



Methods of Sale in Bankruptcy

General Overview

- Methods of Sale in Bankruptcy:
 - Bankruptcy Liquidation
 - Auction
 - Direct sale
 - Bankruptcy Reorganization
 - Tender
 - Auction
 - Mixed tender, then auction or IPO
 - Direct negotiation

General Overview

Main features of a competent public sale are:

- **Economic quality:** The sale is a sales activity with purpose of providing the highest monetary value to seller.
- **Efficiency:** The best public procurement is simple and quick, giving positive results without much delay. In addition, the efficiency implies practicality, especially in terms of compatibility with administrative resources and professional skills of the selling party (Trustee) and its sales personnel.
- **Fairness:** Good sale is impartial, consistent, and thus reliable. It provides a pitch for all interested investors and experts where they can compete, thus expanding the Seller's options and opportunities.
- **Transparency:** Good sale establishes and then maintains the rules and procedures that are available and unambiguous. Not only is it fair, but it should be viewed as fair.
- **Liability and ethical standards:** Good sale holds the its vendors responsible for maintaining and upholding the rules. It subjects them to criticism and sanctions, if necessary, for neglecting or distorting those rules. Liability is, in the same time, the key incentive for individual and institutional integrity, key preventive of collusions and corruption, and key prerequisite for the sale credibility.

General Overview

Definitions

- **Auction** – Invitation to bid for item(s) or job. The process of public auction is based on only one parameter (usually the price), and the rules are set by the auctioneer.
- **Tender** – Invitation to bid for item(s) or job. The process of public tender is based of a set of parameters and rules set by the party that issued the Tender
- **Direct Negotiations** – Tender can precede the direct negotiations on the set of parameters determined by the Seller
- **Tender in Two Stages** – In the first stage, bidders are invited to submit initial tenders, which contain their proposals without the tender price. Short listed candidates are subsequently invited in the second stage to: Auction for their bids, or Direct Negotiations, if a more complex objective is being attempted to achieve

General Overview

Auctions

■ **Open Competition Auctions**

In the open competition auctions, all bids are open for public review; every participant is aware of other submitted bids.

■ **Sealed Bid Auctions**

Auctions with sealed bids allow the participants to submit their bid, seen only by the auction administrator. Set a deadline to submit bids, and no bid received after that deadline will be accepted. A bidder is not aware of other submitted bids.

■ **Dutch Auctions**

Dutch auctions do not require the bidders to set the initial bid price. In stead, the auctioneer announces the price and asks if any of the participants will accept it. Usually, the auction starts with a price that is reduced in time, until the bidders exhaust the inventory.

General Overview

Tender

■ Limited Tender

- Limited tender is the one where a short list of investors is extracted from those who responded to public invitation for a specific sale. Invitation to tender for items being sold is limited to investors who replied to the public invitation, and who met the predetermined criteria for selection. This procedure is used when there is no framework arrangement or when the Auction Rules are to be applied.
- Notices inviting companies to apply for inclusion on a shortlist for the contract will be published in the local press and in one or more appropriate media published nationally. The ad should also be posted on the Internet so it reaches the widest possible audience.

■ Open Tender Procedure

- According to this procedure, all those who responded to the public notice advertising a specific sale must be invited to tender. Evaluation of both bidders and tender is conducted at the same time, after the tenders are returned.
- Notices for companies to apply for tender documentation for the cases that are on sale, will be announced as indicated above. Public notice provides concrete details related to proposed items for sale, invites interested parties to apply for tender documentation, and indicates the deadline for receipt of tenders.

■ Framework Arrangements/Unique Tenders

- Framework arrangements come to place where the Board of Creditors establishes an arrangement with one or more investors about an agreement that an authorized person will invite the investors when necessary.
- Another type of the framework agreement is the formal revoke contract, in which an authorized contract person invites investors' bids according to fixed terms and conditions that are revoked when necessary.

Auctions

- Key Steps in Preparation of an Auction:
 1. Preparation of the auction plan
 2. Selection of auction type (Open, Sealed Bids, Dutch)
 3. Development of auction rules (documentation)
 4. Auction announcement in the media
 5. Registration of participants and distribution of auction documentation
 6. Holding the auction
 7. Finalization of sales agreement
 8. Closing of the auction:
 - Transferring sale revenues to Escrow account
 - Transfer of property into possession of successful bidder
 - Return of cash deposits / Retention of deposits of parties who fail to pay the price they accepted in the auction

Key Auction Rules

- Bidding rules (up/down)/ increment size/ change of direction of bidding and/or increment size
- Who can bid / bid deposit / auction register
- Site visits and bidders' statement that they have inspected items and that they are buying them in found condition
- Damages and defects unknown at the time of auction cannot imply legal liability
- Rules of participation and sanctions
- Payment rules and main events records
- Transfer of property / releasing deposits

