

**Exhibit B**

**Bidding Procedures**

## **Bidding Procedures**

Foamex International Inc. ("**Foamex Inc.**") and its debtor subsidiaries (collectively, the "**Debtors**") and MP Foam DIP LLC, Delaware limited liability company ("**MP Newco**") executed an Asset Purchase Agreement, dated as of March 25, 2009 (the "**APA**"). The APA contemplates the sale of all or substantially all of the assets of the Debtors (the "**Purchased Assets**") to MP Newco and the assumption by MP Newco of certain liabilities of the Debtors (the "**Assumed Liabilities**") pursuant to section 363 of chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). The proposed transaction is subject to approval by the United States Bankruptcy Court for the District of Delaware ("**Bankruptcy Court**"). In connection with execution of the APA, the bidding procedures set forth herein (the "**Bidding Procedures**") were approved by order of the Bankruptcy Court dated April 7, 2009 (the "**Bidding Procedure Order**").

The provisions of the APA shall be referred to herein as the "**MP Newco Bid.**"

## **The Bidding Process**

The Bidding Procedures set forth herein describe, among other things, the assets available for sale, the manner in which prospective bidders may gain access to due diligence materials concerning the Purchased Assets, the manner in which bidders and bids become Qualified Bidders (as defined below) and Qualified Bids (as defined below), respectively, the receipt and negotiation of bids received, the conduct of any Auction (as defined below), the ultimate selection of the Successful Bidder and Successful Bid (each as defined below), and the Court's approval thereof (collectively, the "**Bidding Process**").

Neither the Debtors nor their representatives shall be obligated to furnish any information of any kind whatsoever to any person who is not a Qualified Bidder (defined below). The Debtors, after consultation with MP Newco, shall have the right to amend the rules set forth herein for the Bidding Process in writing, which, in the Debtors' reasonable business judgment, will better promote the goals of the Bidding Process (other than to extend the Bidding Process beyond the Final Date (as defined below)) so long as such changes are not inconsistent with the APA or any Bankruptcy Court order, including the Bidding Procedures Order.

## **"As Is, Where Is"**

The sale of the Purchased Assets will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Debtors, their agents, or estates, except, with respect to the MP Newco, to the extent set forth in the APA or, with respect to a Successful Bidder (as defined below), to the extent set forth in the relevant purchase agreement of such Successful Bidder approved by the Bankruptcy Court.

## **Free Of Any And All Claims And Interests**

All of the Debtors' right, title, and interest in and to the Purchased Assets, or any portion thereof, to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, the "**Claims and Interests**"), such Claims and Interests to attach to the net proceeds of the sale of

such Purchased Assets, except, with respect to the MP Newco, to the extent otherwise set forth in the APA or, with respect to a Successful Bidder, to the extent otherwise set forth in the relevant purchase agreement of such Successful Bidder.

### **Participation Requirements**

Unless otherwise ordered by the Bankruptcy Court, for cause shown, in order to participate in the Bidding Process each person (such person or entity, a "**Potential Bidder**"), other than MP Newco, must

- (i) deliver, unless previously delivered, to counsel to the Debtors at the addresses provided below an executed confidentiality agreement in form and substance satisfactory to the Debtors (to be delivered prior to the distribution of any confidential information by the Debtors to such person); and
- (ii) be deemed by the Debtors, after consultation with their legal counsel and financial advisors, to be reasonably likely to be able to fund and complete the consummation of their proposed transaction on terms no less favorable in the aggregate than the MP Newco Bid and within the time frame acceptable to the Debtors (but not materially in excess of the time frame currently contemplated by the MP Newco Bid) if selected as the Successful Bidder (defined below).

