

Editor's note: 84 I.D. 114; clarification by Under Secretary dated July 21, 1977 -- See 29 IBLA 233A th C below.

ALASKA OIL AND MINERALS CORPORATION

IBLA 76-683

Decided March 23, 1977

Appeal from decision of the Manager, Alaska Outer Continental Shelf Office, Bureau of Land Management, denying request for reconsideration of a bid submitted in Outer Continental Shelf Oil and Gas Lease Sale No. 39.

Set aside and remanded.

1. Oil and Gas Leases: Competitive Leases--Outer Continental Shelf Lands Act: Generally

In order to constitute a clear and definite offer, a bid for an outer continental shelf oil and gas lease must adequately identify the tract which is the subject of the bid.

2. Federal Employees and Officers: Generally--Oil and Gas Leases: Competitive Leases--Outer Continental Shelf Lands Act: Generally

It is not the responsibility of Bureau of Land Management employees to decipher ambiguous bids for outer continental shelf

oil and gas leases in order to save the bidder from the consequences of his own negligence. A bid which was apparently intended for one tract and contains data appropriate for that tract, but identifies a different tract as the subject of the bid, is properly considered, and rejected as too low, for the identified tract.

3. Contracts: Formation and Validity: Bid Award--Oil and Gas Leases: Competitive Leases--Outer Continental Shelf Lands Act: Generally

A rejected bid in an outer continental shelf oil and gas lease sale may be reconsidered and accepted when it is in the public interest to do so. The essential elements in allowing such a reconsideration are the fairness and impartiality of the sale toward all bidders. In a situation where a bid was initially rejected as too low for the tract identified in the bid and the bidder immediately requests reconsideration because he intended to bid for a different tract, where the tract number stated in the bid corresponds to the block number of the intended tract, where all other relevant data in the bid corresponds to the intended tract and only to the intended tract, and where no other person submitted a bid for the intended tract, it is proper to reconsider the bid to determine if it is in the public interest to accept the bid for the intended tract.

APPEARANCES: J. G. Cassity, President, Alaska Oil and Minerals Corporation, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Alaska Oil and Minerals Corporation appeals from the June 2, 1976, decision of the Manager, Alaska Outer Continental Shelf Office,

Bureau of Land Management (BLM), denying its request for reconsideration of a bid it submitted in Outer Continental Shelf (OCS) Oil and Gas Lease Sale No. 39. Appellant alleges that it intended the bid to be considered for Tract No. 39-6, and it requested the reconsideration because BLM considered, and rejected, the bid as applicable to Tract No. 39-9. The OCS Manager denied the request for reconsideration because 43 CFR 3302.4(a) requires that a separate bid must be submitted for each lease unit described in the notice of sale.

OCS Lease Sale No. 39 involved 205 tracts, numbered 39-1 to 39-205, for which sealed bids could be submitted. The OCS Official Protraction Diagram, NO 7-1, Icy Bay, published at 41 FR 10797, describes the two tracts involved here as follows:

	<u>Tract No.</u>	<u>Block</u>	<u>Description</u>	<u>Hectares</u>	<u>Acreage</u>
	*	*	*	*	
	39-6	9	<u>1/</u>	101.17	250.00
*	*	*	*	*	*
	39-9	25	All	2304.00	5693.18
*	*	*	*	*	*

1/ That portion seaward of the three geographical mile line.

The bid submitted by appellant stated the following:

The following bid is submitted for an oil and gas lease on the tract of the Outer Continental Shelf specific [sic] below:

Tract No. 9 Total Amount Bid: \$ 6,290.01

Amount per Hectare: \$ 62.17

Amount of Cash Bonus Submitted with bid: \$ 1,258.02

All the bids on OCS Lease Sale No. 39 were opened on April 13, 1976. Since appellant's bid indicates "Tract No. 9," BLM considered it with the bids for Tract No. 39-9. Appellant's bid was not the high bid for this tract and was therefore rejected.

