

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DIRECT LENDING INVESTMENTS
LLC,

Defendant.

Case No. 2:19-cv-02188-DSF-MRW

BIDDING PROCEDURES FOR SALE OF ARTWORK

On March 22, 2019, the Securities and Exchange Commission filed a complaint commencing an action against Direct Lending Investments, LLC (“**DLI**”) in the United States District Court for the Central District of California (“**Court**”), Case No. 2:19-cv-2188 DSF (MRWx) (the “SEC Action”). On April 1, 2019, the Court in the SEC Action issued a Preliminary Injunction Order and Order Appointing Permanent Receiver (“Receiver Order”), appointing Bradley D. Sharp as permanent receiver (“**Receiver**”) for DLI, and for Direct Lending Income Fund, L.P., Direct Lending Income Feeder Fund, Ltd., DLI Capital, Inc., DLI Lending Agent, LLC, and DLI Assets Bravo, LLC (referred to herein as the “Company”) and their successors, subsidiaries and affiliated entities.

Pursuant to an Order of the Court in the SEC Action entered on April 1, 2019 (Dkt. No. 10), the Receiver has been granted the full powers of an equity receiver over all funds, property and assets belonging to, being managed by or in the possession of or control of the Receivership Entity. (Receiver Order, Section VI). In addition, among other things, the Receiver Order provides that the Receiver has been granted specific powers to sue, marshal, collect, and take possession of the Receivership Entity’s property, and to “take such action as is necessary and appropriate to preserve and take control of and to prevent the dissipation, concealment, or disposition of any assets of or managed by the Receivership Entity.” (Receiver Order Section IV.A. and D). Further, pursuant to an Order of the Court entered June 4, 2019 (Dkt. No. 57), the Receiver, through his Motion filed on March 20, 2020, is seeking further Court authority to sell or liquidate the artwork separately, in combination, or in bulk outside of the ordinary course of business; confirming the modified sale procedures; and approving the stalking horse bid.

The Company’s personal property assets include seven (7) flags described as follows: (1) 35 Stars in a double wreath pattern on a civil war veteran’s flag with overprinted battle honors of the New York 71st volunteer infantry; (2) Exceptional 1876 quilt featuring the images of George & Martha Washington, made from Patriotic textiles and flags that were probably acquired in Philadelphia at the Centennial International Exhibition; (3) 33 Stars in an interesting variation of

the “great star” configuration, made for the 1860 Campaign of Abraham Lincoln & Hannibal Hamlin, with whimsical serpentine text; (4) Abraham Lincoln Memorial Banner with a dramatic portrait image, late 19th century – 1909; (5) U.S. Navy Jack with 30 Stars, an entirely hand-sewn, pre-civil war example with great color and bold visual qualities, Wisconsin Statehood, 1848-1850; (6) A gallant leader: portrait style banner made for the 1932 presidential campaign of Franklin Delano Roosevelt; and (7) Civil War Regimental Flag with a dramatic wartime eagle and patriotic text that reads: “United We Stand, Divided We Fall,” hand-gilded and painted on cornflower blue silk, 1861-1865 (collectively, the “**Artwork**”). The Artwork was originally purchased for a total of \$206,900.00. The original purchase price and description of each art piece being offered for sale pursuant to these Bidding Procedures are set forth in the Fine Arts Summary Schedule which will be provided to interested prospective bidders, who qualify as Qualified Bidders and gain access to view the artwork. All artwork will be sold only “as-is” without representations or warranties. Subject to Court approval of these procedures and approval of the Artwork at a hearing to be conducted on May 4, 2020 at 1:30 p.m. Pacific Standard Time, unless adjourned or continued as set forth in these Bidding Procedures, the Company, through the Receiver, is soliciting bids for the Artwork and will seek Court approval and confirmation of the sale of the Artwork to the Successful Bidder, or the Backup Bidder, as those terms are defined below, in accordance with these **Bidding Procedures**. Any bidding and sale of the Artwork pursuant to the Bidding Procedures shall be referred to as a “**Transaction**,” regardless of the form it takes.

THE SUBMISSION OF A BID IN CONNECTION WITH THE OFFER FOR SALE OF THESE ASSETS IS DEEMED TO CONSTITUTE CONSENT BY THE BIDDER TO BE BOUND TO ALL TERMS AND CONDITIONS OF THESE BID PROCEDURES.