As promptly as practicable, the Debtors will determine and will notify both the interested person and MP Newco, if such person is a Potential Bidder

### **Due Diligence**

The Debtors may in their reasonable business judgment, and subject to competitive and other business concerns, afford each Potential Bidder such due diligence access to the Purchased Assets as the Debtors deem appropriate, after consultation with their counsel and financial advisors. Due diligence access may include management presentations as may be scheduled by the Debtors, access to electronic data rooms, on site inspections, and other matters which a Potential Bidder may reasonably request and as to which the Debtors, in their reasonable business judgment, may agree. The Debtors will designate an employee or other representative to coordinate all reasonable requests for additional information and due diligence access from Potential Bidders. The Debtors may, in the exercise of their reasonable business judgment, extend a Qualified Bidder's time to conduct due diligence after the Bid Deadline (as defined below) until the Auction; *provided, however*, the Successful Bidder and Alternative Bidder shall be permitted to continue to conduct due diligence until closing of the sale; *provided, further however*, that the Qualified Bid submitted by any such Qualified Bidder shall not be subject to further due diligence as provided below. The Debtors may, in their reasonable business judgment, coordinate diligence efforts such that multiple Potential Bidders have simultaneous access to due diligence materials and/or simultaneous attendance at management presentations or site inspections. The Debtors anticipate that they will post substantially all written due diligence provided to any Potential Bidder to the Debtors' electronic data room. Neither the Debtors nor

any of their affiliates (or any of their respective representatives) will be obligated to furnish any information relating to the Purchased Assets to any person. The Debtors make 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 APA or the definitive purchase agreement with any Successful Bidder.

Each Qualified Bidder shall be deemed to acknowledge and shall represent in any definitive agreement, that it has had an opportunity to inspect and examine the Debtors' businesses and to conduct any and all due diligence prior to making its offer, that it has relied solely upon its own independent review, investigation, and/or inspection of any documents in submitting its Bid, and, that it 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 Debtors' businesses or the completeness of any information provided in connection with the Bidding Process.

### **Bid Deadline**

A Potential Bidder that desires to make a Bid (as defined below) must deliver written copies of its offer, via hand delivery or overnight mail, to (i) Foamex Inc., Rose Tree Corporate Center II, 1400 N. Providence Road, Suite 2000, Media, PA 19063, Attn: Andrew Prusky, (ii) Akin Gump Strauss Hauer & Feld LLP ("**Akin Gump**"), counsel for the Debtors, One Bryant Park, New York, New York 10036, Attn: Stephen Kuhn and Brian Geldert, (iii) Houlihan Lokey, 225 S. Sixth Street, Suite 4950, Minneapolis, MN 55402, Attn: Jonathan Cleveland, and (iv) Lowenstein Sandler, PC, counsel for the statutory committee of unsecured creditors appointed in the Debtors' chapter 11 cases, 65 Livingston Avenue, Roseland, New Jersey 07068, Attn: Sharon L. Levine, so that the offer is *actually received* by 5:00 p.m. prevailing Eastern Time on Friday, May 15, 2009 (the "**Bid Deadline**"). Akin Gump shall promptly provide MP Newco with a copy of any Bids received by the Debtors, by electronic mail and by overnight mail, c/o MatlinPatterson Global Advisers LLC, 520 Madison Avenue, 35th Floor, New York, New York 10022, Attn: Mark Palmer (palmer@mpasset.com) and Greg Ethridge (ethridge@mpasset.com), with a copy to Bracewell & Giuliani, 1177 Avenue of the Americas, New York, New York 10036, Attn: Robb Tretter (robb.tretter@bgllp.com).

The Debtors, after consultation with MP Newco and subject to the APA terms limiting any such extension, may extend the Bid Deadline once or successively, but are not obligated to do so. If the Debtors extend the Bid Deadline, they shall promptly notify all other Potential Bidders of such extension.

