

DAN NELSON

IBLA 84-645

Decided February 25, 1985

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting high bid for competitive oil and gas lease U-54212.

Affirmed.

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

The Secretary of the Interior has the discretionary 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. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

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

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 oil and gas 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: Dan Nelson, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Dan Nelson has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated May 14, 1984, which rejected his high

bid submitted for parcel 36 at the April 25, 1984, competitive oil and gas lease sale. The parcel embraced 151.64 acres in sec. 6, lots 1 to 4 inclusive, T. 21 S., R. 23 E., Salt Lake Meridian, Utah. Nelson's bid of \$456 or \$3 per acre was the only bid received for the parcel. BLM rejected appellant's bid under the authority of 43 CFR 3120.5(a) because it was substantially below the presale estimate of value. BLM concluded in its decision:

The three recent sale parcels that are near parcel No. 36 are the best indication of value. The tracts sold for \$11.53 and \$16.05 (two parcels) in July 1983 and January 1984.

Parcel No. 36 received one bid for \$3 per acre, which is significantly less than the \$11.53 bid which adjoins the subject land. The subject parcel was offered for sale in January 1984 and received two bids of \$5.11 and \$10 per acre. Due to problems in which the initial bid payment by the high bidder was made, the bids were rejected.

The single bid on April 25, 1984, was significantly less than any other bids in the area and does not appear to meet the test of fair market value. It is, therefore, in the Government's interest to reject the \$3 bid per acre.

In his statement of reasons appellant asks the Board to set aside the BLM decision, contending BLM has failed to make a prima facie case that his bid was too low. He asserts it did not reveal either the presale evaluation of the minimum acceptable bid or the supporting factual data. He states his bid "was neither spurious nor unreasonable, and actually reflects a fair market value when all equalizing factors such as the small proportion of available acreage, hidden reclamation costs, and production history of the parcel are taken into account" (Statement of Reasons at 7). He further asserts that BLM improperly used only comparison with previous bids in the same vicinity without actually considering if these bids were truly comparable. He contends that BLM has not shown that his bid, which was the only bid for parcel 36 in this sale, did not represent the fair market value; that the "Geologic Summary" given in the decision was insufficient and did not support the decision; and that issuance of this lease would be in the public interest.

[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); Michael Shearn, 83 IBLA 53 (1984); Ronald C. Agel, 83 IBLA 76 (1984); Viking Resources Corp., 80 IBLA 245 (1984); Edward L. Johnson, 73 IBLA 253 (1983). 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 fair market value for the parcel. E.g., Clarence Sherman, 82 IBLA 64, 65 (1984); Viking Resources Corp., *supra* at 246; Glen M. Hedge, 73 IBLA 377, 378-79 (1983); Edward L. Johnson, *supra* at 254-55. 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.

Viking Resources Corp., *supra* at 246; Glen M. Hedge, *supra* at 379; Coquina Oil Corp., 29 IBLA 310, 311 (1977).

[2] The Department is entitled to rely on the reasoned analysis of its technical experts in matters involving geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. Viking Resources Corp., *supra* at 247; L. B. Blake, 67 IBLA 103 (1982). However, when BLM relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided in the record to support the decision. Mesa Petroleum Co., 81 IBLA 194, 195 (1984); Edward L. Johnson, *supra* at 255. 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. Kevin J. Bliss, 82 IBLA 31, 32 (1984); Edward L. Johnson, *supra* at 255. As we have specifically emphasized in Mesa Petroleum, *supra* at 195, and in Southern Union Exploration Co., 51 IBLA 89, 92 (1980),

[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).

In this case we find the record does contain such a reasoned and factual explanation for the rejection of appellant's bid. BLM has provided sufficient elaboration of factual data and a statement of the presale evaluation of a minimum acceptable bid of \$10. The record clearly reflects how it was calculated and adequately establishes a reasonable basis for the decision. In similar circumstances where BLM has demonstrated a reasonable basis for rejecting bids that are less than the estimations of fair market values using analysis of comparable sales, this Board has upheld its decisions. Ronald C. Agel, *supra*; Aminoil USA, Inc., 81 IBLA 231 (1984); L. B. Blake, *supra*.

