

CLARENCE SHERMAN

IBLA 84-304

Decided July 12, 1984

Appeal from decision of the Eastern States Office, Bureau of Land Management, rejecting high bids for three competitive oil and gas leases. ES 32502, ES 32503, and ES 32505.

Affirmed.

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.

APPEARANCES: Clarence Sherman, Fenton, Missouri, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

On May 12, 1983, the Eastern States Office, Bureau of Land Management (BLM), conducted a competitive oil and gas lease sale which included parcels 6, 7, and 9 within the Ravenna Army Arsenal in Windham Township, Portage County, Ohio. Clarence Sherman submitted the high bid (\$12 per acre) for each parcel. 1/

On January 6, 1984, BLM issued a decision rejecting the bids because they were below the presale evaluation for these tracts. Sherman filed an appeal in which he stated that he had previously acquired acreage in Portage County and that the parcels in question are needed as part of his drilling plan. He asserts that he has expended considerable resources acquiring the acreage. He states:

If the bid of \$12.00/acre is below the presale evaluation, may I ask what you consider to be acceptable for parcels 6, 7, and 9. I am very much interested in these parcels for the reasons stated above. Could we come to some agreement for a higher cost per acre regarding the above parcels.

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1/ Two bids were submitted for parcel 6. Appellant's bids were the only ones for parcels 7 and 9.

[1] The Secretary of the Interior has discretionary authority to reject as inadequate a high bid for a competitive oil and gas lease. 30 U.S.C. § 226(b) (1982); 43 CFR 3120.3-1; Viking Resources Corp., 80 IBLA 245 (1984); Edward L. Johnson, 73 IBLA 253 (1983). 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. Ambra Oil & Gas Co., 75 IBLA 11, 14 (1983); Glen M. Hedge, 73 IBLA 377, 378-79 (1983). 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. Mesa Petroleum Co., 81 IBLA 194 (1984).

The Department is entitled to rely on the reasoned analysis of its technical experts in matters involving geologic evaluation of tracts of land offered at a competitive sale of oil and gas leases. L. B. Blake, 67 IBLA 103 (1982). However, when BLM relies on that analysis in rejecting a bid as inadequate, it must insure that a reasoned explanation is provided for the record to support the decision. TXO Production Corp., 73 IBLA 258, 261 (1983).

The record in this case contains a copy of the fair market value appraisal for parcels 6, 7, 8, and 9. It concludes that the minimum acceptable bid for each of the tracts is \$30 per acre. <sup>2/</sup> The appraisal of these parcels was established using the comparable sales method. BLM used the following criteria to judge comparability: Time, location, depth, surface occupancy, total recoverable reserves, and various economic factors. The comparables selected by BLM were eight parcels which were offered in the Eastern States Office June 3, 1982, competitive oil and gas lease sale for which the bids ranged from \$30 to \$50. The appraisal report fully documents the basis for BLM's conclusion.

In this case appellant has presented no arguments challenging BLM's evaluation; nor has he provided any justification to support a finding that his bids represent fair market value for the parcels. <sup>3/</sup>

It does not appear from the record that appellant was informed of the minimum acceptable bid. Ordinarily, we would require that BLM provide the appellant with the reasons for rejection of a bid, including the minimum acceptable bid, in order to provide a meaningful right of appeal. However, we do not find that it is necessary in this case because appellant has not questioned the BLM decision; rather he has merely expressed an interest in BLM's valuation of the parcels and a desire to lease them.

Since the record provides a rational basis for BLM's decision to reject the bids, and appellant has presented to arguments challenging BLM's rejection nor any evidence to show that his bids represented fair market value, we find that BLM's rejection of the high bids was proper.

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<sup>2/</sup> At the sale BLM accepted a high bid of \$35 per acre for parcel 8.

<sup>3/</sup> In essence appellant has failed to point out affirmatively in what respects the decision appealed from is in error. In such a situation the appeal may be dismissed; however, dismissal is not mandatory and whether to dismiss will be determined on a case by case basis. Geneva Barry, 54 IBLA 48, 50 (1981). Because of a lack of sufficient rationale supplied by BLM in its decision, we decline to dismiss the appeal.

Appellant questions whether he could negotiate the price per acre in order to acquire leases for the parcels. The lands in question may only be leased under the competitive bidding procedures of 43 CFR Part 3120. There is no provision which would allow a rejected bidder to offer a greater amount once it is determined that the bid was inadequate. Such a procedure would, in fact, frustrate the competitive process. Competitive leasing contemplates that all offerors have an equal opportunity to gain a lease with the lease being issued to the person who submits the highest bid. Where the high bid is rejected as inadequate, BLM may reoffer the parcel for leasing. In this case appellant may submit new bids at the time the parcels in question are reoffered.

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 affirmed.

Bruce R. Harris

Administrative Judge

We concur

Wm. Philip Horton  
Chief Administrative Judge

Edward W. Stuebing  
Administrative Judge

