



MX RE-STORE, LLC

174 IBLA 254

Decided April 28, 2008



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

MX RE-STORE, LLC

IBLA 2007-262

Decided April 28, 2008

Appeal from a decision of the Land Law Examiner, Fluid Mineral Adjudication, Colorado State Office, Bureau of Land Management (BLM), rejecting competitive oil and gas lease bids.

Affirmed.

1. Oil and Gas Leases: Competitive Leases

Departmental regulations governing competitive lease sales provide that each winning bidder shall submit on the day of sale the minimum bonus bid of \$2 per acre or fraction thereof, the total amount of the first year's rental, and an administrative fee. 43 C.F.R. § 3120.5-2(b). The winning bidder shall submit the balance of the bonus bid within 10 working days of the lease sale. 43 C.F.R. § 3120.5-2(c). A bid shall not be withdrawn and shall constitute a legally binding commitment to execute the lease bid form and accept a lease, including the obligation to pay the bonus bid, first year's rental, and administrative fee. 43 C.F.R. § 3120.5-3(a). Execution of the competitive lease bid form constitutes a binding lease offer.

2. Oil and Gas Leases: Competitive Leases

Failure to timely submit the full amount of the payment required under 43 C.F.R. § 3120.5-2(c) will result in bid rejection and forfeiture of the minimum bonus bid, total amount of the first year's rental, and administrative fee required under 43 C.F.R. § 3120.5-2(b). 43 C.F.R. § 3120.5-3(a).

APPEARANCES: David A. Closson, Esq., Randall J. Feuerstein, Esq., Dufford & Brown, P.C., Denver, Colorado, for appellant; Andrea S. Gelfuso, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

MX Re-Store, LLC (MX Re-Store or appellant), successful bidder at a competitive oil and gas lease sale held on May 10, 2007, appeals from a decision issued by the Land Law Examiner, Fluid Mineral Adjudication, Colorado State Office, Bureau of Land Management (BLM), dated July 16, 2007.¹

Under the terms of Departmental regulations governing competitive oil and gas lease sales at 43 C.F.R. § 3120.5-2(b)(1)-(3), MX Re-Store, as a winning bidder, was obligated to pay, before the close of business on the day of the oral auction, an administrative fee, first year's advance rental, and the minimum bonus bid. Under the terms of 43 C.F.R. § 3120.5-2(c), appellant was required to submit the balance of its respective bonus bids to BLM within 10 working days after the sale. Successful bidders at the May 10, 2007, lease sale were required to submit the balance of the bonus bids in the BLM office by 4:00 p.m. on May 24, 2007.

The facts are not in dispute. MX Re-Store successfully bid on oil and gas lease sale parcels COC 70895 (320 acres), COC 70904 (160 acres), COC 70908 (320 acres), and COC 70917 (2,400 acres) at the May 10, 2007, lease sale. On the day of sale, MX Re-Store paid a total of \$11,720, which included payment for administrative fees and first year advance rentals for the four parcels, and minimum bonus bids for parcels COC 70895, COC 70908, and COC 70917.² MX Re-Store

¹ The Board docketed three individual appeals from three respective BLM decisions pertaining to BLM's competitive oil and gas lease sale, dated May 10, 2007. The appeal by Sahota Energy was docketed as IBLA 2007-249; the appeal by MX Re-Store as IBLA 2007-262; and the appeal by Fossil Energy as IBLA 2007-269. By Order dated Sept. 13, 2007, the Board granted BLM's motion to consolidate the appeals under docket No. IBLA 2007-249. Having reviewed the record and decision pertaining to each appeal, we have concluded that it is in the best interest of Board administration to separately adjudicate each appeal. We begin with adjudication of IBLA 2007-262.

² For each parcel MX Re-Store paid a \$130 administrative fee. It paid \$1.50 per acre for the first year's advance rentals for COC 70895 (\$320); COC 70904 (\$240); COC 70908 (\$320); and COC 70917 (\$3,600). It paid minimum bonus bids of \$2 per acre for COC 70895 (\$640), COC 70908 (\$640), and COC 70917 (\$4,800).

(continued...)

Lease Sale Receipts. It also included the full payment of bonus bid for COC 70904.³ MX Re-Store did not remit payment for the \$81,280 balance due on the three partially paid bonus bids by the due date of May 24, 2007. BLM issued a decision dated July 16, 2007, concerning parcels COC 70895, COC 70908, and COC 70917, declaring that such failure “resulted in forfeiture of all monies previously paid and rejection of the bid[s] per 43 C.F.R. § 3120.5-2(b).” BLM’s decision rejecting the three bids and declaring the forfeiture of all monies previously paid for those bids did not reject MX Re-Store’s successful bid for parcel COC 70904, since the company was not in default on its bonus bid payment for that parcel.

