

HANNA OIL AND GAS CO.

IBLA 88-224

Decided February 9, 1990

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting the high bid in a competitive oil and gas lease sale. ES 37676.

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 if 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

When the Government rejects a competitive oil and gas lease high bid because the bid was less than its fair market valuation, the bidder must not only show the lack of a rational basis for the decision, or that BLM erred when formulating its fair market valuation, but must also establish that its bid represents fair market value in order to be awarded the lease.

APPEARANCES: R. Michael Cardwell, Landman, for appellant.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Hanna Oil and Gas Company (Hanna) has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated January 6, 1988, rejecting its high bid for parcel No. 2 (ES 37676) in the competitive oil and gas lease sale held September 30, 1987. Parcel No. 2 included 80 acres in the Batson-Low Gap Field in Johnson County, Arkansas, described as the SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, sec. 28, T. 11 N., R. 25 W., fifth principal meridian. Appellant bid \$3,000 (\$37.50 per acre) for the parcel.

On October 2, 1987, BLM sent appellant a notice of probable rejection of his bids both for this parcel and for parcel No. 8. The notice stated that appellant's high bids were lower than the "presale estimate of value" (PEV) BLM had assigned to the parcels. BLM did not reveal the PEV figures in the notice. BLM allowed appellant 15 days from receipt to submit information to justify his bid. Appellant apparently responded to this notice with information that was not persuasive to BLM. ^{1/}

On January 6, 1988, BLM issued its decision rejecting appellant's bid for parcel No. 2 because it did not represent fair market value. BLM explained the bid rejection as follows:

The Bureau of Land Management (BLM) appraised fair market value (FMV) for Parcel No. 2 is \$50.00 per acre; the submitted high bid was \$37.50 per acre. The appraised value is based on comparable leasing (sales) as set forth in the Uniform Standards for Federal Land Acquisitions. This approach was employed because it is considered, when data are available, to be the most reliable and logical indicator of the current market value of mineral interests.

The basic premise of comparable sales analysis is that the market for oil and gas reserves is a competitive situation involving prudent and knowledgeable buyers and sellers. It also assumes that no factors exist, to significantly alter the value of previously leased comparable tract(s) relative to the appraised tract(s). If any such factors exist, they must be accounted for in the final analysis. Some of the most important factors affecting the FMV of a tract's reserves include (but are not limited to): time, location, geology, surface occupancy restrictions, royalty rates, interest rates, and drilling costs. Thus, the best indicators of the FMV of the subject Federal parcel are bonuses paid for recently-leased tracts with similar geographic, economic and geologic characteristics.

Current leasing information was obtained for tracts geologically similar to the subject Federal parcel. Parcel No. 23 of the March 17, 1986 Federal sale received an acceptable high bid of \$50.00 per acre. If this is adjusted to account for the approximate 10-percent decrease in the price of natural gas in Arkansas that occurred between March 1986 and September 1987, it "translates" into a current-value bid of approximately \$45.00 per acre. A second comparable tract, Parcel No. 6 of the September 1987 sale, received an acceptable high bid of \$133.44 per acre.

^{1/} The record reveals that appellant submitted a map in response to the Notice of Probable Rejection, which has not been included in the administrative record transmitted to as an appeal. BLM is reminded of its obligation to maintain a complete administrative record and to submit it to this Board when an appeal is filed.

The figure used as the FMV for Parcel No. 2 was \$50.00 per acre, slightly higher than the current-value high bid received for the March 1986 comparable Federal tract, because that tract is offset more closely by a dry hole. According to the July 1987 issue of Lierle Newsletters, Inc.'s U.S. Lease Price Report, the FMV established by BLM is well below the most common lease bonus for the area, \$80.00 per acre.

The map submitted in response to the Notice of Probable Rejection displaying two dry holes that offset Parcel No. 2 was in possession of the BLM before the September 1987 sale, and was taken into consideration in the establishment of the FMV for the parcel.