On April 14, 1976, appellant requested that its bid be reconsidered for Tract No. 39-6. At that time, and now on appeal, it argues that the digit "9" in the bid refers to block 9, not Tract No. 39-9, that dollar amounts in the bid do not fit the acreage of any tract but No. 39-6, and that no other bids were submitted on Tract No. 39-6. On appeal, appellant further argues that the Notice for OCS Lease Sale No. 39 did not require the bids to include any specific part of the descriptions of the tracts.

[1, 2] The rules and procedures for bidding on OCS leases are set out at 43 CFR Subpart 3302 and in the notice of this particular sale published in the Federal Register at 41 FR 10792. There is no express regulatory requirement concerning the description to be furnished for the tract sought. However, it is fundamental under basic contract principles that the bid must adequately identify the tract to constitute a definite and clear offer.

See, e.g., 17 Am. Jur. 2d Contracts §§ 31, 75 (1964); 17 C.J.S. Contracts § 36(2) (1963); 1 WILLISTON ON CONTRACTS §§ 37, 42 (1957). There is certainly no difficulty in ascertaining how the parcel sought could be identified. Regulation 43 CFR 3302.1 refers to tracts to be offered for lease by competitive sealed bidding. The notice invited sealed bids for "tracts described in paragraph 12 herein." 41 FR 10792. That paragraph, as the quoted listing above shows, refers to the "Tract No.," which is a sequential number devised for Sale No. 39, to a "Block" number referring to the tract's location off the coast of Alaska, and then to other figures indicating how much of the "Block" is in the tract and the area of the tract in hectares and in acres. Furthermore, the notice of sale contained a suggested bid form which appellant followed. 41 FR at 10813. The first item in the suggested form, and the first item in appellant's bid, is headed "Tract No.,"; the other items relate to the amount of the bid.

The references to the "tract" in the notice and regulations obviously refer to the tract as it is listed under its tract number. Use of the tract number is the clearest means of identifying the parcels listed for competitive bidding. While it is true that the dollar amounts in appellant's bid are only compatible with the hectares in Tract No. 39-6, the bid identifies the tract as "Tract No. 9." In arguing that the single digit "9" coincides with the block number in Tract No. 39-6, appellant ignores the fact that in the bid, the number is clearly labeled "Tract No."

It is not the responsibility of BLM employees to decipher ambiguous bids in order to save the bidder from the consequences of his own negligence. See Stanley J. Pirtle, 26 IBLA 348 (1976); Richard V. Bowman, 19 IBLA 261 (1975). To require BLM to interpret a bid in order to determine what tract is applied for, other than by the tract number listed in the bid, would open a Pandora's box of complications disruptive of an orderly bidding process. Therefore, the Alaska OCS office could not originally have considered the bid for any parcel other than Tract No. 39-9, the tract identified in the bid. Since the bid was not the high bid for Tract No. 39-9, it was properly rejected for that tract. Appellant's concern, however, is with Tract No. 39-6 and whether its subsequent clarification of the correct identification of the tract sought may now be considered.

[3] Although the OCS leasing regulations do not authorize reconsideration of rejected bids, neither do they prohibit it. See 43 CFR Part 3300. Regarding reconsideration of a rejected bid for an upland competitive oil and gas lease, this Board found that BLM does have the authority to reconsider, and accept, a rejected bid. Phillips Petroleum Co., 28 IBLA 175 (1976). The Board, at 177 of the Phillips decision, relied on the following principle as the basis of its holding:

The Comptroller General has held repeatedly that the public interest in protecting the integrity of the

competitive bidding system is so great that the United States may accept a once-rejected bid when it is in the public interest to do so. 53 Comp. Gen. 775 (1974); 48 Comp. Gen. 19 (1968); 46 Comp. Gen. 371 (1966); 42 Comp. Gen. 604 (1963).

We believe the same principle is applicable to OCS oil and gas lease sales. The OCS Manager may reconsider and accept rejected bids if it is in the public interest to do so. This requires a two-step process: first, does the situation warrant reconsideration; and second, if reconsidered, is it in the public interest to accept the bid.

