

HOWELL SPEAR

IBLA 81-131

Decided July 20, 1981

Appeal from decision of the New Mexico State Office, Bureau of Land Management, requiring execution of competitive bid forms, stipulations, and payment of balance of bonus bid subject to forfeiture of bid deposit. NM-A 41662.

Affirmed.

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

Failure of the high bidder at a competitive oil and gas lease sale to execute a lease results in forfeiture of the deposit submitted with the high bid. Refund of the deposit because offeror elects after the sale to withdraw his offer is not allowed.

APPEARANCES: Howell Spear, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Howell Spear appeals from the decision dated September 10, 1980, of the New Mexico State Office, Bureau of Land Management (BLM), accepting his bid deposit on parcel 23 of the July 23, 1980, New Mexico competitive oil and gas lease sale. The parcel was assigned serial number NM-A 41662.

The decision required appellant to return the executed lease forms and pay the balance of the bonus bid, the first year's rental,

and his proportionate share of the advertising costs within 15 days of receipt of the letter. The decision further recited that in the event of noncompliance appellant's offer would be rejected and appellant's deposit toward the bonus bid forfeited pursuant to 43 CFR 3120.4-1.

In a letter received by BLM on October 10, 1980, appellant expressed his desire to rescind his offer for a competitive lease for which his bonus bid of \$35,000 was the highest. In addition, appellant sought to obtain a refund of his bid deposit of \$7,000. In support of his request appellant submitted a statement of reasons which stated in part:

We have received your proposed lease covering Laredo Air Base, Webb County, Texas. We are herewith returning the proposed lease forms unsigned for the following reason:

1. Nothing was said in the Notice of Sale concerning the requirements that the City of Laredo would control the entry onto the lands covered by this lease.
2. Local inquiry has allowed us to determine that the City of Laredo will make such onerous requirements for drilling and entry on the lands covered by this lease, that it is, in effect, no lease at all.
3. Apparently other prospective bidders, including one local oil company, knew of these proposed restrictions, and that is the reason no other company bid on the acreage, but this was unknown to Howell Spear, sole bidder. \* \* \*

Because these facts were not disclosed to prospective bidders, and because your tendered lease really gives me nothing, as long as the City of Laredo controls the surface, I hereby withdraw my bid, and request refund of the \$7,000.00 deposited with the bid.

In the notice of oil and gas lease sale for parcel 23 the following statement pertaining to surface use restrictions is included in paragraph 3 of page 9:

No drilling activities will commence until the lessee has first checked with the proper City of Laredo official concerning the planning and zoning requirements, if any, for the lands [which] are inside the city limits. The lessee shall be required to comply [with] all such requirements. Any permits needed by the lessee from the City of Laredo

to drill within the city limits, will be received before any drilling activities can commence.

Thus, appellant cannot assert lack of notice that clearance would be required from the City of Laredo prior to commencing activity on the lease.

The record discloses that the subject land was acquired by the United States for use as Laredo Air Force Base and that upon discontinuance of this use the tract was conveyed to the City of Laredo with a reservation of minerals. Authority to lease the reserved mineral interest was delegated to the Secretary of the Interior by the General Services Administration pursuant to sections 203 and 205 of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. §§ 484, 486 (1976 and Supp. 1979). Although the record discloses past litigation brought by the city in an effort to obtain mineral title to the subject tract, this litigation was decided in favor of the United States with the result that mineral title is clearly in the United States. Any possible difficulties in obtaining access to the land for mineral development are purely speculative at this point and, if they arise, would be subject to legal remedy.

[1] The controlling regulation, 43 CFR 3120.4-1, states: "If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under this act." Allowing a bidder to withhold his bid deposit without penalty would obviously place him in a much better position than other bidders and this cannot be permitted as it would be destructive of the orderly conduct of lease sales. North American Coal Corp., 74 I.D. 209 (1967); see Lee E. Loeffler, 33 IBLA 18, 20 (1977). 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. Bernard P. Gencorelli, 43 IBLA 7 (1979); Fred S. Ghelarducci, 41 IBLA 277 (1979). Thus, appellant's bid deposit is subject to forfeiture if he declines to enter the lease and otherwise comply with the decision appealed from. Bernard P. Gencorelli, supra; Fred S. Ghelarducci, supra. By entering bids in the lease sale, appellant bound himself to comply with the regulations. Additionally, publication of the Notice of Oil and Gas Lease Sale put appellant on notice that "[b]ids may not be modified or withdrawn unless the modification or withdrawals are received prior to the time fixed for opening of the bids." Since the timely filing of a notice of appeal suspends the effect of the decision appealed from pending resolution of the appeal, 43 CFR 4.21(a), upon remand of the case BLM should allow appellant 15 days to comply with the decision upon penalty of forfeiture of the bid deposit.

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.

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C. Randall Grant, Jr.  
Administrative Judge

We concur:

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Gail M. Frazier  
Administrative Judge

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Douglas E. Henriques  
Administrative Judge