

SUZANNE WALSH

IBLA 85-600

Decided July 1, 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-58555 (OK).

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 to establish that the appellant's bid reasonably reflects fair market value.

APPEARANCES: Suzanne Walsh, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Suzanne Walsh has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated April 8, 1985, rejecting her high bid of \$505 (\$12.63 per acre) for a competitive oil and gas lease. NM-58555 (OK).

Appellant submitted the high bid for parcel 59, described as 40 acres of land situated in the SE 1/4 SE 1/4 sec. 18, T. 4 N., R. 22 E., Cimarron Meridian, Beaver County, Oklahoma, at a February 23, 1984, competitive oil and gas lease sale. By decision dated March 19, 1984, BLM rejected appellant's bid because the bid was "less than the pre-sale tract evaluation." Appellant challenged that BLM decision. In Suzanne Walsh, 83 IBLA 274, 276 (1984), the Board set aside the March 1984 BLM decision because BLM had failed to disclose its "presale evaluation" of the parcel or the facts supporting that evaluation in order that the Board could determine whether BLM had a "rational basis" for rejecting appellant's bid. We remanded the case to BLM for a readjudication of that bid.

In an April 2, 1985, memorandum, the Acting Chief, Southwest Region Evaluation Team (SRET), recommended to the Chief, Mineral Leasing Unit 1, that appellant's bid be again rejected because the bid was "substantially beneath" BLM's estimated value for the parcel "as of the date of the sale," i.e., \$8,000 (\$200 per acre). The estimated value was based on July 1983 "[l]ease purchases" within the NE 1/4 NE 1/4 sec. 18, T. 4 N., R. 22 E., Cimarron Meridian, Beaver County, Oklahoma, by Funk Exploration, Inc. (Funk), which were "considered to be the most credible indicators of value." These "purchases," which were "confirmed with Funk Exploration's land person," were made at the cost of \$225 per acre. In its April 1985 decision, BLM again rejected appellant's bid based on the SRET recommendation.

In her statement of reasons for appeal, appellant contends that SRET's "contact" with Funk's land person "took place after the sale, that several oil companies" typically avoid small parcels of Federal land "in areas of Western Oklahoma where the spacing for gas wells is normally 640 acres" and that production from Funk's well No. 1-18 in the SE 1/4 NW 1/4 SE 1/4 sec. 18, T. 4 N., R. 22 E., Cimarron Meridian, Beaver County, Oklahoma, starting in June 1984, indicates the well is a "very poor one."

[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 inaccurate but 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 sufficient evidence to raise a prima facie case in favor of rejecting appellant's high bid, although the case is weakened by BLM's failure to substantiate the comparability of the land involved in the "lease purchases." See Clarence Sherman, 82 IBLA 64 (1984). Nevertheless, the burden devolved to appellant to preponderate on the question of the inaccuracy of BLM's evaluation and the adequacy of her own bid. Howell Spear, 86 IBLA 8, 12 (1985).

Appellant first asserts in effect that BLM did not determine the value of parcel 59 for oil and gas leasing purposes until "after" the lease sale by virtue of contacting Funk. Appellant has no evidence that SRET's contacts with Funk came after the lease sale. Even if they did, BLM could properly reject a high bid based on a postsale evaluation of an offered parcel where BLM is entrusted with the responsibility of ensuring that a parcel is leased only at its fair market value. See Coquina Oil Corp., 29 IBLA 310 (1977). Indeed, as a matter of practice, BLM has subjected presale estimated values to a postsale evaluation before adjudicating high bids and that practice was adopted as a matter of BLM policy by the Director, BLM, in Instruction Memorandum (IM) No. 85-182, dated December 20, 1984. See IM No. 85-490, dated May 29, 1985. So long as the evidence is directed toward ascertaining the fair market value as of the date of the sale, the date that the data is collected is irrelevant. Cf. United States v. Foresyth, 15 IBLA 43 (1974).

Appellant also points to a lack of competitive interest in leasing "small acreage." Indeed, parcel 59 received only two bids (\$505 and \$500). Lack of competitive interest will not establish that a BLM estimation of fair market value, supported by probative evidence, is inaccurate where the decision to bid on a particular parcel can be based on a multitude of variables, not the least of which may be a potential bidder's evaluation of the parcel. Harvey E. Yates Co., 71 IBLA 134 (1983).

Finally, appellant relies on the purported "poor" production of a nearby well. In a form (Exh. 1), dated March 29, 1985 filed with the Oklahoma Corporation Commission, submitted by appellant, initial gas production from Funk's well No. 1-18, completed May 27, 1984, is reported as flowing from the Morrow and Chester formations. This data, unlike the price paid by Funk for drilling rights, concerns events which occurred after the lease sale and is not germane to fair market value at the time of the lease sale.

Appellant has simply not established that her bid represents the fair market value of parcel 59, especially in view of the gross disparity between her bid (\$505) and BLM's estimated value (\$8,000), or that BLM's estimate of value is inaccurate. Accordingly, we conclude that BLM properly rejected appellant's high bid. Petrovest, Inc., 88 IBLA 166 (1985); Viking Resources Corp., *supra*; see Kerr-McGee Corp. v. Morton, 527 F.2d 838 (D.C.Cir. 1975).