ANY PARTY INTERESTED IN BIDDING ON THE ARTWORK SHOULD CONTACT DEVELOPMENT SPECIALISTS, INC.:

1. Eric Held, 213-617-2717, eheld@dsiconsulting.com
2. Daniel Ungheanu, 213-617-2717, dungheanu@dsiconsulting.com

Summary of Important Deadlines

Sale Process Commencement	March 9, 2020
Motion to Approve Bidding/Auction Procedures, Stalking Horse Bid, and Sale of Artwork to Successful Bidder(s), or Backup Bidder(s)	To be filed on March 20, 2020
Deadline to object to conduct of Auction and designation of Successful Bidders, and adequate assurance, subject to Court approval	April 20, 2020 (two weeks prior to the date of hearing on the Sale Approval Motion)
Bid Deadline	April 17, 2020 at 5:00 p.m. Pacific Standard Time
Auction	April 24, 2020 at 10 a.m. Pacific Standard

	Time
Notice and Statement Regarding Successful Bidder(s), or Backup Bidders	To be filed on April 27, 2020
Sale Hearing	May 4, 2020 at 1:30 p.m. Los Angeles time
Sale Closing	[As soon as practicable after Sale Hearing and no later than five (5) business days after Court Approval of the sale of artwork]

1. Artwork to Be Sold

The Receiver is offering for sale each individual art piece. Potential Bidders (as defined below) may bid on any of the pieces. Potential Bidders are required to submit a separate bid for each item.

2. Participation Requirements

Any person or entity that wishes to participate in the bidding process for the artwork (each, a “**Potential Bidder**”) must first become a “**Qualifying Bidder**.” To become a Qualifying Bidder, a Potential Bidder must submit to the Receiver:

- (a) Documentation identifying the interested party, its principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated Transaction;
- (b) A statement and other factual support demonstrating to the Receiver’s sole satisfaction that the interested party has a bona fide interest in consummating a Transaction; and
- (c) Sufficient information, as determined solely by the Receiver, to allow the Receiver to determine that the interested party has, or can obtain, the financial wherewithal and any required internal corporate, legal or other authorizations to close a Transaction.

Each Potential Bidder shall comply with all reasonable requests for information and due diligence by the Receiver, or his advisors regarding the ability of such Potential Bidder, as applicable, to consummate its contemplated Transaction.

3. Court Jurisdiction

Any Potential Bidders and Qualifying Bidders shall: (a) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating to the Bidding Procedures, the respective Transaction proposed by each such party, the Auction (as defined below) and the

construction and enforcement of the contemplated Transaction documents of such parties; (b) bring any such action or proceeding in the Court; and (c) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.

4. **Form of Agreement**

Potential Bidders intending to submit bids must include with their bids an asset purchase agreement (a “**Purchase Agreement**”). Potential Bidders may obtain a form of the Purchase Agreement from Development Specialists, Inc. at the contact information provided above and include a redline marked against the form Purchase Agreement that shows all changes to the Purchase Agreement.

5. **Due Diligence**

The Receiver will provide any Qualifying Bidder with reasonable access to the artwork and any other available additional information that the Receiver believes to be reasonable and appropriate under the circumstances. All additional due diligence requests shall be directed to Development Specialists, Inc. at the contact information provided above.

The due diligence period shall extend through and including the Bid Deadline. The Receiver may, but shall not be obligated to, in its reasonable discretion, furnish any due diligence information after the Bid Deadline.

The Receiver reserves the right, in his reasonable discretion, to withhold or limit access to any due diligence information that the Receiver determines is business-sensitive or otherwise not appropriate for disclosure to a Qualifying Bidder. Notwithstanding any pre-receivership limitations, including, without limitation, any non-disclosure, confidentiality or similar provisions relating to any due diligence information, the Receiver shall be authorized to provide due diligence information to Qualifying Bidders. The Receiver, the Company and its receivership estate, and Development Specialists, Inc., are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Qualifying Bidders in connection with the Bidding Procedures and a contemplated Transaction.

6. **Bid Requirements**

To be deemed a “**Qualifying Bid**,” a bid must be received from a Qualifying Bidder on or before the Bid Deadline and satisfy each of the following requirements, as determined by the Receiver (each, a “**Bid Requirement**”):

- (a) A fully executed purchase and sale agreement for the artwork with terms substantially similar to the Stalking Horse Purchase Agreement, which is attached to the Receiver’s declaration in support of the Motion, but in all events acceptable to the Receiver;

