

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

In re:)
) Case No. 3:16-bk-08624
WERTHAN PACKAGING, INC.,)
) Chapter 11
Debtor.)
) Judge Mashburn
)
)

REVISED BID PROCEDURES

These sale and bid procedures (the “Bid Procedures”) govern the procedures for the sale of substantially all of the assets (the “Assets”) of the above-captioned debtor and debtor in possession (collectively, the “Debtor”), pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).

By motion (the “Procedures Motion”) ¹ dated December 5, 2016, the Debtor sought, among other things, approval of the Bid Procedures governing the process and procedures for the sale of the Assets. On December 7, 2016 the United States Bankruptcy Court for the Middle District of Tennessee (the “Bankruptcy Court”), entered an order approving these Bid Procedures (the “Procedures Order”).

On December 16, 2016, the Official Committee of Unsecured Creditors filed an expedited Motion to extend particular deadlines in the original Procedures Order. On December 19, 2016, the Bankruptcy Court entered an order extending particular deadlines, but otherwise leaving these Bid Procedures unchanged. **These Revised Bid Procedures incorporate the new deadlines, and those new deadlines are underlined.**

The Bankruptcy Court has scheduled a hearing on **January 5, 2017, at 1:30 p.m. (prevailing Central Time)**, to consider the sale of the Assets (the “Sale Hearing”).

I. Stalking Horse Bidder

The Debtor has completed arm’s length negotiations with Gateway Packaging Company LLC, a Delaware limited liability company (the “Stalking Horse Bidder”), to serve as the stalking horse bidder for the Assets. As a result of those negotiations, the Stalking Horse Bidder has submitted an initial bid for the Assets of \$7,264,463.00, subject to adjustment upwards or downwards in accordance with the prorations contemplated in the Stalking Horse APA (as defined below) (the “Stalking Horse Bid”). The Stalking Horse Bid, memorialized by an Asset Purchase Agreement by and between the Debtor and the Stalking Horse Bidder, dated December

¹ Capitalized terms used, but not otherwise defined herein, shall have the meanings given to them in the Procedures Motion.

4, 2016 attached hereto as **Exhibit 1** (as may be amended, the “Stalking Horse APA”), shall be subject to higher and better bids pursuant to the terms of these Bid Procedures and applicable law.

II. Assets to Be Sold

Any Potential Bidder (defined below) may obtain a detailed description of the Assets through the process described herein. Except as excluded in the Stalking Horse APA, the Debtor intends to sell substantially all its assets, which include, but are not limited to: certain of the Debtor’s rights to leased property, accounts receivable, furniture, fixtures and equipment, certain leases and contracts, intellectual property, inventory, goodwill and general intangibles, and other tangible personal property.

The Procedures Motion, the APA, and the Procedures Order will be available for viewing at <http://werthan.com/sale.html>.

Pursuant to section 363 of the Bankruptcy Code and in accordance with these Bid Procedures, the Debtor intends to sell the Assets free and clear of all liens, claims, encumbrances, and interests and the Assets will be sold on an “As Is, Where Is” basis.

The Debtor proposes to sell the Assets in accordance with the terms and conditions set forth in the Stalking Horse APA, with such modifications to the Stalking Horse APA as made by the Successful Bidder (defined below).

III. Assumption of Contracts and Leases

As part of the sale of the Assets, the Debtor may propose to assume and assign certain contracts and leases (the “Assigned Contracts”) to the Successful Bidder (defined below). A list of the Assigned Contracts may be obtained from the Debtor. Parties to Assigned Contracts will receive a separate motion or notice on or before December 12, 2016 which will identify the contracts or leases to be assigned, the identity of the assignee, and the amount, if any, to be paid as a “cure amount” under section 365 of the Bankruptcy Code. Objections, if any, to the assumption and assignment of any Assigned Contracts, or to any proposed cure costs therein, must be filed with the Court and served upon parties in interest so as to be received on or before **4:00 p.m. (prevailing Central time) on December 22, 2016.**

IV. Participation Requirements

Unless otherwise ordered by the Bankruptcy Court, for cause shown, or as otherwise determined by the Debtor, in order to participate in the bidding process, prior to the Bid Deadline (defined below), each person other than the Stalking Horse Bidder who wishes to participate in the bidding process (each a “Potential Bidder”) must deliver to the Notice Parties (defined below) at the addresses provided below:

- a. an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtor to a Potential Bidder) in form and substance satisfactory to the Debtor;

- b. sufficient information, as determined by the Debtor, which may include current audited financial statements and the latest unaudited financial statements of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purposes of acquiring the Assets, current audited financial statements and the latest unaudited financial statements of the equity holders of the Potential Bidder who will guarantee the obligations of the Potential Bidder, or such other form of financial disclosure and credit-quality support or enhancement that will allow the Debtor to make a reasonable determination as to the Potential Bidder's financial and other capabilities to consummate the sale; and
- c. a statement demonstrating to the Debtor's satisfaction, a bona fide interest in purchasing the Assets.

