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B-164613

9-19-74

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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RELEASED

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SEP 19 1974

The Honorable Charles A. Vanik
House of Representatives

Dear Mr. Vanik:

In response to your letter of March 27, 1974, and agreements with your office, we are furnishing you with certain information relating to the Department of the Interior's leasing of minerals on public lands. The information pertains to (1) whether there are statutory guidelines to force the Department to tighten up on the prelease evaluation process and (2) noncompetitive leasing of minerals on public lands.

In an August 12, 1974, letter (B-164613), we answered your question on the advantages and disadvantages of amending the Renegotiation Board's authority to require reexamination of sales and leases of public lands after the fact.

PRELEASE EVALUATION PROCESS

The public land mineral leasing laws and regulations do not contain specific provisions requiring prelease evaluation for mineral leases. Office of Management and Budget Circular No. A-25, however, requires the Department to obtain fair market value in leasing Federal resources, which is the reason for prelease evaluations.

The Mineral Lands Leasing Act (30 U.S.C. 181) and the applicable regulations (43 CFR 3100 and 3500) authorize and govern leasing of onshore public lands for production of such minerals as coal, oil, gas, and oil shale. The Outer Continental Shelf Lands Act (43 U.S.C. 1331) and the applicable regulations (43 CFR 3300) authorize and govern offshore leasing of submerged lands for production of oil, gas, sulfur, and other minerals. These laws and regulations do not require prelease evaluation of minerals in public lands offered for competitive mineral leasing.

Circular No. A-25, issued in furtherance of 31 U.S.C. 483a, requires leasing federally owned resources at fair market value by application of sound business management principles and, so far as practicable and feasible, in accordance with comparable commercial practices. Circular No. A-25 is a directive to Federal agencies

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regarding reasonable charges for a special Government service or property to an identifiable recipient above and beyond those which accrue to the public at large. Although Federal agencies must follow this circular, it does not constitute a statutory guideline.

According to Department officials, prelease evaluations are made using the discounted cash-flow technique for measuring profitability when available information is sufficient for applying the formula. When the discounted cash-flow technique is not used, evaluations are based on experience and judgment, including data on similar sales areas, values of adjacent properties, and available geologic data.

The discounted cash-flow technique the Department used is the method of determining the present value of the resources in the land whose cost to develop and revenue from sales will occur over an extended time. The calculation is designed to consider such things as mineral reserve estimates, selling price, development and operating costs, royalty payable to the Government, and rate of return to the lessee. A Department official said that the discounted cash-flow technique met the criteria in Circular No. A-25 because it involved sound business management principles and because it was used by the mining, oil, and gas industries in evaluating major acquisitions.

We have not yet completed our examination of the Department's use of this method. We are making our examination as part of a broad study of the Department's policies and procedures for leasing energy minerals. The study includes an evaluation of decisions concerning selecting and valuing tract sites for lease sales. After we complete this study, we plan to issue a report to the Congress on this matter. When the report is issued, we will be pleased to send you a copy.

NONCOMPETITIVE MINERAL LEASES
ON PUBLIC LANDS

The Mineral Lands Leasing Act authorizes the issuance of non-competitive leases and prospecting permits for mineral exploration and development of leasable minerals on onshore public lands where workable mineral deposits are not known to exist. Offshore leases must be awarded only on a competitive basis in accordance with the provisions of the Outer Continental Shelf Lands Act.

Onshore oil and gas

The Mineral Lands Leasing Act provides that Federal land within a known geologic structure of a producing oil or gas field shall be leased competitively to the bidder who offers the greatest cash bonus,¹ the lessee being subject to an annual rental of not less than \$0.50 an acre and to a royalty of not less than 12.5 percent in amount or value of oil or gas produced. After discovering oil or gas, the lessee must pay a minimum annual royalty of \$1 an acre in lieu of rental.

The act provides also that Federal lands not within a known geologic structure shall be leased without competitive bidding to the first qualified applicant, the lessee being subject to the same rental provisions as that on lands within a known geologic structure, and a royalty of 12.5 percent in amount or value of oil or gas produced.

The Department's Geological Survey has defined a known geologic structure as a trap in which an accumulation of oil or gas has been discovered by drilling and has been determined to be productive. The definition provides that the limits of a structure include all acreage that is presumptively productive.

In our report (B-118678, March 17, 1970) to the Congress entitled "Opportunity for Benefits through Increased Use of Competitive Bidding to Award Oil and Gas Leases on Federal Lands," we concluded that oil and gas rights on Federal lands should be leased at fair market value under a competitive-bidding system. We recommended to the Congress that the Mineral Lands Leasing Act be amended to require that oil and gas leases of all Federal lands be awarded competitively unless otherwise justified. As of August 1974 no such legislation had been enacted.

Other onshore minerals

In accordance with the provisions of the Mineral Lands Leasing Act and as further defined by the Department's regulations, prospecting permits and leases are issued for coal, phosphate, sodium, sulphur, and potash, as follows:

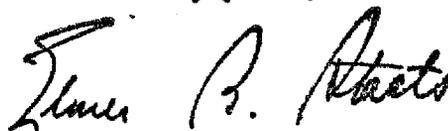
¹ The cash consideration paid to the Government by the successful bidder for a mineral lease, such payment being made in addition to the rent and royalty obligations specified in the lease.

1. Lands which are known to contain sufficient deposits of these minerals and which are available are leased by the Department's Bureau of Land Management under competitive-bidding procedures to the applicant who submits the highest bonus bid. Leases are issued for indeterminate periods and are generally subject to readjustment or renewal at 20-year intervals.
2. For lands where prospecting or exploratory work is necessary to determine the existence of leasable deposits of a mineral, the Bureau may issue a prospecting permit for primary term of 2 years and, under certain conditions, may extend it for 2 years. If, before the permit expires, the permittee can show that the lands contain sufficient quantities of leasable deposits of a mineral, he is entitled to a preference-right lease for all the lands or part of the lands. The Bureau awards such leases without benefit of competition and for indeterminate periods. These leases are generally subject to readjustment or renewal at 20-year intervals.

On February 13, 1973, the Secretary of the Interior ordered that no prospecting permits for coal be issued until further notice and that all pending applications for such permits as well as future applications be rejected. The order does not modify the rights of holders of existing prospecting permits. The Secretary stated that he took this action so that a program could be prepared for more orderly development of coal resources on public lands. The Department has not resumed issuing prospecting permits and does not expect to announce a long-range coal-leasing policy until early 1975.

We do not plan to distribute this report further unless you agree or publicly announce its contents.

Sincerely yours,



Comptroller General
of the United States