

SOUTHERN UNION EXPLORATION CO.

IBLA 78-553

Decided May 31, 1979

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting appellant's competitive oil and gas lease offer NM 33037.

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: Competitive Leases.

Where an uplands competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose the factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid.

APPEARANCES: Paul M. Zeis, Esq., Southern Union Exploration Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Southern Union Exploration Company appeals from a decision dated July 7, 1978, of the New Mexico State Office, Bureau of Land Management (BLM), rejecting its high bonus bid to lease a 237.10-acre parcel of land located in the Puerto Chiquito Field in Rio Arriba County, New Mexico. At a competitive oil and gas lease sale held in the New Mexico State Office, BLM, on February 21, 1978, appellant submitted a bid of \$6 per acre for a total of \$1,428 on parcel No. 2 and was declared the high bidder.

On March 7, 1978, the United States Geological Survey (Survey), recommended rejection of appellant's bid because it was lower than their presale evaluation for parcel No. 2. When requested by BLM to submit additional information concerning the presale evaluation, the Survey reported the following:

Utilizing simulation techniques, it was estimated that the Gallup Formation underlying parcel No. 2 had an expected recoverable reserve of 55,500 barrels of oil. Using the expected reserves value, a discounted cash flow with a 20% rate of return was calculated and risk weighted for the probability of discovering oil. The result of the calculation represents the Total Expected Net Present Value for parcel No. 2 which was then divided by the number of acres of the parcel to yield the minimum acceptable bonus bid on a per acre basis. The presale value was determined to be \$25 per acre and is considered to be a reasonable assessment of parcel No. 2.

On the basis of this information, BLM decided that appellant's high bid of \$6 per acre was inadequate and rejected the bid.

In its statement of reasons, appellant does not dispute the authority of the Secretary to reject a competitive oil and gas lease bid. However, appellant notes that the Board has qualified the authority by holding that such a rejection must have a reasonable basis in fact, citing H & W Oil Co., Inc., 22 IBLA 313 (1975), and Basil W. Reagel, 34 IBLA 29 (1978). Appellant claims that the July 7, 1978, bid rejection letter sent to it did not provide it with any facts as to the basis for the BLM decision, but rather, it contained the Survey's 'conclusory statement regarding the recoverable reserves and the presale value.' Appellant argues that since the Survey did not reveal the facts on which their 'simulation techniques' were based and thus did not reveal the data from which the estimate of expected recoverable reserves of 55,500 barrels of oil

was derived, there is no reasonable basis in fact for the rejection of its bid.

Appellant further argues that factors such as the special stipulations for parcel No. 2, ^{1/} lack of bidding activity in the area during the preceding year, lack of production in nearby wells, and the high risk and expensive nature of possible recompletion and future secondary recovery operations on parcel No. 2 should be taken into account when determining presale value. To the extent that they were not, appellant claims that the Secretary's decision was arbitrary and capricious.

[1] The Secretary of the Interior, or his authorized delegate, clearly has the discretionary authority to reject a high bid at a competitive oil and gas lease sale on the basis of an inadequate bonus. 30 U.S.C. § 226(b). This right to reject competitive oil and gas lease offers is specifically recognized in the Department's regulations at 43 CFR 3120.3-1. Additionally, the Board has upheld the authority of the Secretary or his delegate to reject bids for inadequacy of the offered bonus provided that the rejection has a reasonable basis in fact. Frances J. Richmond, 29 IBLA 137 (1977); Arkla Exploration Co., 25 IBLA 220 (1976); H & W Oil Co., Inc., *supra*.

Departmental policy in the administration of its competitive leasing program is to seek the return of fair market value for the grant of leases, and the Secretary reserves the right to reject a bid which will not provide a fair return. Coquina Oil Corp., 29 IBLA 310, 311 (1977). See Exxon Co. U.S.A., 15 IBLA 345, 357-58 (1974). More particularly, the Board has held that the Department is not bound to accept a bid when the Government's presale value greatly exceeds the bid. Coquina Oil Corp., *supra* at 312; H & W Oil Co., Inc., *supra*.

[2] The United States 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 the Survey's reasoned analysis. Gerald S. Ostrowski, 34 IBLA 254 (1978); Coquina Oil Corp., *supra*; Arkla Exploration Co., *supra*. When BLM relies on Survey's analysis in rejecting a bid as inadequate, it must ensure that a reasonable explanation is provided for the record to support that decision. In this case, the Board agrees that the Survey's explanation of the basis for its presale evaluation is, in itself, conclusory because it fails to

^{1/} The Notice of Oil and Gas Sale required that two stipulations be executed before a lease would be issued for parcel No. 2: (1) A Forest Service stipulation concerning 'No Surface Disturbance or Occupancy' on a portion of the lands which requires directional drilling, and (2) a BLM stipulation concerning unplugged wells.

provide facts for the record showing the basis of its estimate of the expected recoverable reserve.

[3] Where an upland competitive oil and gas lease bid is not clearly 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. Charles E. Hinkle, 40 IBLA 250 (1979); Gerald S. Ostrowski, *supra*; Yates Petroleum Corp., 32 IBLA 196 (1977); Frances J. Richmond, 24 IBLA 303 (1976); Arkla Exploration Co., 22 IBLA 92 (1975). The Board finds that the lack of facts in the record to support the Survey's estimate of a 55,500 barrel expected recoverable reserve of oil underlying parcel No. 2 and the absence of any description of the Survey's simulation method, leave the Board with no basis to determine whether the Survey's conclusion as to presale value and BLM's decision to reject appellant's bid were reasonably based in fact. Moreover, we are unable to ascertain what consideration, if any, was afforded the fact that the lands were to be leased under a no surface disturbance stipulation.

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 remanded to allow compilation of a more complete record, consideration of the information in the appellant's statement of reasons, and readjudication of the bid.

James L. Burski
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Joan B. Thompson
Administrative Judge