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.

Gail M. Frazier  
Administrative Judge

I concur:

James L. Burski  
Administrative Judge.

## ADMINISTRATIVE JUDGE ARNESS CONCURRING IN THE RESULT:

This Board's decision entitled Viking Resources Corp. (Viking II), 97 IBLA 363 (1987), has concluded the shift in the Board's approach to high-bid-rejection appeals which was recently attributed to an earlier case by the same name, Viking Resources Corp. (Viking I), 80 IBLA 245 (1980). See Southern Union Exploration Co., 97 IBLA 275, 277 (1987). As explained in my separate opinion in Southern Union, there has been a lack of uniformity in our decisions concerning the standard which should be applied when reviewing high-bid rejection appeals. Earlier Board decisions began by requiring the Bureau of Land Management (BLM) to support any rejection of a high bid by a "reasoned explanation," a "reasoned and factual explanation," or a "rational basis." See concurring opinion in Southern Union at page 281. This standard, however, proved to be variably applied, a circumstance which finally led to an obvious split in the Board revealed by our opinion in Green v. BLM, 93 IBLA 237 (1986), where three conflicting standards were defined in the separate opinions of the divided panel who were able, despite this circumstance, to achieve agreement concerning the disposition of the appeal. The unifying factor in Green was the panelists' agreement that the bidder had failed to prove his bid represented fair market value. See Green, supra at 245, 248, 249.

Nonetheless, the majority in Southern Union purported to find no inconsistency in our prior high-bid-rejection cases, but found instead an orderly development in which Viking I "represents a major development in our approach to high bid rejections, in which we shifted the focus of our analysis." See Southern Union, 97 IBLA at 277 n.1. This assertion, it now appears, has paved the way for just such a shift, which takes place, however, in Viking II, decided just 1 week after Southern Union. In that case, after quoting from the lead opinion in Southern Union to the effect that the real focus of any review of a high-bid rejection must be made upon an evaluation of the merits of the rejected bid, the opinion observed that the "ultimate burden" upon any appellant in these cases is to show that the lease bid "represented fair market value at the time of the lease sale." *Id.* at 366. In the context in which that finding appears, it is now clear that the single definitive test in these cases is whether a bidder is able to show his bid represents fair market value.

As I stated in Southern Union, I do not object to the result reached by imposing such a standard upon rejected bidders who appeal to this Board. My objective in writing separately on this issue was, and is, to clarify our position concerning the adjudication of these cases in a straightforward manner. It is now evident that the real test, and the only test, of a rejected bid is the relationship of that bid to fair market value at the time of sale. This places the burden of proof squarely upon the bidder, who must show that his rejected bid does in fact represent fair market value. This cannot be done by showing error or inadequacy in the BLM evaluation of the lease. Unless a bidder can show his own bid meets the market value at the time of sale, he will lose. The manner in which BLM reached a determination concerning value is therefore no longer an issue in these cases, if it ever was in reality.

While the Viking II decision briefly alludes to a continuing need for BLM to "show the basis for its determination that the bid was too low" (id. at 365), the former requirement that there be a "rational basis" shown by BLM to justify its rejection is conspicuously absent. Instead, there is now said to be a shift in the burden of proof to the bidder which is caused by BLM's offer of value evidence, slight though it may be, which is said to establish the "prima facie" validity of the BLM estimate. Id. at 365. Clearly, the development of the standard for review of high-bid cases which the Southern Union opinion attributed to Viking I has been accomplished for certain, if not in Viking I, then surely by Viking II.

Because I accept the underlying logic implicit in these cases, I therefore concur in the result in this appeal. I do so although we again avoid a serious defect in BLM's estimate of value. The BLM estimate, which relies upon the comparable sale method of valuation (like the estimate provided by BLM in Southern Union), is not responsive to the prior order of this Board which required that BLM furnish the "presale evaluation" used to reject the bid in the first instance. See Suzanne Walsh, 83 IBLA 274 (1984). It seems doubtful, as appellant complains, that the Southwest Regional Evaluation Team (SRET) report furnished to support this second bid rejection in this case is the original value estimate used to reject appellant's bid in the first instance. But assuming that it is, nothing in the report furnished indicates that the lease to which this lease under review is compared for purposes of evaluation is, in fact, comparable. There is nothing to show that the two tracts which are compared are in any way the same. This weakness in BLM's SRET evaluation has not escaped appellant's notice, since she complains that the price paid for the comparable lease is in no way comparable to the lease for which she bid. She may be right, but since she has offered no data or reasoned analysis to support her contention that her bid represents fair market value, her appeal cannot succeed. To prevail, she must show that her bid represented fair market value, and whether BLM erred or not is beside the point until the rejected bidder has presented her case. At that point, there would be an issue to be resolved. Then, in such case, the relative merit of the contending evaluations should be considered, and weighed. See Viking II, supra; Southern Union, supra.

Franklin D. Arness  
Administrative Judge

