

DOLTON H. SIMMONS

IBLA 85-72

Decided March 13, 1985

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas competitive lease bids W-89140 and W-89152.

Affirmed.

1. Oil and Gas Leases: Competitive Leases -- Regulations: Waiver

The requirement that a bidder in a competitive oil and gas lease sale must submit one-fifth of the bid amount with his bid is mandatory and will not be waived.

APPEARANCES: William A. Riner, Esq., for appellant; Lowell L. Madsen, Esq., Office of the Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

At a competitive oil and gas lease sale held on August 29, 1984, the Wyoming State Office, Bureau of Land Management (BLM), declared Dolton H. Simmons to be the high bidder for parcel 3 (W-89140) and parcel 15 (W-89152). Simmons' total bid for parcel 3 was \$800 and he submitted \$40 as a deposit with the bid. Simmons' total bid for parcel 15 was \$2,000 and he submitted a \$100 deposit with the bid.

On September 18, 1984, BLM issued a decision rejecting both bids because each of the bids contained a deposit of only one-twentieth of the total bid amount. As noted in the decision, 43 CFR 3120.2-4(b) requires a submittal of one-fifth of the bid amount with the bid.

In the statement of reasons for appeal filed with this Board, Dolton H. Simmons (appellant) notes that he is an accountant and customarily relies for numerical and arithmetic calculations on a calculating machine, and that, after the bids had been dispatched with checks, but before the BLM decision rejecting his bids was received by him, he became aware that his calculator had malfunctioned in computing the amounts to be submitted with the bids. 1/ Appellant

1/ It is just as likely that appellant divided the bid amount by 20, rather than multiplying the bid amount by 0.20. In either case, the error was clearly appellant's.

did not submit the balance prior to rejection (even though he knew of the error) but now states that he stands ready to tender the additional funds initially required to be tendered with his bids and balance of his total bid for each lease. 2/

[1] As noted in the BLM decision, which is the subject of this appeal, the regulations at 43 CFR 3120.2-4(b) state that a bidder in a competitive oil and gas lease sale must submit one-fifth of the amount bid. Appellant did not.

This situation has been considered by this Board on a previous occasion. In Sarkeys, Inc., 26 IBLA 141, 142-43 (1976), we stated:

While the regulation is couched in mandatory terms, it must be noted that the Department has held that failure to submit a statement of citizenship with the bid, as required by 43 CFR 3120.1-4(a), is a waivable defect. North American Coal Corp., 74 I.D. 209 (1967). Recent Board cases have drawn a distinction between mandatory compliance with the regulations applicable in noncompetitive lease situations and compliance with those applicable regulations in a competitive lease situation. As this Board noted: "Mandatory compliance with the regulation is essential for determining the priority of non-competitive lease offers. The factor of priority in filing is lacking in the competitive lease situation, where high bid is the overriding criterion." Silver Monument Minerals, Inc., 14 IBLA 137, 139 (1974). See also Ballard E. Spencer Trust, Inc., 18 IBLA 25, 28 (1974). Provided the element of fairness to all participants is present, the Department has not insisted on rigid and unyielding application of its regulations in all circumstances in the competitive leasing milieu.

Nevertheless, in the instant cases where the difference between the amount required and the amount paid as a deposit was substantial, we feel that waiver of the requirement that a bidder submit one-fifth of the entire bid with his offer would be so

2/ On Jan. 22, 1985, counsel for BLM filed a motion to dismiss the appeal. As grounds for the motion, BLM noted that the Office of the Regional Solicitor, Rocky Mountain Region, had received a copy of the notice of appeal; that the notice of appeal did not include a statement of reasons; and that the Regional Solicitor had not received a copy of any statement of reasons. BLM correctly noted that the regulation, 43 CFR 4.413, requires an appellant to serve a copy of its statement of reasons on the Regional Solicitor, and that failure to do so within the time allotted subjects the appeal to summary dismissal. On Jan. 28, 1985, counsel for appellant filed a copy of a letter sent to the Office of the Regional Solicitor with a copy of the statement of reasons. In his letter, counsel for appellant stated that the forwarding of the document was prompted by receipt of the motion to dismiss and that his failure to file the statement of reasons with the Regional Solicitor was an oversight. In light of our disposition of this case, we need not rule on the motion.

prejudicial to the conduct of lease sales that it cannot be permitted. Indeed, in the North American Coal Corp., *supra* at 211, the Solicitor of the Department noted "[w]e agree that if a bidder could withhold his bid deposit without penalty he would be in a much better position than other bidders. * * * [S]ince the consequences of permitting deviations in so important an aspect of competitive bidding as the bid deposit would be so destructive to the orderly conduct of lease sales, such a lapse would not be excused." As that decision pointed out, the high bidder could withhold his deposit until he determined the desirability of obtaining the lease and either submit or not submit the deposit after he had completed his evaluation thus gaining a considerable advantage over other bidders. This analysis is valid whether the bidder deposited part of the one-fifth required or none of it. In short, we hold that failure to submit one-fifth of the amount bid with the sealed bid necessitates rejection of the high bid.

Accordingly, 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.

R. W. Mullen
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge

