

GEORESOURCES, INC.

IBLA 86-1379; 86-1380

Decided November 4, 1987

Appeal from decisions of the Montana State Office, Bureau of Land Management, rejecting high bids for competitive oil and gas leases M-68839 and M-68840.

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 rejection. Where a bid is below the administrative minimum set in the sale notice, there is a rational basis for rejection of the bid.

APPEARANCES: J. P. Vickers, President, GeoResources, Inc., Williston, North Dakota, for the appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

GeoResources, Inc., (GeoResources) appeals from two decisions of the Montana State Office, Bureau of Land Management (BLM), both dated May 7, 1986, which rejected competitive oil and gas lease high bids for parcels 24 and 25 (M-68839 and M-68840). BLM rejected the bids, pursuant to 43 CFR 3120.5, because the bids were lower than the administrative minimum bid of \$5.00 per acre set in the Detailed Notice of Competitive Oil and Gas Lease Offering (Notice) for the April 30, 1986, sale.

The Notice stated:

MINIMUM BID: There will be an administrative minimum bid of \$5 per acre on this competitive sale; however, no bid will be accepted unless the Government has determined such offer to be adequate compensation for the rights conveyed. To be considered for acceptance, a high bid must ordinarily be equal to or greater than the Government's estimate of value for the parcel. The Government's estimate of value used in bid acceptance should not be confused with the administrative minimum price per acre published in this lease offering. In the majority of cases, the Government's estimate of value is higher than the administrative minimum price per acre.

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The Department reserves the right to reject any and all bids.

(Notice at 1-2).

Appellant bid \$250 (approximately \$2.06 per acre) for parcel 24 and \$200 (\$2.50 per acre) for parcel 25. 1/ Appellant was the sole bidder for both parcels.

In the statements of reasons for appeal, appellant asserts that the BLM administrative minimum exceeds the value of the parcels. Appellant states that the parcels received no bids when offered in an earlier sale. It finds the dearth of bids at the two sales indicative of low value, and points out that if the \$5 per acre administrative minimum represents the administrative cost of offering the lands for lease, then the Government has already lost \$10 per acre. Appellant asserts that accepting its bids could partly defray the Government's losses, and that further attempts to lease would only incur greater losses.

BLM responded to the appellant's statements of reasons in a memorandum to the file from the Chief, Regulation and Evaluation Section, Montana State Office, BLM, prepared following the filing of the appeals. 2/ The memorandum provides BLM's justification for the rejection of appellant's bids.

The memorandum stated:

Both of these parcels are within the Hammond KGS, a shallow Cretaceous Muddy Formation gas reservoir. Production is from discontinuous sandstones in the Muddy Formation. Successful gas wells in the field have generally low yields, at low pressures. It is unlikely that an economic well could be drilled within either parcel. For these reasons, the parcels were determined to have only "nominal" values; the presale estimate of value for both parcels was the administrative minimum bid.

Our administrative minimum bid, though not originally calculated, does have a rational basis. For example, total, unrecoupable administrative costs were later calculated for the April 30,

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1/ Parcel 24 (M-68839) is 121.30 acres described as lots 3, 4, and the SE 1/4 NW 1/4 sec. 2, and parcel 25 (M-68840) is 80 acres described as the E 1/2 NE 1/4 sec. 10, both in T. 8 S., R. 58 E., principal meridian, in the Hammond Known Geological Structure (KGS), Carter County, Montana.

2/ Because there was no evidence in the record that BLM served a copy of that memorandum on appellant, as required by 43 CFR 4.22(b), the Board considered the memorandum an ex parte communication in accordance with 43 CFR 4.27(b), and by order dated Aug. 7, 1987, completed service of the memorandum on appellant and allowed appellant the opportunity to respond, which it did.



1986 sale. The costs of adjudicating and evaluating the 7835.47 acres offered for sale was \$5.59/acre.

GeoResources responded by reiterating its objections to the concept of an administrative minimum bid. It states that, unlike BLM, it did not confuse estimate of value with an administrative minimum price. It insists that the Notice did not clearly indicate that no bid below the administrative minimum would be accepted.

[1] The Secretary of the Interior has discretionary authority to lease the public land for oil and gas. 30 U.S.C. § 226(b) (1982). Inherent in the discretion to lease is the discretion not to lease. The right to reject any and all bids is reserved by regulation. 43 CFR 3120.5(a). The sale notice reiterated that right. As the Board has stated, the Secretary is not obligated to accept any bid. Suzanne Walsh, 91 IBLA 119, 122 (1986). However, we have further held that the record must disclose a rational basis for the rejection, and it must be sufficient to establish that the decision was not arbitrary, capricious, or in error. Read & Stevens, Inc., 93 IBLA 84 (1986); Harvey E. Yates Co., 71 IBLA 134 (1983); Kerr-McGee Corp., 6 IBLA 108 (1972), aff'd, Kerr-McGee Corp. v. Morton, 527 F.2d 838 (D.C. Cir. 1975).

Appellant finds the Notice ambiguous and misleading because it does not explicitly warn that BLM will reject all bids below the minimum bid. Appellant would ignore the "minimum bid" requirement in the Notice and focus only on its call for "adequate compensation for the rights conveyed." and its assertions that "a high bid must ordinarily be equal to or greater than the Government's estimate of value for the parcel," and the "estimate of value used in bid acceptance should not be confused with the administrative minimum price per acre," as well as the statement in the Notice that "[i]n the majority of cases, the Government's estimate of value is higher than the administrative minimum price per acre."

Appellant attempts to create ambiguity where none exists. Regulation 43 CFR 3120.5(b) indicates that a lease is awarded to the bidder submitting the highest "acceptable bid." By setting an administrative minimum in the terms of the sale set forth in the Notice quoted above, BLM notified all potential bidders of the lowest possible "acceptable bid." A bid lower than the administrative minimum is not acceptable under the terms of the sale. Appellant chose to participate in the sale; therefore, appellant was subject to its terms. Bidders must comply with the terms of the sale notice. Appellant did not comply with the "bidding requirements" of the Notice. See 43 CFR 3120.4-2. Appellant's bids were below the administrative minimum bid amount. Therefore, we conclude that the record discloses a rational basis for the rejection of appellant's bids.

Appellant claims that BLM confuses administrative cost with value when it refuses to accept a high bid below its administrative minimum. It is true that BLM acknowledged subsequent to the sale that the parcels had a "nominal" value, but according to the terms of the sale, BLM established a minimum bid amount, rather than a nominal value below that minimum.

Appellant asserts that the lack of competitive interest in the parcel indicates a low market value. However, there is not necessarily a direct relationship between lack of bids and fair market value of a parcel at a competitive oil and gas lease sale. Factors such as limited financial resources, a lack of significant data, and the speculative nature of a tract, as well as intrinsic parcel value, can affect the number of bids received. A lack of competitive interest may offer little evidence of actual fair market value. George H. Fentress, 99 IBLA 184 (1987); Edward L. Johnson, 73 IBLA 253, 256 (1983).

In this case, however, the low market value of the parcels is not disputed. The record is clear that present knowledge of the Hammond KGS is that even successful gas wells in the field are generally low producers and that recent interest in the parcels offered for sale has been virtually nonexistent. <sup>3/</sup> Appellant points out that it does not make economic sense from the Government's standpoint to continue to incur the administrative costs associated with reoffering parcels in subsequent sales, because the "nominal" value of such parcels is less than BLM's administrative minimum. Despite the attraction of that analysis, it is, nevertheless, within BLM's prerogative to establish a minimum acceptable bid. Such was done in this case, and appellant failed to meet it.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the Montana State Office are affirmed.

Bruce R. Harris  
Administrative Judge

We concur:

Kathryn A. Lynn  
Administrative Judge  
Alternate Member

Gail M. Frazier  
Administrative Judge

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<sup>3/</sup> Appellant provides evidence that in the competitive oil and gas lease sale conducted by the Montana State Office on June 17, 1987, 24 parcels in the Hammond KGS were offered, and none of the parcels received a bid.