### **Qualified Bid Requirements**

A proposal received from a Potential Bidder that meets the following requirements is a "**Qualified Bid**":

- (i) is received by the Bid Deadline (as may be extended, as described below);
- (ii) provides for the purchase of all or substantially all of the Purchased Assets by the Potential Bidder;

(iii) provides for payment or assumption of all or substantially all of the Assumed Liabilities (as defined in the APA)

(iv) provides for value of not less than \$1,000,000 above the value provided by MP Newco pursuant to the APA after taking into account the Break-Up Fee (as defined in the APA) in the amount of \$2.0 million and Reimbursable Expenses (as defined in the APA) of up to \$2.5 million, in the aggregate (collectively, the "**Bidding Incentives**");

(v) includes a copy of a definitive purchase agreement in form and substance similar to the APA signed by an authorized representative of such Potential Bidder in addition to a marked copy of such agreement to reflect the bidder's modifications to the APA;

(vi) is not subject to any due diligence or financing conditions, board or other approval (excluding customary regulatory approval that would follow the execution of definitive documentation for such a transaction);

(vii) is accompanied by a cash deposit of not less than \$10,000,000 (the "**Required Deposit**");

(viii) includes written evidence of an unconditional commitment for financing (by a credit worthy bank or financial institution that shall provide such financing without alteration of conditions or delays) or other evidence of ability, as determined in the reasonable business judgment of the Debtors, to consummate the transaction;

(ix) is reasonably likely (based on availability of financing, antitrust or other regulatory issues, experience, and other considerations) to be consummated if selected as the Successful Bid within a time frame acceptable to the Debtors and not materially in excess of the timeframe currently contemplated by the MP Newco Bid;

(x) is irrevocable until the earlier of (x) thirty (30) days after the Bankruptcy Court authorizes and approves the Successful Bid and (y) the closing date of the transaction with the Successful Bidder or Alternative Bidder (as defined below); and

(xi) provides for the Bidding Incentives and all obligations under the DIP Credit Agreement to be paid in full in cash in accordance with the terms of the DIP Credit Agreement and the APA, respectively.

A Potential Bidder that makes a Qualified Bid is referred to herein as a "**Qualified Bidder**".

Whether the Bid of a Qualified Bidder meets the foregoing requirements to become a Qualified Bid shall be determined by the Debtors, in their reasonable business judgment. The Debtors shall notify MP Newco promptly if they determine any Potential Bidder is a Qualified Bidder. MP Newco is a Qualified Bidder.

The Debtors, in their reasonable business judgment, may reject any proposal that is on terms that are more burdensome or conditional than the terms of the APA, entitles the Potential Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment

that is not in conformity with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure or the Local Rules of the Bankruptcy Court, or is contrary to the best interests of the Debtors.

A Qualified Bid shall be valued based upon various factors including, without limitation, the net value provided by such proposal, timing and amount of any consideration received, and the likelihood and timing of consummating such transaction. The APA executed by MP Newco is a Qualified Bid for all purposes. Unless otherwise waived by the Debtors in writing, the Debtors will consider a Bid only if the Bid is accompanied by (i) the Required Deposit; and (ii) written evidence of a commitment for financing or other evidence of ability to consummate the transaction.

### **No Qualified Bids**

If the Debtors do not receive any Qualified Bids other than the APA received from MP Newco, the Debtors shall (i) report the same to the Bankruptcy Court, (ii) declare MP Newco the Successful Bidder, and (iii) proceed with the sale pursuant to the terms of the APA without conducting an Auction and without further motion.

### **Auction**

If at least one Qualified Bid, other than the MP Newco Bid, has been received, the Debtors shall conduct an auction (the "**Auction**") on Tuesday, May 19, 2009, at the offices of Akin Gump, One Bryant Park, New York, New York 10036, at 10:00 a.m. (prevailing Eastern Time), or such later time or other place as the Debtors shall notify all Qualified Bidders. Only MP Newco and Qualified Bidders who have timely submitted Qualified Bids shall be eligible to attend the Auction and only MP Newco and the Qualified Bidders shall be entitled to make any subsequent Qualified Bids at the Auction. No Bids shall be considered by the Debtors unless a party submitted a Qualified Bid and participates in the Auction. At least two (2) business days prior to the Auction, each Qualified Bidder who has submitted a Qualified Bid must inform the Debtors whether it intends to participate in the Auction. Houlihan Lokey will distribute a copy of each Qualified Bid to each Qualified Bidder as soon as practicable after receipt but in any event before the Auction.

