

M. S. MACK

IBLA 79-257

Decided January 17, 1980

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting high bid for competitive oil and gas lease NM-36036 (Okla.).

Affirmed.

1. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases: Discretion to Lease

The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

2. Oil and Gas Leases: Generally -- Oil and Gas Leases: Competitive Leases

The Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

3. Administrative Procedure: Adjudication -- Rules of Practice: Evidence

The Board of Land Appeals is obliged to consider everything contained in the record in determining all matters relevant to the disposition of an appeal.

APPEARANCES: M. S. Mack, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

M. S. Mack appeals from the decision of the New Mexico State Office, Bureau of Land Management (BLM), dated February 14, 1979, rejecting his high bid of \$12.79 per acre on competitive oil and gas lease NM-36036 (Okla.). BLM informed appellant that "[b]ased on the pre-sale and post-sale evaluation of this parcel, [the Geological Survey] considered this bid to be inadequate and recommended that it be rejected."

In his statement of reasons, appellant argues that (1) the four bids received on the parcel represent a fair test of the market evaluation of the bid, and his bid was 19.2 percent higher than the average of the other bids, (2) his bid of \$12.79 per acre compares favorably with bids awarded by the State of Oklahoma on State parcels, (3) he has been awarded parcels by other BLM offices on lesser bids, (4) the Santa Fe BLM office administers lands in New Mexico which are traditionally high priced and this Oklahoma parcel is marginal, (5) rejection of the bid favors big business, and (6) the value of a parcel is highly speculative until it is drilled and it is reasonable to let the open market establish the price.

[1] The Secretary of the Interior has discretionary authority to reject a high bid at a competitive oil and gas lease sale on the basis of an inadequate bonus. 30 U.S.C. § 226(b) (1976). This right to reject competitive oil and gas lease offers is recognized in the Department's regulations at 43 CFR 3120.3-1. This Board has repeatedly upheld the authority of the Secretary to reject bids so long as there is a rational basis for the conclusion that the highest bid was too low. B. D. Price, 40 IBLA 85 (1979); Frances J. Richmond, 29 IBLA 137 (1977); Arkla Exploration Co., 25 IBLA 220 (1976); H & W Oil Co., Inc., 22 IBLA 313 (1975). Departmental policy in the administration of its competitive leasing program is to seek the return of fair market value for the grant of leases and the Secretary reserves the right to reject a bid which will not provide a fair return. Coquina Oil Corp., 29 IBLA 310, 311 (1977). See Exxon Co., U.S.A., 15 IBLA 345, 357-58 (1974).

[2] The Geological Survey (Survey) is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on the Survey's reasoned analysis. Gerald S. Ostrowski, 34 IBLA 254 (1978); Coquina Oil Corp., *supra*; Arkla Exploration Co., *supra*. However, when BLM relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided by the record to support the decision. Southern Union Exploration Co., 41 IBLA 81, 83 (1979). Otherwise, if the bid is not clearly spurious or unreasonable on its face, the Board has consistently held that the decision must be set aside and the case remanded for compilation of a more complete record and readjudication

of the acceptability of the bid. Southern Union Exploration Co., supra; Charles E. Hinkle, 40 IBLA 250 (1979); Gerald S. Ostrowski, supra; Yates Petroleum Corp., 32 IBLA 196 (1977).

As noted, the decision rejecting appellant's bid contained only the conclusory statement that Survey considered the bid to be inadequate as reason for the rejection. Examination of the case file reveals no document dated prior to the February 14, 1979, decision containing an explanation for the Survey recommendation. The following memorandum from Survey dated February 5, 1979, does appear in the record:

Memorandum

To: Chief, Branch of Lands and Minerals Operations,
State Office, Bureau of Land Management,
Santa Fe, New Mexico

From: Oil and Gas Supervisor, Mid-Continent Area

Subject: Competitive Oil and Gas Lease Sale, January 30,
1979, Oklahoma, your memorandum of February 1,
1979, ref. 3120 (943b-4)

This will acknowledge receipt of three copies of your official minutes of the January 30, 1979, Oklahoma lease sale, and confirm the recommendations furnished you at the sale by Messrs. Vinyard and Johnson, that we consider the total highest cash amounts bid for Parcels Nos. 1, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 23, 24 and 25 to be acceptable, and we recommend that leases be issued for these bids. We consider the bids received for Parcels Nos. 2 and 11 to be inadequate, and we recommend that they be rejected.

In accordance with the arrangement previously agreed to in oral discussion between Bureau of Land Management and Geological Survey representatives, a copy of our pre-sale evaluation memorandum dated January 26, 1979, is enclosed to show why the bids received on Parcels Nos. 2 and 11 are recommended for rejection. Should the rejection of any of these bids precipitate an appeal, please advise and we will furnish details on our pre-sale evaluation before you submit any such appeal to the Board of Land Appeals.

Appellant bid on Parcel No. 2. The case file does not contain the January 26 evaluation memorandum. While it is possible that this memorandum did provide information from which BLM could make a reasoned decision, we cannot so assume given the Survey's offer to "furnish details" should the rejection of the bid be appealed. The procedure followed by BLM and Survey in this case is unacceptable.

