

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](#).