

Bankruptcy Auctions 101: Recent Texas Power Plant Auction

Article By:

Securities Practice at Bilzin Sumberg

A recent **bankruptcy auction** of a Texas power plant by Optim Energy LLC provided an important lesson for potential bidders at bankruptcy auctions and their representatives on the importance of developing a clear bidding strategy in advance of the auction, and making sure the representative understands both the bidding strategy and the scope of his or her authority at the auction sale.

Bankruptcy auctions can provide exceptional opportunities to acquire assets at distressed prices, so long as the bidder follows the explicit rules established to participate in an auction. A sale of assets in a commercial bankruptcy case usually is governed by the protocol stated in a bid procedures order,

which specifies in what form the bid must be, what documents need to accompany the bid, the deadline to submit a bid, the minimum bid price, the deposit requirement that must accompany the bid, the bidding increments and the date and location of the auction. The scope and specificity of the rules that apply to a bankruptcy auction are often extensive and are meant to provide clear guidelines on how to participate in the auction. Parties who don't regularly participate in bankruptcy auctions are usually surprised by the extent of the rules governing the sale of assets in a bankruptcy case.

One aspect of bidding at a bankruptcy auction that is identical to the rules of a non-bankruptcy auction is the bidder's need to listen closely to the bids being made during the auction itself to ensure that an appropriate overbid is made at the appropriate time. Equally important, when a bidder is being represented at an auction, the bidder's representative must know the scope of his or her bidding authority, to ensure that each bid made by the representative is within the limits established by the bidder, and is consistent with the bidder's strategy.

These rules were tested at a recent bankruptcy auction of a Texas power plant owned by Optim Energy, at which Blackstone Group L.P. had a representative participate in the bidding process. Immediately prior to Blackstone's last bid, the bidding stood at \$121.5 million. Blackstone's representative made a bid for the power plant at \$126 million, and was congratulated by the opposing bidder on having won the auction. Then, but a few moments later, Blackstone's representative attempted to revoke its final bid and to rebid at \$122 million, or \$4 million less than the final bid the representative had previously made.

A representative for the debtor's parent company promptly objected to Blackstone's attempt to restate its bid. At the conclusion of the auction, Blackstone was declared the winning bidder at \$126 million, which was subject to later confirmation by the Bankruptcy Court for the District of Delaware.

A representative for Blackstone told WSJ's Bankruptcy Beat that it was "completely satisfied" with the final price of \$126 million, and that there are "tactics and dynamics" inherent in any auction.

From the record of the auction proceedings, however, it is not entirely clear that Blackstone's representative fully appreciated the scope of his authority, or what the next appropriate overbid was when he made Blackstone's final bid, or whether Blackstone's final bid was indeed part of the "tactics and dynamics" Blackstone sought to employ in the Optim Energy bankruptcy auction.

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