

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

In re: ) Chapter 11  
)  
ATA AIRLINES, INC. ) Case No. 08-03675-BHL-11  
)  
Debtor )

**DEBTOR'S MOTION UNDER  
BANKRUPTCY CODE SECTIONS 105  
AND 363 TO ESTABLISH  
SOLICITATION AND BID PROCEDURES  
FOR THE SALE OF CERTAIN L1011  
AIRCRAFT, FREE AND CLEAR OF  
LIENS, CLAIMS, INTERESTS, AND  
ENCUMBRANCES**

Telephonic:	November 21, 2008
Hearing:	11:00 a.m. EST
Location:	U.S. Courthouse 121 W. Spring Street, Rm. 103 New Albany, Indiana
Dial-In:	1-800-446-1941
Passcode:	8153803#

ATA Airlines, Inc. (the "Debtor") files this Motion under Bankruptcy Code Sections 105 and 363 to Establish Solicitation and Bid Procedures for the Sale of Certain L1011 Aircraft, Free and Clear of Liens, Claims, Interests, and Encumbrances (the "Motion").

**Jurisdiction and Venue**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper in this Court under 28 U.S.C. §§ 1408 and 1409.

### **Background**

2. On April 2, 2008 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the "Court"). The Debtor continues to manage its property and assets as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

3. On April 16, 2008 the United States Trustee appointed the Unsecured Creditors' Committee (the "Committee").

4. Prepetition, the Debtor operated a diversified international passenger airline that operated in two principal business segments: (a) a low cost carrier operation that provided scheduled passenger service that leveraged a code share agreement with Southwest Airlines and (b) a charter operation focusing primarily on providing charter service to the United States government/military.

5. Shortly after the bankruptcy filing, the Debtor decided to cease its business operations, after analyzing its fleet schedules and aircraft fleet, operating costs, relevant business goals and objectives, as well as available financing sources and business combination possibilities. The Debtor is therefore in the process of winding down its business operations and liquidating its assets in an orderly fashion. The Debtor has returned all of its leased aircraft and engines, and has sold or abandoned many of its tangible assets. Among the assets the Debtor still possesses as part of its business operations are the following L1011 aircraft, together with all related engines and logs, books, and records related thereto (collectively, the "L1011 Aircraft"): (a) Lockheed L1011-500 (Tail No. N162AT; Manufacturer's Serial No. 1220); (b) Lockheed

L1011-500 (Tail No. N163AT; Manufacturer's Serial No. 1229);<sup>1</sup> and (c) Lockheed L1011-500 (Tail No. N164AT; Manufacturer's Serial No. 1238).

6. The Debtor has received expressions of interest postpetition from a number of parties regarding an acquisition of the L1011 Aircraft, but no party has submitted a letter of intent or other written proposal for such acquisition. To accomplish the sale of the L1011 Aircraft in the most efficient and effective manner and to promote an orderly marketing process, the Debtor believes it would be beneficial to establish procedures governing the solicitation and submission of bids by interested third parties.

### **The Solicitation and Bid Procedures**

7. The Debtor proposes the following rules and procedures (the "Bid Procedures") that will govern the solicitation and submission of proposals for the acquisition of the L1011 Aircraft.

a. Notice of the Bid Procedures. Within two business days after entry of an order approving the Motion and containing the Bid Procedures (the "Bid Procedures Order"), the Debtor will serve a copy of the Bid Procedures Order on (i) all parties who have previously expressed an interest to the Debtor in acquiring the L1011 Aircraft, (ii) the United States Trustee, (iii) JPMorgan Chase Bank, N.A., (iv) counsel for the Committee, and (v) all parties identified on the Master Service List.

b. Bid Proposals. All bid proposals for the acquisition of the L1011 Aircraft (each a "Bid Proposal") must conform to the following requirements:

i. Each Bid Proposal must be in writing and contain the material terms and conditions regarding a proposed acquisition of the L1011 Aircraft in substantially the same form as the letter of intent attached hereto as Exhibit A. Each Bid Proposal must (a) provide that, if requested by the Debtor, the L1011 Aircraft bearing Tail No. N163AT shall remain under the Debtor's operational control until the closing of a chapter 11 plan confirmed in this bankruptcy case and (b) contemplate the

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<sup>1</sup> For reasons unrelated to the sale of the L1011 Aircraft, it may be necessary for the Debtor to maintain operational control over the L1011 Aircraft bearing Tail No. N163AT until the closing of the chapter 11 plan confirmed in this bankruptcy case. It is currently contemplated that the plan closing would occur sometime in early March 2009.

consummation of the proposed sale transaction under Bankruptcy Code section 363, free and clear of liens, claims, interests, and encumbrances. Each Bid Proposal shall be subject to bankruptcy court approval, but cannot contain any due diligence or financing contingency(ies).

ii. A Bid Proposal may contemplate the acquisition of all the L1011 Aircraft or any lesser combination of the L1011 Aircraft.

iii. The person or entity making the Bid Proposal must deliver to the Debtor by the Proposal Deadline (as defined below) the following: (a) copies of financial statements, letters of credit, and any other documents satisfactory to the Debtor evidencing the prospective purchaser's ability to consummate the contemplated transaction; and (b) the Bid Proposal. The Debtor, in its sole discretion, shall have the right to determine the adequacy of the foregoing information and documents.

iv. By the Proposal Deadline, the entity making a Bid Proposal must also tender to the Debtor by wire transfer a good faith deposit, in cash or cash equivalent (the "Deposit"), in an amount equal to 50% of the consideration specified in the Bid Proposal. The Debtor will maintain each Deposit in a segregated, non-interest bearing account.

