

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
DESA Holdings Corporation, *et al.*,¹) Case No. 02-11672 (PJW)
) (Jointly Administered)
Debtors.)

**ORDER (a) AUTHORIZING AND SCHEDULING
A PUBLIC AUCTION FOR THE SALE OF ALL OF THE DEBTORS'
ASSETS OR ONE OF THE DEBTORS' DIVISIONS FREE AND CLEAR OF ALL
LIENS, CLAIMS AND ENCUMBRANCES, (b) APPROVING PROCEDURES FOR
THE SUBMISSION OF QUALIFYING BIDS, AND (c) APPROVING THE FORM AND
MANNER OF NOTICE PURSUANT TO FED. R. BANKR. P. 2002 [Re: Docket No. 56]**

Upon the motion of DESA Holdings Corporation and its domestic subsidiary, DESA International, Inc., as Debtors² in the above-captioned cases, seeking entry of order (a) authorizing and scheduling a public auction for the sale of all of the Debtors' assets or one of the Debtors' Divisions free and clear of all liens, claims and encumbrances, (b) approving procedures for the submission of Qualifying Bids, and (c) approving the form and manner of notice pursuant to FED. R. BANKR. P. 2002 (the "Bidding Procedures Motion"); and it appearing that the relief requested is essential to the continued operation of the Debtors' businesses and in the best interest of the Debtors' estates and creditors; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this Bidding Procedures Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue in this proceeding and the Bidding Procedures Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409; and adequate notice of the Bidding Procedures

¹ The Debtors consist of the following two entities: DESA Holdings Corporation and DESA International, Inc.

² Capitalized terms not defined herein shall have the meaning given in the Bidding Procedures Motion [Docket No. 56] or the Bidding Procedures attached hereto as Exhibit A.

Motion having been given; and it appearing that no other notice need be given; and after due deliberation and sufficient cause appearing therefor, it is hereby

FOUND AND DETERMINED³ THAT:

A. The Debtors have articulated good and sufficient reasons for approval of the Bidding Procedures and the Notice of Auction in connection with the sale of the DESA Assets; and

B. The Bidding Procedures are reasonable and appropriate to maximize the value of the DESA Assets.

NOW, THEREFORE, IT IS HEREBY:

ORDERED, that the Motion is granted; and it is

ORDERED, that the Bidding Procedures, attached hereto as Exhibit A, are approved; and it is

ORDERED, that the following procedures relating to the submission and consideration of qualifying offers (each, a "Qualifying Bid") are hereby approved:

a. Upon request by a prospective bidder to the Debtors, the Debtors shall, upon (i) execution by such prospective bidder of a confidentiality agreement in form and substance satisfactory to the Debtors (provided, however, that if any Bidder is unable to complete and execute a confidentiality agreement in form and substance satisfactory to the Debtors, the Debtors will consult with the Lenders and the Creditors' Committee with regard to such confidentiality agreement), (ii) delivery of such prospective bidder's certified financial statements to the Debtors, the Lenders and the Creditors' Committee for the preceding two years or other evidence establishing to the Debtors' satisfaction, after consultation with the Lenders and the official committee of unsecured creditors in these Chapter 11 Cases (the "Creditors' Committee"), such prospective bidder's financial

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052. Statements made by the Court from the bench at the hearing shall constitute additional conclusions of law and findings of fact as appropriate.

capability to timely close its proposed Qualifying Bid, and (iii) the Debtors determining with the consent of the agent for the Lenders (the "Agent") and the Creditors' Committee that the potential bidder has demonstrated sufficient financial capability to warrant due diligence, provide such person with access to all relevant business and financial information necessary to enable such person to evaluate the Debtors' assets and liabilities for the purpose of submitting a Qualifying Bid.

b. To be considered, each Qualifying Bid shall remain open and irrevocable in accordance with its terms until after each Final Accepted Bidder (as defined below) closes the purchase of all of the DESA Assets or one of the Debtors' Divisions (as described more fully in the Bidding Procedures) and shall (unless otherwise determined by the Debtors with the consent of the Agent and the Creditors' Committee):

(i) Be submitted in writing by a party satisfying the conditions described in the preceding paragraph a above (each, a "Qualifying Bidder");

