

## **D.N.J. LBR 6004-2. Bidding and Auction Procedures for Sale of Property**

**(a) Motion.** An entity requesting approval of bidding and auction procedures for a sale of property under § 363 of the Code must file a motion. The entity may include the request in a motion to sell property under Local Bankruptcy Rule [6004-1](#) or file a separate motion.

**(b) Material provisions.** The motion must identify the following material provisions:

- (1) a provision governing a bidder's qualifications, including an obligation to:
  - (A) deliver financial information by a stated deadline to the movant and other key parties;
  - (B) demonstrate a bidder's financial ability to consummate a sale;
  - (C) maintain the confidentiality of information obtained from the debtor or other parties or execute a non-disclosure agreement; or
  - (D) make a non-binding expression of interest or execute a binding agreement.
- (2) a provision governing a bid's qualifications, including:
  - (A) a requirement regarding a deposit, including the amount and the conditions under which the deposit may be refundable;
  - (B) a deadline for submitting a bid or for modifying a bid not deemed a qualifying bid; or
  - (C) a requirement regarding the form of a bid, including whether:
    - (i) a bidder must mark its bid against a stalking horse agreement or a template of the movant's preferred sale terms;
    - (ii) a bidder may bid for a portion of the assets; or
    - (iii) a bidder must leave its bid open for a specified period.
- (3) a proposed form of stalking horse bidder protection, including:
  - (A) the amount of an initial overbid and any successive bidding increments;
  - (B) a no-shop, no-solicitation, or other limitation on the movant's ability or right to solicit higher or better offers;
  - (C) an agreement to seek an order authorizing break-up or topping fees and reimbursement of expenses, and the terms and conditions of payment; or

(D) a requirement that the stalking horse bidder receive a bidding credit equal to the amount of the break-up fee, topping fee, or reimbursement of expenses, or a requirement that the stalking horse bidder, upon submitting a higher or better bid, is deemed to have waived the break-up fee, topping fee, or reimbursement of expenses.

(4) a provision that would authorize the movant to modify any bidding or auction procedures without court order.

(5) a provision that would authorize the movant to accept and close on an alternative qualified bid if the successful bidder fails to close the transaction.

**(c) Order.** A proposed order approving bidding and auction procedures must provide:

(1) the date, time, and place at which the auction will be conducted, and the method for providing notice to parties of these terms and any changes;

(2) that each participating bidder will be required to confirm that it has not engaged in any bad faith or collusion with respect to the bidding or the sale;

(3) that the auction will be conducted openly and that all parties in interest will be permitted to attend;

(4) that bidding at the auction will be documented, recorded, or videotaped; and

(5) the date on which the court will consider whether to confirm the results of the auction and whether to approve the sale.

### 2015 Comment

This Rule was formerly part of the Appendix to Local Bankruptcy Rule 6004-1(c), which contained the Guidelines for Sale of Estate Property in chapter 11 cases. The Rule addresses only requests for approval of bidding and auction procedures for a sale of property. The information and disclosures that must be included in a motion to sell property are now addressed in revised Local Bankruptcy Rule [6004-1](#).