In its Statement of Reasons (SOR), MX Re-Store states that “[s]ubsequent to the sale, on or about May 13, 2007, MX Re-Store discovered it had made a mistake concerning the location of the parcels. MX Re-Store had bid on the parcels “based upon its belief [that] the parcels were adjacent to similar parcels owned by a business associate.” On or about that day, MX Re-Store called BLM and “discovered that the mistaken bids resulted from an error as to the reading of the township and range coordinates on the legal description of the lease parcels.” *Id.* Its bids, the company states, were “based on a unilateral mistake of fact” as to the location of the parcels. SOR at 2. An affidavit by an agent of the company attests to this mistake. Affidavit of Dennis Johnson, Aug. 2, 2007.

MX Re-Store asks the Board “to reverse the decision of the Land Examiner, cancel the leases, and order a return of funds to MX Re-Store in the amount of \$11,720.”⁴ SOR at 2. Appellant cites *Boesche v. Udall*, 373 U.S. 472 (1963)

² (...continued)

MX Re-Store Lease Sale Receipts.

³ The minimum bonus bid of \$2 for COC 70904 (\$320) was also the full bonus bid for that parcel.

⁴ It appears that appellant wishes a refund of all monies paid in connection with its four bids. MX Re-Store asks for a return of \$11,720 — the full amount of its check no. 5840, which comprises payments submitted the day of sale for all four bids, including the full payment (\$690) (advance rental, full bonus bid and administrative fee) for COC 70904. The Notice of Appeal (NOA) filed by MX Re-Store mistakenly states that BLM’s Decision concerns all four parcels, including COC 70904. NOA at 1. The caption at the top of page 1 of the SOR similarly misidentifies COC 70904 as one of the parcels subject to the “Decision of Land Law Examiner, Brenda Figueroa dated July 16, 2007.” BLM, in a letter to the Board transmitting the administrative record, indicated that “the company is including [COC 70904] in their appeal.” Letter from Karen Zurck, for Duane Spencer, Chief Fluid Mineral Resources, dated Aug. 14, 2007. And on Mar. 24, 2008, the Board received from BLM the *Case Recordation*, (*Live*)

(continued...)

(cancellation in an administrative proceeding of a noncompetitive oil and gas lease issued in violation of statutory and regulatory requirements) as support for its proposition that “the Secretary of the Interior has the authority to cancel any oil and gas leases based upon errors or mistakes committed prior to the issuance of the lease.” SOR at 1. Appellant also relies on two Board decisions citing *Boesche v. Udall*, 373 U.S. 472; *Celeste C. Grynberg*, 169 IBLA 178, 183 (2006) (declaration of all bid offers in competitive oil and gas lease sale null and void and cancellation of lease issued in violation of BLM’s statutory obligation to obtain the prior approval of the surface managing agency), and *High Plains Petroleum Corp.*, 125 IBLA 24, 26 (1992) (cancellation of competitive oil and gas lease issued in violation of requirement to conform resource management authorizations to the resource management plan). In addition, appellant seeks equitable relief from its bid mistakes, which it claims precluded a meeting of the minds. SOR at 1. No statutory or regulatory authority and no Board precedent is cited to support such relief.

[1] Departmental regulations governing competitive lease sales were amended in 1988 (53 Fed. Reg. 22,814) (June 17, 1988), and provide that, on the day of sale, each winning bidder must submit the minimum bonus bid of \$2 per acre or fraction thereof, the total amount of the first year’s rental, and an application processing fee. 43 C.F.R. § 3120.5-2(b). The balance of the bonus bid is due within 10 working days of the lease sale. 43 C.F.R. § 3120.5-2(c). The regulations make clear the binding nature of the bid and the consequences for failure to timely submit the full payment due:

A bid shall not be withdrawn and shall constitute a legally binding commitment to execute the lease bid form and accept a lease, including

⁴ (...continued)

Serial Register Page for each of the four bids, dated Mar. 24, 2008. The page relating to COC 70904 states that it “wasn’t rejected in [the] decision of 7/16/07 but [MX Re-Store] appealed issuance along with 3 other leases.”

We note that BLM’s belief that MX Re-Store’s appeal filed Aug. 6, 2007, included an appeal of COC 70904 does not explain why BLM did not issue the lease for that bid within 60 days of the May 10, 2007, lease sale, as required by the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (FOOGLRA), 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)). Nor does it affect our jurisdiction. This Board “decides finally for the Department appeals to the head of the Department from decisions rendered by Departmental officials” relating to the use and disposition of public lands. 43 C.F.R. § 4.1(b)(3). The July 16, 2007, Decision from which MX Re-Store appeals did not decide any matter pertaining to COC 70904. Therefore, the Board has no jurisdiction in this appeal to adjudicate any issue relating to COC 70904.

the obligation to pay the bonus bid, first year's rental, and administrative fee. Execution by the high bidder of a competitive lease bid form . . . shall constitute a binding lease offer, including all terms and conditions applicable thereto, and shall be required when payment is made in accordance with § 3120.5-2(b) of this title. Failure to comply with § 3120.5-2(c) of this title shall result in rejection of the bid and forfeiture of the monies submitted under § 3120.5-2(b) of this title.

