

VIKING RESOURCES CORP.

IBLA 82-674; IBLA 82-676; IBLA 82-679

Decided November 7, 1983

Appeals from decisions of the New Mexico State Office, rejecting competitive oil and gas lease offers. NM 51850 (OK), NM 51851 (OK), and NM 51854 (OK).

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: Lynda G. Faulds, Property Manager, Viking Resources Corp., Denver, Colorado, for appellant; Robert J. Uram, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for appellee.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

These appeals are taken from decisions dated February 18 and 23, 1982, of the New Mexico State Office, Bureau of Land Management (BLM), rejecting appellant's high competitive oil and gas lease bids, NM 51850 (OK), NM 51851 (OK), and NM 51854 (OK) for parcels 25, 26, and 29 at the December 22, 1982, lease sale. ^{1/} Appellant's bids for those parcels were \$200, \$1,200, and \$200, respectively.

^{1/} These parcels are described as follows:

"Parcel No. 25, T. 29 N., R. 15 W., I.M.

Sec. 29: SW 1/4 SE 1/4

Containing 40.00 Acres

Wolgamott Field

Woods County, Oklahoma

(Serial No. Assigned NM 51850 (Okla.))

BLM rejected the bids based on Minerals Management Service (MMS) recommendations that the bids were inadequate because they were lower than its presale evaluation of the parcels.

With respect to parcel 25, the MMS recommendation states:

Parcel No. 25 consists of 40.00 acres in T. 29 N., R. 15 W., I.M., Section 29 (SW 1/4 SE 1/4) in Woods County, Oklahoma. This parcel is located northwest of a parcel in T. 28 N., R. 16 W., I.M., Section 33, which sold for \$188.51 per acre in June 1980. A well located in T. 29 N., R. 15 W., I.M., Section 20 (NE 1/4 SW 1/4 NE 1/4) has produced almost 800 million cubic feet of gas and condensate commingled from the Cherokee sand and the Mississippian. A well located in Section 28, T. 29 N., R. 15 W., I.M., has produced over 1.5 billion cubic feet of gas from the Cherokee sand. The presale evaluation was based on a discounted cash flow analysis based on these wells and previous lease sale data and was considerably higher than the bid of \$200.00 (\$5.00 per acre) submitted by Viking Resource Corporation.

The Minerals Management recommendation for parcel 29 says:

Parcel No. 29 consists of 40.00 acres in T. 21 N., R. 25 W., I.M., Section 6 (SW 1/4 SE 1/4) in Ellis County, Oklahoma. This parcel is located about one mile east of a tract in Section 2, T. 21 N., R. 26 W., I.M., which sold for \$210.00 per acre in November 1980. In February 1981, a tract just to the northeast in Section 5, T. 22 N., R. 24 W., I.M., was sold for \$150.00 per acre. The presale evaluation was based on previous lease sale data and was higher than the bid of \$200.00 (\$5.00 per acre) submitted by Viking Resources Corporation.

The MMS recommendation for parcel 26 says:

Parcel No. 26 consists of 120.00 acres in T. 24 N., R. 16 W., I.M., Section 14 (SE 1/4 NW 1/4 SW 1/4) in Woods County, Oklahoma. A well about one mile east of this parcel in Section 13 of this township has produced over 485 million cubic feet of gas from Tonkawa. The presale evaluation was based on a discounted cash

fn. 1 (continued)

"Parcel No. 26, T. 24 N., R. 16 W., I.M.
Sec. 14: SE 1/4 NW 1/4, E 1/2 SW 1/4
South Waynoka Field
Woods County, Oklahoma
(Serial No. Assigned NM 51851 (Okla.))"
"Parcel No. 29, T. 21 N., R. 25 W., I.M.
Sec. 6: SW 1/4 SE 1/4
Touzalin Field
Ellis County, Oklahoma
Containing 40.00 Acres
(Serial No. assigned NM 51854 (Okla.))"

flow analysis based on this and other wells and indicated a value much greater than the high bid of \$1,200.00 (\$10.11/acre) submitted by Viking Resources Corporation.

The BLM decisions do not list a presale value for either parcel and a review of the case files reveals that MMS did not provide such data.

Appellant has submitted the identical statement of reasons in all three appeals. Appellant does not question the Secretary's discretionary authority to reject high bids in competitive sales, but contends that the decisions rejecting their high bids were arbitrary.

[1] The Secretary is entitled to rely on MMS' reasoned analysis in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. 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. 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); Yates Petroleum Corp., 32 IBLA 196 (1977). The Board has elaborated on the reasons for this as follows:

[T]he appellant is entitled to a reasoned and factual explanation for the rejection of its bid. Appellant must be given some basis for understanding and accepting the rejection or alternatively appealing and disputing it before this Board. The explanation provided must be a part of the public record and must be adequate so that this Board can determine its correctness if disputed on appeal. Steven and Mary J. Lutz, 39 IBLA 386 (1979); Basil W. Reagel, 34 IBLA 29 (1978); Yates Petroleum Corp., 32 IBLA 196 (1977); Frances J. Richmond, 24 IBLA 303 (1976); Arkla Exploration Co., 22 IBLA 92 (1975).

Southern Union Exploration Co., 51 IBLA 89, 92 (1980).

In our view, the records do not provide an adequate basis for understanding and accepting the bid rejections or disputing them before this Board.