(ii) Be submitted on or before 4:00 p.m. Eastern Time on November 8, 2002 (Qualifying Bids received after this deadline may be rejected in the discretion of the Debtors, with the consent of the Agent and the Creditors' Committee), by (A) delivering the complete Qualifying Bid together with the Initial Deposit (as defined herein) to the Debtors at the address provided below, and (B) delivering a complete copy of the Qualifying Bid to:

The Debtors:

DESA Holdings Corporation and DESA International, Inc.
Stephen L. Clanton, Chief Financial Officer
2701 Industrial Drive
Bowling Green, Kentucky 42101-9004
Telephone: (270) 745-7767
Facsimile: (270) 781-5705

Counsel for the Debtors:

Kirkland & Ellis
James H.M. Sprayregen, P.C.
James W. Kapp III
200 East Randolph Drive
Chicago, Illinois 60601
Telephone: (312) 861-2000
Facsimile: (312) 861-2200

and

Pachulski, Stang, Ziehl, Young & Jones
Laura Davis Jones
919 North Market Street, 16th Floor
P.O. Box 8705
Wilmington, Delaware 19899-8705 (Courier 19801)
Telephone: (302) 652-4100
Facsimile: (302) 652-4400

Financial advisors to the Debtors:

Berenson Minella & Company
Sam Zughayer
667 Madison Avenue, 4th Floor
New York, New York 10021
Telephone: 212-935-7676
Facsimile: 212-317-1265

Counsel to the Agent:

Shearman & Sterling
Fredric Sosnick
Andrew Ambruoso
599 Lexington Avenue
New York, New York 10022-6069
Telephone: (212) 848-4000
Facsimile: (212) 848-7179

Financial advisors to the Agent:

Benedetto, Gartland & Company, Inc.
Arthur J. Gartland, Jr.
1330 Avenue of the Americas, 29th Floor
New York, New York 10019
Telephone: (212) 847-5022
Facsimile: (212) 262-8708

Counsel to the Creditors' Committee:

Stroock & Stroock & Lavan LLP
Michael J. Sage
180 Maiden Lane

New York, New York 10038
Telephone: (212) 806-5400
Facsimile: (212) 806-6006

Financial advisors to the Creditors' Committee:

Jefferies & Company, Inc.
Thane Carlston
520 Madison Avenue, 12th Floor
New York, New York 10022
Telephone: (212) 284-2550
Facsimile: (212) 284-2540

(iii) Contain (A) an executed copy of the asset purchase agreement attached hereto as Exhibit B (the "Asset Purchase Agreement"), or (B) an executed copy of a modified version of the Asset Purchase Agreement (with a red-lined comparison to the Asset Purchase Agreement provided);

(iv) (A) Provide for review by the Debtors, the Agent, and the Creditors' Committee of the draft submissions of the person making the Qualifying Bid (the "Qualifying Bidder") relating to the approval of the Qualifying Bidder's purchase of the DESA Assets by the Federal Trade Commission in accordance with the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, if necessary in the sole discretion of the Debtors, after consultation with the Lenders and the Creditors' Committee, (B) represent that the Qualifying Bidder is prepared to immediately initiate all actions necessary to obtain all other applicable regulatory approvals for the qualifying bid, and (C) provide its best estimate of the time period within which such approvals will be obtained;

(v) Unless the Debtors otherwise determine, with the consent of the Agent and the Creditors' Committee, (A) Clearly state the portion of consideration to be paid in cash and the portion to be paid in any other form of value, (B) provide such information as to permit the Debtors, the Agent and the Creditors' Committee to accurately assess the value of such consideration, if any consideration is to be provided in a form other than cash, (C) give sufficient indicia that the bidder or its representative is legally empowered, by power of attorney or otherwise, and financially capable, to both bid on behalf of the bidder and also to complete and sign, on behalf of the bidder, a binding and enforceable asset purchase agreement, including as such agreement may be amended at the Auction, and (D) identify each and every executory contract or unexpired lease, the assumption and assignment of which is a condition to closing and provide evidence of the bidder's ability to comply with section 365 of the Bankruptcy Code;