Unlike the situation in Phillips Petroleum Co., *supra*, appellant is requesting reconsideration of a bid that requires clarification. In the area of competitive bidding for mineral leases, the Department of the Interior has referred to decisions of the Comptroller General for general guidance in the processing of requested bid modifications and reconsiderations. For example, in Malcolm N. McKinnon, A-29979 (June 12, 1964), the sole bidder for a competitive coal lease requested modification of his accepted bid in the form of a reduction in the required minimum bonus payment. In denying the request, the Assistant Solicitor quoted decisions of the Comptroller General, particularly 31 Comp. Gen. 660, 661 (1952):

With respect to the matter of whether a bidder may be permitted to change a provision in its bid subsequent to the opening of the bid, it has been held that if the

provision be material and in any way affects the price, quality, quantity, limits the bidder's liability for delays or for failure to perform, or the like, a change may not be permitted. See 17 Comp. Gen. 554; 20 id. 4; 30 id. 179. * * *

In North American Coal Corp., 74 I.D. 209 (1967), the high bid for a competitive coal lease was rejected because the bidder failed to include statements of citizenship and coal lease interests with his bid. The Department allowed a late filing of the required statements under Departmental regulations and, relying on decisions of the Comptroller General, accepted the high bid. ^{1/} The Solicitor reasoned, as summarized by this Board in Phillips Petroleum Co., supra at 177, that

* * * the essential elements in competitive sales are fairness and impartiality to all bidders and not an undeviating compliance with the regulations. * * *

As shown by the above decisions, the question of reconsideration and/or clarification requires an examination of the reason the

^{1/} A key distinction was made in this decision between bids on competitive mineral leases and offers on noncompetitive mineral leases. For noncompetitive mineral lease offers, strict compliance with regulations is required because the essential element is determining the first qualified offeror. For competitive lease offers, however, the amount of the bid replaces priority of filing as the determining factor. Id. at 211; Ballard E. Spencer Trust, Inc., 18 IBLA 25, 28 (1974), aff'd, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976); Silver Monument Minerals, Inc., 14 IBLA 137, 139 (1974).

bid was rejected and the effect the requested action will have on the bidding process. Appellant's bid was originally rejected on Tract No. 39-9 because it was too low. The case file indicates that appellant's bid was considerably lower than the successful high bid on that tract. Appellant is not attempting to change any part of its bid. Since there were no other bids submitted for Tract No. 39-6, no other bidders are unfairly prejudiced by reconsideration of appellant's bid for that tract. Except for the confusion over the proper tract number, appellant's bid complies in all respects with the description of Tract No. 39-6. Moreover, Tract No. 39-6 has a total area (101.17 hectares or 250 acres) which is different than the total area in any of the other 204 tracts listed in OCS Lease Sale No. 39. The differences between Tract No. 39-6 and Tract No. 39-9 are sufficient to remove any question that appellant's timely request for reconsideration was not an attempt to have one bid considered for two tracts in violation of 43 CFR 3302.4(a).

We note that regulation 43 CFR 3302.5 provides, inter alia, that if the authorized officer fails to accept the highest bid for a lease within 30 days after the date on which the bids are opened, all bids for that lease will be considered rejected. This regulation, however, does not directly or impliedly prevent reconsideration of the bid in the circumstances of this case. Therefore, since there is no legal barrier to reconsideration, we conclude the public interest will best be served by reconsidering appellant's bid for Tract No. 39-6. On remand, all else being regular, the Alaska OCS

manager should determine whether it is in the public interest to accept the bid at this time or whether the bid should be rejected on its merits. See Phillips Petroleum Co., supra; 53 Comp. Gen. 737, 739-40 (1974).

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 set aside and the case remanded for further consideration consistent with this opinion.

Joan B. Thompson

Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Martin Ritvo
Administrative Judge

July 21, 1977

DECISION

ALASKA OIL and MINERALS CORPORATION

29 IBLA 224 (1977)

Award of Outer Continental
Shelf Oil and Gas Lease,
and Clarification of Interior
Board of Land Appeals Decision

By decision dated March 23, 1977, the Interior Board of Land Appeals set aside a decision by the Manager, Alaska Outer Continental Shelf Office, Bureau of Land Management, and remanded the case to the Manager for further consideration. Alaska Oil And Minerals Corporation, 29 IBLA 224. The Manager had denied Alaska Oil and Minerals Corporation's request for reconsideration of a bid it submitted at OCS Lease Sale No. 39. The facts as stated in IBLA's decision adequately describe the background of the case, and are incorporated herein by reference.