- (b) Specify the artwork to be included in the bid;
- (c) Provide proof of funds in an amount at least equal to the purchase price under the Stalking Horse Purchase Agreement;
- (d) Provide for an all cash purchase, paid in full at closing;
- (e) State that the Qualifying Bidder is offering to purchase the Artwork “as-is” without representations or warranties;
- (f) Make a commitment to close the Transaction as soon as practicable but no later than five (5) business days after entry of an order of the Court approving the sale to the Successful Bidder;
- (g) Not contain any contingencies of any kind, including, without limitation, contingencies related to financing, internal approval or due diligence;
- (h) Contain a written acknowledgement and representation that the Qualifying Bidder (i) has had an opportunity to conduct any and all due diligence regarding the artwork, (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and other information in making its Qualifying Bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the artwork, or the completeness of any documents or other information provided in connection with the Bidding Procedures and the proposed Transaction;
- (i) Provides for the Qualifying Bidder to serve as a backup bidder (the “**Back-Up Bidder**”) if the Qualifying Bidder’s bid is the next highest and best bid (the “**Back-Up Bid**”) after the Successful Bid (as defined below), as determined by the Receiver;
- (j) Provides a good faith cash deposit (the “**Deposit**”) in an amount equal to ten percent (10%) of the purchase price provided for in the Purchase Agreement (or such additional amount as may be determined by the Receiver in its reasonable discretion) to be held in escrow by the Receiver, prior to the Bid Deadline;
- (k) Make a commitment to, upon becoming a Successful Bidder, to be responsible for taking into possession the artwork, including moving or transporting the art pieces, paying any and all associated costs, coordinating with Development Specialists, Inc. in obtaining the artwork, and solely liable for any issues that may arise in taking into possession the art pieces;

- (l) Provides for liquidated damages in the event of the Qualifying Bidder's breach of, or failure to perform under, the Purchase Agreement equal to the amount of the Deposit, which modified Purchase Agreement, redlined to show all changes, shall be submitted with the bid as required by Section 4 of these Bidding Procedures; and
- (m) The Stalking Horse Bidder is deemed a Qualified Bidder, and the Stalking Horse Purchase Agreement is deemed a Qualified Bid.

The Receiver reserves the right to negotiate with any Qualifying Bidder in advance of the Auction to cure any deficiencies in a bid that is not initially deemed a Qualifying Bid.

Each Qualifying Bidder submitting a bid shall be deemed to acknowledge and represent that it is bound by all of the terms and conditions of the Bidding Procedures.

7. **Bid Deadline**

A Qualifying Bidder that desires to make a bid shall deliver a written and electronic copy of its bid in both PDF and MS-WORD format to the Notice Parties (defined below) so as to be received on or before **April 17, 2020 by 5:00 p.m. PST** (the "**Bid Deadline**"); *provided that* the Receiver may extend the Bid Deadline without further order of the Court. To the extent that the Bid Deadline is extended for all parties, the Receiver shall file a notice on the docket of these (cases) indicating the same. **Any party that does not submit a bid by the Bid Deadline (including as extended in accordance with the prior two sentences) will not be allowed to (a) submit any offer after the Bid Deadline, or (b) participate in the Auction.**

8. **Auction Process**

The Auction shall be governed by the following procedures:

- (a) The Auction shall commence on **April 24, 2020** (the "**Auction Date**"), at the **Los Angeles offices of Development Specialists, Inc. at 10 a.m. PST**;
- (b) Only Qualifying Bidders with Qualifying Bids (collectively, the "**Auction Bidders**") shall be entitled to may any subsequent bids at the Auction;
- (c) Only the Company through its Receiver and the Auction Bidders may attend the Auction;
- (d) The Receiver and his team shall direct and preside over the Auction, which may be transcribed;
- (e) The Auction Bidders shall confirm that they have not engaged in any collusion with respect to the Bidding Procedures, the Auction, or the Sale;

- (f) The Receiver shall commence the auction for each art piece with the Stalking Horse bid:
- (i) George & Martha Washington Quilt at \$4,473.00; (ii) Abraham Lincoln Memorial Banner at \$6,394.00; (iii) Navy Jack with 30 Stars Flag at \$9,135.00; (iv) United We Stand Civil War Regimental Flag at \$37,405.00; (v) Roosevelt Campaign Banner at \$1,319.00; (vi) Lincoln & Hamlin Parade Flag at \$7,653.00; and (vii) New York 71st Volunteer Infantry Flag at \$3,620.00;
- (g) The initial overbid for each individual art piece must be at least 5% higher than the Stalking Horse bid. Any subsequent overbids shall also be an increase by an amount that is equal to or greater than 5% of the Stalking Horse bid for the piece; and
- (h) At the conclusion of the Auction, the Receiver shall identify the highest and best bid (the “**Successful Bid(s)**”), based upon the Receiver’s determination of the highest or otherwise best bid from a Qualified Bidder in his discretion as set forth in the Sales Procedures (the “**Successful Bidder(s)**”). The Receiver may, in his reasonable discretion, designate **Back-Up Bids** (and the corresponding **Back-Up Bidders**) to purchase the artwork in the event that the Successful Bidder does not close the Sale.