Herein, appellant's bids are not spurious, and it has had no opportunity to refute the presale evaluations. Neither the presale valuations nor their method of calculation has been disclosed to appellant or this Board. We are unable to determine the correctness of the BLM decisions without such information. This does not mean the Board will substitute its judgment for that of MMS in determining fair market value for the parcels, 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).

Therefore, we remand these cases to BLM for readjudication of appellant's bids. If the bids are 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 decisions appealed from are set aside and the cases remanded for further consideration consistent with this opinion.

Gail M. Frazier
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE BURSKI CONCURRING:

While in agreement with the resolution of the case, I find myself in much the same situation as did Judge Stuebing in the appeal of Larry White, 72 IBLA 242, 247 (1983) (concurring opinion). We are faced with a record which fails to contain information critical to the adjudication of appellant's contentions that its various high bids were improperly rejected. At the same time, however, appellant's high bids represent such minimal values (\$5 and \$10.11 per acre) that they clearly approach the demarcation line between good faith and spurious bids. Nevertheless, I have reached the same conclusion as Judge Stuebing that "[w]e cannot simply accept the correctness of all pre-sale evaluations as an article of faith and still preserve the integrity of this Board as an impartial tribunal for administrative review." Id.

We have always accorded considerable deference to the opinions of the Department's technical experts as to matters within their expertise. See, e.g., Exxon Company, U.S.A., 15 IBLA 345 (1974). This reliance is not absolute, however, particularly where the predicate of rejection only tangentially involves technical analysis. In cases such as Amoco Production Co., 71 IBLA 241 (1983), it was clear that, while technical assessments of current expected value (MROV), delayed expected value (DRV) and average trace value (AEOT) were relevant to acceptance or rejection of high bids, ultimate rejection was premised on a non-technical consideration.

Thus, on the one hand, MMS recommended acceptance of certain high bids which were below both the MROV and DRV because MMS deemed the bids to be "substantial" even though they fell short of calculated values and were therefore considered "evidence of a serious commitment on the part of bidders to actively pursue exploration of these tracts within the primary term of the lease." On the other hand, similar bids were rejected because "most of the values suggest only speculative interest." As the Board noted in Amoco, it was impossible to ascertain the correctness of MMS' judgment that one bid was substantial while another was speculative when the Board had no knowledge of what were the calculated values for either. On the record presented to the Board in that case, the result was clearly arbitrary and capricious. 1/

Moreover, even in purely technical matters, MMS is not immune from error. In Stephen M. Bess, 71 IBLA 122 (1983), the Board noted that MMS' computations of production from certain neighboring wells had mistakenly utilized a monthly production figure as a daily production figure and thus distorted the production obtained from these wells by a factor of 30. In Bess, we set aside the rejection of the high bid and remanded the case for reconsideration of the adequacy of the bid.

1/ I would assume that the "calculated values" to which the MMS memorandum in that case referred was not the fair market value. BLM has absolutely no authority to issue a lease for less than the fair market value, particularly when the only justification for violating this statutory mandate is the bona fides of the bidder to seek development of the lease. This unusual justification seems to imply that other parties are willing to pay a bonus for a lease which they do not intend to develop.

The refusal of BLM to supply this Board with the data which so many prior cases have shown to be needed (particularly, the minimum acceptable bid valuation) has resulted in a plethora of Board decisions that needlessly reiterate the requirements necessary to document a decision, even though these requirements have been clearly spelled out in cases going back to 1980. See Southern Union Exploration Co., 51 IBLA 89, 92-95 (1980).

No valid administrative or adjudicatory purpose has been served by the studied refusal of BLM and MMS to comply with past Board decisions. The only justification tendered for the failure to release nonproprietary information after the bid solicitation period is closed is that it "could effectively compromise the Federal Government's ability to receive fair market value at subsequent public lease levels." I find this argument intrinsically flawed on a number of levels.

First, the Government is supposedly determining fair market value in these computations. If an individual, on the basis of the Government's presale evaluation, bid exactly the minimum bid, and the minimum bid represented "fair market value" (if it did not, the Government has no authority to accept it), the Government is receiving exactly what it is supposed to obtain. The only possible situation in which this could work to the detriment of the Government is where the Government's fair market evaluation is too low. Premising refusal to release the data on this argument, however, puts the Department in the anomalous position of rejecting high bids based on the Government's expertise in calculation fair market value but refusing to release the Government's calculations because they might be wrong. Either the procedures of the MMS do or do not correctly establish fair market value. The Department cannot have it both ways.

Secondly, insofar as subsequent sales are concerned, the argument is premised on a state of stasis. I would hope that fair market valuations are computed prior to each sale so that evaluations of new information can be properly factored in. To suggest that MMS will blandly utilize the same fair market value computations for years into the future is to suggest that MMS will be clearly derelict in its duty to make sure that the Government receives fair market value when it disposes of the minerals held in trust for the benefit of all citizens. I would prefer not to credit such a contention.

Ultimately, to my mind, the essential reason that MMS does not wish to disclose its evaluations is a reluctance on its part to be put in the position of justifying its conclusions where they are necessarily based on a number of technical considerations which are subject to arguable differences of opinion. While I think this is understandable, I do not think that we can allow this consideration to effectively forestall the objective review of administrative decisions provided by the Department's regulations.

Therefore, while I feel that it is likely that these bids will be deemed properly rejected when an adequate record is finally presented to this Board, I decline to affirm the decision appealed where the record is simply inadequate to support the decision below. I concur with the majority decision.

James L. Burski
Administrative Judge