(vi) Be considered to be higher or better offers if (A) the Debtors' Board of Directors has determined in good faith, and the Agent and the Creditors' Committee agree, that the offer, if accepted, is reasonably likely to be closed taking into account all legal, financial, regulatory and other aspects of the proposal and the entity making the proposal, and that the Debtors' Board of Directors believes in good faith, and the Agent and the Creditors' Committee agree, would, if closed, result in a sale of all of the DESA Assets or one of the Debtors' Divisions (the "Superior Proposal"), and (B) such bid is not conditioned on the outcome of due diligence that is not completed by the date that is two business days prior to the date of the Auction (unless otherwise agreed to by the Debtors, with the consent of the Agent and the Creditors' Committee);

(vii) Include sufficient information, if a Qualifying Bid is conditioned on the assumption and assignment of any executory contract or unexpired lease, to permit the Debtors, the Agent and the Creditors' Committee to determine the proposed assignee's ability to comply with section 365 of the Bankruptcy Code (as applicable), including providing adequate assurance of such assignee's ability to perform in the future; and

(viii) (A) If the Debtors, together with the Agent and the Creditors' Committee, are not satisfied with a Bidder's ability to submit the Full Deposit (as defined below) or to close the sale transaction contemplated by such Bidder's Qualifying Bid after reviewing the financial evidence (as described above) offered by such Bidder, the Debtors with the consent of the Agent and the Creditors' Committee, may require that such Bidder's Qualifying Bid include a submission to the Debtors of a good faith deposit of at least 5% of the enterprise value of the Qualifying Bid for all or part of the DESA Assets (the "Initial Enterprise Formula") in cash or in other form of immediately available U.S. funds (the "Initial Deposit") no later than one day after the Debtors notify the Qualifying Bidder of the amount of the Initial Deposit; provided, however, that the Debtors in their discretion, and with the consent of the Agent and the Creditors' Committee, shall fix the amount of the Initial Deposit in accordance with the Initial Enterprise Formula, and (B) all Qualifying Bidders must commit to provide, in the event such Qualifying Bid ultimately is determined by the Debtors to be a Final Accepted Bid, a deposit in cash or in other form of immediately available U.S. funds in an amount sufficient to bring the total deposit up to the amount that is equal to 10% of the enterprise value of the Final Accepted Bid (the "Final Enterprise Formula") for the DESA Assets; provided, however, that the Debtors in their discretion, and with the consent of the Agent and the Creditors' Committee, shall fix the amount of the Remaining Deposit in accordance with the Final Enterprise Value (the "Remaining Deposit" and together

with the Initial Deposit, the "Full Deposit") and the Remaining Deposit shall be received by the Debtors within the earlier of one business day after the Debtors notify the Qualifying Bidder that it has been determined to be the Final Accepted Bidder and one business day prior to the Sale Hearing scheduled to be held on November 15, 2002, at 1:30 p.m.

c. The Bank Bid will be deemed a Qualifying Bid subject to and upon compliance with all requirements described herein and in the Bidding Procedures, and the Prepetition Lenders will be deemed a Qualifying Bidder subject to and upon compliance with all requirements described herein and in the Bidding Procedures, and will be allowed to participate in the Auction; provided, however, that:

(i) The Prepetition Lenders need not deliver certified financial statements for the preceding two years (or other evidence establishing to the Debtors' satisfaction the Prepetition Lenders' financial capability to timely close its proposed Qualifying Bid) as required herein;

(ii) The Prepetition Lenders need not submit a Qualifying Bid before the Auction in order to attend or participate in the Auction; and

(iii) The Prepetition Lenders will not be required to provide an Initial Deposit or a Remaining Deposit as required herein.

d. Upon receipt of a Qualifying Bid that satisfies all of the required terms and conditions set forth herein and upon receipt of a Bank Bid, if any, that satisfies all of the required terms and conditions set forth herein (collectively, a "Conforming Qualifying Bid"), the Debtors, in their discretion, may communicate with such Qualifying Bidder prior to the Auction, and such Qualifying Bidder shall provide to the Debtors, the Lenders and the Creditors' Committee within one business day after the Debtors' request therefor, any information reasonably required by the Debtors, the Lenders and the Creditors' Committee in connection with the Debtors' evaluation of such Conforming Qualifying Bid.

e. Prior to the Auction, the Debtors shall evaluate, in conjunction with the Lenders and the Creditors' Committee, each Conforming Qualifying Bid they have received and shall select (with the consent of (i) the Agent and (ii) in the event that there are multiple Conforming Qualifying Bids that together would provide more than one proposal that would provide cash consideration that would pay the Lenders in full in cash, the Creditors' Committee) the Conforming Qualifying Bid or Bids that they determine to be the highest and best offer or offers that constitute a Superior Proposal for the DESA Assets.

