

MTS LIMITED PARTNERSHIP

IBLA 85-370

Decided January 30, 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-58044.

Affirmed.

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

The Board will affirm a BLM decision rejecting a high bid for a competitive oil and gas lease where the appellant fails to overcome, by a preponderance of the evidence, BLM's prima facie showing of the accuracy of its estimated fair market value for the offered parcel and where appellant fails to establish that its bid reasonably reflects fair market value.

APPEARANCES: Steven C. James, Esq., Mesa Petroleum Company, for appellant; Margaret L. Miller, Esq., Office of the Field Solicitor, Southwest Region, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

MTS Limited Partnership 1/ has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated January 9, 1985, rejecting its high bid for competitive oil and gas lease NM-58044.

Appellant was declared the high bidder for parcel 28 in a competitive oil and gas lease sale held on October 26, 1983, with a bid of \$10,028.80 (\$125.36 per acre). Parcel 28 is described as 80 acres of land situated in the W 1/2 SW 1/4, sec. 22, T. 19 S., R. 34 E., New Mexico Principal Meridian, Lea County, New Mexico, within an undefined known geological structure (KGS).

By memorandum dated November 15, 1983, the Deputy State Director, Mineral Resources, recommended the Deputy State Director, Operations, reject appellant's high bid because the bid was "lower than the presale

1/ The record indicates that Mesa Petroleum Company is the general partner associated with appellant.

[evaluation]." By decision dated November 29, 1983, BLM rejected appellant's bid for this reason. Appellant appealed and in Mesa Petroleum Co., 81 IBLA 194, 195 (1984), the Board set aside the November 1983 BLM decision and remanded the case to BLM for a readjudication of appellant's bid, because the bid was not clearly spurious or unreasonable on its face and BLM had not provided a "rational basis" supporting its decision to reject the bid as not representing the fair market value of the lease, including the purported "presale evaluation."

In our previous decision, Mesa Petroleum Co., *supra* at 196, the Board stated:

There is insufficient elaboration of factual data in the record. See Davis & Smith, Ltd., 73 IBLA 22, 24 (1983); Southern Union Exploration Co., 41 IBLA at 84. The record did not contain any underlying calculations, nor did it contain any data in support of its conclusion. In order for this Board to find that BLM had a rational basis for its conclusion, we must know that basis. A plethora of Board decisions have reiterated the requirements necessary to document a decision. See Viking Resources Corp., 77 IBLA 57, 61-62 (1983) (BURSKI, A.J., concurring). "We 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." Larry White, 72 IBLA 242, 247 (1983) (Stuebing, A.J., concurring).

However, this Board will not substitute its judgment for that of BLM in determining the fair market value of parcel 28, but rather the Board will require sufficient facts and analysis to ensure that a rational basis for the determination is present. E.g., Viking Resources Corp., 77 IBLA at 59; TXO Production Corp., *supra* at 261; Davis & Smith, Ltd., *supra* at 261.

By memorandum dated November 2, 1984, the Chief, Southwest Region Evaluation Team (SRET), again recommended the Chief, Mineral Leasing Unit 1, reject appellant's high bid because the bid was "substantially beneath the government's [estimated dollar value for parcel 28 of \$16,000]." The Government estimate was derived from a "comparable sales analysis," which relied in particular on the "prior sale * * * of a parcel in Section 28 of the same township." In its January 1985 decision, BLM again rejected appellant's high bid based on the November 1984 memorandum.

The record also contains another evaluation of parcel 28 with an attached routing and transmittal slip, dated February 8, 1985, from the SRET to the Chief, mineral Leasing Unit 1, which states: "Attached is the original 'Tract Evaluation' for Parcel #28; Case No. NM 58044, 10/26/83 KGS Sale, overview indicates that it is still valid as of the date of the sale." The evaluation states in relevant part:

Historically, the immediate area has shown to have proven economic production from the "Bone Springs," "Pearl Queen," "Lea San Andreas," and the "Morrow" formations at a depth range

of from 5,000' to 11,000'. Information provided from well logs, individual well record reports, well history data bases, etc., indicates uniform deposition for all target formations with no apparent indications of abrupt faulting or intense folding which would create any type of hiatus or structural anomaly. The traps for hydrocarbons are primarily stratigraphic rather than structural.

