

Rio may get to bid a third time

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Rio Tinto Energy America may get a third crack at a coal lease it has twice failed to win from the federal government.

The Bureau of Land Management is considering a request from the London-based mining giant that would allow it to submit another bid later this year for the 54.6-million-ton North Maysdorf coal lease that would expand the company's Cordero Rojo mine.

The company's March offer of 80 cents per ton fell short of the government's "fair market value" for the tract. In an April 9 letter to the agency's Cheyenne office, the company asked to bid again, leaving the possibility of what could be an unprecedented third bid for a big chunk of Southern Powder River Basin coal.

"They requested a re-offer and we are certainly proceeding along those lines," said Phil Perlewitz, the state's branch chief for solid minerals.

Powder River Basin producers have long operated under the assumption that a failed second bid was the end of the line for a coal lease application before having the requested tract be sent to the back of the regulatory line. But with close to a dozen leases up for sale in the next three years, that could be a long wait, especially if another environmental impact statement is needed. Perlewitz acknowledged such considerations in his justification for giving consideration to Rio Tinto's third request.

"Basically, we have a number of sales we're looking at in the next couple years, so going to the end of the line is a very long process," he said.

University of Colorado law professor Mark Squillace, an expert in mining law, said the BLM appears to be within its rights to offer the coal a third time.

"There's nothing in the rules that prevent 100 bids if you want to make 100 bids," said Squillace, director of the Natural Resources Law Center.

Before getting to the point of another bid, though, Perlewitz said the agency will conduct an informal review of the environmental impact statement issued last April.

"A lot depends on the review of the NEPA (National Environmental Policy Act) documents in terms of timeframes and if additional work is required," Perlewitz said.

The environmental impact statement compiled by the BLM is now more than a year old. Perlewitz expects the earliest another bid could occur would be at the end of 2008. By that time, the environmental impact statement would be close to two years old.

"If the re-offer does occur it won't occur in the next couple months," Perlewitz said.

"NEPA has a certain shelf life and basically we'll need to take a look and see if the analysis is done on the existing NEPA document ... is still applicable."

State Rep. Tom Lubnau, R-Gillette, pointed out a new environmental analysis was unlikely to turn up any new impacts — positive or negative — beyond ones that already have been identified in the current literature.

That view is not shared in all corners.

"Given the age of the environmental impact statement, BLM hasn't appropriately analyzed coal's impact on greenhouse gas emissions," said Shannon Anderson, an organizer with the Powder River Basin Resource Council, a landowner and environmental group.

She pointed out such considerations have been taken into account on later leases by application the BLM has underway.

But it won't just be the environment that's likely to be reviewed. Across the border, the Montana BLM has experience with a trio of bids. Western Energy spread three bids for a tract of coal by its Rosebud mine in Coalstrip, Mont., over nearly four years in the late 1990s before it finally met the government's fair market value.

"They were in negotiation with the power plant owners and it just took that amount of time to get it done," said Ed Hughes, acting branch chief for solid minerals in Billings, Mont.

Of the Maysdorf situation, he said, "Two years? I don't think things on the ground are going to change that much. The only thing that's changed is the market for coal, so the appraisal may need to be revisited."

Anderson said she is confident given the BLM's past decisions, that it will get a fair price for public resources.

John Wilson, former president of the now defunct Triton Coal Co., said that from his point

of view, Rio and others should be allowed to have third bids. However, the BLM needs to make such opportunities available for all companies and not change their rules mid-stream.

"There's no obvious provisions for a third re-bid and (the BLM) ran the risk of the coal being bypassed ... it was fair and good in the second bid."

"This shouldn't be an exception, it should be a rule and everyone should be able to get three bites," he said. "They just need to apply it to the system."

Lubnau and Sen. Michael Von Flatern, R-Gillette, agreed. They both have no problem with a third bid, looking past it to the positive impact on state finances. Half the bonus bids — money the companies offer up front for such tracts — go to build schools around the state.

With March's rejected bid at close to \$43.8 million, stakes for the state are high, to speak nothing of the millions in severance and royalty taxes that could be made down the road.

"The only thing I'd weigh in on that is if it's competitive in nature and they're not excluding anybody," said Von Flatern, a member of the education committee. "Is that coal just going to sit because nobody else can mine it?"

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