43 C.F.R. § 3120.5-3(a).

On the day of sale, MX Re-Store submitted the bids included in the record and, as the winning bidder, properly complied with the payment requirements of 43 C.F.R. § 3120.5-2(b). Its bid constituted “a legally binding commitment to execute the lease bid form,” and the record shows that it did. Each lease bid form constituted “a binding lease offer.” Within days of the lease sale, MX Re-Store regretted its bids and requested release from its “legally binding commitment.”

Certainly “it is well-established that the Secretary of the Interior has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertence of his subordinates, including administrative errors committed prior to lease issuance.” *Grynberg*, 169 IBLA at 183, *citing Boesche v. Udall*, 373 U.S. at 478-79; *Clayton W. Williams, Jr.*, 103 IBLA 192, 202 (1988). This is consistent with Departmental regulations, which provide that an improperly issued lease is subject to cancellation. 43 C.F.R. § 3108.3(d).

The facts of this appeal, however, are not within the scope of that regulation and are significantly dissimilar to the circumstances to which the limited principle established in the *Boesche* and *High Plains* cases and their progeny apply. The Court in *Boesche* made clear the limits of its decision: “We sanction no broader rule than is called for by the exigencies of the general situation and the circumstances of this particular case. We hold only that the Secretary has the power to correct administrative errors of the sort involved here by cancellation of leases in proceedings timely instituted by competing applicants for the same land.” 373 U.S. at 480. No such administrative errors exist here.

The issue in this case is not whether the United States is bound or estopped by actions of its officers or agents that are not sanctioned by law. *See* 43 C.F.R. § 1810.3. Appellant does not allege and the record does not demonstrate that there was any mistake on the part of BLM which might warrant rescinding the binding lease offer and refunding monies paid under 43 C.F.R. § 3120.5-2(b). Rather, because of its “unilateral mistake,” MX Re-Store no longer wished to pay the balance due on May 24, 2007, and accept leases for any of the parcels. And, although it asks the Board to “cancel” its lease, no leases were awarded. *See Case Recordation, (Live)*

Serial Register Page for each lease. In effect, appellant seeks to withdraw its bids, which BLM rejected for failure to comply with the payment requirements of 43 C.F.R. § 3120.5-2(c). The regulations do not authorize bid withdrawal. 43 C.F.R. § 3120.5-3(a).

[2] Regulations governing competitive lease sales provide for strict enforcement of its payment and forfeiture requirements. *Carlyle, Inc.*, 164 IBLA 178, 181 (2004); *John P. Lockridge*, 159 IBLA 117, 119 (2003); *Partnership One, Inc.*, 119 IBLA 7, 11 (1991). The regulations prohibit bid withdrawal (43 C.F.R. § 3120.5-3(a)) and require forfeiture in the case of noncompliance with 43 C.F.R. § 3120.5-2. In cases arising under the rules as amended in 1988, appellants have appealed BLM's rejection of their competitive oil and gas lease bids for failure to pay the full amount of the bonus bid balance within 10 working days after the auction under 43 C.F.R. § 3120.5-2(c). See *Carlyle, Inc.*, 164 IBLA 179; *John P. Lockridge*, 159 IBLA 117; *Morgan Richardson Operating Co.*, 126 IBLA 332 (1993); *Eastern American Energy Corp.*, 123 IBLA 300 (1992); *Partnership One, Inc.*, 119 IBLA 7. Unlike MX Re-Store, appellants in those cases sought to retain their bids. Nevertheless, application of the regulations requires the same result in these circumstances as in those. "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 C.F.R. 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." *Carlyle, Inc.*, 164 IBLA at 181, citing *John P. Lockridge*, 159 IBLA at 119; and *Partnership One, Inc.*, 119 IBLA at 11.

We discussed the rationale for the Department's strict enforcement of the regulatory requirement for forfeiture under the prior rules in *D.B. Allsup*, 92 IBLA 197, 199 (1986). Regulations in existence prior to the 1988 amendments required a successful bidder to submit a deposit equal to 1/5 of the amount bid on the day of sale. 43 C.F.R. § 3120.1-4 (1982). The bidder had until the 15th day after receipt of the lease, rental and royalty schedules or the 30th day after the date of the sale, whichever was later, to execute the lease and pay the first year's rental and the balance of the bonus bid. 43 C.F.R. § 3120.3-2 (1982). Failure to comply resulted in forfeiture of the deposit. 43 C.F.R. § 3120.4-1 (1982).