The Debtors shall evaluate all Qualified Bids received and shall determine which Qualified Bid reflects the highest or best offer for the Purchased Assets (the "**Starting Auction Bid**"). The Debtors shall announce the Starting Auction Bid at the commencement of the Auction.

The minimum initial overbid and any subsequent overbids must be in increments of at least \$500,000 in cash consideration, or such lesser amount as the Debtors shall announce from time to time at the Auction, until the Debtors declare a winner. MP Newco shall have the right to credit the Purchaser DIP Claim pursuant to section 363(k) of the Bankruptcy Code or the Bidding Incentives toward any Bid made by it at the Auction. Other bidders shall have the right to credit their secured claims as and to the extent set forth in section 363(k) of the Bankruptcy Code.

The Debtors, after consultation with their counsel and financial advisors, may employ and announce at the Auction additional procedural rules that are reasonable under the

circumstances (e.g., the amount of time allotted to make subsequent Bids) for conducting the Auction, provided that such rules are (i) not inconsistent with the APA, these Bidding Procedures, the Bankruptcy Code, or any order of the Bankruptcy Court or of any other applicable court entered in connection herewith and (ii) disclosed to each Qualified Bidder at the Auction.

At the conclusion of the Auction, the Debtors shall, in consultation with their legal and financial advisors, (i) review each Qualified 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 Qualified Bid and (ii) identify the highest and best bid (the "**Successful Bid**") and the bidder making such Bid (the "**Successful Bidder**"). In determining the Successful Bidder, the Debtors shall include the Purchaser DIP Claim and the Bidding Incentives (as applicable) in MP Newco's bid. The Debtors shall promptly seek confirmation that such Qualified Bidder is the Successful Bidder and that such proposal is the Successful Bid at a hearing to be held before the Bankruptcy Court within three (3) business days of the conclusion of the Auction.

### **The Sale Hearing**

A hearing is presently scheduled to take place on Thursday, May 21, 2009 at 3:00 p.m. (prevailing Eastern Time) (the "**Sale Hearing**"). At the hearing, the Debtors shall seek entry of an order, among other things, authorizing and approving the proposed transaction (i) if no other Qualified Bid is received and accepted as the Successful Bid, with MP Newco pursuant to the terms and conditions set forth in the APA or (ii) if a Qualified Bid is received and accepted by the Debtors, to the Successful Bidder, as determined by the Debtors in accordance with the Bidding Procedures, pursuant to the terms and conditions set forth in the Successful Bid. The Sale Hearing may be adjourned or rescheduled at the Debtors' reasonable business judgment; *provided* that the Sale Hearing shall not be adjourned or rescheduled beyond the Final Date, unless otherwise agreed to by the Debtors and the agent and the lenders under the Debtors' DIP Credit Agreement. The Debtors shall notify all relevant parties of such adjournment or rescheduling in an appropriate manner, including by an announcement of the adjourned or rescheduled date at the hearing.

If the Debtors receive Qualified Bids in addition to the MP Newco Bid, then, at the Sale Hearing, the Debtors will seek approval of the Successful Bid, and, at the Debtors' election, the next highest or best Qualified Bid (the "**Alternate Bid**" and, such bidder, the "**Alternate Bidder**"). The Debtors' presentation to the Bankruptcy Court of the Successful Bid and, if applicable, the Alternate Bid will not constitute the Debtors' acceptance of either of such Bids, until such Bids are approved by the Bankruptcy Court at the Sale Hearing. Following approval of the sale to the Successful Bidder, if the Successful Bidder fails to consummate the sale for any reason, then the Alternate Bid will be deemed to be the Successful Bid and the Debtors will be authorized, but not directed, to effectuate a sale to the Alternate Bidder subject to the terms of the Alternate Bid of such Alternate Bidder without further order of the Bankruptcy Court. The Alternate Bid shall remain open until the earlier of (a) thirty 30 days following the entry of the Sale Order or (b) the consummation of the sale to the Successful Bidder (the "**Alternate Bid Expiration Date**").