Although the original analysis for the bid rejection prepared by the Economic Evaluation Staff, Utah State Office, dated May 8, 1984, did not include an amount for the minimum acceptable bid, this figure was later included in the record with additional information on July 2, 1984, and made available to appellant for his consideration. The record shows that BLM sent a certified letter to appellant, dated July 27, 1984, which included a copy of an analysis for rejection of oil and gas bid for parcel 36 (Greater Cisco known geologic structure (KGS)). This analysis includes a more extensive discussion of the geology of the Great Cisco KGS than the initial geologic summary stated in the BLM decision. It sets forth a comparison of parcel 36 to three comparable sales of adjacent and nearby parcels in 1983 and 1984. The high bids for these sales were \$11.53 per acre and \$16.05 per acre

(2 parcels). The analysis reflects how downward adjustments were made for parcel 36 to take into account several factors in order to determine comparability as follows: 1/

Analysis

The subject and the comps. [comparables] are all adjacent in the Greater Cisco Area KGS. For this reason they are very similar. Downward adjustment in the subject is necessary for all three comps. due to the fact the subject has had drilling tests while the comps. are untested. Comps. 1 and 3 extend across the anticline which is a favorable area.

A downward adjustment is also necessary from the number 2 and 3 comps. due to decline of interest in natural gas areas since the July 1983 sale.

Overall the subject land should be reduced to a value of \$10.00 per acre to be comparable with the comparative areas.

Discounted Cash Flow

This analysis based on a typical well resulted in a minor positive cash flow at no risk. When risk was applied the DCF figure became negative.

Conclusion

Comparison between the subject land and the comparative sales is the best indication of value. The sales are quite comparable with downward adjustment necessary due to the geology (drilling history) and time. With the downward adjustment it is concluded the minimum acceptable bid for the subject land is \$10.00 per acre.

The record as compiled in various stages and as disclosed to appellant clearly provided sufficient background information for appellant to understand the rejection of his bid and for this Board to properly consider this

1/ The comparative analysis included a table of the various factors considered:

Comp.	Present	Marketing				
Sale	Geology	Size	Terrain	Market	Facilities	Time
#1	-	0	0	0	0	0
#2	-	0	0	0	0	-
#3	-	0	0	0	0	-

Terms & Conditions      Overall Adjustment

0	-
0	-
0	-

- (minus) = Subject less desirable than comp. for the factor
- + (plus) = Subject more desirable than comp. for the factor
- 0 = Subject comparable with comp. for the factor

appeal. <sup>2/</sup> Where the record taken as a whole substantiates that a decision to reject a bid has been made in a careful and systematic manner, that decision will not be reversed even though the determination may be subject to reasonable differences of opinion. Ronald C. Agel, *supra* at 79; Aminoil USA, Inc., *supra* at 232.

Ultimately, the appellant must show not merely that the Government's estimate did not constitute fair market value, but must also affirmatively show that his bid did represent fair market value. R. T. Nakaoka, 81 IBLA 197, 200 (1984); Viking Resources Corp., *supra* at 247. Appellant has made allegations as to the lack of comparability of the three sales parcels used by BLM, but has provided no persuasive evidence that his single bid of \$3 per acre reflects the true fair market value. We have stated that 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). 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 recognizes that a prudent seller would retain his property if no adequate offer is received. Ronald D. Agel, *supra* at 80; Viking Resources Corp., *supra* at 247.

Although appellant has also attempted to show that \$3 is the fair market value for this parcel by taking into account his estimation of "hidden reclamation costs" and the limited usable area of the parcel, we are not persuaded that such factors warrant a 70 percent reduction from the Government's minimum acceptable bid of \$10, especially in view of the fact that the same tract attracted bids of \$5.11 and \$10 per acre in January 1984. We must conclude that appellant has not met his burden of showing error in the BLM decision rejecting his bid as inadequate.

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.

Will A. Irwin  
Administrative Judge

We concur:

C. Randall Grant, Jr.  
Administrative Judge

Bruce R. Harris  
Administrative Judge

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<sup>2/</sup> Better practice would be for BLM to complete compilations of necessary technical data and presale evaluation and include them in the record prior to adjudication of the acceptability of the bid rather than provide the rationale for its decision in supplemental filings. Appellant was not adversely affected by the procedure in this case, however, since the necessary documents were made a part of the record and made available for his consideration.