The following comparable lease sales because of time, location, and geographical similarities are indications of the current fair market value for the bonus amount for the subject tract * * *:

A. February 15, 1983; W/2 SW/2 of Section 28, T19S, R34E, NMPM, 320 acres; BLM to Daniel Gonzales; \$275.00 per mineral acre, by sealed bids. [2/]

B. August 31, 1983: SW/4 SW/4 of Section 28 and W/2 NW/4 of Section 33, T19S, R34E, NMPM, 120.00 acres; BLM to Sun Exploration and Production Company; \$654.30 per mineral acre, by sealed bids.

Since there is no evidence of any geological abnormalities in the vicinity of the subject tract and the above comparables, the conclusion is that the subject has a minimum value for bonus of \$200.00 per mineral acre. Sale "A" due to its proximity is felt to be the most comparable, and it has been adjusted downward to reflect recent reductions in the prices being paid for gas.

It was apparent from appellant's statement of reasons that it was not aware of the purported "original" tract evaluation. Accordingly, by order dated August 26, 1985, we sent appellant a copy of the evaluation and afforded appellant an opportunity to respond.

In its filing to supplement the record, appellant reiterates its contention that BLM had no reasonable factual basis for rejection of the bid submitted by appellant. Appellant contends that the tract evaluation has several defects which are fatal to its use as the basis for BLM's decision to reject its bid. Specifically, appellant states:

You will note that both tracts A and B cover the SW/4 SW/4 of Section 28, T19S, R34E, NMPM in Lea County, New Mexico. Thus, the same land is purported to have been leased by the BLM to different parties for different prices within a seven month period of time in 1983. Note that this land was first purportedly leased for \$275.00 per mineral acre and then later purportedly leased for \$654.30 per mineral acre. Certainly, this information must place one in doubt as to whether one or both of these

2/ In the BLM brief on appeal, counsel discloses a typographical error in the land described in sec. 28, noting the parcel sold for \$275 per acre embraced the NE 1/4 and the N 1/2 S 1/2 of sec. 28.

leases actually exist. Also, the map attached to the Tract Evaluation lists as acreage leased the NE/4, N/2SE/4 and NE/4 SW/4 of Section 28. Neither tract A or tract B in the Tract Evaluation sets forth this acreage as leased. Thus, whatever acreage was purportedly leased is more than a mile away from Parcel No. 28 in Section 22. These mapping errors indicate that any evaluation done was done in error. Also, the Tract Evaluation gives you no idea with regard to the term of the so called comparable leases or their lease royalty. These factors must be known before the purported leases can truly be held as comparable.

The Tract Evaluation states, "The traps for hydrocarbons are primarily stratigraphic rather than structural." This is opposed to its statement that, "Information provided from well logs, individual well record reports, well history data bases, etc., indicated uniform deposition for all target formations with no apparent indications of abrupt faulting or intense folding which would create any type of hiatus or structural anomaly." The Manual of Oil and Gas Terms by Williams and Meyers defines stratigraphic trap as follows, "A reservoir, capable of holding oil or gas, formed from a change in the character of reservoir rock from a break in its continuity. For example, the loss of porosity and permeability in a tight sandstone updip forms a stratigraphic trap. Such a trap is much harder to locate than a structural trap, because it is not readily revealed by geological or geographical surveys." The inconsistency in the statements in the Tract Evaluation is readily apparent. There is no geological basis in the evaluation for the use of the purported leases as comparable leases.

In its reply brief on appeal, BLM notes and corrects the typographical error contained in the Tract Evaluation, dated October 25, 1983. BLM also contends that, regardless of the typographical error, the lease, as correctly described, was sufficiently close to parcel 28 to be "reliably used in the Agency's comparable sales approach to lease evaluation."

BLM further states:

Appellant's claim that the Agency has not evaluated comparable leases because of the difference between stratigraphic and structural traps is unfounded. The Agency's evaluation is consistent in considering the relevant area as containing stratigraphic rather than structural traps. The conclusion that the "traps for hydrocarbons are primarily stratigraphic" is consistent with the statement that there are "no apparent indications of abrupt faulting or intense folding which would create any type of hiatus or structural anomaly." ^{3/}

^{3/} This is confirmed by the definition of a structural trap: "A reservoir, capable of holding oil or gas, formed from crustal movements in the earth that fold or fracture rock strata in such a manner that oil or gas accumulating in the strata are sealed off and cannot escape. H. Williams and C. Meyers, Manual of Oil and Gas Terms (5th ed. 1981) at 732.