A Potential Bidder that has executed a confidentiality agreement and has otherwise complied with the requirements described above, and that the Debtor determines in its reasonable business judgment is reasonably likely (based on availability of financing, experience, or other considerations) to be able to consummate the sale, will be deemed a "Qualified Bidder."

V. Due Diligence

The Debtor may, in its reasonable business judgment, and subject to competitive and other business considerations, afford each Qualified Bidder and any person seeking to become a Qualified Bidder that has executed a confidentiality agreement with the Debtor, such due diligence access to materials and information relating to the Assets as the Debtor deems appropriate. Due diligence access may include management presentations as may be scheduled by the Debtor, access to electronic data rooms, on-site inspections, and other matters which a Qualified Bidder may reasonably request and as to which the Debtor, in its reasonable business judgment, may agree. No additional due diligence will continue after the Bid Deadline (defined below). The Debtor shall provide the Stalking Horse Bidder with access to all material due diligence materials, management presentations, on-site inspections, and other information provided to any Qualified Bidders that were not previously made available to the Stalking Horse Bidder as soon as reasonably practicable and in no event later than five (5) Business Days after the date that the Debtor made such information available to any Qualified Bidder. Neither the Debtor nor any of its affiliates (or any of their respective representatives) will be obligated to furnish any information relating to the Assets to any person other than to Qualified Bidders. The Debtor makes no representation or warranty as to the information to be provided through this due diligence process or otherwise, except to the extent set forth in the Stalking Horse APA or in any other definitive agreement a Successful Bidder executed and delivered to by the Debtor.

VI. Bid Deadline

A Qualified Bidder that desires to make a bid shall deliver copies of such bid no later than **4:00 p.m. (prevailing Central Time) on or before December 29, 2106** (the "Bid Deadline"), via email, to the following parties (collectively, the "Notice Parties"):

Werthan Packaging, Inc., c/o Gary Murphey (murphy@rfslimited.com)
Bass, Berry & Sims, c/o Paul G. Jennings (pjennings@bassberry.com)

McDonald Hopkins LLC, Attention David Agay (dagay@mcdonaldhopkins.com)
Gullett, Sanford, Robinson & Martin, c/o Thomas H. Forrester (tforrester@gprm.com)

The Debtor may extend the Bid Deadline, but they are not obligated to do so; provided that for any such extension beyond five (5) Business Days, the Debtor has obtained the written consent of the Stalking Horse Bidder, which consent will not be unreasonably withheld. If the Debtor extends the Bid Deadline, it will promptly notify all Qualified Bidders (including the Stalking Horse Bidder).

VII. Requirements of a Qualified Bid

A bid submitted will be considered a Qualified Bid only if the bid is submitted by a Qualified Bidder prior to the Bid Deadline and complies with all of the following (a “Qualified Bid”):

- a. it is in writing;
- b. it: (a) is definitive and binding, not subject to due diligence or any conditions other than Court approval; (b) is accompanied by evidence of financial wherewithal of the proposed buyer acceptable to the Debtor in its sole discretion; (c) is accompanied by a deposit of immediately available funds equal to ten percent (10%) of the proposed cash purchase price; (d) is accompanied by an asset purchase agreement marked to show changes from the Stalking Horse APA (a “Modified APA”); and (e) contemplates a cash purchase price of at least \$7,779,463.00 (the “Minimum Cash Overbid Amount”);
- c. it is irrevocable until the earlier of (i) the Qualified Bidder’s bid being determined by the Debtor not to be a Qualified Bid or (ii) another Qualified Bid being approved by the Bankruptcy Court, subject to the Reserve Bidder (defined below) provision hereof;
- d. it provides that the Qualified Bidder is obligated to perform as the Reserve Bidder (defined below) in the event the Qualified Bidder is not the Successful Bidder, but is the second highest bidder for the Assets; and
- e. it is accompanied by an affirmative statement from the Qualified Bidder that: (i) it has and will continue to comply with these Bid Procedures; (ii) its bid does not entitle such Qualified Bidder to any break-up fee, termination fee, expense reimbursement, or similar type of payment or reimbursement; and (iii) it waives any substantial contribution administrative expense claims under section 503(b) of the Bankruptcy Code related to bidding for the Assets.