In its statement of reasons on appeal, appellant asserts its bid is sufficient for these lands because, inter alia, the current economics and gas markets in this area are not good (natural gas is down 35 percent and the Spot Market price for gas in the area is about \$1.20 to \$1.25 per Mcf) and, therefore, any acreage that can be leased between \$35 to \$50 per acre is reasonable. It asserts that fair market value is established by what a party is willing to pay, as, in this case, its high bid of \$37.50 per acre. Appellant also notes that it is active in leasing in this area and has been successful in acquiring acreage at this same price range. Lastly, it argues that the bid of \$133.44 per acre for parcel No. 6 in the September 1987 sale should not be considered because this sale was located in two other sections with offset production to the west.

[1] The Secretary of the Interior has the discretionary authority to reject a bid for a competitive oil and gas lease if he considers the bid inadequate. 30 U.S.C. § 226(b) (1982); 43 CFR 3120.5(a); MTS Limited Partnership, 95 IBLA 337 (1987); Michael Shearn, 87 IBLA 168, 169 (1985). This Board has consistently upheld that authority, so long as there is a rational basis for the conclusion that the highest bid does not represent the fair market value of the parcel. Victor P. Smith, 101 IBLA 100 (1988); Viking Resources Corp., 80 IBLA 245, 246 (1984). Departmental policy in the administration of its competitive leasing program must be to seek the return of fair market value of the grant of leases, 43 U.S.C. § 1701(a)(9) (1982), and the Department reserves the right to reject a bid which will not provide a fair return. Viking Resources Corp., supra at 246.

When exercising the authority to reject a high bid, 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. Matthew Wolf, 98 IBLA 193 (1987); Viking Resources Corp., supra at 247. However, when BLM relies on that analysis, it must ensure that a reasoned explanation to support the decision is provided in the record. Mesa Petroleum Co., 81 IBLA 194, 195 (1984). Past Board decisions establish that at a minimum, BLM must disclose the PEV and provide some explanation for the rejection of a high bid. Eugene Chmelar, 104 IBLA 301, 303 (1988); Suzanne Walsh, 96 IBLA 374 (1987).

When BLM issued its decision rejecting appellant's bid, it provided a reasoned explanation in the record to show a rational basis for its conclusion that appellant's bid for parcel No. 2 did not represent fair market value. BLM analyzed comparable tract data generated in the sale to derive its postsale fair market valuation for the parcel. In its postsale analysis, BLM initially estimated the value of this parcel to be \$50 per acre. After considering appellant's assertions, and adjusting to account for the approximate 10-percent decrease in the price of natural gas in Arkansas prior to the sale, BLM lowered the FMV to \$45. This lower postsale estimate is still more than 20-percent higher than appellant's bid. We conclude that the record is sufficient to justify rejection of appellant's bid. See Billy Krumbein, 92 IBLA 362, 363 (1986).

[2] Although the Board has held that BLM should provide a rational basis for its determination to reject a high bid, we have also concluded that the high bidder must establish that his bid represents fair market value in order to be awarded the lease. Miller Brothers Oil Corp., 100 IBLA 172, 175 (1987); Burton/Hawks, Inc., 98 IBLA 118, 122 (1987). ^{2/} Appellant's statements on appeal are mostly self-serving and are merely indicative of its business decision not to pay more than \$37.50 per acre for leases in this area. Appellant has not provided any technical or geologic information with this appeal that is persuasive that its bid clearly represents fair market value. Therefore, based on the record before us, we are unable to find that appellant has affirmatively established that its bid represents fair market value. In light of these circumstances, we find the high bid offered by Hanna was properly rejected.

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 affirmed.

John H. Kelly
Administrative Judge

I concur:

David L. Hughes
Administrative Judge

^{2/} This is true even when BLM fails to provide a rational basis for its rejection decision or where the high bidder shows BLM has erred in its determination of a minimum acceptable bid value. Miller Brothers Oil Corp., supra at 175.