BLM attached as Exhibit A to its response, a memorandum dated October 18, 1985, from the Deputy State Director to the Field Solicitor. In Exhibit A the Deputy State Director discussed the degree to which geology played a role in the evaluation of the parcel which is the subject of this appeal, as follows:

Geology does play an important role in comparable sales analyses. The Uniform Appraisal Standards for Federal Land Acquisitions (the UAS) provides the cornerstone for that role. The UAS states, in part:

The consideration and weight to be given sales of other lands is determined by application of the three tests of proximity in time, proximity in location and similarity (UAS, page 11, attached).

Similarity, in turn, is translated into:

4. Similarity of highest and best use positions, including intensity
5. Physical similarities and dissimilarities;
6. Economic similarities and dissimilarities (UAS, page 9, attached).

The appraiser of parcel 28 used an economically similar, previously leased tract in his evaluation. (The length of the lease terms and the types of conditions on parcel 28 and the comparable parcel - parcel 55 from the February 15, 1983, tract discussed previously - were identical. Both parcel 28 and the comparable parcel were Federal tracts at a 12.5 percent royalty with cash bonus bidding.) The appraiser also reviewed the geology of the area and concluded that parcel 28 and the previously leased comparable parcel - parcel 55 - were "physically" similar. The minimum acceptable bid of \$200 per acre for parcel 28 is thus fully consistent with UAS sanctioned procedures and is reasonable [given] the prices paid for similar parcels.

We would also note that later activity in the area reinforces the conclusion that Mesa's bid on parcel 28 was too low. At the December 19, 1984, Federal sale parcel 38 in the northwest quarter of the same section as parcel 28 received a high bid of \$662.50 per acre. ^{4/}

^{4/} The memorandum also contains a discussion of the existence of widely varying prices per acre ostensibly for the same lease tract, as follows: "The confusion in the appellant's mind concerning whether the southwest quarter of the southwest quarter of section 28, township 19 south, range 34 east was leased for \$275 per acre or for \$654.30 per acre may have resulted from a typographic error. The above southwest quarter of the

[1] The Secretary of the Interior has the discretionary authority to reject a high bid for a competitive oil and gas lease where the bid does not represent the fair market value of the offered parcel. 30 U.S.C. § 226(b) (1982); 43 CFR 3120.5(a); Suzanne Walsh, 91 IBLA 119 (1986), and cases cited therein. A BLM decision rejecting a high bid will be affirmed where there is a rational basis for the conclusion that the high bid does not represent the fair market value of the parcel. Suzanne Walsh, *supra*. An appellant has the burden of establishing by a preponderance of the evidence that not only is the BLM evaluation in error, but also that appellant's bid represents the fair market value of the parcel. Viking Resources Corp., 80 IBLA 245 (1984).

In the present case BLM has provided memoranda with supporting data regarding its evaluations of parcel 28. Those memoranda have been made available to appellant. Appellant's objections to the evaluation partly arise from a typographical error subsequently corrected by BLM. The remainder of appellant's objections rest upon the contention that there is "no geological basis in the evaluation for the use of the purported leases as comparable leases." BLM has effectively rebutted appellant's challenge to use of the comparable lease sales.

BLM therefore has raised a prima facie case in favor of rejection of appellant's bid. Appellant has not established that its bid represents fair market value or that BLM's estimate is inaccurate. We must conclude that BLM properly rejected appellant's high bid. See Petrovest, Inc., 88 IBLA 166 (1985).

Accordingly, 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.

C. Randall Grant, Jr.
Administrative Judge

We concur:

John H. Kelly
Administrative Judge

R. W. Mullen
Administrative Judge

fn. 4 (continued)

southwest quarter of section 28 did have an accepted high bid of \$654.30 per acre (as parcel 124 at the August 31, 1983, Federal sale). The tract receiving a high bid of \$275 per acre comprised the northeast quarter and the north half of the south half of the same section (parcel 55 offered at the February 15, 1983, Federal sale)."