THE SUBMISSION OF A BID IN CONNECTION WITH THE OFFER FOR SALE OF THE ARTWORK IS DEEMED TO CONSTITUTE CONSENT BY THE BIDDER TO BE BOUND TO ALL TERMS AND CONDITIONS OF THESE BID PROCEDURES.

THE SUCCESSFUL BID AND ANY BACK-UP BIDS SHALL CONSTITUTE AN IRREVOCABLE OFFER AND BE BINDING ON THE SUCCESSFUL BIDDER AND THE BACK-UP BIDDER, RESPECTIVELY, FROM THE TIME THE BID IS SUBMITTED UNTIL TWO (2) BUSINESS DAYS AFTER THE SALE HAS CLOSED. EACH QUALIFYING BID THAT IS NOT THE SUCCESSFUL BID OR BACK-UP BID SHALL BE DEEMED WITHDRAWN AND TERMINATED AT THE CONCLUSION OF THE SALE HEARING.

9. Sale Hearing

The Successful Bid and any Back-Up Bid will be subject to approval by the Court. The hearing to approve such Successful Bid and any Back-Up Bid (the “**Sale Hearing**”) shall take place, subject to the Court’s availability, on **May 4, 2020 at 1:30 p.m. PST**. The Sale Hearing may be adjourned by the Receiver or the Court from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, by filing a notice of the continuance with the Court, or by posting a notice on the receivership website for the Company’s receivership case at <https://case.stretto.com/dli>. **For the avoidance of doubt, by no later than April 27, 2020, the Receiver may determine to withdraw the artwork or any subset thereof, from the Auction and sale process, and adjourn the Sale Hearing with respect to these artwork on the terms set forth herein.**

At the Sale Hearing, the Receiver on behalf of the Company will seek entry of an order

that, among other things: (i) authorizes and approves the Sale to the Successful Bidder (and, if applicable the Back-Up Bidder), pursuant to the terms and conditions set forth in the applicable Purchase Agreement executed by the Successful Bidder (and, if applicable the Back-Up Bidder), and that the artwork being transferred in such transaction shall be transferred; (ii) unless otherwise ordered by the Court, directing that all Encumbrances on the artwork that are sold shall attach to the cash proceeds generated from the sale of such artwork in the same order of priority as they existed prior to the consummation of such sale; and (iii) finding that the Successful Bidder, as applicable, is a good faith purchaser.

10. **Back-Up Bidder**

Notwithstanding any of the foregoing, in the event that the Successful Bidder fails to close the Sale no later than five (5) business days following the approval of the sale by the Court (or such date as may be extended by the Receiver and with the agreement of the Back-Up Bidder), the Back-Up Bid will be deemed to be the Successful Bid, the Back-Up Bidder will be deemed to be the Successful Bidder, and the Receiver on behalf of the Company will be authorized, but not directed, to close the Sale to the Back-Up Bidder subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any interested parties, as soon as practicable, but not later than ten (10) business days following the approval of the sale by the Court.

11. **Return of Deposits**

All Deposits shall be returned to each bidder not selected by the Receiver as the Successful Bidder or the Back-Up Bidder no later than three (3) business days following the conclusion of the Sale Hearing. The deposit of the Successful Bidder or, if the Sale is closed with the Back-Up Bidder, the deposit of the Back-Up Bidder, shall be applied to the purchase price for the Sale. If the Successful Bidder (or, if the Sale is to be closed with the Back-Up Bidder, then the Back-Up Bidder) fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the Purchase Agreement the Company and its receivership estate shall be entitled to retain the Deposit of the Successful Bidder (or, if the Sale is to be closed with the Back-Up Bidder, then the Back-Up Bidder) as part of the damages resulting to the Company and its receivership estate for such breach or failure to perform.

12. **Notice of Parties**

The term “**Notice Parties**” as used in these Bidding Procedures shall mean: (i) the Company through its permanent receiver Bradley D. Sharp (“Receiver”), bsharp@dsiconsulting.com; (ii) counsel to the Receiver for the Company, Christopher D. Sullivan of Diamond McCarthy LLP, csullivan@diamonddmccarthy.com, (415) 692-5200; and (iii) the Receiver’s team, at Development Specialists, Inc., Eric Held, eheld@dsiconsulting.com, (213) 617-2717, and Daniel Ungheanu, dungheanu@dsiconsulting.com, (213) 617-2717.

13. **Reservations of Rights**

Notwithstanding any of the foregoing, the Receiver reserves Company the right to modify

these Bidding Procedures at or prior to the Auction, including, without limitation, to extend the deadlines set forth herein, modify bidding increments, waive terms and conditions set forth herein with respect to any or all potential bidders (including, without limitation, the Bid Requirements), impose additional terms and conditions with respect to any or all Potential Bidders, adjourn or cancel the Auction at or prior to the Auction, and adjourn the Sale Hearing.