

Appeal from a decision of the Phoenix District Office, Bureau of Land Management, accepting a high bid in a public land sale. A-21619.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Sales--Public Sales: Generally

BLM's failure to send a notice to the co-owner of an adjoining parcel of land as required by 43 CFR 2711.1-2(a) will not vitiate a public sale of the parcel by modified competitive bidding procedure where the co-owner had actual knowledge of the sale prior to the sale date and subsequently participated in the sale.

2. Federal Land Policy and Management Act of 1976: Sales--Public Sales: Preference Rights

The failure of a high bidder to include proof of United States citizenship with a sealed bid is a curable defect not requiring rejection of a bid submitted pursuant to modified competitive bidding procedures.

APPEARANCES: Stephen J. Stagnaro and Kenneth Ragan, pro sese; Fritz L. Goreham, Esq., Office of the Regional Solicitor, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Stephen J. and Mickie L. Stagnaro and Kenneth J. and Elsie V. Ragan have appealed from a decision of the Phoenix District Office, Bureau of Land Management (BLM), dated May 20, 1987, informing them that Margaret Campbell had been determined to be the high bidder for a parcel of land described as the S\ NE^ SW^ SE^ sec. 27, T. 1 N., R. 8 E., Gila and Salt River Meridian, Arizona, at a public sale held in the Phoenix District Office on April 20, 1987.

The following sequence of events provides the pertinent factual background for our consideration of this appeal. On April 6, 1984, Kenneth Ragan inquired as to the possibility of purchasing the subject tract of

land. 1/ Ragan subsequently arranged for a survey of the property as well as an appraisal of the parcel by R. Veldon Naylor. In the meantime, BLM contacted other adjacent landowners and, after ascertaining that some of them also had an interest in acquiring the parcel, decided to offer the subject property for public sale utilizing a modified competitive bidding procedure with the use of sealed bids pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. | 1713 (1982), and implementing regulations, 43 CFR Subpart 2711. On February 20, 1987, a notice of realty action (NORA) was approved which informed the public of BLM's intention to sell the subject parcel.

BLM set a minimum bid of \$15,700 based on the Naylor appraisal. The modified bidding procedure identified four adjacent landowners as designated bidders pursuant to 43 CFR 2711.3-2(a)(1), including the Ragans and Campbell. 2/ While the Stagnaros were co-owners of the Ragan parcel, it is unclear whether BLM was aware of this fact or whether BLM assumed that Kenneth Ragan was representing both his and the Stagnaros' interest. In any event, the Stagnaros were not sent a copy of the NORA. The NORA was, however, duly published in the Federal Register. See 52 FR 6225-26 (Mar. 2, 1987).

Nevertheless, the Ragans and Stagnaros submitted a joint bid of \$21,250 which bid contained two checks of equal value, one from Stagnaro and the other from Ragan. Campbell submitted a bid of \$22,800. The other two designated bidders failed to submit bids. When the bids were opened, Ragan, the only bidder present at the sale, inquired whether Campbell's sealed bid had included proof of citizenship and evidence of ownership of the adjoining land. Upon determining that Campbell's bid did not include these items, the attending sale supervisor declared Ragan/Stagnaro the successful bidder. Subsequently, BLM reviewed the sale procedures and, in the May 20, 1987, decision under appeal herein, reversed the original determination, declaring Campbell the successful high bidder.

In its decision, BLM attempted to explain the reason for its reversal. Thus, the decision noted:

After careful analysis of the Notice of Realty Action (NORA) for the subject sale, it was determined that Mrs. Campbell's lack of evidence of adjoining land ownership with the sealed bid is not considered a fatal defect that could affect the outcome of the sale.

Mrs. Campbell provided our office with the necessary proof of sole ownership of adjacent property, as well as proof of citizenship and has subsequently been declared the apparent high bidder.

Appellants have appealed the foregoing decision.

1/ According to a letter which Ragan wrote in 1986, he had first inquired about obtaining the property in 1980, but the letter which he sent had apparently been lost.

2/ A map contained in the case file indicates that these four parties were deemed to be the Ragans, Campbell, the Echo Bay Leasing Company, and the Cross Roads Southern Baptist Church.

