

HARRIS-HEADRICK

IBLA 85-382

Decided January 6, 1987

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting high bid for competitive oil and gas lease, NM-44628.

Affirmed.

1. 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. Once BLM establishes the prima facie correctness of its presale evaluation, a party appealing from rejection of its high bid must not only show error in the Government's evaluation, it must also affirmatively establish that its bid represents fair market value.

APPEARANCES: Gary W. Harris, Stillwater, Oklahoma, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Harris-Headrick, a general partnership, has appealed from a decision dated January 9, 1985, of the New Mexico State Office, Bureau of Land Management (BLM), which rejected, for the second time, its high bid for parcel 38 at a competitive oil and gas lease sale held on February 24, 1981.

Appellant's bid of \$ 3,080 (\$ 77 per acre) for 40 acres of land situated in the SW 1/4 SW 1/4 sec. 29, T. 17 N., R. 24 W., Indian Meridian, Ellis County, Oklahoma, was initially rejected by BLM decision dated April 14, 1981, and an appeal was taken at that time.

In rejecting appellant's bid, BLM relied on a Geological Survey 1/ compilation of sales of six comparable tracts in the vicinity of parcel 38 as follows:

1/ As we noted in our earlier decision, the functions of the Conservation Division, Geological Survey, had been transferred to the Minerals Management Service (MMS). Subsequent to our decision, these functions were transferred from MMS to BLM. See 48 FR 8982 (Mar. 2, 1983).

1. T. 17 N., R. 25 W., Sec. 23 -- \$ 118.00/acre in 2-77
2. T. 17 N., R. 24 W., Sec. 6 -- \$ 311.79/acre in 10-77
3. T. 16 N., R. 24 W., Sec. 6 -- \$ 113.69/acre in 4-77
4. T. 17 N., R. 24 W., Sec. 16 -- \$ 277.83/acre in 2-80
- *5. T. 17 N., R. 24 W., Sec. 22 -- \$ 37.25/acre in 5-72
6. T. 17 N., R. 24 W., Sec. 4 -- \$ 134.05/acre in 3-79

*Equivalent to \$ 87.83/acre in 1981 inflated at 10 percent per year.

BLM stated that, based on these comparable sales, appellant's bonus bid was inadequate. It is important to note that BLM did not disclose its minimum presale evaluation of the parcel.

In its initial appeal, appellant argued that only four bids were tendered on the parcel, none from an oil and gas company, thereby showing limited competitive interest in the land. Appellant also argued that the only well drilled within one mile of the parcel did not obtain "an economically attractive return for a well at that depth in view of present drilling costs." Finally, appellant pointed out that records of the Oklahoma Corporation Commission showed that it had established values of \$ 50, \$ 75, and \$ 125 per acre for parcels in the vicinity.

In our original decision, reported as Harris-Headrick, 66 IBLA 84 (1982), we set aside the decision of the State Office. Our action in doing so was not predicated on appellant's arguments relating to lack of competitive interest or the values established by the Oklahoma Corporation Commission. Rather, the prime impetus for our action was the failure of BLM to explain why it believed that the sales which had been referenced were comparable.

Subsequent to our decision, the Chief, Southwest Region Evaluation Team, BLM, prepared another bid rejection justification. In this document it was disclosed for the first time that the Government's presale evaluation was \$ 275 per acre, or a total of \$ 11,000 for the 40-acre parcel. It was further argued that the most credible sale of geologically similar properties was the sale of a parcel in section 16 of the same township in February of 1980, which obtained a bonus of \$ 277.83 per acre. The high bid for parcel 38 was again rejected. Harris-Headrick once again appealed from rejection of its high bid.

In its present appeal, Harris-Headrick suggests that BLM has failed to establish that the tract in section 16 is comparable to the subject parcel as required by our prior decision and seeks an order from the Board directing acceptance of its offer.

