

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re

FURR'S SUPERMARKETS, INC.,

Debtor.

Case No. 11-01-10779-SA
Chapter 11

01 JUN 20 PM 3:34
U.S. BANKRUPTCY COURT
ALBUQUERQUE, NM

**Notice of Final Hearing on Debtor's Motion for Order Approving
Sale of Some or All of Debtor's Operating Assets and Granting Related Relief**

Notice of Rescheduled Auction Sale

**Notice of Revision of Exhibit to Debtor's Motion for Order Approving
Sale of Some or All of Debtor's Operating Assets and Granting Related Relief**

A final hearing on the above-referenced motion will be held on June 29, 2001, at 9:00, a.m. before the Honorable James S. Starzynski, Federal Building and United States Courthouse, 421 Gold Ave. SW., Sixth Floor, Albuquerque, N.M. 87102.

The auction sale of the Debtor's assets has been rescheduled. The Debtor will conduct the Auction on June 27, 2001, convening at 9:30 a.m., in Albuquerque, New Mexico. The Debtor will notify all qualified bidders (and any party in interest in the chapter 11 case who requests notice) of the place of the auction.

On June 19, 2001, the Debtor revised the following exhibit to the above-referenced motion: Exhibit 4 (Bidding Procedures). A copy of the revised Exhibit is annexed to this Notice.

Date of Delivery: June 20, 2001

COUNSEL FOR THE DEBTOR:

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Revised Exhibit 4
(Bidding Procedures)

Auction Bidding Procedures

(Revised: June 19, 2001)

These bidding procedures govern the proposed sale of the assets of Furr's Supermarkets, Inc. (the "Debtor"). By submitting a bid, each bidder agrees to follow these procedures and acknowledges that any sale agreement resulting from these procedures will be subject to the ultimate approval of the Bankruptcy Court. The Debtor has not submitted these bidding procedures for prior approval by the Bankruptcy Court.

Potential purchasers will be permitted to submit bids for any or all of the Debtor's assets. If more than one bid is received, the Debtor intends to conduct an auction, presently scheduled to be held on June 27, 2001 (the "Auction"). The Debtor intends to seek approval of any sale agreements resulting from the Auction at a hearing before the Bankruptcy Court, to be held as soon after the completion of the Auction as possible (the "Sale Hearing"). The Auction and the Sale Hearing may be adjourned or rescheduled without notice other than by an announcement of the adjourned date at the Auction or Sale Hearing (as the case may be).

Due Diligence

All bidders may continue their due diligence under existing procedures and confidentiality agreements through the close of business June 19, 2001.

Bid Deadline

A bidder that desires to make a bid must deliver a copy of its bid to the Debtor's counsel, Skadden, Arps, Slate, Meagher & Flom LLP, 300 South Grand Avenue, Los Angeles, California 90071, Attention: Stephen J. Lubben, Facsimile: (213) 621-5642, not later than 4:00 p.m. (Pacific Daylight Time) on June 20, 2001 (the "Bid Deadline").

The Debtor may extend the Bid Deadline once or successively, but is not obligated to do so. Bidders should not expect the Debtor to grant any extensions. If the Debtor extends the Bid Deadline, it will promptly notify all potential bidders of the extension.

Proposed Buyer

Before the Auction, the Debtor intends to continue to negotiate with potential purchasers who have indicated interest in an acquisition with a view to

entering into an agreement before the Auction, subject to Court approval, for the sale of all or substantially all of its assets (a "Proposed Sale"). The Debtor may seek Court authority to grant the buyer in the Proposed Sale a break-up fee or other similar consideration. If it is able to enter into a Proposed Sale agreement, the Debtor will seek Court approval of the break-up fee at a hearing on shortened notice, depending on the availability of the Court's calendar.

Bid Requirements

A bid is a letter from a bidder stating that (i) the bidder offers to purchase the specified assets, and assume the specified agreements, upon the terms and conditions set forth in a copy of a proposed Asset Purchase Agreement, available from Debtor's counsel upon request (the "Form Asset Purchase Agreement"), marked to show those amendments and modifications to the agreement, including price and terms, that the bidder proposes (the "Marked Contract") and (ii) the bidder's offer is irrevocable until the conclusion of the Sale Hearing. A bidder shall accompany its bid with a good faith deposit (the "Deposit") equal to the lesser of 10% of the bid or \$2 million, to be held in escrow by the Debtor's counsel, and written evidence of a commitment for financing or other evidence, reasonably satisfactory to the Debtor, of financial ability to consummate the transaction. The foregoing deposit and financing requirements will be waived with respect to any credit bid submitted by the Debtor's secured lenders.

