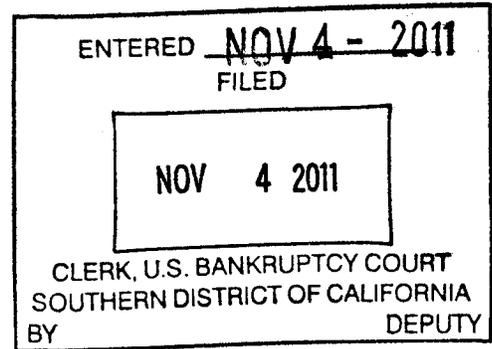


1 **WRITTEN DECISION - NOT FOR PUBLICATION**



9 UNITED STATES BANKRUPTCY COURT

10 SOUTHERN DISTRICT OF CALIFORNIA

11 In re) Case No. 09-07742-PB11

12 WEST COAST PROPERTY)

13 CONSULTANTS, INC.,) ORDER ON MOTION TO SELL

14 Debtor.)

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16 This matter came on for hearing on debtor's motion to sell

17 subject to overbid. When debtor concluded there was no qualified

18 overbidder, and the original bidder had withdrawn its offer after

19 the Court modified the bidding procedures and possible breakup

20 fee, debtor attempted to withdraw the motion to sell, but the

21 Court required it to remain on calendar.

22 At the hearing, debtor's counsel explained why he attempted

23 to withdraw the motion to sell. Counsel for Quality Built, LLC

24 argued that they were a qualified overbidder and had made a

25 formal proposal to the debtor. The Court required the parties to

26 brief the issue, which they have done.

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2 After review, the Court finds and concludes that Quality
3 Built, LLC was not a qualified overbidder. One of the terms of
4 the approved bidding procedures required the overbidder to sign
5 the "Asset Purchase Agreement" "in substantially the form as
6 attached to the Joint Reply to Opposition". The agreement
7 Quality Build proffered to the debtor required certain current
8 employees to execute covenants not to compete, thus depriving
9 those individuals of their ability to utilize their experience to
10 gain other employment. That was not a term of the Asset Purchase
11 Agreement and required enforceable commitments -- from persons
12 who are neither debtors nor parties to any sales agreement.

13 The Court recognizes that covenants not to compete are not
14 unusual terms in a sale of businesses built on client contacts.
15 But they were not terms of this proposed sale and were a material
16 change to the Asset Purchase Agreement. So the Court finds
17 debtor acted properly in attempting to withdraw the sale motion
18 when it did because the original offer had been withdrawn and no
19 qualifying overbid had been proffered.

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2 Quality Built attempted to change its position at the
3 hearing and no longer require covenants not to compete. It was
4 too little and too late. The Court finds and concludes that
5 Quality Built, LLC did not timely qualify as an overbidder, so
6 the motion to sell is ordered off calendar.

7 IT IS SO ORDERED.

8 DATED: NOV - 4 2011

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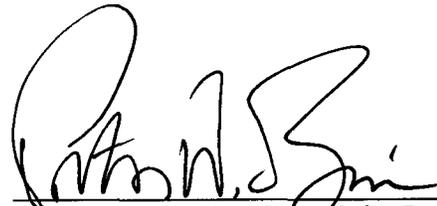
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PETER W. BOWIE, Chief Judge
United States Bankruptcy Court