It is true that the information submitted by BLM is not as complete as we expected when we issued our original decision. However, subsequent to our first decision in this case, the Board had occasion to reexamine in some depth its approach to high bid rejection appeals. The seminal case in the development of our present approach was Viking Resources Corp., 80 IBLA 245 (1984). Therein we noted that, while past Board decisions had stressed

the need for BLM to justify its determination of the minimum acceptable bid, we had not meant to absolve appellants from their affirmative obligation to establish that their bid represented fair market value.

The reason for this is obvious. The Government is required to obtain fair market value when it issues a competitive lease. See, e.g., Read & Stevens, Inc., 72 IBLA 390 (1982); Harry Ptasynski, 48 IBLA 246 (1980). Merely establishing that the Government's presale estimate is too high cannot justify issuance of a lease to any appellant absent a showing that its bid does, indeed, represent fair market value for the parcel in question, because it is possible that even though the Government's estimate may be too high, the appellant's bid could, at the same time, be too low. Thus, while, as a practical matter, an appellant's first avenue of attack will normally be that the Government over-valued the parcel, ultimate success on appeal is dependent upon establishing that its high bid does represent fair market value. In essence, then, an appellant will succeed, if at all, only upon the strength of its case and not merely upon any weakness in the Government's presentation. See Green v. BLM, 93 IBLA 237 (1986).

Admittedly, we have noted that the Government must first establish the prima facie correctness of its action before an appellant may be put to his proof. See R. T. Nakaoka, 81 IBLA 197, 200 (1984); Larry White, 81 IBLA 19, 22 n.2 (1984). BLM's 1984 memorandum rectified one critical shortcoming in its earlier justification, viz., it provided both the Board and appellant with its presale evaluation figure. Additionally, rather than relying on a number of scattered tracts as generally comparable, BLM limited itself to one main tract, situated approximately 2 miles from the subject parcel. While such information does not conclusively establish the accuracy of the Government's estimate, we believe that such data was sufficient to establish the prima facie correctness of BLM's decision and to shift the burden to appellant to establish not only error in BLM's evaluation but, more importantly, the acceptability of its own bid.

Appellant has clearly failed to carry this latter burden. Its focus in this appeal is totally on perceived inadequacies in the Government's justification of its presale evaluation. Appellant has failed to provide any convincing argument that its bid represents fair market value. Indeed, a reevaluation of its prior submissions supports the conclusion that its bid does not represent fair market value.

Thus, appellant relied on determinations made by the Oklahoma Corporation Commission as to the "cash bonus" which would be paid to nonparticipating interest owners as full satisfaction of their rights and interests in wells drilled under the pooling arrangement being decreed. However, when these are examined individually, a clear pattern can be discerned which fatally compromises appellant's argument. Thus, Order No. 13875, issued on February 3, 1978, forced pooled interests in only the Tonkawa formation in sec. 13, T. 17 N., R. 24 W., Indian Meridian. This order fixed compensation in the amount of \$ 50 per acre in lieu of the right to participate in the working interest in the well. Order No. 134884, issued on October 18, 1977, pooled interests in the Tonkawa and Douglas formations in sec. 4, T. 16 N., R. 24 W., Indian Meridian, and fixed compensation in the amount of \$ 75 per

acre. Finally, Order No. 138266, issued on February 13, 1978, forced pooled interests in the following formations: the Cottage Grove, Morrow, Chester, Meramec, Hunton, Viola, Simpson, Oswego, Douglas, Cleveland, Mississippi Solid, Cherokee, Atoka, and Tonkawa. This order covered sec. 29, T. 17 N., R. 24 W., Indian Meridian, the section embracing the subject parcel, and directed payment in lieu of the right to participate in the amount of \$ 125 per acre. Inasmuch as a Federal lease normally conveys all horizons under the surface, it would seem that appellant's submissions actually undercut any argument that its bid of \$ 77 per acre represents fair market value. It is clear from its submissions that, as the number of formations included in the forced pooling orders rose, the price per acre for nonparticipating acreage increased above the level of its high bid. Inasmuch as appellant has failed to establish that its bid represents fair market value, we must affirm rejection of its bid.

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.

James L. Burski
Administrative Judge

We concur:

Kathryn A. Lynn
Administrative Judge
Alternate Member

Gail M. Frazier
Administrative Judge