The Debtor will consider a bid only if the bid:

- a. (if for all or substantially all assets) provides for cash consideration at least \$3,000,000 greater than offered under the Proposed Sale, if any;
- b. (if for less than all or substantially all assets) indicates the cash consideration offered for each store and whether the bid is conditioned upon the Debtor's acceptance of the bid for a certain number or combination of stores;
- c. is on terms that, in the Debtor's judgment, are not materially more burdensome or conditional than the terms of the Form Asset Purchase Agreement;
- d. is not conditioned on obtaining financing or on the outcome of unperformed due diligence by the bidder with respect to the assets sought to be acquired, but may be subject to the accuracy in all material respects at the closing of that transaction of

specified representations and warranties or the satisfaction in all material respects at the closing of that transaction of specified conditions, none of which are materially more burdensome than those set forth in the Form Asset Purchase Agreement;

- e. is accompanied by admissible evidence in the form of declarations establishing the bidder's good faith, within the meaning of Bankruptcy Code sections 363(m) and (n), and demonstrating "adequate assurance of future performance" of all agreements to be assumed and assigned to the bidder, within the meaning of Bankruptcy Code section 365(f)(2)(B) (the bidder has the sole responsibility of meeting its burden of proof on these issues); and
- f. is received by the Bid Deadline.

The Debtor may exclude Bidders that fail to comply with the foregoing requirements from the Auction.

"As Is, Where Is"

The sale of the Debtor's assets shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtor, its agents or its estate, except to the extent set forth in the Purchase Agreement or the Marked Contract, as the case may be. Except as otherwise provided in the Marked Contract, all of the Debtor's right, title and interest in and to the assets to be sold will be sold free and clear of all interests, with such interests to attach to the net proceeds of the sale of the assets.

Auction

If there is more than one bid for the Debtor's assets, the Debtor will conduct an Auction. The Debtor will notify all bidders who have submitted conforming, timely bids if an Auction will be held. The Auction is scheduled to be held on June 27, 2001, with bidders convening at 9:30 a.m., and the Auction commencing thereafter. The Auction will be held in Albuquerque, New Mexico, at a place to be announced to all bidders and to any party in interest in the chapter 11 case who requests notice of the place of the auction.

The Debtor may postpone the Auction for up to fourteen days. If the Debtor postpones the Auction, it will promptly notify all potential bidders of the new

time and place for the Auction. The Debtor may contact bidders after the Bid Deadline and seek to negotiate modifications to the bids before the start of the Auction.

At the Auction, bidding for portions of the Debtor's assets will begin with the highest initial bid(s) and continue (i) in increments of \$25,000, for single store locations, (ii) in increments of \$50,000, for initial bids under \$5,000,000, (iii) in increments of \$100,000, for initial bids under \$10,000,000, and (iv) in increments of \$250,000, for initial bids greater than \$10,000,000. If the Debtor receives bids for all or substantially all of the Debtor's assets, bidding will begin with the highest initial bid and continue in increments of \$500,000. The Debtor may modify these bidding increments during the Auction, if appropriate.

The Debtor will conclude the Auction only after allowing each participating bidder the opportunity to submit bids during an announced "final round" of bidding. The Debtor may set time limits for all rounds of bidding of not less than thirty minutes.

Upon conclusion of the Auction or, if the Debtor determines not to hold an Auction, then promptly following the Bid Deadline, the Debtor will review each bid on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the sale with respect to such assets, and announce its determination as to the party or parties submitting the best bid(s) for the assets. The Debtor will determine in its sole discretion which bid or combination of bids constitutes the best offer for the assets.

Sale Hearing

At the Sale Hearing, the Debtor will move the Bankruptcy Court for an order approving one or more bids that constitute the best offer(s) for the assets to be acquired.

Acceptance of Bids

The Debtor presently intends to sell the assets under the best bid received, whether received from a Proposed Buyer or another bidder. The Debtor is not obligated to accept any bid, except the bid of a Proposed Buyer as reflected in a Proposed Sale. The Debtor shall be deemed to have accepted any other bid only when the bid has been approved by the Bankruptcy Court at the Sale Hearing. The closing of the sale(s) shall take place on a date consistent with the closing date contemplated by the Marked Contract.

Failure to Close

If a bidder fails to close a sale in accordance with the terms of the Marked Contract, it will forfeit its Deposit, and the assets to be purchased by the bidder will be sold to the bidder submitting the next best bid for such assets, as determined by the Debtor in its sole discretion, which is able to close in accordance with the terms of the applicable Marked Contract.

Return of Good Faith Deposit

Each Deposit of a bidder other than a successful bidder will be returned, with any interest actually earned, two days after (a) entry of an order granting or denying the relief sought in the Sale Motion, or (b) the Debtor's withdrawal of the Sale Motion.

Modifications

The Debtor may: (a) determine in its sole discretion which bid, if any, is the best offer; and (b) reject, at any time before entry of an order of the Bankruptcy Court approving a bid, any bid that, in the Debtor's sole discretion, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, these Bidding Procedures, or the terms and conditions of sale, or (iii) contrary to the best interests of the Debtor, its estate and its creditors. Without modifying the Asset Purchase Agreement, the Bankruptcy Court, at or before the Sale Hearing, may impose such other terms and conditions as it may determine to be in the best interests of the Debtor's estate, its creditors and other parties in interest.

The Debtor reserves the right to waive or modify any of these auction and bidding procedures if it determines that doing so is required by its fiduciary duties or to be in the best interests of the Debtor and its estate. The Debtor will promptly notify all potential bidders of any changes to these procedures.

Withdrawal of Motion

Except as provide by the terms of any Proposed Sale, the Debtor reserves the right in its sole and absolute discretion to withdraw the Sale Motion at any time before approval of the sale.