In *Allsup*, appellants, successful bidders at a competitive oil and gas lease sale, regretted having bid on certain parcels after discovering belatedly that two dry wells had been drilled on the property. 92 IBLA at 198. Appellants requested refunds for the deposits that they forfeited when they failed to pay the balance of the bonus bids. *Id.* Affirming BLM, we explained that allowing a successful bidder to change his mind without penalty after BLM has accepted the bid "would obviously place him in a much better position than other bidders, an approach that would be destructive [to]

the orderly conduct of lease sales Further, it would be unfair to potential bidders of limited means if those bidders with greater capital resources were permitted to bid on many parcels and later decide which leases to execute and accept without penalty.” *D.B. Allsup*, 91 IBLA at 199, *citing Howell Spear*, 56 IBLA 151 (1981); *Bernard P. Gencorelli*, 43 IBLA 7 (1979); *Fred S. Ghelarducci*, 41 IBLA 277 (1979).

A similar rationale underlies the current regulations. In 1988, when the Department amended its regulations covering competitive and noncompetitive onshore oil and gas leasing on Federal mineral lands managed by BLM to implement provisions of FOOGLRA, the Department examined its payment and forfeiture requirements. 53 Fed. Reg. 22,814, 22,830-31 (June 17, 1988). The final amendments included procedures for the conduct of oral auctions by each BLM State Office at least quarterly and required payment on the day of auction of the national minimum acceptable bid of \$2 per acre, the total first year’s rental, and a \$75 administrative fee, with the remainder of the bonus bid to be remitted within 10 days.

During the process, the Department received a number of comments regarding its proposed payment requirements. One commenter suggested no payment be required on the day of the sale and a few recommended payment of the full bonus bid on the day of sale. 53 Fed. Reg. at 22,830. The Department responded that:

[C]onsideration was given to the merits of requiring either the full bonus bid amount or the \$2 minimum bonus bid per acre or fraction thereof at the oral auction If experience at future oral auctions finds that payment of the balance of the bonus bid fails to be remitted in a timely manner within 10 working days following the last day of the auction, a future rulemaking will be considered to require 100 percent of bonus payments at the oral auction, similar to [the] requirement now made by some State governments.

Id.

The Department also considered several comments pertaining to forfeiture. A few suggested that a bid should be binding and supported a penalty for failure to honor a bid. Another “questioned the right of the Government to retain the first year’s rental when a lease never issues and, further, [questioned] whether a bidder could be deemed liable as well, under any circumstances, for the balance of the bonus bid.” 53 Fed. Reg. at 22,831. In response, the Department was clear: “A bid is binding and does commit the bidder to payment of the full bonus amount. This provision as well as retention of the minimum bonus bid, the first year’s rental and the administrative fee should deter irresponsible bidders.” *Id.*

The regulations were developed to deter the sort of bidding exemplified in this appeal and to encourage potential bidders to exercise due diligence before submitting bids at Federal competitive oil and gas lease sales. BLM provided the information MX Re-Store needed to identify and consider the location of all parcels to be offered at the lease sale held on May 10, 2007. In accordance with the regulations at 43 C.F.R. § 3120.4-1(a), BLM published a Notice of Competitive Lease Sale, which provided a legal description of the lands, including the township, range, and section number of every parcel, including those on which MX Re-Store bid. Mar. 9, 2007, Notice of Competitive Oil and Gas Lease Sale May 10, 2007, at 5, 9, 10, and 15. The Lease Bid Requests, which appellant submitted for each bid, also identified the legal description of each parcel. Although we credit appellant for acknowledging its “unilateral mistake” pertaining to each bid, we cannot grant the equitable relief the company now seeks.

In view of the clarity of 43 C.F.R. § 3120.5-3(a), which as a duly promulgated regulation of the Department we are bound to follow (*Seldovia Native Association*, 173 IBLA 71, 80 (2007), and cases cited), we reject appellant’s arguments supporting its contention that the company is entitled to a refund. MX Re-Store made “a legally binding commitment to execute the lease bid form and accept a lease, including the obligation to pay the bonus bid, first year’s rental, and administrative fee.” See 43 C.F.R. § 3120.5-3(a). When it failed to pay the full bonus bid, BLM properly rejected its three bids and declared forfeited the monies MX Re-Store had submitted for those bids on the day of sale, pursuant to 43 C.F.R. § 3120.5-2(b).

Appellant has not sustained its burden of showing error in the Decision. *Twin Arrow, Inc.*, 118 IBLA 55, 58 (1991). Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

_____/s/_____
 Christina S. Kalavritinos
 Administrative Judge

I concur:

_____/s/_____
 James F. Roberts
 Administrative Judge