Tenders

- Key Steps in Preparation of a Tender:
 1. Defining tender objectives and *prequalification* criteria
 2. Choice of tender process (open, limited, negotiated)
 3. Evaluation criteria design
 4. Development of tender documentation
 5. Announcement of tender in the media
 6. Gathering tender bids
 7. Ranking tender bids
 8. Selection of the best bidder and notice to other bidders
 9. Start of negotiations on contract with the best bidder
 10. Closing of the tender:
 - Executing the contract with the best bidder
 - Transfer of sale revenues to Escrow account
 - Announcement for all tender participants that the tender is closed
 - Return of cash deposits / Retain deposits of parties who fail to pay accepted price

Key Tender Rules

- *Prequalification* – require the potential investors to demonstrate their financial, economic, and technical ability to fulfill the tender objectives in full.
- Content of bid (investment, social program, and debt repayment program)
- Bid deposit (fee) and bid submittal
- Due diligence
- Evaluation of bids / ranking
- Negotiations

Evaluation of Tender Bids

■ Bankruptcy Reorganization Case:

- Terminated operations of debtor have the potential in domestic market, and perhaps in foreign as well if appropriately restructured;
- 80% of debtor's property is pledged;
- Significant amount of debt towards secured creditors has not been repaid
- In liquidation the General Repayment Order gets nothing;
- Creditors devised the Reorganization Plan according to which:
 - secured creditors are repaid in full;
 - bankruptcy costs are covered; and
 - general creditors are paid 20% of their claims
- Unfortunately, funds are missing to implement the Reorganization Plan
- Creditors have decided to put the Reorganization Plan on tender
- Creditors have developed evaluation criteria

Design for Evaluation of Tender Bids

■ Creditors have decided that tender bids must meet or exceed the requirements of the reorganization plan, in order for the plan to be accepted. Based on that, the creditors have set the evaluation criteria and their relative weights as follows =>

■ Bid evaluation formula:

PB1

$$P_{spb1} = \frac{\text{PB1}}{\text{Max(PB1, PB2)}} \times 10$$

Max(PB1, PB2)

PB1 = (Bid value) x Gweight x Sweight

PB1 = Weighted value of Bid 1

P_{spb1} = Points per evaluated parameter of Bid 1

Gweight – Weight groups

Sweight – Weight subgroups

Parameter	Weight G S	Reorganization Plan
Debt repayment	50%	2,200,000
- first year	70%	1,000,000
- second year	30%	1,200,000
Investments	20%	500,000
- first year	60%	250,000
- second year	40%	250,000
Social program	20%	
- number of new jobs	80%	60
- severance pays	20%	270,000
Technical capacities	10%	
- experience in industry	30%	10
- share in the market	70%	80,000

Evaluation of Tender Bids

- Creditors issued the Tender and received two bids
- Which one do they chose?

Parameter	Weight	Bid 1	Bid 2	Reorg. Plan
Debt repayment	50%	2,500,000	3,000,000	2,200,000
- <i>first year</i>	70%	1,500,000	1,000,000	1,000,000
- <i>second year</i>	30%	1,000,000	2,000,000	1,200,000
Investments	20%	600,000	700,000	500,000
- <i>first year</i>	60%	300,000	200,000	250,000
- <i>second year</i>	40%	300,000	500,000	250,000
Social program	20%			
- <i>number of new jobs</i>	80%	100	70	60
- <i>severance pays</i>	20%	300,000	400,000	270,000
Technical capacities	10%			
- <i>experience in industry</i>	30%	8	6	10
- <i>share in the market</i>	70%	100,000	70,000	80,000

Result of Evaluation of Tender Bids

Parameter	Weight	Bid 1	Weighted	Points	Bid 2	Weighted	Points
Debt repayment	50%	2,500,000			3,000,000		
- first year	70%	1,500,000	525,000	10	1,000,000	350,000	7
- second year	30%	1,000,000	150,000	5	2,000,000	300,000	10
Investments	20%	600,000			700,000		
- first year	60%	300,000	36,000	10	200,000	24,000	7
- second year	40%	300,000	24,000	6	500,000	40,000	10
Social program	20%						
- number of new jobs	80%	100	16	10	70	11	7
- severance pays	20%	300,000	12,000	8	400,000	16,000	10
Technical capacities	10%						
- experience in industry	30%	8	0.24	10	6	0.18	8
- share in the market	70%	100,000	7,000	10	70,000	4,900	7
Ukupan rezultat				69			65