Should the Bankruptcy Court approve a Bid other than the MP Newco Bid as the Successful Bid, the Bidding Incentives shall be paid to MP Newco within five (5) business days after such sale closes. The Bidding Incentives shall constitute an administrative expense priority claim of the Debtors' estates under sections 503(b)(1)(A) and 507(a) of the Bankruptcy Code.

All deposits, including the Deposit Amount of MP Newco, but excluding the deposits of the Successful Bidder and Alternative Bidder (which, in the case of the deposit of the Alternative Bidder, shall be returned within three (3) days of the closing of a sale to the Successful Bidder), shall be returned to Qualified Bidders (including MP Newco unless it is the Successful Bidder or Alternative Bidder) within three (3) days after the date of the Auction. The Debtors shall be required to maintain deposits in a non-interest bearing account. Required Deposits may only be used in accordance with the provisions of these Bidding Procedures. Neither the Debtors nor MP Newco shall have any liability with respect to any deposit of others. If a Successful Bidder fails to consummate an approved sale on terms which would allow the Debtors to retain such Successful Bidder's deposit under the relevant purchase agreement between the Debtors and such Successful Bidder, the Debtors will not have any obligation to return the Required Deposit of such Successful Bidder, and such Required Deposit will become property of the Debtors' estates.

#### **Reservation Of Rights**

The Debtors reserve their rights, in the exercise of their fiduciary obligations, after consultation with their counsel and financial advisors in their reasonable business judgment, to (a) determine which Qualified Bid, if any, is the highest or otherwise best offer, (b) reject, at any time, any bid (other than MP Newco's initial bid) that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or any other orders applicable to the Debtors, or the terms and conditions of the sale or (iii) contrary to the best interests of the Debtors, their estates, and stakeholders as determined by the Debtors in their reasonable business judgment, and (c) modify the Bidding Procedures (after consultation with MP Newco), including, without limitation, (1) extending any of the deadlines set forth above for the Bidding Process; *provided* that no deadline shall extend or cause the Bidding Process to extend beyond fifteen (15) days prior to the Stated Maturity Date under the Debtors' DIP Credit Agreement (the "**Final Date**") unless otherwise agreed to by the Debtors and the agent and lenders under the Debtors' DIP Credit Agreement, (2) modifying bidding increments, other than the overbid requirements set forth in section (iv) of the paragraph titled "Qualified Bid Requirements", (3) with the consent of the Successful Bidder or MP Newco, as the case may be, adjourning the Auction at the Auction and/or adjourning the Sale Hearing in open court without further notice; *provided* that no such adjournment may extend the Auction beyond the Final Date, (4) withdrawing from the Auction the Purchased Assets at any time prior to or during the Auction or (5) canceling the Auction, and rejecting all Qualified Bids if, in the Debtors' business judgment, in consultation with its financial advisors, no such bid is for a fair and adequate price.

Notwithstanding the forgoing and subject in all respects to the APA and the Debtors' fiduciary duties, (a) the Debtors may not impair or modify MP Newco's rights and obligations under the APA or MP Newco's right to credit the Bidding Incentives and MP Newco's claims under the Debtors' DIP Credit Agreement as part of any Bid at the Auction or otherwise or (b) in the event the Debtors (i) elect to withdraw from the Auction the Purchased Assets, (ii) cancel the Auction, and/or (iii) reject all Qualified Bids, the Debtors shall, subject to the initial provision of



this paragraph, nonetheless be obligated to request at the Sale Hearing that the Bankruptcy Court approve the APA with MP Newco.