For purposes of these Bid Procedures and bidding at the Auction, the Stalking Horse Bidder is a Qualified Bidder and the Stalking Horse Bid is a Qualified Bid. The Debtor shall notify all other Qualified Bidders whether their bids have been determined to be Qualified Bids by no later than **5:00 p.m. (prevailing Central Time) on December 30, 2016**. The Debtor reserves the right to reject any bid on any grounds or extend this deadline if clarifying information is necessary.

VIII. Break-Up Fee and Expense Reimbursement

The Debtor recognizes the value and benefits that the Stalking Horse Bidder has provided to the Debtor by entering into the Stalking Horse APA, as well as the Stalking Horse Bidder's expenditure of time, energy, and resources. Therefore, in the event another party other than the Stalking Horse Bidder is the Successful Bidder for the Assets, subject to the terms of the Stalking Horse APA, the Debtor shall pay a break-up fee to Stalking Horse Bidder in an amount equal to \$215,000.00 (the "Break-Up Fee") and shall reimburse the Stalking Horse Bidder for the actual and reasonable out-of-pocket expenses incurred by the Stalking Horse Bidder in performance of the Stalking Horse Bidder's due diligence investigation, review, research, and analysis regarding the Assets and the negotiations and documentation of the Stalking Horse APA, in a total amount of not more than \$200,000.00 (the "Expense Reimbursement").

IX. Auction Process

In the event that the Debtor receives more than one Qualified Bid, the Debtor will conduct an auction (the "Auction") for the Assets. The Auction will take place on **January 4, 2017 at 10:00 a.m. (prevailing Central Time)** at Bass, Berry & Sims PLC, 150 Third Avenue South, Suite 2800, Nashville, Tennessee 37201. If the Debtor does not receive any Qualified Bids other than the Stalking Horse Bid, the Auction shall be cancelled and the Debtor, subject to requiring and obtaining approvals of the Bankruptcy Court and satisfaction of the conditions set forth in the Stalking Horse APA, shall promptly proceed to seek entry of the appropriate order approving the sale of the Assets to the Stalking Horse Bidder pursuant to the terms of the Stalking Horse APA.

The Debtor will have the right to enact detailed procedures for the conduct of the Auction at any time prior to the start of the Auction so long as such procedures are consistent with the Procedures Order. Any rules developed by the Debtor will provide that all bids in the Auction with respect to any set of assets will be made and received in one room, on an open basis, and all other Qualified Bidders participating in the Auction will be entitled to be present for all bidding on assets on which they have made a qualified bid with the understanding that the true identity of each Qualified Bidder will be fully disclosed to all other Qualified Bidders participating in the Auction and that all material terms of each Qualified Bid submitted in response to the Baseline Bid (defined below) or to any Subsequent Overbid (defined below) made at the Auction will be fully disclosed to all other Qualified Bidders throughout the entire Auction. The Debtor will provide for a record of the Auction, which shall either be transcribed or videotaped.

Parties entitled to attend the Auction shall include the Debtor, the Stalking Horse Bidder, Qualified Bidders that submitted Qualified Bids, a representative of the Official Unsecured Creditors' Committee, and each of those respective parties' representatives. The Stalking Horse Bidder and each Qualified Bidder shall appear at the Auction in person, or through a representative who provides appropriate evidence of such person's authority. Only a Qualified Bidder that submitted a Qualified Bid and the Stalking Horse Bidder shall be entitled to make bids at the Auction.

Prior to the Auction, the Debtor will share with all Qualified Bidders the highest and best bid received at the Bid Deadline (each, a "Baseline Bid"). Qualified Bidders will be permitted to

revise, increase, and/or enhance their bids at the Auction based upon the terms of the Baseline Bid. All Qualified Bidders will have the right to make additional modifications to their Modified APA or the Stalking Horse APA, as applicable, at the Auction.

The Auction will be conducted in rounds and in any order the Debtor determines. At the end of every round, the Debtor shall declare the highest and best bid at that time for the Assets. Each Qualified Bidder shall have the right to continue to improve its respective bid at the Auction. The initial minimum overbid shall be the Baseline Bid plus \$100,000 (the “Initial Overbid”). Thereafter, a Qualified Bidder (including the Stalking Horse Bidder) may increase its Qualified Bid in any manner that it deems fit; provided, however, that each subsequent bid above the Initial Overbid (each, a “Subsequent Overbid”) must have a purchase price that exceeds the purchase price of the previous highest bid by at least \$100,000 of additional consideration in terms of net value to the Debtor. For any Initial Overbid or Subsequent Overbid, the Stalking Horse Bidder shall receive a credit for the Break-Up Fee and its then current good faith estimate of the Expense Reimbursement

The Initial Overbid and Subsequent Overbids must continue to meet each of the criteria of a Qualified Bid (other than the requirement that such bids be submitted by the Bid Deadline), including a purchase price that includes the Minimum Cash Overbid Amount. The Debtor reserves the right to approach any Qualified Bidder and seek clarification to bids at any time.

