

GLEN M. HEDGE

IBLA 83-443

Decided June 15, 1983

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting high bid for a competitive oil and gas lease. NM 55128.

Set aside and remanded.

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

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum that does not reveal the estimated minimum value for the parcel and sufficient factual data cannot support rejection of the high bid for the parcel.

APPEARANCES: Glen M. Hedge, pro se; Robert J. Uram, Esq., Office of the Field Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Glen M. Hedge appeals the January 26, 1983, decision of the New Mexico State Office, Bureau of Land Management (BLM), which rejected his high bid for parcel 16 in the December 14, 1982, sale of competitive oil and gas leases. The reason given for the rejection was that the high bid was not adequate based on the presale evaluation.

Parcel 16 included the SE 1/4 sec. 21, T. 8 S., R. 30 E., New Mexico principal meridian, Chaves County, New Mexico, within the Cato Field. Hedge submitted a bid of \$4.07 per acre.

Hedge states, in support of his appeal, that he sought the parcel for possible production from deeper formations and not from the San Andres formation. He states that wells in the San Andres formation in sec. 21 have

been plugged and abandoned or were dry to begin with. Also, all wells in the NE 1/4 sec. 28, immediately to the south of parcel 16, have been plugged and abandoned.

In his memorandum of January 4, 1983, the Deputy Minerals Manager for Resource Evaluation provided justification for his recommendations on the high bids at the December 14, 1982, sale, and made these comments relative to parcel 16:

Parcel 16 is a 160-acre tract located in T. 8 S., R. 30 E., section 21, Chaves County, New Mexico. It received two bids, the highest being for \$651.20 (\$4.07/acre), submitted by Glen M. Hedge.

A plugged and abandoned San Andres oil well is located on the parcel and a dry hole was drilled in the southeast corner. A parcel in section 20, the adjacent section to the west received a high bid of \$278.85/acre in the 12-22-81 lease sale. San Andres oil wells in section 22, the adjacent section to the east, have average per well cumulative productions of approximately 54,000 barrels. San Andres wells in the adjacent section to the south (section 28) have similar production histories. San Andres oil possibilities may still exist at drilling location on the extreme southern side of the parcel. Parcel 17, located on the southern side of parcel 16, was assigned the same pre-sale valuation as parcel 16. It received a high bid of \$17,600 (\$110.00/acre).

Our presale evaluation for parcel 16 was based upon these factors, and is higher than the high bid received.

Counsel for BLM entered his appearance, but has submitted no timely response to appellant's statement of reasons. However, counsel belatedly transmitted comments of the BLM Acting Deputy State Director for Minerals regarding the evaluation of the parcel. Appellant has requested that the submissions be disregarded by the Board because of being filed out of time.

Key factors in the evaluation included the modern completion technology which has been developed in recent years and provides a tremendous opportunity to rejuvenate old wells in the San Andres and to complete new wells in zones previously considered impossible. Because of the very hard nature of the San Andres, most of the recovery has been by secondary and tertiary methods. Technology existing today makes these methods more feasible than in earlier years. Also mentioned was the fact that the high bid for Parcel 17, adjoining the subject parcel on the south was \$110 per acre. As both parcels basically overlie the same formations, it would be irresponsible to recommend acceptance of the bid of Hedge, in the amount of \$4.07 per acre.

[1] The Secretary of the Interior has discretionary authority to reject a high bid for a competitive oil and gas lease 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 does not represent a fair market value for the parcel. Harold R. Leeds, 60 IBLA 383 (1981); William C. Welch, 60 IBLA 248 (1981); Harry Ptasynski, 48 IBLA 246 (1980); B. D. Price, 40 IBLA 85 (1979). 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 357-58 (1974).

In this case, BLM concluded that its presale evaluation for parcel 16 was "higher than" the high bid for this parcel. However, the record does not disclose what the presale evaluation was or the computations upon which it was based. In Southern Union Exploration Co., 51 IBLA 89, 95 (1980), we stated:

Refusal to inform a good-faith appellant of the basis for the rejection of a high bid renders the right of appeal, which the Secretary has afforded, virtually meaningless. Regardless of whether or not an exemption is provided by the FOIA [Freedom of Information Act] which the Department might invoke, we hold that, except to the extent that the release of certain information is prohibited by law, an appellant who has submitted a high bid, which is not clearly spurious, must be informed not only of the estimated minimum values, but the subsidiary factual data which served as the predicate for the derivation of that estimate. [Emphasis in original.]

Recently, the importance of such information was underscored in Stephen M. Bess, 71 IBLA 122 (1983). In that case, BLM rejected the appellant's high bid at a competitive oil and gas lease sale. In rejecting the bid as inadequate, BLM relied on the Minerals Management Service (MMS) 1/ recommendation. In arriving at a presale evaluation, MMS had assessed oil and gas production within a 1-mile radius of the parcel in question. The MMS figure in the record showed monthly average production based on daily production figures; however, on appeal the appellant produced data which showed that the MMS' average daily production figures were equal to the average monthly production figures taken from operators' reports filed with the state. Thus, since MMS' presale evaluation was based on erroneous computations, we set aside the BLM decision and remanded the case.

We note that in his recommendations for the December 14, 1982, sale, the Deputy Minerals Manager indicated that the high bids for 24 parcels were lower than his presale estimates of value, but he recommended acceptance of 11 of such high bids.

Herein, appellant's high bid is not spurious, and he has had no opportunity to refute the presale evaluations. Neither the presale evaluation

1/ On Dec. 3, 1982, the Secretary of the Interior issued an order transferring all onshore minerals management functions of the MMS, not relating to royalty management, to BLM. 48 FR 8982, 8983.

nor the method of calculation has been disclosed to appellant or this Board. We are unable to determine the correctness of the BLM decision without such information. This does not mean the Board will substitute its judgment for that of BLM in determining fair market value for the parcel, but rather that the Board will require sufficient facts and analysis to ensure that a rational basis for the determination is present. Snyder Oil Co., 69 IBLA 259 (1982); M. Robert Paglee, 68 IBLA 231 (1982).

Accordingly, this case will be remanded to BLM for readjudication of appellant's bid. If the bid is rejected again, BLM shall set forth the reasons for doing so, including the presale evaluation, so the Board can properly consider the issues in event of an appeal.

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 set aside and the case remanded for further consideration consistent with this opinion.

Douglas E. Henriques
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

