

PETROVEST, INC.

IBLA 82-1192

Decided March 21, 1983

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting competitive oil and gas lease offer ES-30728.

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. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

2. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases:  
Discretion to Lease

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a sufficient 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. A justification memorandum that does not reveal the estimated minimum value for the parcel and sufficient factual data cannot support rejection of the high bid for the parcel.

APPEARANCES: George Haymans, President, Petrovest, Inc.

## OPINION BY ADMINISTRATIVE JUDGE HARRIS

Petrovest, Inc., has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated July 26, 1982, rejecting its high bid of \$524 (\$13.10 per acre) for parcel 3 at the competitive oil and gas lease sale held on January 28, 1982. 1/ BLM stated that the Minerals Management Service (MMS) 2/ recommended rejection of the bid because it was below the MMS presale evaluation of the tract.

On appeal, appellant presents reasons why its high bid for parcel 3 should not be rejected. Several of these reasons merit attention. Appellant contends that parcel 3, which consists of 40 acres which BLM forewarned bidders had been "spaced out" of an existing unit of privately held acreage, 3/ is not large enough or spaced correctly to be drilled. Appellant notes that Arkansas has changed the spacing to 640 acres and well locations must be 1,320 feet from the unit line. Appellant further contends that the figures used by MMS for its presale estimate of value were for a producing well located on a 640-acre spacing, which would not be comparable to parcel 3's spaced out 40 acres. Finally, appellant contends that the higher bids on other tracts are not comparable because those tracts were bigger or adjoining other tracts which were bid on or controlled by the bidding party. Further, appellant asserts the other tracts were big enough to support a well on a 640-acre spacing, while parcel 3 would not. Consequently, appellant concludes that parcel 3 is not worth more money, as MMS contends.

[1, 2] The Secretary of the Interior has discretionary authority to reject a high bid for a competitive oil and gas lease as inadequate. 30 U.S.C. § 226(b) (1976); 43 CFR 3120.3-1. This Board has consistently upheld that authority so long as there is a rational basis for the conclusion that the highest bid does not represent a fair market value for the parcel. Harold R. Leeds, 60 IBLA 383 (1981); Harry Ptasynski, 48 IBLA 246 (1980); Frances J. Richmond, 29 IBLA 137 (1977).

At the time of the sale MMS was 4/ the Secretary's technical expert in matters concerning geologic evaluation of tracts of the land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on MMS' reasoned analysis. L. B. Blake, 67 IBLA 103 (1982). When BLM relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided for the record to support the decision.

1/ Parcel 3 contains 40 acres in the NE 1/4 SW 1/4 of sec. 18, T. 6 N., R. 28 W., fifth principal meridian, Logan County, Arkansas.

2/ By Secretarial Order No. 3071 published in the Federal Register on Feb. 2, 1982, 47 FR 4751, the Secretary created the MMS to, inter alia, take over the functions of the Conservation Division, Geological Survey.

3/ Appellant's exhibit A is an Amendment to Sale Notice authored by the Eastern States Office, BLM. It provides in part: "The revised acreage for parcel number 3 is 40 acres. All bidders should be forewarned that this tract has been 'spaced out' of an existing unit of privately-held acreage."

4/ Secretarial Order No. 3087, dated Dec. 3, 1982, consolidated the onshore mineral leasing functions of the MMS within the BLM. 48 FR 8982 (Mar. 2, 1983). Although this order was amended on Feb. 7, 1983, the amendment is not relevant to this discussion.

Southern Union Exploration Co., 41 IBLA 81, 83 (1979). Otherwise, if the bid is not clearly spurious or unreasonable on its face, the Board has consistently 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. Southern Union Exploration Co., *supra*; Charles E. Hinkle, 40 IBLA 250 (1979). The Board stated in Southern Union Exploration Co., 51 IBLA 89, 92 (1980):

[T]he appellant is entitled to a reasoned and factual explanation for the rejection of its bid. Appellant must be given some basis for understanding and accepting the rejection or alternatively appealing and disputing it before this Board. The explanation provided must be a part of the public record and must be adequate so that this Board can determine its correctness if disputed on appeal. Steven and Mary J. Lutz, 39 IBLA 386 (1979); Basil W. Reagel, 34 IBLA 29 (1978); Yates Petroleum Corp., 32 IBLA 196 (1977); Frances J. Richmond, 24 IBLA 303 (1976); Arkla Exploration Co., 22 IBLA 92 (1975).

We are unable to determine the correctness of the BLM decision on competitive bid ES-30728 or the merits of appellant's arguments on the present record. The record is deficient because it does not reveal the presale evaluation of parcel 3 or its estimated fair market value. There is insufficient elaboration of the factual data that is presented. See Southern Union Exploration Co., 41 IBLA at 84; Gerald S. Ostrowski, 34 IBLA 254 (1978). Moreover, we are unable to ascertain what consideration, if any, was afforded the fact that parcel 3 is a tract of 40 acres which has been "spaced out" of an existing unit of privately held acreage. This does not mean the Board will substitute its judgement for that of MMS in determining fair market value for parcel 3, but rather that the Board will require sufficient facts and analysis to ensure that a rational basis for the determination is present. Snyder Oil Co., 69 IBLA 259 (1982); M. Robert Paglee, 68 IBLA 231 (1982).

Therefore, we remand this case to BLM for readjudication of appellant's bid. In readjudicating the bid, BLM should consider the arguments presented by appellant in this appeal. If the bid is rejected again, BLM shall set forth the reasons for doing so, including the presale evaluation, so the Board can properly consider the issues in event of an appeal.

Accordingly, 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 for action consistent with this decision.

Bruce R. Harris  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

Douglas E. Henriques  
Administrative Judge