c. Due Diligence Materials. To assist prospective purchasers in their evaluation of the L1011 Aircraft, the Debtor will provide access during normal business hours to all logs and records related to the L1011 Aircraft for purposes of the proposed purchase (collectively, the "Due Diligence Materials"). All contacts and requests regarding the Due Diligence Materials by potential purchasers should be directed to Mr. Doug Yakola of ATA Airlines [(317) 809-9410].

d. Deadline for Submission of Bid Proposals. Parties must deliver any Bid Proposal on or before December 12, 2008 at 5:00 p.m. prevailing eastern time (the "Proposal Deadline").

e. Selection of the Highest and Best Offer. The Debtor, in its sole discretion, but in consultation with JPMorgan Chase Bank, N.A. and the Committee, will determine which Bid Proposal (or combination of Bid Proposals) is the highest and best offer for the acquisition of the L1011 Aircraft. The following non-exclusive factors will influence the Debtor's determination: (i) the consideration offered to be paid, (ii) the potential purchaser's financial strength and ability to timely close on the proposed transaction, and (iii) whether the Bid Proposal contemplates the acquisition of all or less than all of the L1011 Aircraft. The Debtor shall have the right, in its sole discretion, not to accept any Bid Proposal or to waive any technical violation of, or deviation from, the Bid Procedures consistent with the goal of maximizing the sale price for the L1011 Aircraft.

- f. Service of Documents. All Bid Proposals must be delivered as follows:

ATA Airlines, Inc.  
c/o Haynes and Boone, LLP  
Attn: Kourtney P. Lyda  
1 Houston Center  
1221 McKinney Street, Suite 2100  
Houston, Texas 77010  
Facsimile: (713) 236-5687  
Email: kourtney.lyda@haynesboone.com

JPMorgan Chase Bank, N.A.  
c/o Simpson Thacher & Bartlett LLP  
Attn: Kathrine A. McLendon  
425 Lexington Avenue  
New York, New York 10017  
Facsimile: (212) 455-2502  
Email: kmclendon@stblaw.com

The Official Committee of Unsecured Creditors  
c/o Otterbourg, Steindler, Houston & Rosen P.C.  
Attn: Steven B. Soll  
230 Park Avenue  
New York, New York 10169  
Facsimile: (917) 368-7139  
Email: ssoll@oshr.com

Office of the United States Trustee  
Attn: Ronald J. Moore  
101 West Ohio Street, Suite 1000  
Indianapolis, Indiana 46204  
Facsimile: (317) 226-6356  
Email: ronald.moore@usdoj.gov

**Relief Requested and Applicable Authority**

8. The Debtor requests entry of an order approving the Bid Procedures outlined in the Motion. The Debtor believes that the Bid Procedures will promote an efficient and effective mechanism for the solicitation and submission of bids for the acquisition of the L1011 Aircraft, and are therefore in the best interests of the bankruptcy estate and its creditors.

9. The paramount goal in any proposed sale of property of a bankruptcy estate is to maximize the proceeds received by the estate. See, e.g., Four B. Corp. v. Food Barn Stores, Inc., 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at hand"); Official Committee of Subordinated Bondholders v. Integrated Resources, Inc., 147 B.R. 650, 659 (S.D.N.Y. 1992)("It is a well-established principle of bankruptcy law that the objective of bankruptcy sales and the debtor's duty with respect to such sales is to obtain the highest price or overall greatest benefit possible for the estate." (quoting In re Atlanta Packaging Products, Inc., 99 B.R. 124 (Bankr. N.D. Ga. 1988))).

10. Caselaw uniformly recognizes that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate, and therefore are appropriate in the context of bankruptcy sales. See, e.g., Integrated Resources, 347 B.R. 659 (such procedures "encourage bidding and maximize the value of the debtor's assets"); In re Financial News Network Inc., 126 B.R. 152, 156 (S.D.N.Y. 1991) ("court-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [ ] provide for a fair and efficient resolution of bankrupt estates").

11. Courts have made clear that a debtor's business judgment is entitled to substantial deference with respect to the procedures to be used in selling assets from the estate. See, e.g., Integrated Resources, 147 B.R. at 656-57 (affirming Integrated Resources, 135 B.R. 746 (Bankr. S.D.N.Y. 1992)), appeal dismissed, 3 F.3d 49 (2d Cir. 1993); In re 995 Fifth Ave. Assoc., L.P., 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989).

12. The Bid Procedures are designed to further the Debtor's marketing efforts concerning a sale of the L1011 Aircraft through an efficient solicitation process and to facilitate the submission of easily comparable bids. The Debtor believes that the Bid Procedures are

reasonable, appropriate, and within the Debtor's sound business judgment. Approval of the Bid Procedures is therefore in the best interest of the bankruptcy estate and its creditors.

**Notice of the Motion**

13. In accordance with the case management procedures established by the Court, notice of the Motion will be served on the parties identified on the Master Service List maintained in this bankruptcy. Notice of this Motion will also be served on the known parties who have expressed an interest in acquiring the L1011 Aircraft or any subpart thereof.

WHEREFORE, the Debtor requests that the Court enter an order (a) approving and establishing the Bid Procedures described in the Motion and (b) granting such other legal and equitable relief to which the Debtor is entitled.

Dated: November 11, 2008

BAKER & DANIELS LLP

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- and -

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