Appellants challenge the acceptance of Campbell's bid on four separate grounds. First, they argue that the Stagnaros never received proper notification of the sale. Second, they contend that Campbell was not one of the designated bidders. Third, they point out that, under the NORA, proof of citizenship was required to accompany the bid deposit and that Campbell did not comply with this requirement. Fourth, they challenge the right of BLM to allow Campbell to submit proof of ownership of adjoining land 30 days after the opening of the bids. We will discuss each of these points seriatim.

[1] Initially, appellants allege that the Stagnaros never received a copy of the NORA. This assertion is undisputed. But it is also undisputed that the Stagnaros' co-owner, Kenneth Ragan, was the moving force in having the parcel offered for public sale and that Ragan was, in fact, timely served with all to the necessary information. We need not decide whether, and in what circumstances, service on only one co-owner will discharge the requirement of 43 CFR 2711.1-2(b), because, as BLM points out, the Stagnaros did, in fact, submit a timely joint bid with the Ragans.

Where parties have actual notice and thus suffered no prejudice, this Board, in other contexts, has refused to vacate agency action due to a lack of formal notice. See Santa Fe Pacific Railroad, 90 IBLA 200, 219-20 (1986); Village & City Council of Aleknagik (On Reconsideration), 80 IBLA 221, 223 (1984). Of more direct relevance to the present appeal is the decision in Richard D. & Virginia Troon, 93 IBLA 256 (1986).

In that case, appellants also objected that they received inadequate notification of a NORA. In Troon, there was no question that the appellants did not receive the 60-day notice contemplated by 43 CFR 2711.1-2(b). But, pointing out that appellants were, nevertheless, able to timely submit a bid, the Board concluded that "[a]ppellants cannot credibly argue that they did not have actual notice of the terms of the public sale." Id. at 262. Accordingly, the Board determined that the assertion that notice of the sale was deficient could not constitute a basis for negating the sale. Id.

So, too, in the instant case, while the Stagnaros did not receive notice from BLM of the NORA, they admit that they were informed of the sale prior to the sale date by Ragan. Indeed, as referenced above, they actually submitted a joint bid with the Ragans. Thus, even assuming that the notification afforded appellants was deficient, this would not justify cancellation of the sale given the factual milieu of the instant appeal.

With respect to appellants' second argument, they are simply in error. Campbell was clearly one of the designated bidders, as she owned property adjoining the sale parcel on the west and she was, in fact, mailed copies of the NORA. The contention that Campbell was not a proper bidder must be rejected.

[2] Appellants also challenge acceptance of Campbell's bid on the ground that the bid was not accompanied by proof of citizenship. With respect to this issue, the NORA provided that: "Federal law requires that all bidders be U.S. citizens, or in the case of corporations, be subject to

the laws of any state in the U.S. Proof of these requirements must accompany a sealed bid submitted to the BLM." There seems no room for cavil that the NORA required that proof of citizenship accompany the bid being submitted. Nor is there any doubt that Campbell failed to submit such proof with her bid. The question, then, is whether the failure of Campbell to submit proof of citizenship with her bid requires rejection of her bid. We do not believe that it does.

We think it important to keep in mind the fact that Campbell is a citizen of the United States and was a citizen as of the date of the sale. See 43 CFR 2711.2(a) (requiring a showing of citizenship as a precondition to conveyance of the land); cf. Havasu Heights Ranch and Development Corp., 94 IBLA 243, 247 (1986) (requiring proof of United States citizenship as a precondition for approving an exchange under sec. 206(a) of FLPMA, 43 U.S.C. | 1716(a) (1982)). These facts were shown by her subsequent submissions. The NORA, however, clearly required that proof of citizenship "accompany" the bid. To that extent, Campbell's submissions were not in conformity to the NORA.

But, as BLM points out, not only did Campbell fail to submit proof of citizenship with her application, so, too, did both the Stagnaros and the Ragans fail to accompany their bid with proof of their citizenship. BLM argues that Campbell's failure to include proof of citizenship is not fatal because, once the technicality is permitted to be corrected in the case of both bidders, the status of Campbell as the high bidder does not change (BLM's Answer at 2-3).

