

ABSTON CONSTRUCTION CO., INC.

IBLA 84-451

Decided October 22, 1985

Appeal from a decision of the Eastern States Office, Bureau of Land Management, amending coal lease ES 27221.

Affirmed.

1. Coal Leases and Permits: Generally--Coal Leases and Permits: Leases

Where a bidder at a competitive coal lease sale clearly has notice of the deferred bonus payment schedule required of the lessee, it accepts that schedule by submitting a bid. The failure of BLM to include the payment schedule in the lease does not foreclose BLM from amending the lease to include the payment schedule.

APPEARANCES: Dennis Herndon, Esq., Tuscaloosa, Alabama, for appellant; Kenneth G. Lee, Esq., Office of the Solicitor, Alexandria, Virginia, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Abston Construction Company, Inc. (Abston), appeals a decision dated March 28, 1984, issued by the Eastern States Office, Bureau of Land Management (BLM), which amended a coal lease, ES 27221, which had been issued effective November 1, 1982, to Abston for lands in Fayette County, Alabama. The decision stated that, at the time of lease issuance, section 30 of the lease terms was inadvertently left incomplete as to the amount of the deferred bonus bid and that the payment schedule of the deferred bonus was not listed in section 31 under "Special Stipulations." The decision amended the coal lease as follows:

Section 30 is amended to read: This lease is issued subject to the payment of \$214,368.00 by the lessee as a deferred bonus.

Section 31 is amended to include the payment schedule of the deferred bonus as follows:

November 1, 1983 - \$53,592.00
November 1, 1984 - \$53,592.00
November 1, 1985 - \$53,592.00
November 1, 1986 - \$53,592.00

The decision also stated that, although the lease terms were incomplete, the Detailed Statement of the coal sale clearly stated that one-fifth of the bonus bid had to be submitted with the offer and that the remainder of the bonus bid would be due and payable in four equal installments due on the first four anniversary dates of the lease.

In the statement of reasons for appeal Abston notes that the coal lease, as issued, did not provide for a deferred bonus to be paid on any schedule and that, although Abston had bid a bonus of \$214,368, it was anticipated that the payments would be paid as the coal was removed from the land, *i.e.*, one-fifth at the time of leasing and one-fifth at a time as one-fifth of the coal was removed. Abston contends that this interpretation is a reasonable approach to the payment of the bid bonus and that to require one-fifth payment each year, even when no coal has been removed, is a harsh interpretation of the "statement of the proposed coal sale."

Counsel for BLM, in answer to Abston's statement of reasons, notes that BLM published a Notice of Coal Lease Offerings by Sealed Bid in the Federal Register on November 23, 1981. 46 FR 57349. The notice instructed potential bidders that "[b]idding instructions and bidder qualifications are included in the Detailed Statement of the Lease Sale." Id. at 57350. Counsel for BLM contends that, contrary to Abston's representations, BLM notified Abston on at least two occasions prior to lease execution that the remaining four-fifths of its bonus bid were due on the first four anniversaries of coal lease ES 27221, and that the payment schedule was part of BLM's offer to lease which Abston accepted by submitting its bid.

The Detailed Statement of Coal Lease Sale provided:

Payment of the bonus bid shall be on a deferred basis. One-fifth of the bonus will be payable on the day of the sale. The balance shall be paid in equal annual installments due and payable on the first four anniversary dates of the lease. If a lease is relinquished or otherwise terminated, the unpaid remainder of the bid shall be immediately payable to the United States.

(Answer, Exh. 5 at 3). At the time the bids were submitted and at the time the lease issued the regulations provided in pertinent part at 43 CFR 3422.4(c) (1982):

In a deferred bonus payment, the lessee shall pay the bonus in 5 equal installments; the first installment shall be submitted with the bid. The balance shall be paid in equal annual installments due and payable on the next 4 anniversary dates of the lease. If a lease is relinquished or otherwise cancelled or terminated, the unpaid remainder of the bid shall be immediately payable to the United States.

[1] The Detailed Statement, quoted above, provided appellant with notice of the lease payment schedule. 1/ The Board has held that a bidder in a

1/ Appellant states in its reasons for appeal at page 1:

"A copy of the Detailed Statement of Coal Lease Sale, Dividing Ridge Tract is attached to this appeal. We are unable to find any language in

competitive lease sale accepts the conditions in the notice of sale by submitting a bid. Anadarko Production Co., 66 IBLA 174 (1982), aff'd, Anadarko Production Co. v. Watt, No. 82-1278C (D.N.M. Nov. 4, 1983). Likewise, the BLM decision dated March 18, 1982, forwarding lease forms to appellant for execution also contained notice of the applicable payment schedule (Answer Exh. 2). In addition, the regulations provided further notice of the payment schedule. 2/

A term or condition of a competitive sale of which a bidder has notice, but which is inadvertently omitted from the lease, may be added to the lease by amendment. Anadarko Production Co., supra; Palmer Oil and Gas Co., 43 IBLA 115 (1979). To allow the lessee to profit from the inadvertence of BLM would violate the basic principle of a competitive leasing situation, i.e., that all bidders have an equal opportunity to compete on a common basis. Lee E. Loeffler, 33 IBLA 18, 20 (1977). Moreover, the authority of the United States to protect a public interest is not vitiated or lost by acquiescence of its officers or agents, or by their neglect of duty or failure to act. 43 CFR 1810.3(a); Rachalk Production, Inc., 71 IBLA 374 (1983).

Appellant had notice of the deferred bonus payment schedule. It accepted that schedule by submitting a bid. BLM properly amended the lease to include the schedule.

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.

Bruce R. Harris
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

James L. Burski
Administrative Judge

fn. 1 (continued)

said statement that requires the payment of the bonus bid as outlined in the decision of March 28, 1984." The document attached by appellant is not a copy of the Detailed Statement. It is merely a copy of an Eastern States BLM news release prepared Aug. 23, 1982. It does not contain any information concerning the payment schedule other than to state that one-fifth of the total bonus must be tendered at the time of the sale. It does provide the names, addresses and telephone numbers of two BLM employees to contact for "[i]mportant details for potential lessees."

2/ Even assuming appellant did not have actual notice of the deferred bonus payment schedule, it would still be bound by that schedule since all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Our Turn Now Association, 77 IBLA 24 (1983).

