

**Editor's note: Reconsideration denied by Order dated Oct. 19, 1987**

GRANT S. LYDDON

IBLA 85-534

Decided July 30, 1987

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting competitive bids for geothermal resources leases CA 13794 and CA 13795.

Affirmed.

1. Geothermal Leases: Competitive Leases

The Secretary of the Interior has the discretionary authority to reject a competitive geothermal lease bid where it fails to reflect fair market value for the parcel. A decision rejecting a bid on such a basis will be affirmed where the record establishes a rational basis for the conclusion and appellant has neither rebutted the basis for the conclusion nor shown that his bid represents fair market value.

APPEARANCES: Grant S. Lyddon, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Grant S. Lyddon appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated March 7, 1985, rejecting his high bids of \$ 2.01 per acre for parcel 5 (CA 13794) and \$ 1 per acre for parcel 6 (CA 13795) in the March 24, 1983, geothermal resources lease sale because his bids were considered inadequate.

This is the second time this case has been before the Board. Appellant's bids for these leases were initially rejected by BLM decision of July 13, 1983. Pursuant to a motion for remand filed by BLM, this Board vacated the initial decision and remanded the case to BLM to readjudicate the bids and issue a new decision setting forth the factual and analytical basis for the conclusion reached. The decision under appeal, together with the supporting data and analysis, was subsequently issued by BLM.

On remand, BLM explained that presale values for the subject parcels were "determined by the market approach utilizing comparable sales methodology." The BLM decision stated that a value comparison was made between the subject parcels and "other previously leased geologically comparable proper-

ties at The Geysers." The decision set forth the other parcels, the amount bid per acre, and the date of sale. Attached to the decision was a "Comparable Value Factor Table" comparing the relative value of the subject parcels and the comparison tracts in terms of various characteristics including geological factors and geophysical factors. From this analysis of relative values, a comparable value factor was estimated for each comparison parcel. As the BLM decision explained, where the comparable parcel was found to be superior, the value (in terms of bid per acre) was adjusted downward by applying the comparable value factor to arrive at an estimate of fair market value for the subject parcels.

For parcel 6, the estimated values derived from the comparable parcels were then averaged to obtain a value in terms of amount bid per acre. With respect to parcel 5, only one comparable was used. The resulting estimated value was \$ 53.68 for parcel 5 and \$ 342.52 for parcel 6. Accordingly, the BLM decision concluded that the minimum presale values of \$ 55 per acre for parcel 5 and \$ 340 per acre for parcel 6 were proper and the bids submitted by appellant must be rejected.

In his statement of reasons for appeal, appellant attacks the comparable sales analysis used to arrive at a minimum acceptable bid in light of the "subjectively determined" comparable value factor used to estimate fair market value. Appellant contends the comparable sales approach requires objective rather than subjective data. Further, appellant contends analysis of comparable sales is not a valid method of determining fair market value of geothermal lease tracts, asserting the fair market value of other parcels at a lease sale has no bearing on the value of disputed parcels in the same field. Appellant points out the bids received on any parcel do not necessarily represent fair market value, citing California Energy Co., 64 IBLA 163 (1982). Further, appellant alleges the lease used as a comparable for parcel 5 is not comparable, regardless of adjustments for differences in geothermal potential in that surface occupancy is allowed whereas no surface occupancy is allowed on the subject tract. In addition, appellant contends seven leases were subsequently issued in the Geysers known geothermal resources area for bids of \$ 1.11 per acre and that those lease tracts were superior to the tracts bid by appellant. Finally, appellant requests a hearing.

[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. § 1003 (1982); 43 CFR 3220.5(c). This Board has consistently upheld the exercise of that authority so long as the record establishes a rational basis for the conclusion that the high bid does not represent fair market value for the parcel. Aminoil USA, Inc., 81 IBLA 231 (1984); 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. Aminoil USA, Inc., 81 IBLA at 232.

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). This Board has also recognized that 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. However, this does not discredit use of comparable lease sales (where bids are accepted) as an appraisal method for determining fair market value. The Board has previously upheld rejection of a competitive geothermal lease bid as inadequate where the bid failed to match the fair market value established from comparable geothermal lease sales. Aminoil USA, Inc., 81 IBLA at 233.

Appellant also challenges the BLM appraisal of fair market value on the basis of the "subjectively determined" comparable value factor used to derive fair market value from the comparable tract prices. As an initial matter, we find no problem with a subjective conclusion regarding comparative value based on an analysis of objective factors noted in the record. Such an approach is necessarily implicit in the comparable sales approach to appraisal. See Interagency Land Acquisition Conference, Uniform Appraisal Standards for Federal Land Acquisitions (1973) at 9-11. The factors considered when arriving at the comparative value included various geological and geophysical criteria as well as such other factors as proximity to utilities and roads. We also note that one of the factors considered was "surface occupancy." There has been no showing that the factors considered in arriving at a comparable value are not relevant to appraisal of the value of the geothermal lease tracts.

However, application of the comparable value factor in this case has raised certain problems in calculating the fair market value of parcel 6. If application of the comparable value factor to the sale price of the comparable tract is to be a reliable estimate of fair market value for the subject tract, it seems reasonable to expect the value (comparable bid) obtained by multiplying the sale price by the comparable value factor would be fairly consistent. Table 2 in the case record, however, discloses a range of values (identified as preliminary comparable adjusted bid) for area 1 of parcel 6 from \$ 106.82 per acre to \$ 1,243.44 per acre. BLM averaged these figures to arrive at a projected fair market value of \$ 684.34 per acre for area 1 of parcel 6. Thus, although subarea 1 of parcel 6 was found to be less valuable than each of the seven comparable tracts with comparable value factors ranging from 0.2 to 0.8, the fair market value was actually greater than the sale price (as adjusted for inflation) of three of the comparable tracts (CA 951, CA 956, and CA 12967).

Although this appeal has raised some questions regarding the accuracy of the figures developed by BLM in their minimum bid or fair market value determination, we are unable to find appellant has sustained the burden of showing reversible error in the BLM decision rejecting his bids. Contrary to appellant's assertion, the decision was not arbitrary or capricious. Appellant's bids were less than 2 percent of the comparable adjusted bid for the lowest price comparable sale. Appellant's reference to subsequent lease sales for \$ 1.11 per acre will not suffice to establish error -- the issue is the fair market value of the tracts at issue at the time of the sale under

appeal. 1/ Appellant has an affirmative obligation to establish that its bids represent fair market value. Aminoil USA, Inc., 81 IBLA at 234; Viking Resources Corp., 80 IBLA 245, 247 (1984). This appellant has not done. -

Appellant's request for a hearing is denied in the absence of an allegation of material facts which, if proven, would establish that appellant's bids represent fair market value for parcels 5 and 6. Cf. Union Oil Co., 38 IBLA 373 (1978) (hearing on rejection of competitive geothermal bid denied in absence of showing a hearing would lead to a different result).

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.

C. Randall Grant, Jr.

Administrative Judge

We concur:

Anita Vogt,  
Administrative Judge  
Alternate Member

R. W. Mullen  
Administrative Judge.

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1/ We note that appellant has not presented sufficient data and analysis to establish comparability of these lease sales in any event.

