

CRAIG FOLSON

IBLA 84-178

Decided August 31, 1984

Appeal from decision of New Mexico State Office, Bureau of Land Management rejecting appellant's high bid for competitive oil and gas lease, NM 57596.

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 verify a rational basis for 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 factual basis sufficient to support 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.

3. Confidential Information -- Words and Phrases

"Proprietary information." Proprietary information means information which, if disclosed, would do substantial harm to the competitive position of the outside source from which it was obtained and would inhibit the Government's ability to obtain this type of information in the future resulting in a substantial detrimental effect on a Government program. Internally generated Governmental conclusions and information are not generally proprietary.

APPEARANCES: Craig Folson, Esq., pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Craig Folson appeals from a November 28, 1983, decision of the New Mexico State Office, Bureau of Land Management (BLM), rejecting his high bid submitted for parcel 23 at the August 31, 1983, oil and gas lease sale. Parcel 23 embraced the NW 1/4 SE 1/4 of sec. 21, T. 16 S., R. 25 E., New Mexico principal meridian, Eddy County, New Mexico (40 acres). Appellant bid \$30.25 per acre for a total of \$1,210 for the parcel. Appellant's bid was the highest of four bids submitted for parcel 23.

By decision of November 28, 1983, BLM rejected appellant's bid. The only reason given for the rejection was that BLM's "evaluation of this parcel shows that the bid was less than the pre-sale tract valuation."

The file contains a memorandum dated November 3, 1983, from the Deputy State Director, Mineral Resources, to the Deputy State Director, Operations, recommending rejection of certain bids including appellant's, and stating that "[s]upporting data for these recommendations is being retained in the Economic Evaluation Branch proprietary files." A handwritten note dated after receipt of the notice of appeal appears on the file copy of the BLM decision. The note discloses that the BLM adjudicator requested data to support the conclusion that the bid was inadequate, but that the economic evaluation staff of BLM declined to provide such information.

On appeal, appellant makes the following contentions:

1) There were a total of only four (4) bids on this tract and the amounts were \$1,210, 1,003.20, \$600, \$375. If the tract were deemed more valuable there would have been more bids with higher bid prices offered. The fact is there was neither!

2) Lease prices paid in the area the past several years are commensurate with my offer of \$30 + per acre. For example in T16S-25E - Eddy County, New Mexico:

Section 16 - \$37.50 per acre (North offset)
 Section 20 - \$42.50 per acre (West offset)
 Section 28 - \$41.87 per acre (South offset)
 Section 22 - \$5.51 per acre (East offset)
 Section 17 - \$12.12 per acre (Northeast offset)

In conclusion, I offered \$30 + per acre in an area where lease prices are between \$5.51 - \$42.50 per acre. As a result, I fail to realize why my bid is unacceptable when it is well within these parameters.

[1] 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) (1982); see, e.g., 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. E.g., Viking Resources Corp., supra at 246; Glen M. Hedge, 73 IBLA 377, 378-79 (1983); Edward L. Johnson, supra at 254-55. 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. Viking Resources Corp., *supra* at 246; Glen M. Hedge, *supra* at 379; Coquina Oil Corp., 29 IBLA 310, 311 (1977).

[2] 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 sale of competitive oil and gas leases. Viking Resources Corp., *supra* at 247; L. B. Blake, 67 IBLA 103 (1982). However, when BLM relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided in the record to support the decision. *E.g.*, Mesa Petroleum Co., 81 IBLA 194, 195 (1984); Edward L. Johnson, *supra* at 255. 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. *E.g.*, Mesa Petroleum Co., *supra* at 195; Edward L. Johnson, *supra* at 255. In Southern Union Exploration Co., 51 IBLA 89, 92 (1980), this Board stated:

[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 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 ascertain a rational basis for the BLM decision on the present record. There is insufficient elaboration of factual data in the record. *See* Mesa Petroleum Co., *supra* at 196; Davis & Smith, Ltd., 73 IBLA 22, 24 (1983). The record does not set forth the presale evaluation, any of the information on which it is based, or the manner in which it was calculated. In order for this Board to find that BLM had a rational basis for its conclusion, we must know that basis. Although this Board will not substitute its judgment for that of BLM in determining the fair market value of parcel 23, the Board will require sufficient facts and analysis to ensure that a rational basis for the determination is present. *E.g.*, Mesa Petroleum Co., *supra* at 196; Viking Resources Corp., 77 IBLA at 59. The Board has held that the ultimate burden is on appellant to establish that his bid represents fair market value. However, a bid rejection cannot be sustained for failure to meet this burden in the absence of the presale evaluation and sufficient documentation in support thereof to establish its prima facie correctness. R. T. Nakaok, 81 IBLA 197, 200 (1984).

Therefore, we remand this case to BLM for compilation of a proper record and readjudication of appellant's bid. On remand, BLM should address the allegations made in appellant's statement of reasons. If the bid is rejected again, BLM shall set forth in a meaningful way the reasons for doing so, including the presale evaluation, so that this Board can properly consider the issues in event of an appeal.

[3] BLM has noted that the supporting data for the recommendation is retained in a proprietary file. "Proprietary" or "confidential" generally

refers to information which, if disclosed, would do substantial harm to the competitive position of the outside source from which it was obtained and would also inhibit the Government's ability to obtain this type of information in the future resulting in a substantial detrimental effect to the oil and gas leasing program. See National Parks & Conservation Association v. Morton, 498 F.2d 765 (D.C. Cir. 1974); Freedom of Information Act, Appeal of Tenneco, M-36918, 86 I.D. 661, 663 (1979). The term "proprietary" is not generally applicable to internally generated Government information. Southern Union Exploration Co., *supra*; cf. Federal Open Market Committee v. Merrill, 443 U.S. 340 (1979). BLM has made no showing that the supporting data is prohibited by law from public disclosure. Should the record compiled by BLM contain any information which is prohibited by law from public disclosure, it should be so identified. ^{1/} However, no record of this Department may be treated as immune from Secretarial review on appeal. See Edward L. Johnson, *supra* at 257. We hold that, except to the extent that the release of certain information is prohibited by law, an appellant who has submitted a high bid, which is not clearly spurious, must be informed not only of the estimated minimum value, but the subsidiary factual data which served as the predicate for the derivation of that estimate. Southern Union Exploration Co., *supra* at 95.

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 is remanded for further consideration consistent with this decision.

C. Randall Grant, Jr.
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Wm. Philip Horton, Chief

Administrative Judge

Chief

^{1/} We recognize that there is an exemption under the Freedom of Information Act (FOIA) for "geological and geophysical information and data, including maps, concerning wells." 5 U.S.C. § 552(b)(9) (1982). However, it is well established that FOIA exemptions are permissive, not mandatory, allowing an agency having control over the exempted information discretion to disclose or withhold it. The exemptions, themselves, therefore, do not forbid disclosure of information. Westchester General Hospital, Inc. v. Department of Health, Education, and Welfare, 464 F. Supp. 236, 239 (M.D. Fla. 1979). A distinction is properly drawn between proprietary information prohibited by law from public disclosure, see Trade Secrets Act, 18 U.S.C. § 1905 (1982), and the broader scope of information which may be withheld from public disclosure under the FOIA. See Westchester General Hospital, Inc. v. Department of Health, Education, and Welfare, *supra* at 251.

