

ANADARKO PETROLEUM CORP.

IBLA 94-568

Decided March 27, 1996

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, dismissing protest against competitive lease sale of parcel No. 9404001.

Affirmed.

1. Oil and Gas Leases: Generally—Oil and Gas Leases: Competitive Leases

When a bidder at an oil and gas lease oral auction failed to object that his bid was overlooked before bidding moved on to other leases, the announced award was properly found by the auctioneer to be final pursuant to 43 CFR 3120.5-1(b).

APPEARANCES: James J. Ward, Jr., Esq., Houston, Texas, for appellant; Margaret Miller Brown, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Anadarko Petroleum Corporation (Anadarko) has appealed from a May 5, 1994, decision of the New Mexico State Office, Bureau of Land Management (BLM), that denied Anadarko's protest of the sale of parcel No. 9404001 to Philip L. White. A stay of the effect of the decision pending appeal was granted on July 26, 1994, to permit the parties to brief the effect of

Departmental regulation 43 CFR 3120.5-1(b) on the oil and gas lease sale by oral auction that is here at issue. After the ordered briefing was completed, Anadarko sought to file a reply which asked, should the BLM decision not be reversed on appeal by the Board of Land Appeals, that a hearing be ordered before an Administrative Law Judge to resolve disputed issues of fact appearing in affidavits offered by the parties during briefing. The reply offered by Anadarko is accepted for filing and has been considered; the request therein for an evidentiary hearing is denied, although the BLM decision is affirmed on appeal. This result is reached because we find, on the record developed during briefing, that while there are some inconsistencies in statements offered by the parties during briefing, there is no conflict of material fact among them that requires a further evidentiary hearing.

The record before us establishes that, on April 20, 1994, BLM held a competitive lease sale by oral auction at a BLM office in Santa Fe, New Mexico. The first lease offered for sale at the auction was parcel No. 9404001. Jeff Poole, BLM's auctioneer, determined that an \$8-per acre bid offered by Daniel Gonzales on behalf of White was high, and awarded the lease to him. He then went on to auction other parcels.

M.S. Wallace, an Anadarko employee who had also bid on the first lease offered for sale, states: "I raised my bidder card to accept the bid at the conclusion of the bidding for the parcel and was informed that I was not the high bidder" (Affidavit of M.S. Wallace dated June 14, 1994). Wallace, however, did not register an objection with the auctioneer, who continued the auction of other parcels. Instead, Wallace went to Martha Rivera, a BLM employee who was also present in the audience, to complain about the award to Gonzales. Wallace asked Rivera to reopen bidding because he had been confused about the award to another bidder at the identical price he had bid.

Rivera then approached the auctioneer, who had sold at least one more lease in the interval, being unaware of the objection raised by Wallace. Bidding was halted for a short time; when the other bidders present at the auction were informed of the complaint by Wallace, an objection was voiced to reopening bidding on the first lease. The auctioneer then determined that the sale to Gonzales was final as previously announced, and the auction continued. Concerning the complaint the Wallace bid was overlooked, the auctioneer states Wallace "should have, in my opinion, made an immediate verbal protest, as, when this has happened with any other person doing this sale, myself included, if we did not see a bidder, he immediately spoke up upon realizing that we did not notice him" (Poole Statement, dated Aug. 4, 1994).

Anadarko contends that BLM's decision here under review was arbitrary, capricious, an abuse of discretion, not in accordance with law, or without observance of procedure required by law (Statement of Reasons (SOR) at 3). It is contended that, by refusing to reopen bidding, BLM acted contrary to 30 U.S.C. § 226 (1994) and 43 CFR 3120.5-1(b), which required BLM to accept the highest bid and specified that a winning bid shall be the highest oral bid. Id. at 4. Arguing that the Anadarko bidder was authorized to bid more than \$8 per acre, Anadarko reasons that the oral auction regulation, 43 CFR 3120.5-1(b), does not give the auctioneer "discretion to arbitrarily choose between two bidders who have bid the same amount." Id. at 5. Anadarko also reasons that a BLM auctioneer may not choose to accept less than the highest amount the Government could have obtained at auction, and that the auctioneer was not authorized to consult the audience to determine whether they objected to reopening bidding for the first lease. Id. Finally, Anadarko contends, in reply to the answer filed by BLM, that Departmental regulation 43 CFR 3120.5-1(b) should not be wholly dispositive of this appeal (Reply at 1). The cited regulation provides: "A winning bid shall be the highest oral bid by a qualified

