



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 Negotiations

General Overview

The principal hallmarks of proficient public procurement are:

- **Economy:** Procurement is a selling activity whose purpose is to give the seller best value for money.
- **Efficiency:** The best public procurement is simple and swift, producing positive results without protracted delays. In addition, efficiency implies practicality, especially in terms of compatibility with the administrative resources and professional capabilities of the selling party (Trustee) and its procurement personnel.
- **Fairness:** Good procurement is impartial, consistent, and therefore reliable. It offers all interested investors and experts a level playing field on which to compete and thereby, directly expands the Seller's options and opportunities.
- **Transparency:** Good procurement establishes and then maintains rules and procedures that are accessible and unambiguous. It is not only fair, but should be seen to be fair.
- **Accountability and Ethical Standards:** Good procurement holds its practitioners responsible for enforcing and obeying the rules. It makes them subject to challenge and to sanction, if appropriate, for neglecting or bending those rules. Accountability is at once a key inducement to individual and institutional probity, a key deterrent to collusion and corruption, and a key prerequisite for procurement credibility.

General Overview

Definitions

- **Auction – Invitation** to offer for an item/items or work. Public bidding process based on only one parameter (usually Price) and rules determined by the Auctioneer
- **Tender – Invitation** to offer for an item/items or work. Public bidding process based on set of parameters and rules determined by the Tendering Party
- **Direct Negotiations** – Direct negotiations on set of parameters determined by the Seller, could be preceded by Tender
- **Two stage tender** – First stage calls for bidders to submit initial tenders containing their proposals without a tender price. Short listed candidates are later invited on second stage to: Auction for their price offer or Direct negotiations if more complex goal is pursued

General overview

Auctions

- **Open Cry auctions**

In Open Cry auctions, all bids are available for public viewing; each participant knows the other bids submitted.

- **Sealed Bid auctions**

Sealed Bid auctions allow participants to submit a bid that is seen only by the auction administrator. You set a submission deadline, and no bid received after that time is accepted. The bidder does not know the other bids submitted.

- **Dutch auctions**

Dutch auctions do not require bidders to set the initial bid price. Instead, the user creating the auction announces a price and ask if any participants will accept it. Usually the auction starts with a high bid price that is reduced over time until bidders have cleared the inventory.

General Overview

Tender

- **Restricted tendering**

- A restricted tender is where a shortlist of investors is drawn from respondents to a public notice for a specific sale. Invitation to tender for the items for sale is limited to investors who reply to this public notice and who meet predetermined selection criteria. This procedure is used when there is no Framework Arrangement maintained or when Public Procurement Rules should 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 advert should also be placed on the web, so that it reaches the widest possible audience.

- **Open Tender Procedure**

- Under this procedure, all respondents to a public notice advertising the specific sale must be invited to tender. An evaluation of both the tenderers and tenders is carried out at the same time, once tenders have been returned.
- Notices inviting companies to apply for tender documents for the items for sale will be published as outlined above. The public notice sets out particulars of the proposed items for sale, invite interested parties to apply for tender documents and state the deadline for tenders to be received.

- **Framework Arrangements /Single Tenders**

- Framework arrangements occur where a the Board of Creditors sets up an arrangement with one or more investors on the understanding that the authority will call on the investors when needed.
- Another type of framework agreement is a formal call-off contract where the contracting authority invites offers from investors on fixed terms and conditions which are then called off when necessary.

Auctions

- Key steps to prepare an Auction :
 1. Prepare an auction plan
 2. Select Auction type (Open, Seal-Bid, Dutch)
 3. Develop Auction Rules (documentation)
 4. Announce Auction in Media
 5. Register participants and distribute auction documentation
 6. Conduct the Auction
 7. Finalize sale agreement
 8. Close Auction:
 - Transfer proceeds from sale into Escrow account
 - Transfer property to successful bidder
 - Return cash deposits/Keep deposits of parties failing to pay the price they have accepted to pay at the auction

Key Auction Rules

- Bidding rules (up/down)/ size of step/ change of bidding direction and/or size of step
- Who can bid/Bid Deposit/Auction register
- Site visits and Declaration from bidders that they have inspected the items and they buy them in the state they are
- Damages and defects not known in the time of the auction cannot be assumed as legal liability.
- Participation rules and sanctions
- Payment rules and protocol from main events
- Transfer of property/Release of deposits

Tenders

- Key steps to prepare a Tender:
 1. Define Tender goals and *Pre-qualification* criteria
 2. Select tender process (Open, Restricted, Negotiated)
 3. Design Evaluation criteria
 4. Develop tender documentation
 5. Announce Tender in Media
 6. Collect tender bid offers
 7. Rank tender bid offers
 8. Select winning bidder and announce to other bidders
 9. Start contract negotiations with winning bidder
 10. Conclude Tender:
 - Sign contract with successful bidder
 - Transfer proceeds from sale into Escrow account
 - Announce to all tenderers that tender is closed
 - Return cash deposits/Keep deposits of parties failing to pay the price they have accepted

Key Tender Rules

- *Pre-qualification* – require potential Investors to demonstrate their financial, commercial and technical capabilities to fully meet the tender goals.
- Contents of Bid (Investment, Social and Debts repayment program)
- Bids deposit (fee) and submission of bid
- Due diligence
- Evaluation of bids/ranking
- Negotiations

Tender Bids Evaluation

- **Bankruptcy Reorganization Case:**

- Debtor ceased operations have prospects on domestic market and may be foreign if restructured properly
- 80% of Debtor's property under lien;
- Significant debt outstanding to secured creditors
- In liquidation General payment rank Group will get nothing;
- Creditors designed Reorganization Plan, where:
 - secured creditors will be paid in full
 - bankruptcy cost will be covered, and
 - general trade creditors will be paid 20%
- Unfortunately there is no funds to implement Reorganization Plan
- Creditors decided to put on tender the “Reorganization plan”
- Creditors developed evaluation criteria

Tender Bids Evaluation Design

- The creditors decided that the tender bids should be at least equal or exceed the requirements of the reorganization plan in order plan to be accepted and determined the evaluation criteria and their relative weight as follows =>

- Formula for valuation of bids:**

PB1

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

PB1 = (Bid Value) x Gponder x Sponder

PB1 = Pondered value of Bid 1

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

Gponder – Group ponder

Sponder – Subgroup ponder

Parameter	Ponder 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 pay	20%	270,000
Technical capacity	10%	
- industry experience	30%	10
- market share	70%	80,000

Tender Bids Evaluation

- Creditors announced Tender and received 2 bids
- **Which one to choose?**

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

Tender Bids Evaluation Result

Parameter	Ponder	Bid 1	Pondered	Points	Bid 2	Pondered	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 pay	20%	300,000	12,000	8	400,000	16,000	10
Technical capacity	10%						
- industry experience	30%	8	0.24	10	6	0.18	8
- market share	70%	100,000	7,000	10	70,000	4,900	7
Total score				69			65