The ultimate question, of course, is whether either Campbell or appellants can be allowed to correct this deficiency in their respective bids. In this regard, it is important to keep in mind the rationale animating the competitive bidding system.

Traditionally, with respect to simultaneous filing systems, particularly in the area of oil and gas leasing, the Department has rigorously enforced all requirements of the regulations. See, e.g., H.J. Enevoldsen, 44 IBLA 70, 78, 86 I.D. 643, 647 (1979); William R. Curtis, 37 IBLA 124, 127 (1978). The same approach, however, has not been followed in competitive leasing situations. In Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, B.E.S.T., Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976), we explored the rationale behind the dissimilar treatment of simultaneous and competitive systems.

Explaining the difference in approach, we noted that, under simultaneous procedures, the determinative factor in obtaining a benefit is one of priority in time. Thus, if for some reason the first drawn priority filing is deficient, the next drawn filing in an acceptable form obtains priority. Defects cannot be cured because, since priority would be established as of the date of the curative action, any action to cure the defect would necessarily render the first drawn application subordinate to any other application which had been properly filed initially. Thus, even if a first-drawn simultaneous applicant is permitted to cure a defect in filing, the first drawn filing would no longer possess any priority, and thus curative action would be totally futile.

We contrasted the foregoing with the situation involved in a competitive bidding system:

[I]n a competitive lease sale priority is not a consideration; it is the qualified high bidder who is entitled to receive the lease. Thus, the Department has held that failure of a high bidder at a sealed bid auction to submit with his bid a statement of citizenship and interests in other holdings required by the regulation and the invitation to bid may be waived where the default has given him no advantage over the other bidder. North American Coal Corp., 74 I.D. 209 (1967).

Id. at 28. Accord, Eurafrep, Inc., 55 IBLA 275, 276 (1981); Black Hawk Resources Corp., 50 IBLA 399, 401 (1980); Mesa Petroleum Co., 37 IBLA 103 (1978).

In the instant case, while Campbell failed to submit proof of her citizenship with the bid, so, also, did appellants. Clearly, Campbell's omission did not give her an advantage over appellants. In any event, failure to submit proof of citizenship with a bid has consistently been held to be the type of deficiency which does not necessitate rejection of a high bid. See North American Coal Corp., supra at 211-13. Accordingly, we conclude that while it is undisputed that Campbell failed to submit proof of citizenship with her bid as required by the NORA, this failure does not justify rejection of her bid.

The final argument raised by appellants relates to Campbell's failure to accompany her bid deposit with proof of ownership of adjoining lands. We must note that, in contradistinction from the failure of a bidder to submit proof of citizenship, failure of an individual, attempting to assert a statutory preference right in a competitive bidding system, to timely submit proof of ownership of adjoining lands has been dealt with as a disqualifying omission. See, e.g., Yose Cattle Co., 24 IBLA 347 (1976); Mildred M. Miller, 7 IBLA 363 (1972). The difficulty with appellants' argument on this point, however, is that nothing in the NORA or the regulations can fairly be said to require submission of proof of ownership with the sealed bid.

Thus, the NORA provided:

Each sealed bid shall be accompanied by a certified check, postal money order, bank draft or cashiers check made payable to the Department of the Interior, BLM for not less than 20% of the bid. In addition, the designated bidders will be required to submit evidence of adjoining land ownership to validate the bid. Such evidence must establish ownership in fee simple of lands adjoining the sale parcel on the date of the sale. [Emphasis supplied.]

A fair reading of the NORA, particularly the underlined language, supports BLM's position that, while a bidder would be required to prove ownership of an adjoining tract as of the time of the sale, there was no requirement that this proof be submitted with the sealed bid. Nor does any regulation compel a contrary conclusion. Thus, Campbell's bid was not

deficient in this regard. In view of the foregoing, it is clear that BLM correctly held that Campbell was the high bidder at the sale. 3/

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.

James L. Burski  
Administrative Judge

I concur:

John H. Kelly  
Administrative Judge

3/ As the sale notice stated, as a precondition to consummation of the sale, Campbell will be required to compensate Ragan for the costs associated with surveying and appraising the land.