

**RICHTER**  
EVOLUTION OF EXCELLENCE

# **Effigi Inc.**

## **Request for Proposals**

**March 20, 2013**





# **Section I**

## **Introduction**

# Introduction



Richter Advisory Group Inc. (“**Richter**”) in its capacity as trustee (“**Trustee**”) to the bankruptcy of Effigi Inc. (the “**Company**”) and/or on behalf of an eventual receiver in respect of the Company (the “**Receiver**”) is soliciting bids for the purpose of:

- Selecting an agent, on an exclusive basis, to assist in the liquidation of:
  - inventory located at the Company's nine retail store locations (“**Closing Stores**”) and in its distribution center (“**DC**”); as well as
  - Furniture, Fixtures and Equipment (“**FF&E**”) located at the Closing Stores, the Company's head office (“**HO**”) and DC;(the Closing Stores, HO and DC are collectively referred to as “**All Locations**”) through the conduct of "store closing" or similar theme sales (the "**Sale**") at All Locations;
- The acquisition of the Company's wholesale division or any part thereof, including inventory located at the DC, goods in transit (“**GIT**”) and current order book; and
- The acquisition of the Company's intellectual property (“**IP**”).

Potential interested parties may submit bids for all or part of the above-noted asset categories.

Through a virtual data room maintained by Richter, each Bidder who has executed and returned the required Confidentiality Agreement will be provided certain select financial information concerning the above-noted asset categories.

Requests for additional financial information and site visits should be directed to Andrew Adessky, (aadesky@richter.ca 514.934.3513 ) or Gilles Benchaya (gbenchaya@richterconsulting.com 514.934.3496).

PARTICIPATION BY A BIDDER AND SUBMISSION OF A PROPOSAL IN THIS PROPOSAL SOLICITATION PROCESS IS EXPRESSLY SUBJECT TO THE TERMS AND CONDITIONS OF THE CONFIDENTIALITY AGREEMENT SIGNED BY SUCH BIDDER AS WELL AS COMPLIANCE WITH THE TERMS AND PROVISIONS OF THIS REQUEST FOR PROPOSALS. THE TRUSTEE AND THE RECEIVER RESERVE THE RIGHT TO ACCEPT OR REJECT ANY AND ALL PROPOSALS AND EXCLUDE ANY BIDDER FROM ANY FURTHER PARTICIPATION IN THE PROPOSAL SOLICITATION PROCESS.



# **Section II**

## **Request For Proposals**

# Request For Proposals



All proposals must: (a) conform to each and every one of the requirements outlined herein (subject to such compliance, as may be determined in the discretion of the Trustee or the Receiver) and (b) be received, in writing by e-mail, no later than 2 p.m. (EST) on Sunday, March 24, 2013 (the "**Proposal Deadline**"). It is the present intention to only consider proposals that arrive on or before the Proposal Deadline, and which conform to the terms and provisions of this proposal solicitation.

Proposals must be marked as "Strictly Confidential" and delivered **by e-mail** on or before the Proposal Deadline as follows:

## **Richter Advisory Group Inc.**

**Andrew Adessky, CPA, CA, MBA, CIRP**

**T.: 514.934.3513**

**E.: [aadessky@richter.ca](mailto:aadessky@richter.ca)**

**F.: 514.934.3504**

**Gilles Benchaya, CPA, CA**

**T.: 514.934.3496**

**E.: [gbenchaya@richterconsulting.com](mailto:gbenchaya@richterconsulting.com)**

**F.: 514.934.3504**

Richter shall determine which of the proposals constitutes the highest and best proposal received (the "**Accepted Proposal**"). The Accepted Proposal shall form the basis of an Agency Agreement ("**Agency Agreement**") and/or an Asset Purchase Agreement ("**Purchase Agreement**"), both to be negotiated between the Trustee and/or the Receiver and the Successful Bidder immediately following its acceptance.

Richter reserves the right, in its discretion, to accept or reject all proposals, or any components of a bidder's proposal or to seek clarification or enhancement of a bidder's Proposal.

