

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting high bid for competitive oil and gas lease NM 58526.

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.

APPEARANCES: Ross M. Smith, Esq., and J. A. Vance, Division Landman, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Exxon Company, U.S.A. has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated March 19, 1984, rejecting its high bid submitted for parcel 28 in the February 23, 1984, sale of oil and gas leases. Appellant submitted a bid of \$42,693 or \$107 per acre for the lease designated NM 58526, containing 399 acres. The only reason given by BLM for rejecting appellant's bid was that the "evaluation of this parcel shows that the bid was less than the pre-sale tract valuation."

The case file contains a memorandum to the BLM Deputy State Director, Operations, from the BLM Deputy State Director, Mineral Resources, which recommends that the high bid for parcel 28 be rejected based on recommendations by the Branch of Economic Evaluations. No supporting documentation accompanied the memorandum. There is nothing in the record which demonstrates that BLM considered any factors other than this memorandum to determine the inadequacy of appellant's bid.

In its statement of reasons appellant points out that its bid was twice as high as the second high bid and seven times as high as the third high bid for parcel 28. It states that the weighted average price of recent bidding within a 5-mile radius of this tract has been \$106 per acre. Appellant contends that a higher bid would not be justified because the only production in the area has been from deep gas wells and the market for additional gas is almost nonexistent.

[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) (1982); 43 CFR 3120.5(a). E.g., Michael Shearn, 83 IBLA 53 (1984); 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 was 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; Ambra Oil & Gas Co., 75 IBLA 11, 14 (1983); 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).

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., TXO Production Corp., 73 IBLA 258 (1983); Edward L. Johnson, supra at 255; Southern Union Exploration Co., 41 IBLA 81 (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. E.g., Ambra Oil & Gas Co., supra at 14; TXO Production Corp., supra at 261; 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 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 the basis of the present record. The record is deficient in that it does not reveal the presale evaluation of the parcel or provide any factual explanation for rejection of the bid. Appellant has not been provided any basis for understanding and accepting the bid rejection or for disputing it before this Board.

This Board will not substitute its judgment for that of BLM in determining the fair market value of the parcel for which appellant applied, but rather the Board will require sufficient facts and analysis to ensure that a rational basis for the determination is present. E.g., Viking Resources Corp., 77 IBLA 57, 59 (1983); TXO Production Corp., supra at 261; Davis & Smith, Ltd., 73 IBLA 22, 25 (1983).

We recognize that ultimately appellant must not merely show that the Government's estimate did not constitute fair market value, but it must also affirmatively show that its bid represented fair market value. Kevin J. Bliss, 82 IBLA 31 (1984). But as we noted in Larry White, 81 IBLA 19 (1984), the burden of justifying its bid does not shift to appellant "in the absence of sufficient documentation of the Government's estimate such as would establish its prima facie correctness." Id. at 22 n.2. See also R. T. Nakaoka, 81 IBLA 197, 200 (1984). Such a prima facie case cannot be made in the absence of a disclosure of the presale evaluation. In readjudicating the bid, BLM should consider the arguments presented by appellant's statement of reasons. If its bid is rejected again, BLM shall set forth the reasons for doing so, including the presale evaluation, so that these reasons may be addressed by appellant and considered by the Board in the 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 remanded to the New Mexico State Office for further consideration consistent with this decision.

Gail M. Frazier
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Will A. Irwin
Administrative Judge