f. On November 13, 2002 at 10:00 a.m. (prevailing Eastern Time), the Debtors shall conduct the Auction to be held at the offices of Kirkland & Ellis,

153 East 53rd Street, 39th Floor, New York, New York 10022-4611, on invitation to each Qualifying Bidder that has made a Conforming Qualifying Bid to determine which bid will be presented to the Court for approval at the Sale Hearing. The only persons who will be permitted to bid at the Auction are those bidders that have made Conforming Qualifying Bids.

g. For its Conforming Qualifying Bid to be considered, each bidder must appear in person at the Auction or through a duly authorized representative, unless alternative arrangements are made in advance with the Debtors. If multiple Conforming Qualifying Bids are received, each such bidder shall have the right to continue to improve its Conforming Qualifying Bids at the Auction. Bidding will commence with (i) the announcement of the highest and best Conforming Qualifying Bid(s) constituting a Superior Proposal, and will proceed in monetary increments to be determined by the Debtors, or (ii) such other Bidding Procedures as are determined by the Debtors, with the consent of the Agent and the Creditors' Committee.

h. The bid or bids that the Debtors determine (with the consent of (i) the Agent and (ii) in the event that there are multiple Conforming Qualifying Bids that together would provide more than one proposal that would provide cash consideration that would pay the Lenders in full in cash, the Creditors' Committee) to be the highest and best offer or offers for the DESA Assets (each, a "Final Accepted Bid") shall be submitted for approval by the Court; provided, however, the Debtors shall have the right, in their discretion (with the consent of (i) the Agent and (ii) in the event that there are multiple Conforming Qualifying Bids that together would provide more than one proposal that would provide cash consideration that would pay the Lenders in full in cash, the Creditors' Committee) to reject any and all Conforming Qualifying Bids made at the Auction. Within one business day after the Debtors notify the party or parties submitting each Final Accepted Bid (each, a "Final Accepted Bidder") that the offer has been determined to be a Final Accepted Bid, each Final Accepted Bidder shall deliver its Remaining Deposit to the Debtors. Following approval by the Court of each Final Accepted Bid and receipt by the Debtors of the related Full Deposit from the Final Accepted Bidder, the Debtors shall close each Court-approved transaction on or before ten days after the Sale Hearing in accordance with the terms of each executed Asset Purchase Agreement.

i. Each Initial Deposit and Remaining Deposit received by the Debtors shall be maintained in an interest-bearing account and be subject to the jurisdiction of the Court.

j. Each Full Deposit shall be applied by the Debtors against the cash portion of the purchase price to be paid by each Final Accepted Bidder at the closing of the transaction approved by the Court. If the Prepetition Lenders are a Final Accepted Bidder, the Bank Bid shall be applied by the Debtors against the

purchase price to be paid by the Prepetition Lenders at the closing of the transaction approved by the Court.

k. If any Final Accepted Bidder fails to close the purchase of all of the DESA Assets or one of the Debtors' Divisions, as applicable, such party's Full Deposit, together with any interest paid thereon, shall be forfeited to, and retained irrevocably by, the Debtors, and the Debtors specifically reserve the right to seek all appropriate additional damages from such bidder. Furthermore, in such a circumstance, the bidder of the next highest and best Conforming Qualifying Bid for such DESA Assets as determined by the Debtors (with the consent of (i) the Agent and (ii) in the event that there are multiple Conforming Qualifying Bids that together would provide more than one proposal that would provide cash consideration that would pay the Lenders in full in cash, the Creditors' Committee) that constitutes a Superior Proposal will automatically be deemed to have submitted the highest and best Conforming Qualifying Bid, and such bidder shall be subject to the Bidding Procedures as if such bidder were originally determined to be a Final Accepted Bidder; provided, however, that nothing herein shall affect the Debtors' right to retain the Full Deposit of any bidder that is or is deemed to be a Final Accepted Bidder and to seek all available damages from any such bidder that otherwise fails to close the purchase of the DESA Assets pursuant to the Bidding Procedures.