bidder, equal to or exceeding the national minimum acceptable bid. The decision of the auctioneer shall be final." 43 CFR 3120.5-1(b).

[1] Anadarko does not challenge the statement by the auctioneer that it is agency practice, when an announced award is questioned at oral auction, to require bidders to object at once, before bidding moves on to other leases. Wallace states that Anadarko had authorized him to bid more than \$8 on the first lease and that he would have done so had he "not believed the auctioneer had awarded the bid to Anadarko" (Wallace Affidavit, dated June 14, 1994, at 3). When Wallace notified the auctioneer that he questioned the first award, however, bidding had progressed to other parcels. Wallace, however, describes with approval how a later bid was handled by the auctioneer:

This was not the only parcel on which there was confusion as to who had submitted the high bid. In at least one other case, the auctioneer indicated a current high bid and the party informed the auctioneer that he had not made the bid. The bidding was temporarily halted until the correct bidder had been identified.

(Wallace Statement at 2). A statement by C. Craig Folson, who was present at the auction, corroborates that this event took place as described (Folson Statement, dated Sept. 12, 1994, at 2), as does the statement by the auctioneer, quoted above.

The accuracy of the auctioneer's statement of agency practice in such cases, and his practice in this case, is not denied by Anadarko. The auctioneer did not arbitrarily refuse to reopen bidding, but did so in keeping with described agency practice; the practice was to require immediate objection to an announced bid acceptance in the case of error or confusion, which would then be resolved before moving on to other sales. Anadarko and the other bidders at the auction were entitled to consistent agency procedure in the handling of questioned bids. See, generally, Squaw Transit Co. v. United States, 574 F.2d 492 (10th Cir. 1978). The record before us shows that the auction was conducted consistent with regular agency practice, and that the auctioneer properly refused to revisit the first lease sale after bidding had been allowed to move on to other leases without objection to the auctioneer from Anadarko's employee.

Under 43 CFR 3120.5-1(b) it was the auctioneer who was handling the bidding: It was to him that Wallace was required to address his objection that he had been overlooked. When Wallace chose instead to consult first with a BLM employee other than the auctioneer, he acted contrary to customary practice in such cases and in disregard of the rule that placed responsibility for the conduct of the auction in the auctioneer. See 43 CFR 3120.5-1(b). When his tardy request to reopen bidding was presented to the auctioneer after bidding had continued on to other parcels, it was properly denied. The fact that members of the audience commented on the request to reopen bidding did not taint the auctioneer's decision. As the

auctioneer explains, "[M]y decision not to reopen the bidding on that parcel was in no way influenced by the audience" (Poole Affidavit, dated Nov. 17, 1994).

There is no question but that, as Anadarko points out, both 30 U.S.C. § 226 (1994) and 43 CFR 3120.5-1(b) require BLM to accept high bids at sales such as the one held by BLM on April 20, 1994. That observation, however, does not bear directly on the issue here presented, which concerns instead whether the procedure used by BLM in this case was regular. We find the decision announced by the auctioneer was consistent with his handling of bidding on another lease at the same auction, and conformed to his statement of agency practice in such cases generally; under 43 CFR 3120.5-1(b), the decision was his to make. Consequently, applying 43 CFR 3120.5-1(b) to the case under review, it was properly determined by BLM that the bidding on the first lease could not be reopened after bidding had been allowed to continue without an objection from Anadarko having been stated to the auctioneer.

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.

Franklin D. Amess
Administrative Judge

I concur.

Bruce R. Harris
Deputy Chief Administrative Judge