The Auction will continue until the Debtor determines, subject to Bankruptcy Court approval, that they have received the highest and best offer for the Assets (a “Successful Bid”) and the next highest and best Qualified Bid for the Assets as the next highest and best offer for the Assets (each, a “Reserve Bid”). The Qualified Bidder submitting the Successful Bid shall be the “Successful Bidder” and the Qualified Bidder submitting the Reserve Bid shall be the “Reserve Bidder.” Within 24 hours of identifying any Successful Bidder and Reserve Bidder, the Debtor shall file a notice with the Bankruptcy Court identifying such parties.

The Debtor reserves the right, in its business judgment, to make one or more modifications and/or adjournments to the Auction to, among other things: (i) facilitate discussions between the Debtor, on the one hand, and individual Qualified Bidders, on the other hand; (ii) allow individual Qualified Bidders to consider how they wish to proceed; and (iii) give Qualified Bidders the opportunity to provide the Debtor with such additional evidence as the Debtor in its reasonable business judgment may require. To the extent the Auction is canceled or postponed, the Debtor shall file a notice with the Bankruptcy Court.

X. The Sale Hearing

At the Sale Hearing, the Debtor will seek entry of an order authorizing and approving the sale to the Successful Bidder and, on a contingent basis, the Reserve Bidders. No later than **January 3, 2017, at 4:00 p.m. (prevailing Central Time)**, all objections to the relief requested at the Sale Hearing shall be filed and served in the manner prescribed in the notice of the motion to approve the sale of the Assets. No later than **January 5, 2017, at 10:00 a.m. (prevailing Central Time)**, all objections solely with respect to events at the Auction shall be filed and served in the manner prescribed in the notice of the motion to approve the sale of the Assets.

In the event no Qualified Bid is received, the Debtor reserves the right to request that the Bankruptcy Court advance the date of the Sale Hearing and provide notice of such new date to those parties in interest entitled to notice thereof.

The Sale Hearing may be adjourned or rescheduled from time to time.

XI. Failure to Consummate Purchase

Following the Sale Hearing, if the Successful Bidder fails to consummate the closing of the sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtor will be authorized, but not required, to consummate the sale with the Reserve Bidder without further order of the Bankruptcy Court. In such instance, the defaulting Successful Bidder's deposit shall be forfeited to the Debtor. Additionally, the Debtor shall be entitled to seek all available damages from the defaulting Successful Bidder.

XII. Return of Deposit

The deposits of the Successful Bidder shall be applied to the Successful Bidder's obligations under the Successful Bid upon closing of the transactions contemplated thereby. If a Successful Bidder fails to close the transactions contemplated by the Successful Bidder then such Successful Bidder shall forfeit its deposit.

The deposit of the Reserve Bidder shall be returned to the Reserve Bidder upon the closing of the transaction to the Successful Bidder; provided, however, that if a Successful Bidder fails to close the transaction when and as provided in the Successful Bid, then the deposit of the Reserve Bidder shall be applied to the Reserve Bidder's obligations under the Reserve Bid upon closing of the transactions contemplated thereby. If a Reserve Bidder fails to close the transactions contemplated by a Reserve Bid, then such Reserve Bidder shall forfeit its deposit.

All other deposits of Qualified Bidders who are not the Successful Bidder or the Reserve Bidder shall be returned within three (3) business days after the conclusion of the Auction. The Debtor reserve all of its rights regarding any return of deposits, and the failure by the Debtor to timely return any deposits shall not serve as a claim for breach of any Qualified Bids or create any default in favor of any Qualified Bidders.

XIII. Modification of Bid Procedures

Upon prior notice to the Stalking Horse Bidder, the Debtor may amend any non-material terms of these Bid Procedures, in its reasonable business judgment, at any time in any manner that will best promote the goals of the bidding process, including but not limited to extending or modifying any of the dates described herein, except as otherwise provided for herein.

December 19, 2016

Respectfully submitted,

/s/ Gene L. Humphreys

Paul G. Jennings

Gene L. Humphreys

Bass, Berry & Sims PLC

150 Third Avenue South, Suite 2800

Nashville, TN 37201

Tel: (615) 742-6267

Fax: (615) 742-2767

pjennings@bassberry.com

ghumphreys@bassberry.com

Proposed Counsel for Debtor

20802549.6