

LARRY WHITE

IBLA 83-345; IBLA 83-346

Decided May 15, 1984

Appeal from decisions of New Mexico State Office, Bureau of Land Management, rejecting high bids for competitive oil and gas leases. NM-55014 and NM-55010.

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 record that does not reveal the estimated minimum acceptable value for a parcel and sufficient factual data indicating the derivation of that value cannot support rejection of the high bid for the parcel.

APPEARANCES: Larry White, pro se; Robert J. Uram, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Larry White has appealed from separate decisions of the New Mexico State Office, Bureau of Land Management (BLM), each dated December 22, 1982, rejecting his high bids for competitive oil and gas leases, NM-55014 and NM-55010, respectively. 1/

Appellant was the sole bidder for parcels 41 (NM-55010) and 45 (NM-55014) in an October 27, 1982, competitive oil and gas lease sale. Parcel 41, totaling 5.77 acres and described by metes and bounds, is situated in sec. 33, T. 6 N., R. 22 E., Indian meridian, Latimer County, Oklahoma, within the Red Oak-Norris Field known geological structure (KGS).

1/ We have consolidated, sua sponte, the two appeals because of the substantial similarity of the legal issues involved.

Parcel 45, totaling 15.80 acres and described by metes and bounds, is situated in sec. 26, T. 22 N., R. 19 W., Indian meridian, Woodward County, Oklahoma, within the Southeast Woodward Field KGS. Appellant's bids were \$102.60 or \$17.78 per acre (parcel 41) and \$113.76 or \$7.20 per acre (parcel 45). In its December 1982 decisions, BLM rejected appellant's bids because the Minerals Management Service (MMS) had determined, based on a "pre-sale evaluation," that the bids were "inadequate."

In his statement of reasons for appeal with respect to parcel 45 (IBLA 83-345), appellant contended that his bid was in line with the value of the parcel because the parcel is located "two miles from the nearest significant production" and is surrounded by three dry holes. In addition, appellant noted that the parcel is a small tract, *i.e.*, considerably less than a normal spacing unit for a gas well, thereby "decreasing the opportunity for drilling activity," and is located on the bank of the Canadian River, which is an "unsuitable" drilling site.

In response to appellant's statement of reasons, BLM argued that appellant's bid was rejected because it was significantly below the acceptable minimum value set in the presale evaluation. This value, while not disclosed by BLM, was apparently based on two gas wells northeast and one gas well west of parcel 45, which were producing in the Chester formation, and the September, presumably 1982, issue of Petroleum Land Data, which recorded bonuses in Woodward County ranging between \$125 per acre and \$300 per acre. BLM also noted, based on an April 14, 1983, letter from MMS, that the three dry holes cited by appellant do not totally surround parcel 45 but are located in secs. 24, 35, and 36, T. 22 N., R. 19 W., Indian meridian, Woodward County, Oklahoma. Thus, BLM contended that there had been no tests in sections north, east, southwest, or northwest of the subject parcel. In addition, BLM argued that the small size of a parcel does not affect per acre value, maintaining that it only affects a lessee's proportional share of costs and benefits with respect to any well drilled in an approved spacing unit.

In his statement of reasons with respect to parcel 41 (IBLA 83-346), appellant contended that his bid was in line with the value of the parcel because the parcel is located "over a mile south of the Red Oak-Norris Field proper" and outside the southern limits of that field. Appellant noted that the nearest well, the Galaxy Oil #1 Fleener, is a "poor" well, which was last reported to be shut-in. In addition, appellant noted that the parcel is a small tract, there is a "low demand" for gas, and there were no other bidders for parcel 41.

In response to appellant's statement of reasons, BLM stated that, even accepting appellant's southern boundary for the Red Oak-Norris Field, parcel 41 is "within the productive area" of the field and that there is no dry hole between the parcel and production to the northeast. BLM reiterated its contention that the small size of a parcel does not affect its per acre value. BLM also noted, based on an April 12, 1983, letter from MMS, that, despite a depressed market, leases in Latimer County were receiving bids ranging between \$100 per acre and \$350 per acre at the time of the lease sale, and that a parcel in the NE 1/4 sec. 34, T. 6 N., R. 22 E., Indian meridian, Latimer County, Oklahoma, received a bid of \$262.32 per acre in

April 1980. In addition, BLM pointed out that the Monte Carlo Discounted Cash Flow computer program also generated a per acre value greater than appellant's bid. Finally, BLM argued that there is no necessary connection between the number of bidders and a per acre value for a parcel.

