UNITED STATES DEPARTMENT OF JUSTICE
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	
	§	**Case No. 17-31646**
MONTCO OFFSHORE, INC., *et al.*,[1]	§	
	§	**Chapter 11**
Debtors.	§	
	§	**(Jointly Administered)**

THE UNITED STATES TRUSTEE'S OBJECTION TO EMERGENCY MOTION OF DEBTOR MONTCO OFFSHORE, INC. FOR AN ORDER (I) APPROVING (A) BIDDING PROCEDURES GOVERNING SUBMISSION AND CONSIDERATION OF COMPETING TRANSACTIONS, (B) BID PROTECTIONS, (C) FORM AND MANNER OF NOTICE OF SALE TRANSACTION AND SALE HEARING, AND (D) ASSUMPTION AND ASSIGNMENT PROCEDURES FOR ANY TRANSFERRED CONTRACTS; (II) (A) SCHEDULING AND AUTHORIZING DEBTOR TO CONDUCT AN AUCTION PURSUANT TO THE BIDDING PROCEDURES, AND (B) AUTHORIZING DEBTOR TO ENTER INTO THE PURCHASE AGREEMENT TO IMPLEMENT THE BIDDING PROTECTIONS; (III) AUTHORIZING (A) THE SALE OF THE PURCHASED ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, AND (B) THE ASSUMPTION AND ASSIGNMENT OF ANY TRANSFERRED CONTRACTS

TO THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE:

COMES NOW Judy A. Robbins, the United States Trustee for Region 7, including the Southern District of Texas ("UST"), by and through the undersigned counsel and respectfully

[1] The Debtors in these chapter 11 cases, together with the last four (4) digits of each Debtor's federal tax identification number, are Montco Offshore, Inc. (1448) and Montco Oilfield Contractors, LLC (9886). The mailing address for the Debtors, solely for the purposes of notices and communications, is 17751 Hwy 3235, Galliano, Louisiana 70354.

submits the following objections to the *Emergency Motion of Debtor Montco Offshore, Inc. for an Order (I) Approving (A) Bidding Procedures Governing Submission and Consideration of Competing Transactions, (B) Bid Protections, (C) Form and Manner of Notice of Sale Transaction and Sale Hearing, And (D) Assumption and Assignment Procedures for Transferred Contracts; (II) (A) Scheduling And Authorizing Debtor to Conduct An Auction Pursuant to the Bidding Procedures, And (B) Authorizing Debtor to Enter Into the Purchase Agreement to Implement the Bidding Protections; (III) Authorizing (A) The Sale of the Purchased Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and the Assumption and Assignment of Any Transferred Contracts; and (IV) Granting Related Relief* ("Bidding Procedures Motion", Doc. No. 637) as follows:

I. PRELIMINARY STATEMENT

1. The proposed Bidding Procedures should not be approved because the timing, lack of information and detail could chill the bidding process and discourage potential bidders from participating in the sale process, thus preventing Debtors from maximizing the value of the estate assets. Specifically, the UST objects to the Bidding Procedures Motion because the motion lacks critical information, the motion (and approval) is dependent on documents that have either just been filed or have not yet been filed, there has been no demonstration of an emergency, and lastly, the Bidding Procedures and other relief may operate as a *sub rosa* Plan.

2. In the absence of amendments to deal with such matters as are noted below, the UST recommends that the Court deny approval of the Bidding Procedures Motion.

II. JURISDICTION, VENUE & CONSTITUTIONAL AUTHORITY TO ENTER A FINAL ORDER

3. The Court has jurisdiction to consider this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(1). Venue is proper in this district under 28 U.S.C. § 1408. The Court has constitutional authority to enter a final order in this matter. If it is determined that the bankruptcy judge does not have the constitutional authority to enter a final order or judgment in this matter, the United States Trustee consents to the entry of a final order or judgment by this Court in this matter.

4. Judy A. Robbins is the duly appointed United States Trustee for the Southern District of Texas under 28 U.S.C. § 581(a)(7). Pursuant to 11 U.S.C. § 307, the United States

Trustee has standing to appear and be heard on any issue in a case or proceeding under the Bankruptcy Code.

5. Pursuant to 28 U.S.C. § 586(a)(3), the UST is statutorily obligated to monitor the administration of cases commenced under the Bankruptcy Code, 11 U.S.C. § 101 *et seq*. Specifically, the UST is charged with a number of supervisory responsibilities in reorganization bankruptcy cases under chapter 11 of the Bankruptcy Code, including monitoring the progress of such cases and taking such actions as the UST deems to be appropriate to prevent undue delay in such progress. 28 U.S.C. § 586(a)(3)(G).