Even though BLM may rely on Survey's expertise, the decision must be BLM's and a reasoned explanation for the decision must be reflected in the record.

[3] Ordinarily, in a case such as this, we would set the decision aside and remand for compilation of an adequate record and readjudication of the acceptability of the bid. However, following receipt of appellant's notice of appeal, BLM did request that Survey provide supportive information concerning the evaluation of Parcel 2. A memorandum to that effect dated March 2, 1979, is in the case file and provides the following rationale for the conclusion that appellant's bid was inadequate:

Parcel 2, described as lots 1, 2, 3, sec. 2, T. 1 S., R. 10 E., Cimarron meridian, Texas County, Oklahoma, was evaluated by our Lease Sale Committee, which consists of a petroleum engineer and a geologist.

This parcel is located adjacent to the western margin of the Guymon Hugoton field, one of the largest gas fields of the United States. The main Hugoton gas reservoirs in this part of the field occur in stratigraphic traps in the Chase Group, Permian, from about 2,500 feet to 2,800 feet in depth. Very few of the gas wells here have drilled any deeper than the base of the Chase Group, and past exploration of this general area has shown that numerous oil and gas zones may be present below the Chase. Just a few miles west of the subject parcel, gas and oil have been produced from the Morrow sands, about 4,600 feet deep; the Cherokee sands, about 4,300 feet deep; the Oswego lime, about 4,250 feet deep; the Lansing Group, about 3,700 feet deep; the Topeka lime, about 3,400 feet deep; and the Wabaunsee Group, about 3,250 feet deep. The trapping mechanisms for these zones appear to vary from stratigraphic to combinations of stratigraphic and structural.

Active exploration in the vicinity of Parcel No. 2 was taking place at the time of the subject lease sale. An oil and gas test in sec. 25, T. 1 N., R. 10 E., Cimarron meridian, 1-1/4 miles northeast of Parcel No. 2, had reached a total depth of 2,900 feet and was waiting on completion tools. This well could extend the projected western limit of the Chase production in the Hugoton field toward Parcel No. 2. Also, another oil and gas test was first reported January 5, 1979. This well is in sec. 36, T. 1 N., R. 10 E., Cimarron meridian, three fourths of a mile northeast of Parcel No. 2, and would, if successful, also extend the western limit of the Hugoton field toward Parcel No. 2, thus increasing interest in developing sec. 2, and, therefore, increase the value for its oil and gas

rights. The concept of the Chase gas reservoir, as well as the deeper pays mentioned above, underlying a portion of sec. 2, T. 1 S., R. 10 E., Cimarron meridian, is quite possible.

New and continuing higher prices received for oil and gas are apparently escalating recent bonus offers. It is noted that Parcel No. 1, offsetting Parcel No. 2 to the east, received a bid of \$51.00 per acre in the sale on January 30, 1979. State lands in the area were leased for \$42.42 per acre in 1976. We believe that the minimum acceptable oil and gas lease bonus of \$20.00 per acre, as determined by our Lease Sale Committee, is compatible with the fair market value of bonuses currently being offered and accepted in the area, and the high bid of \$12.79 per acre for Parcel No. 2 is too low and should be rejected as inadequate.

It would be futile and a waste of appellant's and the Government's time to remand this case to correct the procedural deficiency. This Board is free and is indeed obligated to decide on the basis of the complete record as it now stands. United States v. Grediagin, 7 IBLA 1 (1972). However, it would be unfair to decide this case without giving appellant an opportunity to comment on the Survey memorandum. On November 27, 1979, a copy of the memorandum was sent to appellant who responded by a letter dated December 2, 1979.

Appellant contends that the outcome of the exploration near Parcel No. 2 is speculative and presumably should not be considered in evaluating the potential of Parcel No. 2. We do not find this argument persuasive. The bidding process is speculative by its very nature. In his original letter of appeal, appellant himself asserted that the value of the parcel for leasing was speculative until it is drilled. The possibility that the Hugoton field may be extended towards Parcel No. 2 as a result of the exploration affects the value of the parcel for leasing. The degree to which it does is surely speculative but the exploration is an appropriate consideration nevertheless.

Appellant urges that if the exploration activities do affect the worth of Parcel No. 2, then persons with knowledge of them were free to bid on the parcel and those that did bid may have been aware of these activities. Also he notes that the high bidder for Parcel No. 1 at \$51, mentioned in the memorandum, bid only \$11 on Parcel No. 2. These arguments are apparently meant to bolster appellant's previous argument that a fair test of the market for this parcel occurred with the bids received. As earlier noted, the Secretary is entitled to rely on the Survey's assessment of fair market value so long as it is rationally based. Appellant has not presented definitive evidence which overcomes the basis of the Survey's recommendation.

Finally, appellant notes that the difference between his bid and Survey's recommendation is not great, just \$325.50. We would submit that appellant's bid was approximately 36 percent less than the Survey amount, which we find to be a significant difference.

In view of the overall character of the area and the values of leases in the immediate vicinity of Parcel No. 2, as described in the Survey memorandum we cannot find that rejection of appellant's bid was improper.

Therefore 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.

James L. Burski
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