[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) (1982); 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 the fair market value for the parcel. Harold R. Leeds, 60 IBLA 383 (1981); Harry Ptasynski, 48 IBLA 246 (1980); B. D. Price, 40 IBLA 85 (1979).

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 sufficient 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).

In rejecting appellant's bids, BLM relied largely on MMS' recommendations, which were based for the most part on bids received with respect to other leases in the general vicinity of the subject parcels. In Larry White, 72 IBLA 242 (1983), a substantially similar case, we concluded that while such data may be relevant, it cannot, without more, support rejection of appellant's bids. The primary reason for this conclusion is that without some supporting data there is no assurance of comparability, in fact, *i.e.*, that the land from which the data is taken is comparable to the parcel offered for lease with respect to a number of factors. As Judge Stuebing said in his concurring opinion in Larry White, *supra* at 247:

[M]ere per-acre comparable sales data in raw form is insufficient to fix an evaluation of the subject parcels. Other factors must be taken into account, such as the size of the parcels, impediments to development by reason of the nature of the terrain, the state of the market, the availability of marketing facilities, well spacing requirements, the success or failure of other drilling efforts in the vicinity, the more or less advantageous lease terms incident to the comparable sales, etc.

In addition, in White, BLM failed to disclose MMS' presale evaluation, *i.e.*, the minimum acceptable bid valuation. The Board simply was not in a position to independently judge whether appellant's bids were inadequate by any reasonable standard, since the Board was totally in the dark as to MMS' own valuation. Since appellant's bids were not clearly spurious or unreasonable on their face, although they were, admittedly, low (\$7.41 and \$7.29 per acre), we set aside the BLM decision and remanded the case to BLM for readjudication of the bids.

The present case, likewise, appears to be a case where the bids submitted by appellant are so low as to be only marginally credible. Nevertheless, the record does not provide sufficient support for the Board to uphold rejection of the bids as "inadequate." See also Viking Resources Corp., 77 IBLA 57 (1983). ^{2/} Here, as in White, MMS has failed to provide us with the presale evaluation or any substantive data beyond comparable lease bonuses. We do not mean to rule out the use of comparable lease data. However, as we have noted, we must have some evidence that the data is truly comparable.

It goes without saying that the valuation of land for oil and gas leasing purposes and even the presence of oil and gas in quantity may vary substantially within a fairly small area depending upon geologic factors, and these estimates of value necessarily have a speculative element. However, in the absence of a disclosure of the valuation placed on the parcels by MMS, we are simply not in a position to make an informed judgment in this case as to whether appellant's offers were properly rejected.

Accordingly, we must remand these cases to BLM for readjudication of appellant's bids. In readjudicating the bids, BLM should consider the arguments presented by appellant in this appeal. ^{3/} If the bids are rejected again, BLM shall set forth the reasons for doing so completely, including the presale evaluation, so they may be addressed by appellant and considered by the Board in the event of an appeal.

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 to BLM for action consistent with this opinion.

James L. Burski
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Franklin D. Arness
Administrative Judge

^{2/} Unlike the situation in our recent decision in Viking Resources Corp., 80 IBLA 245 (1984), the burden of justifying his own bid cannot be shifted to appellant in the absence of sufficient documentation of the Government's estimate such as would establish its prima facie correctness. Indeed, in the instant case we do not even know what the Government's estimate was. ^{3/} We recognize that BLM has reviewed the data and submitted an analysis of appellant's arguments. While these documents are enlightening, the failure of BLM to inform us of the estimated minimum value makes it impossible for us to adjudicate the present appeal. In reference to these comments, however, we agree that the small size of the subject parcels should not have a negative effect on their per acre value. In addition, this Board has expressly held that there is no connection between the number of bidders and the per acre value of a tract of land for oil and gas leasing purposes. M. Robert Pagle, 68 IBLA 231, 235 (1982).

