

MARY M. GONZALES

IBLA 82-1021

Decided October 5, 1982

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting high bid for competitive oil and gas lease, NM 53368.

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

Minerals Management Service is the Secretary's technical expert in matters concerning geological 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. Oil and Gas Leases: Generally -- Oil and Gas Leases: Competitive Leases

The bids received at a sale of competitive oil and gas leases on any parcel do not necessarily represent an accurate test of fair market value, as bidders may consider other factors in making their bids.

APPEARANCES: David R. Vandiver, Esq., Artesia, New Mexico, for appellant; Robert J. Uram, Esq., Office of the Field Solicitor, Southwest Region, Department of the Interior, for the Bureau of Land Management.

## OPINION BY ADMINISTRATIVE JUDGE STUEBING

Mary M. Gonzales has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated May 25, 1982, rejecting her high bid for parcel 4, NM 53368, at a competitive oil and gas lease sale held April 27, 1982. Appellant submitted a bid of \$ 64,000 (\$ 400 an acre) on behalf of several New Mexico corporations, 1/ for 160 acres of the Dagger Draw field situated in the SE 1/4 sec. 24, T. 19 S., R. 24 E., New Mexico principal meridian, Eddy County, New Mexico. BLM rejected the bid based on a recommendation from the Minerals Management Service (MMS). In a memorandum to BLM dated May 13, 1982, the Deputy Minerals Manager for Resource Evaluation, South Central Region, MMS, recommended rejection because "the [MMS] presale valuation for these parcels were [sic] considerably higher than the high bids received." MMS evaluated parcel 4 along with parcel 5 (of the same April 27, 1982, sale) and commented that the evaluation was based upon possible Morrow gas potential. MMS referred to "three fairly recent Morrow (1981) producers" located nearby in support of its recommendation.

BLM's decision utilized a prepared form for rejecting high bids as inadequate in comparison to presale evaluation. The rationale submitted by BLM for its rejection of appellant's high bid was a photocopy of MMS' recommendations for parcels 4 and 5.

Appellant contends that MMS' observations are "devoid of any rational reason providing factual support for the conclusion" and the decision rejecting the bid lacks independent evaluation by BLM. Appellant further argues that the evaluation was not representative as it ignored the production and sales history of nearby lands and that the bids submitted by appellant and other bidders reflected the fair market value of parcel 4.

[1] In her statement of reasons, appellant recognized that the United States may reject a high bid offered as a bonus for a competitive oil and gas lease so long as there is a reasonable basis for the rejection shown. The Secretary of the Interior has the discretionary authority to reject a high bid as inadequate. 30 U.S.C. § 226(b) (1976), 43 CFR 3120.3-1. This Board has consistently upheld that authority so long as there is a rational basis for the conclusion that the highest bid did not reflect fair market value for the parcel. Harris-Headrick, 66 IBLA 84, 85 (1982); Harold R. Leeds, 60 IBLA 383, 384 (1981); Frances J. Richmond, 29 IBLA 137 (1977). 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. Harold R. Leeds, supra at 384; Coquina Oil Corp., 29 IBLA 310, 311 (1977).

[2] MMS is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at sale of competitive oil and

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1/ Yates Petroleum Corporation, Yates Drilling Company, Abo Petroleum Corporation, and Myco Industries, Inc., likewise, appeal BLM's decision. Their appeals are merged into one appeal represented by Mary M. Gonzales.

gas leases and the Secretary is entitled to rely on MMS's reasoned analysis. Harris-Headrick, *supra* at 85; Harold R. Leeds, *supra* at 384; Gerald S. Ostrowski, 34 IBLA 254 (1978) (MMS is the successor to the functions of the Geological Survey (Survey) referred to therein). When BLM relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided for the record to support the decision. Harris-Headrick, *supra* at 86; Southern Union Exploration Co., 41 IBLA 81, 83 (1979).

It is arguable whether MMS' analysis which accompanied the BLM decision provided appellant with an adequate explanation for the rejection of her high bid. In Harris-Headrick, *supra*, this Board remanded BLM's decision to reject a high bid where the decision was based on MMS's analysis of "comparable tracts in the vicinity of the parcel." There was no explanation provided for the record as to why the tracts were comparable. However, in Harold R. Leeds, *supra*, the Board affirmed BLM's decision to reject the high bid where BLM, quoting from Survey's analysis, used other producing wells in the area as examples of the parcel's potential.

In an appearance in this appeal, Field Solicitor's Office, Southwest Region, has filed a reply to appellant's statement of reasons. Department counsel accompanied the comments therein with an evaluation on parcel 4 prepared by MMS. We have previously faced situations where the justification for the rejection was submitted after the appeal was filed. See William C. Welch, 60 IBLA 248 (1981); M. S. Mack, 45 IBLA 99 (1980). Copies of Department counsel's comments and MMS' report were sent to appellant and her counsel. Although MMS spent considerable energy in its report attacking this appeal, some information was provided touching the rationale used to reach its recommendation to reject appellant's bid.

In its evaluation, MMS relied upon sales and production information of a more recent date than the evidence appellant offered. That data strongly indicated a marked increase in the value of oil and gas lease sales. Further, appellant's examples came from the Upper Pennsylvanian formation, whereas MMS' evaluation was based upon potential for production from the Morrow. The comparable lease sales and producing wells data MMS relied upon is adequate justification for its recommendation.

[3] Appellant contends that the bids received are "highly probative of fair market value." As we said in California Energy Co., 63 IBLA 159, 163 (1982), involving a high bid for a competitive geothermal lease: "While the lack of bids may on the one hand suggest that such bidders found parcel 20 to have little value, it could also reflect a determination by the companies to use finite financial resources on parcels more attractive to each company's particular plans." A lack of competitive interest offers very little evidence with regard to the actual fair market value of the land for oil and gas leasing. Harris-Headrick, *supra* at 86; Harry Ptasynski, 48 IBLA 246 (1980).

Where a competitive oil and gas lease bid is not clearly spurious or unreasonable on its face and the record fails to disclose the factual basis for the conclusion that the bid is inadequate, the Board has 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., 51 IBLA 149 (1980); Southern Union Exploration Co., 41 IBLA 81 (1979); Charles C. Hinckle, 40 IBLA 250 (1979). It is not required that the Secretary or his delegate prove that the bid is inadequate in order to support his decision to reject the bid in the exercise of his discretion, where he believes such action is necessary in the public interest. However, the record should be sufficient to establish that the decision was neither arbitrary nor capricious. Gerald S. Osrowski, 34 IBLA 254, 256 n.2 (1978); Kerr McGee Corp., 6 IBLA 108 (1972), aff'd, Kerr McGee Corp. v. Morton, 527 F.2d 838 (D.C. Cir. 1975).

We find that the documents provided for the record justify rejection of appellant's bid. Her arguments on appeal, although well prepared, are insufficient to overcome the weight which we properly accord to MMS' findings as they relate to areas of technical expertise. See Gerald S. Ostrowski, supra. Appellant's arguments represent her evaluation of the fair market value of the parcel, but do not present definitive evidence which overcomes BLM's decision and its acceptance of MMS' recommendation and rationale.

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.

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Edward W. Stuebing  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Newton Frishberg  
Administrative Judge  
Alternate Member

