

WILLIAM C. WELCH

IBLA 80-752

Decided December 4, 1981

Appeal from the decision of the New Mexico State Office, Bureau of Land Management, rejecting the high bid for competitive oil and gas lease NM 40781 (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: Competitive Leases

The Department of the Interior is not required under the Freedom of Information Act to release its presale evaluation of parcels prior to the acceptance of competitive oil and gas lease bids.

3. 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.

APPEARANCES: William C. Welch, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

William C. Welch has appealed from the decision of the New Mexico State Office, Bureau of Land Management (BLM), dated June 13, 1980, rejecting his high bid of \$ 10 per acre for parcel No. 7 (NM 40781-OK) in a competitive oil and gas lease sale held on May 20, 1980. The BLM decision indicates that the Geological Survey (Survey) recommended rejection of appellant's bid based on its presale evaluation of the lease parcel and that appellant's bid was lower than the evaluation. At the time of rejection, Survey had merely provided a recommendation that BLM reject the bid for inadequacy. Subsequent to the filing of an appeal, a supporting memorandum was submitted by Survey to BLM and transmitted to the Board.

Appellant alleges in his statement of reasons that no other parties bid on this parcel, that if a minimum bid was anticipated it should have been published, and noted that the State Office had retained his deposit. He generally argued that he had bid a fair per acre bonus considering developmental costs.

[1] The authority of the BLM to reject the high bid for inadequacy of the bonus has been repeatedly affirmed by this Board. See, e.g., Harry Ptasynski, 48 IBLA 246 (1980); Exxon Co., U.S.A., 15 IBLA 345, 357-58 (1974). Moreover, the "Notice of Oil and Gas Lease Sale" which solicited bids expressly noted that "the right is reserved to reject any and all bids" and further advised prospective participants that "any bonus bid considered inadequate on the basis of the estimated value of the parcel will be rejected." Appellant was clearly on notice that, should BLM determine that his high bid was insufficient, the bid would be rejected.

[2] Insofar as the prelease sale release of minimum bid estimates are concerned, both the Department and the courts have consistently ruled that such estimates are not subject to presale disclosure under the Freedom of Information Act. See Pitman v. Interior, No. 76-F-1022 (D. Col. May 23, 1977); Southern Union Exploration Co., 51 IBLA 89 (1980). Retention of the bid deposit is a prerequisite to maintaining an appeal from the rejection of a high bid. When a final decision issues affirming a rejection, the bid deposit is refunded in due course. In short, none of appellant's specific arguments could serve as the basis for reversing the decision below.

[3] Appellant also contends, however, that his bid did represent fair market value. This Board has consistently held that while BLM is entitled to place great reliance on Survey's technical expertise, the decision rejecting a high bid is that of BLM and, thus, BLM must independently analyze the question of sufficiency. See generally Southern Union Production Co., supra; Steven Lutz, 39 IBLA 386 (1979); Basil W. Reagel, 34 IBLA 29 (1978). Prior to submission of the Survey memorandum, the record was woefully inadequate to justify BLM's action. Indeed, the only reference to any justification was a cryptic note which indicated that the high bid for parcel No. 7 was "Rejected per GS memo dated

5/27/80." There is no copy of this memorandum in the case file so we are unable to ascertain the arguments presented therein.

The Survey memorandum of July 18, 1980, however, clearly provided justification for its recommendation. In M. S. Mack, 45 IBLA 99 (1980), a similar problem arose where the justification for rejection was submitted after the appeal from rejection of a high bid. Therein, we afforded appellant an opportunity to comment on Survey's contentions. In the instant case this Board, by order of October 26, 1981, sent to appellant's address of record, afforded an opportunity to comment on the July 18 memorandum. This order, however, was returned as undeliverable. No change of address was filed with the Board as required by 43 CFR 4.22(d). We will therefore consider Survey's submission in light of appellant's generalized allegation that his bid represented fair market value.

In its memorandum, Survey noted:

Parcel 7 is located within the known geologic structure of Wolgamott field. This parcel, which is a 40-acre tract located in the SW 1/4 SE 1/4 sec. 29, T. 29 N., R. 15 W., I. M., Woods County, Oklahoma, is approximately one mile southwest of the presently producing portion of Wolgamott field. This field trends generally in a north-westerly direction and produces from the Cherokee and Mississippian zones, which are approximately 4,900 feet in depth.

Oil and gas exploration in this portion of Woods County is fairly active. Numerous oil and gas tests have been drilled in this township and surrounding townships during the past year, and several drilling rigs are presently active.

An oil and gas "play" is continuing parallel to and just southwest of the Wolgamott field. This tract (Parcel 7) is considered to be on trend with this "play," which has had mixed success to the present. However, there are possibilities of additional pay zones here.

Our records show that the State of Oklahoma received a bonus of \$ 121.66 per acre for lands located in sec. 25-29N-16W (approximately two miles west of Parcel 7) in December 1979. The State also accepted bonuses in the range of \$ 26.00 per acre, somewhat earlier, for lands located in secs. 9 and 11-28N-15W. We have no records of any lands in the immediate area being leased for oil and gas as low as \$ 10.00 per acre, which was the offer made by Mr. Welch for Parcel 7.

A gas well located in the NE 1/4 sec. 28-29N-15W was completed in May 1970, in Cherokee perforations 4,966 to

4,986 feet, and has a cumulative gas production of 1.467 billion cubic feet as of January 1, 1980. The well appears to have an ultimate recovery in the range of two billion cubic feet of gas.

We believe, based upon the possible gas production for the area in two or more reservoirs, previous bonuses received for oil and gas leasing in the area, and the new and higher prices received for oil and gas, that the acceptance of Mr. Welch's high bid of \$ 10.00 per acre for Parcel 7 would not be in the public interest. In conclusion, we find no grounds to alter our previous recommendation that Mr. Welch's bid be rejected as inadequate.

We find that this document adequately justifies rejection of appellant's bid. His generalized allegations are clearly insufficient to overcome the weight which we properly accord to Survey's findings as they relate to areas of technical expertise. See Gerald S. Ostrowski, 34 IBLA 254 (1978).

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:

Douglas E. Henriques
Administrative Judge

Bruce R. Harris
Administrative Judge