III. FACTUAL BACKGROUND

6. On March 17, 2017, Montco Offshore, Inc., ("MOI") and Montco Oilfield Contractors, LLC ("MOC," and collectively with MOI, as noted in footnote 1, hereinafter referred to as the "Debtors") filed Voluntary Chapter 11 bankruptcy cases, and sought Joint Administration and Complex Case Designation. *See* Doc. Nos. 2 and 4.

7. MOC is wholly owned by MOI, its sole member. MOI is majority owned by Mr. Lee Orgeron, who serves as the Chief Executive Officer. Mr. Orgeron is also a manager of MOC.

8. On March 17, 2017, the Court entered Orders Directing Joint Administration and Complex Case Designation. *See* Doc. Nos. 14 and 15. On March 29, 2017, the UST appointed a Committee of Unsecured Creditors. *See* Doc. No. 82.

9. On September 26, 2017, Debtors filed the Plan of Reorganization of Debtor MOI and the Plan of Liquidation of Debtor MOC under Chapter 11 of the Bankruptcy Code and a Disclosure Statement. *See* Doc. Nos. 439 and 440.

10. On October 4, 2017, MOI filed a revised Plan and revised Disclosure Statement. *See* Doc. Nos. 465 and 466.

11. On November 24, 2017, Debtors filed the Bidding Procedures Motion, which, among other things, proposes a sale of substantially all of MOI's assets to Falcon USA on terms and conditions memorialized in a then unfiled purchase agreement. *See* Doc. No. 637.

12. On November 28, 2017, Debtors filed a Notice of Withdrawal of the respective Plans and Disclosure Statement. *See* Doc. No. 641.

13. The Purchase Agreement was filed subsequently on November 28, 2017. *See* Doc. No. 645.

14. The Bidding Procedures Motion indicates the First Lien Agent and Lenders will support Falcon USA on terms and conditions that will be set forth in a claims assignment agreement. The claims assignment agreement was subsequently filed on December 1, 2017. *See* Doc. No. 666.

15. The Bid Procedures Motion is currently set for hearing on an expedited basis for December 4, 2017, providing merely ten (10) days' notice thereof.

IV. OBJECTIONS

16. The purpose and goal of any asset sale is to maximize the recovery of value for the benefit of the bankruptcy estate. To that end, the bidding procedures that are proposed through a sale process must establish a framework for competitive bidding to ensure the maximization of such value. See In re Jon J. Peterson, Inc., 411 B.R. 131, 137 (Bankr. W.D.N.Y. 2009) ("[U]nless the bidding process remains fair and equitable, competitors will refrain from the type of full participation that is needed to assure bids for the highest reasonable value. For those reasons, the court will not approve bidding procedures that undermine principles of fair play."); In re Cormier, 382 B.R. 377, 388 (Bankr. W.D. Mich. 2008) (quotations omitted) ("'The purpose of procedural bidding orders is to facilitate an open and fair public sale designed to maximize value for the estate.")

17. Here, the Bidding Procedures Motion should not be approved because it is vague, will have the potential to chill the bidding process, and discourage potential bidders from participating in the bidding process. Further, the timing of the process does not allow for sufficient marketing and sale which will reflect true asset value.

A. The Bidding Procedures Motion is Vague and Lacks Critical Information

18. Information and details regarding the transactions are missing which significantly affect interested parties' ability to evaluate the procedures and formulate a position. Specifically, as noted in the various objections filed by creditors:

a) Debtors fail to describe the Claims Assignment Agreement. *See* Doc. No. 637 ¶ 28.

b) Debtors fail to explain the identity of the stalking horse purchaser as well as what happened with the 30% interest that equity was to receive under the prior MOI plan. *See* Doc. No 637 ¶ 22. MOI instead explains that "... existing equity will not receive any percentage interest in the buyer". *See* Doc. No. 637 ¶ 32.

c) Debtors do not discuss the benefits, if any, that insiders may receive or otherwise explain how equity will be treated or whether the same treatment of various aspects of the prior financial structure will be maintained under this transaction. MOI should explain the change in structure and the implications for equity and insiders.

d) MOI explains that it "expects to simultaneously prepare and prosecute a liquidating plan for each of MOI and MOC . . ." See Doc. No. 637 ¶ 13, but the MOI plan has not been filed. Absent a concurrently-running plan process parties cannot evaluate the implications of the sale.

e) The Bidding Procedures Motion does not describe with particularity all of the assets that are to be sold or assigned to Falcon USA, and in particular, if it includes the claims at issue in the Adversary Proceeding, and which contracts, if any, will be assumed and assigned or rejected in connection with the sale or in subsequent proceedings. The Purchase Agreement also references an "MOI Disclosure Schedule", which indicates contracts to be assumed and assigned to the buyer, but the schedule has not been attached, filed or circulated.