Pursuant to the Board's decision, the Bureau of Land Management has reconsidered the bid by Alaska Oil and Minerals Corporation for tract number 39-6, block 9, in the amount of \$6,290.01 (\$62.17 per hectare) under the Sale No. 39 post-sale review criteria, and made the following determinations:

1. Except for the improperly defined tract number, the bid complies in all other respects with the description of tract number 39-6.
2. No other bidders would be unfairly prejudiced by the reconsideration of Alaska Oil and Minerals Corporation's bid for that tract.
3. Alaska Oil and Minerals Corporation has resubmitted its check for the one-fifth bonus bid amount.
4. It is in the public interest to accept the bid for tract number 39-6.

29 IBLA 233A

I concur in the Bureau's determinations and accept the recommendation that a lease be issued for tract number 39-6. Therefore, a copy of this decision should be transmitted to Alaska Oil and Minerals Corporation, together with the appropriate lease forms for execution and payment of the outstanding cash-bonus due, the lease forms and payment to be returned within 15 days of receipt of this decision.

The following comments are made to clarify relevant parts of the IBLA decision. Beginning with OCS Sale No. 33 (March 28, 1974), through the present time, including OCS Lease Sale No. 39, the final Departmental decisions accepting and rejecting bids for Outer Continental Shelf oil and gas leases have been reserved to and made by the Secretary of the Interior. In the Secretary's absence, the Under Secretary and Deputy Under Secretary have acted in the Secretary's stead. While these Secretarial decisions represent final Departmental action on a matter, in all respects, petitions for reconsideration of such decisions have been considered by the Office of the Secretary, when filed. Such reconsideration has been premised on the relief or further review accorded a petitioner under 43 CFR §4.21(c), from a decision by the Director or an Appeals Board of the Office of Hearings and Appeals, which is also a final administrative decision on behalf of the Department.

OCS oil and gas lease sale number 39 was held on April 13, 1976, whereat all bids received on tracts offered by leasing were publicly announced. On April 14, Alaska Oil and Minerals Corporation informed the Bureau of Land Management (Manager, Alaska OCS Office) of a mistake in its bid-offer, that its bid should be considered as having just beginning to prepare his recommendations on acceptances and rejections to the Director, BLM. As of that date, the Manager was just beginning to prepare his recommendations on acceptances and rejections to the Director, BLM. The Manager did not act on the petition for reconsideration filed by Alaska Oil and Minerals Corporation until after a Secretarial decision had been made to reject 5 bids for insufficiency, and to accept all other high bids. After the date of the Secretarial decision, April 22, 1976, only the Office of the Secretary could finally act on a petition for reconsideration of a bid received at sale number 39, unless the Secretary or Secretarial Officer directed that the Director of appropriate Appeal Board of the Office of Hearings and Appeals consider the petition for him. Therefore, to the extent the IBLA's decision at page 230, ruled that "the OCS Manager may reconsider and accept rejected bids if it is in the public interest to do so," this decision stands as a clarification. The OCS Manager may

reconsider and accept rejected bids if it is in the public interest to do so, only in instances when the accept or reject decision is originally made by the Manager, and not by the Secretary or a Secretarial Officer.

The subject IBLA decision is also clarified on a further ruling. At page 229 of its decision the Board states:

Although the OCS leasing regulations do not authorize reconsideration of rejected bids, neither do they prohibit it.

It should be noted that where the regulations provide that an administrative decision may be appealed, the filing of a petition for reconsideration of such a decision is an action which neither constitutes an appeal of that decision, nor tolls the period during which an appeal must be filed with the appropriate office.

James A. Joseph
Under Secretary

cc:

Director, BLM
Director, U.S.G.S.
A/S, Land and Water Resources
A/S, Energy and Minerals
A/S, Policy, budget and Administration
Chairman, IBLA, Office of Hearings & Appeals

29 IBLA 233C