l. Except as otherwise set forth herein, after the closing of the purchase of the DESA Assets, the Debtors shall return to each unsuccessful Qualifying Bidder its Initial Deposit, together with any interest paid thereon, submitted by such Qualifying Bidder; provided, however, each Conforming Qualifying Bidder, by making the Initial Deposit, commits to making the Full Deposit if such bidder is deemed to be a Final Accepted Bidder.

m. Where the Bidding Procedures require that the Debtors receive the consent or agreement of the Agent or the Creditors' Committee, and the Debtors, for whatever reason, are unable to obtain such consent or agreement, no action will be taken by the Debtors, the Agent or the Creditors' Committee with respect to such disputed item of the Bidding Procedures unless and until such issue (i) is resolved by an order of the Court or (ii) is otherwise resolved by agreement of the Debtors, the Agent and the Creditors' Committee; provided, however, that the Debtors, the Lenders and the Creditors' Committee shall reasonably and in good faith consult with each other on a prompt and timely basis under the circumstances before seeking relief from the Court, but that such consultation requirement shall not limit the ability of any party to seek relief from the Court on an expedited basis; and provided, further, that such consent shall not be unreasonably withheld by the Debtors, the Agent, or the Creditors' Committee.

ORDERED, that all persons or entities who submit a Qualifying Bid for any DESA Assets shall be deemed to have read and understood the terms and conditions of the Bidding Procedures and shall comply with and be bound by such Bidding Procedures; and it is further

ORDERED, that the Prepetition Lender shall have the right to credit bid in accordance with the Bidding Procedures, the outstanding amount under the Prepetition Credit Facility (as defined in the Bidding Procedures Motion); and it is further

ORDERED, that each Initial Deposit and Remaining Deposit received by the Debtors shall be maintained in an interest-bearing account and be subject to the jurisdiction of the Court; and it is further

ORDERED, that the Full Deposit shall be applied by the Debtors against the purchase price to be paid by the party submitting the Final Accepted Bid at the closing of the transaction approved by the Court; and it is further

ORDERED, that in the event the party submitting the Final Accepted Bid does not close the sale transaction with the Debtors, the Full Deposit, together with any interest paid thereon, shall be retained by the Debtors in its entirety as liquidated damages and shall not limit the Debtors' right to seek all available damages; and it is further

ORDERED, that the Debtors are hereby authorized and empowered to take such actions, expend such sums of money, and do such other things as may be necessary to implement and effect the terms and requirements consistent with this Order; and it is further

ORDERED, that except as otherwise set forth herein, after the closing of the purchase of the DESA Assets, the Debtors shall return to each unsuccessful Qualifying Bidder its

Initial Deposit, together with any interest paid thereon, submitted by such Qualifying Bidder; provided, however, each Conforming Qualifying Bidder commits to making the Full Deposit if such bidder is deemed to have submitted the highest and best Conforming Qualifying Bid as described herein and is deemed to be the Final Accepted Bidder; and it is further

ORDERED, that Notice of this Bidding Procedures Order, the Bidding Procedures, and the Auction, substantially in form attached hereto as Exhibit C shall be given by first class mail deposited as soon as practicable after the date of entry of this Bidding Procedures Order pursuant to the Bidding Procedures; and such notice shall constitute good and sufficient notice of this Bidding Procedures Order, the Bidding Procedures and the Auction; and it is further

ORDERED, that the Agent and the Creditors' Committee reserve all rights to object to any of the matters set forth herein, including, but not limited to, the selection of the Final Accepted Bid and the Sale; and it is further

ORDERED, that the Debtors may, in their reasonable business judgment, with the consent of the Agent and the Creditors' Committee: (i) impose, at or prior to the Auction, additional terms and conditions on a sale of the DESA Assets consistent with the Bidding Procedures Order; (ii) extend the deadlines set forth in the Bidding Procedures and adjourn the Auction at the Auction without further notice; (iii) withdraw from the Auction any or all of the DESA Assets at any time prior to or during the Auction or cancel the Auction; (iv) reject all Conforming Qualifying Bids if no bid is for a fair and adequate consideration; and (v) modify the Bidding Procedures, including, without limitation, any and all processes and rules regarding

conduct of activities at the Auction, including, inter alia, the manner in which bids are submitted and the permitted increments of such bids; and it is further

ORDERED, that the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of this Order.

Dated: Aug 7, 2002



The Honorable Peter J. Walsh