

MICHAEL SHEARN

IBLA 84-509 Decided June 13, 1985

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting appellant's high bid for competitive oil and gas lease NM 58536.

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: Michael Shearn, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Michael Shearn has appealed from a decision dated March 9, 1984, by the New Mexico State Office, Bureau of Land Management (BLM), rejecting his high bid for oil and gas lease NM 58536. The only reason given for rejection of the bid was that BLM's "evaluation of this parcel shows that the bid was less than the pre-sale tract valuation." A notice of appeal and statement of reasons were filed by appellant. BLM did not file an answer.

[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). 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 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 246; L. B. Blake, 67 IBLA 103 (1982). However, when BLM relies on that analysis in rejecting a bid as inadequate, it must ensure a reasoned explanation is provided for the record to support the decision. E.g., TXO Production Corp., 73 IBLA 258, 261 (1983); Edward L. Johnson, *supra* at 255; 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. E.g., Ambra Oil & Gas Co., *supra* at 14; TXO Production Corp., *supra* at 255; Edward L. Johnson, *supra* at 255. Adherence to these precedents requires similar action here. See, e.g., Michael Shearn, 83 IBLA 53 (1984). 1/

The BLM failure to provide sufficient record to support its decision does not relieve appellant of his own affirmative obligation to establish the reasonableness of his bid. In Viking Resources Corp., *supra* at 247, we noted:

In several decisions we have stressed the need for BLM to justify its determination of minimum acceptable bid. For example, in Southern Union Exploration Co., 51 IBLA 89, 92 (1982), we indicated that such an explanation was necessary to provide the bidder with "some basis for understanding and accepting the rejection or alternatively appealing and disputing it before this Board." Nevertheless, these rulings do not absolve appellant of its affirmative obligation of establishing a basis for a determination that there was error in the decision appealed from, i.e., that appellant's bid represents the fair market value. We note

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1/ This decision was based upon an appeal by the same appellant from a decision by the New Mexico State Office, BLM. The facts and results are similar.

that appellant did not rely on BLM's justification when formulating its bid, and therefore appellant should be able to provide justification for the reasonableness of its own bid. 4/

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4/ Requiring an appellant to submit his own analysis of value in support of the adequacy of his bid is consistent with the Board's practice in other appeals from BLM determinations of fair market value. In an appeal involving an appraisal of a right-of-way for a communication site, we noted that in the absence of evidence that a BLM appraisal is erroneous, such an appraisal generally may be rebutted only by another appraisal. Dwight L. Zundel, 55 IBLA 218, 222 (1981). We believe that a similar requirement is appropriate here.

Appellant offers persuasive reasons why his bid represents the fair market value of the tract:

In a previous KGS lease sale, Amoco bid \$68.39 for a lease in Section 36, one mile southeast of my bid in Section 23. Also, in Section 32 of the same Township, Amoco was awarded a lease for \$58.82 per acre. Southern Union Producers were awarded a lease in Section 20 for a \$50.00 per acre bid. There have been other higher bids in this Township for leases, but in review of the overall picture, I felt my offer of \$53.75 was a reasonable bid at the time of this sale. Lease prices have dropped significantly [sic] in all areas. Approximately one quarter of the Independents have not been able to continue in the oil exploration business since the collapse of 1983. The U.S.G.S. is not reflecting this dynamic change in the industry in arriving at their secret estimates of value.

The area in which I was the high bidder for Parcel No. 39 is primarily a gas potential in nature.

The market for gas is so saturated throughout the United States and especially Southeast New Mexico, that El Paso Natural Gas has not signed a new contract for gas in over two years. The market price for deep gas has dropped from over \$10.00 per MCF to \$3.00 per MCF, if you can even find a market.

Parcel 23 adjoins the Talco Unit to the South. A review of the cumulative [sic] gas production from this unit reveals that its existing production (if you had a market) will probably not pay out well costs at today's depressed prices.

The nature of the production business is such that an independent, such as myself, must anticipate that the gas market will improve and begin acquiring leases for future exploration. It is very discouraging to outbid three other oil operators on Parcel No. 23 and to add insult, my bid of \$34,400 was \$24,304

higher than the next bidder. Then the Survey rejected this bid. A Bid that clearly reflected the market value of this lease at the time of the sale.

A deep gas test in Section 21 was drilled to 22,926 feet. It is currently producing [sic] but will never pay out well costs. In Section 25, adjoining Parcel 39, a well was drilled to 19,894 feet and has since been plugged without returning initial costs.

All of the factors which I have stated in my reasons for this appeal, I took in consideration in my initial evaluation. A reasonable man would surely agree my bid was well above "market value" and the lease should be awarded to me on the basis of my high bid.

Statement of Reasons, 3-4.

This analysis is totally un rebutted by BLM. However, we will decline to direct acceptance of appellants bid at this time. In keeping with the past practice of this Board, we will remand this case for readjudication in light of the information submitted by appellant. E.g., Suzanne Walsh, 86 IBLA 83 (1985); Southland Royalty Co., 83 IBLA 302 (1984); Suzanne Walsh, 83 IBLA 274 (1984); Suzanne Walsh, 83 IBLA 187 (1984). In its readjudication of appellants bid, BLM should specifically respond to the points raised in appellants statement of reasons.

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 for further action consistent with this opinion. 2/

R. W. Mullen  
Administrative Judge

We concur:

C. Randall Grant, Jr.  
Administrative Judge

Wm. Philip Horton  
Chief Administrative Judge.

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2/ Should BLM again reject appellants bid, appellant will again have the right to appeal. BLM is advised that in the event of such appeal, our determination will be based upon the information in the record before us. Any matters raised in a statement of reasons submitted by appellant that is not resolved in the record transmitted to the Board should be specifically addressed in an answer filed by BLM within the time limit prescribed by the applicable regulation, 43 CFR 4.414.