19. The lack of clarity in the Bidding Procedures as currently drafted creates uncertainty thus failing to establish a framework for competitive bidding and potentially discouraging potential bidders from participating in the process.

B. Insufficient Time and No Stated Emergency

20. The current expedited setting for consideration of the Bid Procedures Motion is December 4, 2017. As indicated above, numerous critical documents have either just been filed or have not yet been filed which prevent creditors and parties in interest from performing a meaningful evaluation of the Bidding Procedures and proposed transactions. Specifically, the Asset Purchase agreement was not filed until November 28, 2017 and the Claims Assignment Agreement was not filed until December 1, 2017.

21. Debtors have filed the Bid Procedures Motion on a short fuse (Friday following Thanksgiving), but no emergency has been demonstrated that justifies a quick setting on a vague sale process rather than a traditional plan and disclosure statement. Additionally Debtors have set

short deadlines on the marketing and sale process, assuming the Bidding Procedures Motion is approved. The Debtors propose a ten day marketing process, a bid deadline of December 14, 2017, an Auction date of December 15 and a Sale Hearing on December 19.

C. Debtors May Not Have Consulted With the UCC and Other Interested Parties

22. It appears that Debtors have formulated the Bidding Procedures Motion and associated relief in a vacuum. The UCC has suggested they were excluded from the process and were not consulted in an abrupt change of direction. *See* Doc. No. 669

D. Debtors Need to Establish the Motion is not a Sub Rosa Plan

23. In this case, it appears MOI is attempting an end run around the Plan and Disclosure Statement process and should not be allowed to "short circuit the requirements of Chapter 11 for confirmation of a reorganization plan by establishing the terms of the plan *sub rosa* in connection with the sale of assets". *See, e.g., In re Braniff Airways, Inc.*, 700 F.2d at 940; *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring that "a judge determining a § 363(b) application expressly find from the evidence presented before him at the hearing a good business reason to grant such an application.").

24. Further, "[T]he bankruptcy court must not authorize a § 363(b) transaction if the transaction would effectively evade the 'carefully crafted scheme' of the chapter 11 plan confirmation process, such as by denying §§ 1125, 1126, 1129(a)(7), and 1129(b)(2) rights." *In re Gulf Coast Oil Corp.*, 404 B.R. 407, 422 (Bankr. S.D. Tex. 2009); *see also PBGC v. Braniff Airways, Inc. (In re Braniff Airways, Inc.)*, 700 F.2d 935, 940 (5th Cir. 1983) (expressing concern regarding interference with "the Code's carefully crafted scheme for creditor enfranchisement where plans of reorganization are concerned.").

25. Components of the Bidding Procedures Motion raise concern that the contemplated process is a *sub rosa* Plan:

a) The process contemplates a sale of the majority of Debtors' assets including causes of action and insider loans without providing cash for creditors.

b) No opportunity to vote is provided to creditors despite the effective release provided to insiders and broad releases benefiting MOI and the buyer. While such releases might be appropriate under a Plan, creditors have no opportunity to weigh in.

c) The process contemplated by the Bid Procedures Motion effectively cuts off all recovery for the unsecured creditors without an opportunity to vote on a Plan.

V. RESERVATION OF RIGHTS

The United States Trustee reserves all rights with respect to any amended or supplemented Bidding Procedures Motion and any claims or any plan process in connection with this case.

VI. CONCLUSION

WHEREFORE, the UST respectfully requests that this Court sustain this objection, deny the Bidding Procedures Motion unless the Bidding Procedures are altered to address the concerns raised herein, and grant such other relief as the Court may deem appropriate.

Dated: December 4, 2017

Respectfully Submitted,

JUDY A ROBBINS
UNITED STATES TRUSTEE

By:/s/ Stephen D. Statham
Stephen D. Statham
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Objection was served on the parties reflected on Debtors' Master Service List and by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on the 4th day of December, 2017.

/s/ Stephen D. Statham
Stephen D. Statham