

GERALD S. OSTROWSKI

IBLA 77-58      Decided March 28, 1978

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting appellant's competitive oil and gas lease offer ES 16482.

Set aside and remanded.

1. Oil and Gas Leases: Competitive Leases—Oil and Gas Leases: Discretion to Lease

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

2. Oil and Gas Leases: Generally—Oil and Gas Leases: Competitive Leases

The U.S. Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

3. Oil and Gas Leases: Known Geological Structure

Where an offeror submits a bid in a competitive sale, under the law and regulations governing such sales, he accepts the premise that the land is within the known geologic structure of a producing field.

4. Oil and Gas Leases: Competitive Leases

Where the high bid tendered at a competitive upland oil and gas lease sale, which

is not clearly spurious or irresponsible, is rejected solely on the basis of a conclusory statement that the bid is inadequate and the factual basis for that conclusion does not appear in the case record, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid.

APPEARANCES: Gerald S. Ostrowski, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE GOSS

This appeal is brought by Gerald S. Ostrowski from a decision of the Eastern States Office, Bureau of Land Management (BLM), rejecting appellant's competitive upland oil and gas lease offer. Appellant submitted the high bid in a competitive sale. The parcel embraced certain land within the known geological structure of the producing oil or gas field (hereinafter abbreviated as KGS) identified as the Bayou Middle Fork Field in Claiborne Parish, Louisiana.

The decision of the BLM was based on a memorandum from the United States Geological Survey advising that appellant's bid is inadequate. The memorandum noted that Survey had found the minimum acceptable resource value per acre, as determined in the presale evaluation, to be in excess of appellant's bid. Survey stated that the evaluation was "based upon proximity to existing production and previous leasing transactions in the area," without further elaboration. Accordingly, Survey recommended that the bid be rejected.

In his statement of reasons for appeal, appellant does not dispute the right of the United States to reject any and all competitive oil and gas lease bids. However, appellant argues that a decision rejecting a high bid in the exercise of administrative discretion must be supportable on a rational basis, citing Arkla Exploration Co., 25 IBLA 220 (1976). Further, appellant contends that a high bid at a competitive sale of oil and gas leases which is not clearly spurious or irresponsible cannot be rejected solely on the statement of an official that the bid is inadequate. Frances J. Richmond, 24 IBLA 303 (1976). Appellant further argues that such factors as the proximity of the parcel to non-KGS lands, the distance from the nearest production in the field, and the rate and type of production achieved from the field to date create an inference that the value of a lease on the land is much less than that asserted by Survey. Certain data regarding prices of other leases sold and results of drilling on other leases is cited by appellant to support his contention. Appellant represents that the property is located near, rather than within, a KGS.

The issue raised by this appeal is whether a decision rejecting a high bid at a competitive oil and gas lease sale in the exercise of the Secretary's discretionary authority will be affirmed where the decision is based on the conclusory statement that the bid is inadequate, without factual support in the record for this conclusion.

[1] The Secretary of the Interior, or his authorized delegate, clearly has the authority to reject a high bid at a competitive oil and gas lease sale on the basis of an inadequate bonus. Section 17 of the Mineral Leasing Act, as amended, provides in part:

If the lands to be leased are within any known geological structure of a producing oil or gas field, they shall be leased to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than six hundred and forty acres, which shall be as nearly compact in form as possible, upon the payment by the lessee of such bonus as may be accepted by the Secretary. [Emphasis added.]

30 U.S.C. § 226(b) (1970). This right to reject competitive oil and gas lease offers is recognized in the regulations at 43 CFR 3120.3-1. The Board has upheld the authority of the Secretary or his delegate to reject bids for inadequacy of the bonus offered provided the rejection has a reasonable basis in fact. Frances J. Richmond, 29 IBLA 137 (1977); Yates Petroleum Corporation, 27 IBLA 224 (1976); Arkla Exploration Co., *supra*; H & W Oil Co., Inc., 22 IBLA 313, 315 (1975). <sup>1/</sup>

[2, 3] The Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary (or his delegate) is entitled to rely upon Survey's reasoned analysis. Coquina Oil Corporation, *supra* note 1; Frances J. Richmond, *supra*; Arkla Exploration Co., *supra*. The fact that appellant may have reached a different conclusion regarding the value of a tract subject to competitive bidding on the basis of the facts known to him does not require setting aside a decision rejecting his bid on appeal where the record shows that the Survey has reached the conclusion that the bid is inadequate in the proper exercise of its technical expertise. See Yates Petroleum Corporation, 32 IBLA 196 (1977). Further, when an offeror submits a bid in a competitive sale, under the law

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<sup>1/</sup> The policy of the Department in the administration of its competitive leasing program is to seek the return of fair market value for the grant of leases, and the right to reject any and all bids which would not provide a fair return is reserved. Coquina Oil Corporation, 29 IBLA 310, 311 (1977).

and regulations governing such sales, he accepts the premise that the land is within a KGS.

[4] However, where the bid is not spurious or unreasonable on its face and the record fails to disclose the factual basis for the conclusion that the bid is inadequate, the Board has held that the decision must be set aside and the case remanded for compilation of a more complete record and readjudication of the acceptability of the bid. Yates Petroleum Corporation, supra; Yates Petroleum Corporation, 27 IBLA 224 (1976); Frances J. Richmond, 24 IBLA 303 (1976); Arkla Exploration Co., 22 IBLA 92 (1975). 2/

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 set aside and the case is remanded to allow the compilation of a more complete record and readjudication of the bid.

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Joseph W. Goss  
Administrative Judge

We concur:

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Joan B. Thompson  
Administrative Judge

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Frederick Fishman  
Administrative Judge

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2/ It is not required that the Secretary or his delegate prove that the bid is inadequate in order to support his decision to reject the bid in the exercise of his discretion, where he believes such action is necessary in the public interest. However, the record should be sufficient to establish that the decision was neither arbitrary nor capricious. See Coquina Oil Corporation, supra note 1 at 312; Kerr-McGee Corporation, 6 IBLA 108, aff'd, Kerr-McGee Corporation v. Morton, 527 F.2d 838 (D.C. Cir. 1975). In view of the points raised by appellant in his appeal, his statement of reasons for appeal should be transmitted to Survey for consideration at the time the record is compiled.

