

FORTUNE OIL CO.

IBLA 85-637

Decided April 28, 1987

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, cancelling oil and gas lease W-89910.

Reversed.

1. Oil and Gas Leases: Cancellation -- Oil and Gas Leases: Competitive Leases

A decision cancelling a competitive oil and gas lease issued to the high bidder established by tie-breaking bid at a competitive lease sale will be reversed where BLM followed its established procedure for requesting additional bids and there is no evidence of fraud or collusion in the bidding process. An apparent defect in service of notice on one of the tie bidders discovered after lease issuance will not justify cancellation where no timely appeal has been taken from refund of the bid deposit and it does not appear from the facts that the ability of the Government to obtain the highest qualified bid has been prejudiced.

APPEARANCES: John R. Anderson, president, Fortune Oil Company, Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Fortune Oil Company appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated April 23, 1985, which cancelled competitive oil and gas lease, W-89910, and which requested additional bids for parcel 39.

Parcel 39 had been initially offered for sale on October 31, 1984. Appellant and Elmer E. Chasteen each submitted bids of \$ 3,829.68 for the parcel. These tying high bids represented identical bids of \$ 27 per acre for the parcel which contains 141.84 acres. 1/

1/ The parcel is located in the Collums Field and is described as T. 55 N., R. 73 W., sixth principal meridian, Wyoming, sec. 10: lot 2, sec. 23: SE 1/4 SE 1/4, tracts 64 D & E, Campbell County.

By decision dated November 7, 1984, BLM gave notice to appellant and Chasteen they had submitted tying high bids for parcel 39 and requested that additional sealed bids of at least the original amount be submitted to break the tie. The return receipt cards indicate, however, that both appellant's and Chasteen's copies of the decision requesting additional sealed bids were received (signed for) by a representative of appellant in Salt Lake City, Utah, notwithstanding the fact that Chasteen's address is in Fort Lauderdale, Florida.

The November 7, 1984, decision stated that November 26, 1984, at 10 a.m., was the deadline for submitting additional bids. Appellant responded with an additional bid. The record indicates no bid was received from Chasteen and, accordingly, his bid deposit was refunded November 28, 1984. A lease was issued to appellant as the high bidder effective January 1, 1985.

The subsequent April 23, 1985, decision issued by BLM, which is the subject of this appeal, states:

Since it appears that Mr. Chasteen did not receive the decision requesting an additional bid, we must hold lease W-89910 cancelled and again request additional bids to break the tie of \$ 3,829.68. The minimum bid acceptable will be \$ 3,829.68, and the deposit must be submitted in certified funds. Mr. Chasteen must also resubmit the one-fifth refunded to him. The additional bids requested must be received in this office by June 2, 1985, 4:30 p.m., and will be opened in the Receiving Room on June 3, 1985, at 10:00 a.m.

In the statement of reasons for appeal appellant contends that it has met all the provisions of the lease and is not in default on the terms of the lease and that BLM, in cancelling the lease, violated appellant's rights as lessee. Appellant requests that this Board reverse BLM's decision of April 23, 1985, and direct that the lease stand as issued to appellant. Chasteen, although served with a copy of the decision under appeal, the notice of appeal, and with appellant's statement of reasons, has neither responded to appellant's arguments nor indicated an intent to bid further.

[1] Where lands to be leased for oil and gas are within the known geological structure (KGS) of a producing oil and gas field they "shall be leased to the highest responsible qualified bidder by competitive bidding." 30 U.S.C. § 226(b)(1) (1982); 43 CFR 3120.1(a); 43 CFR 3120.5(b). Bids are opened at the time and date specified in the notice of lease sale. 43 CFR 3120.5(a). Although we find no provision in the regulations governing the procedure to be followed in the event of a tie for high bid, the BLM Manual provides for notice to the tie bidders allowing time to submit an additional bid to break the tie. BLM Manual Handbook 3120.1 (Competitive Leases) at 8 (Aug. 14, 1985). Accordingly, it appears BLM followed the proper procedure for breaking the tie and determining the high bidder.

However, as noted by BLM, there is some question as to whether Chasteen received the invitation to make an additional bid to break the tie. Although the return receipt cards bear the respective addresses of the tie

bidders, both cards were signed by the same person, Sandra J. Kinney, of Fortune Oil. Unfortunately, this fact was apparently not noticed by BLM until after issuance of the lease to appellant pursuant to its tie-breaking bid. The issue raised by this appeal is whether BLM may properly cancel a competitive oil and gas lease issued to the high bidder upon discovery after lease issuance that one of the bidders may not have received actual notice of the tie bid and the resulting invitation to submit an additional bid. Under the circumstances of this case, we find the answer is "no."

The Secretary of the Interior has the authority to cancel by administrative decision an oil and gas lease which was invalid at its inception because it issued in violation of statute or Departmental regulations. Boesche v. Udall, 373 U.S. 472 (1963); McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955); Emery Energy, Inc., 90 IBLA 70, 76 (1985). Although the Department under the Mineral Leasing Act has discretion whether or not to issue an oil and gas lease for a given tract of land, if a lease is issued for land within a KGS, the Department is under a statutory duty to issue the lease by competitive bidding to the highest responsible qualified bidder. Thus, this Board has previously upheld a BLM decision rescinding acceptance of an "apparent" high bid at a competitive oil and gas lease sale upon subsequent discovery of a higher bid properly filed in the lease sale but inadvertently overlooked by BLM. Jack M. Chodar, 36 IBLA 324 (1978). Although the discovery was made prior to lease issuance in the Chodar case and, hence, cancellation of the lease was not required, the same principle would apparently require lease cancellation if the discovery was made after lease issuance.

On the other hand, this Board has recognized that cancellation of a lease is improper where it was not issued in violation of any statute or regulation. See Carl J. Taffera, 71 IBLA 72, 76-77 (1983). It may be more precise to add to those categories the situation where an officer of BLM acts beyond the scope of his authority in issuing an oil and gas lease and, hence, the lease is voidable. See John Bloyce Castle, 81 IBLA 53, 55-57 (Burski, A. J., concurring).

Under the circumstances of the present case, we cannot find that appellant's lease was properly cancelled. Although it appears that Chasteen did not receive timely notice of the initial tie in the bidding and the resulting request for tie-breaking bids, we note that his bid deposit was refunded on November 28, 1984. This constituted a rejection of his bid. This decision became final when Chasteen did not question or respond to the refund/rejection and he must be considered to have waived his right to bid further on the lease. Cf. Sarkeys, Inc., 1 IBLA 123, 127-128 (1970) (incumbent upon lessee to inquire regarding circumstances of erroneous refund or suffer the consequences of erroneous repayment). ^{2/} The lease was awarded to the tie-breaking high bidder identified through BLM procedures established for this purpose.

^{2/} We note also that Fortune's appeal of BLM's decision elicited no response from Chasteen. He did not come forward in support of BLM's action or respond to Fortune's statement of reasons. At no time has he indicated that had he been aware of the tie-bid procedure, he would have submitted an additional bid.

We cannot find from the facts of this case that the defect in notice prejudiced the right of the Government to obtain the highest qualified bid. In the absence of evidence of fraud or collusion on the part of the high bidder which would vitiate the bidding process, we reverse the decision cancelling the lease.

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 reversed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge