Editor's note: 79 I.D. 596

TIPPERARY LAND & EXPLORATION CORPORATION

IBLA 71-158 Decided September 19, 1972

Appeal from Bureau of Land Management decision rejecting high bid for oil and gas lease on Outer Continental Shelf Land, OCS-G 2020.

Reversed.

Administrative Practice -- Words and Phrases

"Competitive Bidding." Competitive bidding does not require that more than one bid be submitted before the authorized officer, but only that the officer, by due advertisement, give opportunity for everyone to bid.

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

The competitive bidding requirement in the Outer Continental Shelf Lands Act for awarding oil and gas or sulfur leases is satisfied by due advertisement and a giving of an opportunity to bid, and contemplates that all bidders be placed upon the same plane of equality, and that they each bid upon the same terms and conditions set forth in the advertisements, and the pertinent statutes and in the Department's regulations. Competitive bidding does not require that more than one bid be submitted before the authorized officer, but only that the officer, by due advertisement, give opportunity for everyone to bid.

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

A decision rejecting a bid for an Outer Continental Shelf Lands Act oil and gas lease will be set aside where the bid met two of three criteria used by the manager to evaluate bids, and the third one was improperly imposed.

APPEARANCES: Arlen Edgar, Vice President, Tipperary Land and Exploration Corporation.

OPINION BY MR. HENRIQUES

Tipperary Land & Exploration Corporation has appealed from rejection of its bid for tract 2138, E 1/2 Block 143, East Cameron area, Louisiana, OCS-G 2030, offered December 15, 1970, at an oil and gas lease sale pursuant to the Outer Continental Shelf Lands Act, 43 U.S.C. § 1337 (1970). The decision by the Manager, Outer Continental Shelf Office, BLM, stated:

> The notice of this sale published in the Federal Register Vol. 35, No. 205, Pages 16417-16419 inclusive, contained a statement that "The United States reserves the right and discretion to reject any and all bids, regardless of the amount offered."
>
> In accordance with this specific reservation the bid referred to above is hereby rejected for inadequacy of the cash bonus bid.

The appellant contends essentially that lack of geological information relating to the subject tract precludes any way of knowing if its bid is adequate or inadequate, and that rejection of the high bid is contrary to the Outer Continental Shelf Lands Act.

The record shows that the tract 2138 was considered to be part of a single prospect consisting of tracts 2137, 2138, and 2139. These tracts, as a group, are about 40 miles from shore, under a water depth of approximately 80 feet, and 6 miles north from the closest existing pipeline. Only one of these tracts, tract 2137, had ever been leased for oil and gas under the Act. It was offered for sale in 1955. A lease issued in response to a high bid of

$ 16.10 per acre expired August 31, 1960. No production of oil or gas was obtained under the lease. Several other tracts in blocks 129, 130, 148, and 149, adjacent on the north and south sides of tract 2137 were leased in response to the 1955 sale, and all the leases expired without any production of oil or gas being obtained.

Prior to the sale of December 15, 1970, the Government determined the risk value, and the risk-free value of tract 2138, as well as of the neighboring tracts 2137 and 2139, to be nominal only. 1/

At the sale, the sealed bid of $ 45,075 ($ 18.03 per acre) of the appellant was the only bid submitted for tract 2138. The adjacent tracts each received three bids, with high bids of $ 84.86 per acre for tract 2137, and $ 38.36 per acre for tract 2139. Each of these high bids was accepted.

Before the sale the Geological Survey had characterized tract 2138 and the adjacent tracts 2137 and 2139 as being wildcat acreage located on a structural feature which has not previously produced oil or gas, but which is in close proximity to other producing structures. Projection of these nearby reservoirs and sand conditions into the leasing tract is possible through the use of geophysics,

---

1/ "Nominal" is defined in Webster's Third New International Dictionary (1966), as "Being so small, slight, or negligible as scarcely to be entitled to the name: trifling, insignificant."

stratigraphy, and paleontology. It is also possible to obtain a reserve estimate based on reserve calculations performed in a nearby comparable producing structure. After the sale, the Geological Survey made no recommendation that the high bid for tract 2138 be rejected.

The manager stated that he rejected high bids tendered at the sale which failed to meet two of these three tests: 1) one hundred percent of the pre-sale evaluation, 2) fifty percent of the risk-free value, 3) the high bid exceeded at least five other bids for the same tract. The manager has reported that both the pre-sale evaluation and the risk-free value were "nominal". Applying the accepted definition of this term, it is obvious that the high bid of Tipperary exceeded both the pre-sale evaluation and the risk-free value. Looking at the third test applied by the manager, that the bid exceeded at least 5 other bids for the tract, we note in his "Bid Adequacy Determination Data," the following comments relative to tract 2138:

> No competition on tract.
> Very poor bidding pattern of high bidder in this sale.
> High bid less than 1/4 that was offered for adjacent tracts at this sale.
> Below historical prices in this area.

Within the Outer Continental Shelf Lands Act requirement for "competitive bidding" in awarding oil and gas or sulfur leases, we construe the quoted term as requiring due advertisement, the giving of an opportunity to bid and that all bidders be placed upon the same plane of equality, that they each bid upon the same terms and conditions involved in the advertisement, including the pertinent statutes and the regulations, and that the advertisements specify as to all bids the same specifications. Competitive bidding does not require that more than one bid be submitted before the authorized officer, but only that the officer, by due advertisement, give opportunity for everyone to bid. See Wilmington Parking Authority v. Ranken, 105 A. 2d 614 (Del. 1954).

Notice of the subject sale was published in the Federal Register, Volume 35, pages 16417-16419, on October 21, 1970. The test requirement of at least six bids per tract is not compatible with our definition of "competitive bidding."

The sale notice carried a caveat that the United States reserves the right and discretion to reject any and all bids, regardless of the amount offered. This Board has affirmed the action of a manager to reject high bids for reason of inadequacy where the same parameters were applied to all high bids rejected. See Kerr McGee Corporation, et al., 6 IBLA 108 (June 5, 1972); Humble Oil and Refining Company, 4 IBLA 72 (November 8, 1971).

From our review of the records and documents used by the manager in arriving at his decision relative to tract 2138, it is evident that he did not adhere to the same conditions in determining that the high bid of Tipperary was inadequate in amount, as he professed to have applied to all high bids rejected by him, to wit: a high bid would not be rejected unless it did not satisfy two of three conditions that are, (1) meet 100 percent of pre-sale evaluation, (2) 50 percent of the risk-free value, or (3) exceed at least five bidders for the tract. As the bid of Tipperary did meet two of these three tests (and we have shown that the third test was improper), it must be held that the rejection of the high bid of Tipperary for tract 2138 was improper.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, (211 DM 13.5; 35 F.R. 12081), the decision of the manager is reversed, and the case is remanded to the Bureau of Land Management for further appropriate action, not inconsistent herewith.

Douglas E. Henriques
Member

We concur:

Martin Ritvo
Member

Edward W. Stuebing
Member