AMINOIL USA, INC.

IBLA 83-869 Decided June 6, 1984

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting competitive bid for geothermal resources lease CA 12968.

Affirmed.

1. Geothermal Leases: Competitive Leases

The Department is entitled to rely on the reasoned analysis of its technical experts in matters concerning geologic evaluation of tracts of land offered at a sale of competitive geothermal leases. Where a decision to reject a bid has been made in a careful and systematic manner utilizing the advice of such experts, the decision will not be reversed, even though the determination may be subject to reasonable differences of opinion, where an appellant fails to meet its affirmative obligation to establish that its bid is a reasonable reflection of fair market value.

APPEARANCES: Nevins D. Young, Esq., Huntington Beach, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Aminoil USA, Inc. (Aminoil), appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated July 8, 1983, rejecting appellant's high bid for geothermal resources lease, CA 12968, because appellant's bid is inadequate.

The July 8 BLM decision was issued in response to the Board decision in Aminoil USA, Inc., 70 IBLA 5 (1983), holding that the rejection by the California State Office decision of August 26, 1982, of Aminoil's bid for parcel 2 in the amount of $804.91 per acre, offered at the competitive bidding in the geothermal resources lease sale of July 20, 1982, was not supported by a record that disclosed a rational basis for the conclusion that the bid was inadequate. The Board then set aside the August 26, 1982, decision and remanded the case for the compilation of a more complete record and readjudication of the acceptability of the bid.

In its statement of reasons, appellant contends that the concepts regarding the Geysers geothermal reservoir that were held in the 1970's were

no longer accepted at the time of the sale. Appellant lists eight factors which reflect the basic changes in thinking. 1/ Utilizing those factors, appellant offered its analysis of the subareas of parcel 2, the subject land in CA 12968. Appellant also incorporated by reference the statement of reasons it filed on October 5, 1982, challenging the earlier decision rejecting its bid on CA 12968. The earlier statement of reasons premised its appeal on the location of two faults in the Geysers area, where most development has occurred in relation to those faults and parcel 2, the number of dry holes located in the vicinity of parcel 2, and the discouraging productive history of nearby geothermal acreage.

[1] The Secretary of the Interior has discretionary authority to reject a high bid for a competitive geothermal lease as inadequate. 30 U.S.C. §§ 1002-1003 (1976); 43 CFR 3220.5(c). This Board has consistently upheld the exercise of 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. 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).

We have noted in the past that the fair market value is the amount in cash, or in terms reasonably equivalent to cash, for which a knowledgeable owner would grant to a knowledgeable user the right to use the land where both parties are willing but not obligated to engage in the transaction. See Northwestern Colorado Broadcasting Co., 49 IBLA 23 (1980); B & M Service, Inc., 48 IBLA 233 (1980). Although the Government identifies the minimum acceptable bid in an effort to ensure that it receives fair market value for a particular parcel, a minimum bid is conceptually discrete from fair market value. Because the concept of fair market value involves terms which are mutually agreed upon by both the buyer and the seller, an unaccepted bid from a single party carries little probative weight as evidence of fair market value. The concept implicitly recognizes that a prudent seller would retain his property if no adequate offer is received. One court noted: "[I]t is not unreasonable to reject a problem bid when too few bids are received on that tract." Superior Oil Co. v. Watt, 548 F. Supp. 70, 74 (D. Del. 1982).

The Department relies on the reasoned analysis by its technical experts in matters concerning geologic evaluation of tracts of land offered at a competitive sale of geothermal leases. See L. B. Blake, 67 IBLA 103 (1982). Where a decision to reject a bid has been made in a careful and

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1/ The factors range from the observation that most reservoir engineers do not believe there is "a deep water surface below the steam horizon which boils off to form the steam," to "initial production rates are not valid measures of commercial producibility," to "gradient holes are not reliable unless they are at least 600 m. deep," and conclude with "it is not possible to determine in advance of drilling the actual completed well costs." (Statement of Reasons at 3-4).

systematic manner utilizing the advice of such experts, that decision will not be reversed, even though the determination may be subject to reasonable differences of opinion. See Kerr-McGee Corp. v. Watt, 517 F. Supp. 1209, 1213-14 (D.D.C. 1981).

In this case, a reasoned analysis was presented that disclosed the rational basis for the conclusion that Aminoil's bid is inadequate. The presale value for the subject land tract was determined by the "comparable sales" methodology. The July 8, 1983, BLM decision states:

> [A] value comparison was made between the subject tract and other Geysers geologically comparable properties that have been leased at past geothermal resources lease sales.
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> In using this technique, the previous high bids received for the comparable tracts were not directly applied to the evaluation of the subject tract. Rather, these high bids were analyzed and adjusted to account for economic inflation, as well as the determined differences in geothermal production potential between the subject tract and comparable tracts.
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> As a result of the comparison analysis, the minimum sale value for parcel 2 was determined to be $1,700 per acre. The Evaluation Report, as well as the tables and plats of record, fully document the conclusions.

In our earlier Aminoil decision we stressed the need for BLM to justify its determination of the minimum acceptable bid. In Southern Union Exploration Co., 51 IBLA 89, 92 (1982), we indicated that such an explanation was necessary to provide the bidder with "some basis for understanding and accepting the rejection or alternatively appealing and disputing it before this Board." BLM has supplied this Board with a proper justification of its determination.

In this case, appellant would have to present evidence that would affirmatively show that BLM's determination of the minimum acceptable bid was in error, as well as evidence showing that its bid represented the true fair market value of the lease. Appellant argues, however, that it was not possible for it to analyze the presale value for parcel 2 that BLM presented since it was not supplied with the data, tables, or plats necessary for such an analysis. Those documents, however, were part of the record as of the July 8, 1983, BLM decision. The record was available for inspection by appellant prior to filing its Notice of Appeal. Appellant has only made allegations that the Department overvalued the comparables and raised questions challenging the underlying assumptions of the Geyser geothermal reservoir area. It has not provided any analysis of the true values, nor has it justified that its bid was an accurate reflection of the true fair market value.

We note that appellant did not rely on BLM's justification when formulating its bid, therefore appellant should be able to provide justification for the reasonableness of its own bid. 2/ Appellant has an affirmative

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2/ Requiring an appellant to submit his own analysis of value in support of the adequacy of his bid is consistent with the Board's practice in other

obligation to establish that its bid represents the fair market value. Viking Resources Corp., 80 IBLA 245, 247 (1984). Appellant has not done so.

The pre-sale evaluation by BLM was $1,700 per acre, but appellant's bid was only $804.19 per acre; a very substantial disparity amounting to 47.3 percent. Even assuming that appellant's criticisms of the pre-sale evaluation served to demonstrate certain fallacies or inaccuracies, the evaluation would have to incorporate error of a magnitude of 52.7 percent before appellant's bid could be shown to represent the "true" market value of the lease. This has not been established. Appellant has done little more than raise questions which challenge the efficacy of BLM's evaluation. This is insufficient to meet appellant's burden of proof.

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.

Edward W. Stuebing
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

R. W. Mullen
Administrative Judge

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fn. 2 (continued)
appeals from BLM determinations of fair market value. In an appeal involving an appraisal of a right-of-way for a communication site, we noted that in the absence of evidence that a BLM appraisal is erroneous, such an appraisal generally may be rebutted only by another appraisal. Dwight L. Zundel, 55 IBLA 218, 222 (1981). We believe that a similar requirement is appropriate here.