 1.) When notified of the BLM’s rejection of its bid on lease WYW 155007, as well as the reason for this rejection, Carlyle promptly appealed, and enclosed with its appeal a check for \$3.50. Id.

Carlyle thus does not dispute the facts or the insufficiency of the total amount paid, but rather presents a defense based on estoppel. Carlyle asserts that it relied to its detriment upon a representation by BLM personnel. (SOR at 1.) In the alternative, it asserts that the \$3.50 shortfall on payment of the balance outstanding on the bonus bid is de minimis, and that BLM should accept Carlyle’s prompt correction of the problem. Id.

[1] Estoppel against the Government in matters concerning the public lands is an extraordinary remedy, and must be based upon affirmative misconduct, such as misrepresentation or concealment of material fact. United States v. Ruby Co., 588 F.2d 697, 703-04 (9<sup>th</sup> Cir. 1978); Mineral Hill Venture, 155 IBLA 323, 329-330 (2001) (citing “well-established precedents [of IBLA] governing when estoppel is applicable against the Government” in the context of proper payment of mining claim fees); Partnership One, Inc., 119 IBLA 7, 10-11 (1991) (addressing estoppel argument in context of oil and gas lease bonus bids). Though Carlyle asserts that a BLM employee provided incorrect information over the telephone, we have held that all persons dealing with the Government are presumed to have knowledge of relevant statutes and regulations, and that oral misstatements cannot support a claim of estoppel. Mineral Hill Venture, 155 IBLA at 330 and citations therein. Rather, for estoppel to apply, a party’s reliance must be predicated on a crucial misstatement in an official written decision. Id. We note as well that the same Carlyle representative who signed the bonus bid application also signed a receipt upon which was noted the \$240 balance due, as well as the 10 day time-frame within which such payment was to be made. (Dec. 4, 2001, Competitive Bid Receipt); see United States v. Georgia-Pacific Co., 421 F.2d 92, 96 (9<sup>th</sup> Cir. 1970) (party asserting estoppel must be ignorant of the true facts); Partnership One, Inc., 119 IBLA at 11.

[2] Carlyle notes that the \$3.50 deficiency in payment is a minor shortfall. Unfortunately, the consequences do not stem from the amount of money not timely

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<sup>1/</sup> (...continued)

\$240.00.” (Decision at 1.) In fact, the record shows that the total bonus bid was actually \$320 and the outstanding balance due on the bonus bid was \$240. (Dec. 4, 2001, Competitive Bid Receipt.)

paid but from the payment's untimeliness. Where payment of the balance due on a bonus bid is beyond the date of the regulatory 10-day deadline, the reasons given for failure to comply with the regulations in 43 CFR Subpart 3120, regardless of how unfortunate the circumstances or the consequences, cannot serve as a basis for waiver of the regulatory payment requirement, which is strictly applied. John P. Lockridge, 159 IBLA 117, 119 (2003); Partnership One, Inc., 119 IBLA at 11; see also Morgan Richardson Operating Co., 126 IBLA 332, 333 (1993); Eastern American Energy Corp., 123 IBLA 300, 301 (1992); Twin Arrow, Inc., 118 IBLA 55 (1991). This result does not change whether the amount of payment that is late is small or large.<sup>2/</sup>

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed.

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Lisa Hemmer  
Administrative Judge

I concur:

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Gail M. Frazier  
Administrative Judge

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<sup>2/</sup> It is worth noting that the record reveals that the entire payment was late. The payment was postmarked on Dec. 18, 2001, but was received on Dec. 20, 2001. Carlyle states that BLM told its representative by telephone that it would accept the payment if it was postmarked on the due date. (SOR at 1.) BLM did not issue its decision on this ground. However, as we held in John P. Lockridge, 159 IBLA at 119 n.2, the "regulations contain no provision authorizing BLM to consider as timely filed a payment which was postmarked, but not received, on the due date."