# **Section III**

## **Selected Terms and Conditions**

### **On Which Bidders Should Submit Proposals**

# Selected Terms and Conditions on Which bidders Should Submit Proposals (cont'd)



## Purchase Bids

1. The aggregate Cost Value of the Wholesale Merchandise subject to the Sale will be determined based on a SKU-based physical inventory count ("**Inventory Taking**") to be conducted by an independent outside inventory service ("**Inventory Taking Service**") to be mutually selected by the Trustee and/or Receiver and the Bidder within one week of closing. Fifty percent (50%) of the costs of the Inventory Taking Service shall be an "Expense" of the Sale payable by the Bidder. The Trustee and/or Receiver and the Bidder may each have their employees or representatives present at each Test Location to observe and test the physical counting, and review and test the listing, tabulation and pricing of the Merchandise. proposals should include an estimate of the costs associated with the Inventory Taking.
2. Bidder shall arrange to remove at its own cost and expense all merchandise within one week following the inventory count or alternatively, Bidder may request that it occupy the DC for an agreed upon period of time so long as it shall assume all related operating costs including rent, operating and labor costs. In the event the Bidder wishes to occupy the DC, the Trustee and/or Receiver shall have the option of requiring the removal of all Wholesale Merchandise from the DC upon reasonable notice.
3. In respect of any GIT acquired, Bidder shall be responsible for all costs including the cost value of the inventory, duty, transport, brokerage, storage, etc.
4. The successful acquirer of the Company's IP shall allow for the IP to be used at no cost, for a period of one year to enable the sale of the inventory (including GIT), the order book and the fixed assets.
5. The successful acquirer of the Company's IP shall incur all costs associated with the transfer of the IP to the successful acquirer.

# Selected Terms and Conditions on Which bidders Should Submit Proposals



## Agency Bids

Any Bidder who desires to submit a proposal to serve as the Trustee's or the Receiver's exclusive agent to conduct the Sale at the Closing Stores, should ensure that its proposal(s) conforms to the following guidelines.

1. The Bidder submitting the Accepted Proposal shall be allowed to conduct the Sale as a "store closing", "sale on everything" or similar theme sale at the Closing Stores consistent with the terms of an Agency Agreement to be executed between the successful Bidder and the Trustee and/or the Receiver. The Agency Agreement shall set forth the terms and conditions of the agency relationship.
2. All proposals should include payment to the Trustee and/or the Receiver:
  - a) a minimum guaranteed amount ("**Guaranteed Amount**") as well as any other amounts to be shared between the Trustee and/or the Receiver and the Bidder; and
  - b) an initial up front amount equal to not less than 90% of the estimated Guaranteed Amount (such amount being determined by reference to the aggregate Cost Value of the merchandise on the Sale commencement date, as reflected in the Company's books and records).
3. Bidders will be required to furnish one or more irrevocable standby letter(s) of credit to the Trustee and/or Receiver for an amount not less than the remaining unpaid portion of the estimated Guaranteed Amount.
4. All proposals must be presented as a percentage of the "Cost Value" of the merchandise subject to the Sale, to be defined in the Agency Agreement.
5. Proposals may also provide an alternative fee proposal based on net proceeds generated through the Sale.



# Selected Terms and Conditions on Which bidders Should Submit Proposals (cont'd)



6. The aggregate Cost Value of the merchandise subject to the Sale will be determined based on a SKU-based physical inventory count ("**Inventory Taking**") to be conducted by an independent outside inventory service ("**Inventory Taking Service**") to be mutually selected by the Trustee and/or Receiver and the successful Bidder. Fifty percent (50%) of the costs of the Inventory Taking Service shall be an "Expense" of the Sale payable by the Bidder. The Trustee and/or Receiver and the Bidder may each have their employees or representatives present at each Test Location to observe and test the physical counting, and review and test the listing, tabulation and pricing of the Merchandise. Proposals should include an estimate of the costs associated with the Inventory Taking.
7. Proposals should provide that the Bidder is unconditionally responsible for all "Expenses" incurred in conducting the Sale. Sale-related Expenses shall expressly include the costs associated with the transfer of merchandise from (and between, where applicable) the Stores. Bidders will also be required to furnish one or more irrevocable standby letter(s) of credit to the Trustee and/or Receiver for an amount equal to not less than three (3) weeks' estimated Expenses.
8. Richter presently projects that the successful Bidder will be given undisturbed possession of the Closing Stores on or about March 28, 2013 and that inventory at cost will be approximately **\$14MM** (of which approximately **\$10MM** is located in the DC). Such inventory values are subject to prior sales which may be made by the Company, the Trustee and/or the Receiver. Bidders should specify in their bids their proposed Sale term for consideration by the Trustee and/or Receiver.
9. Sales completed between the sale commencement date and the completion of the Inventory Taking at each particular Closing Stores (the "**Gross Rings Period**") shall be recorded and accounted for under the "gross rings" method, inclusive of a shrink adjustment of 1.5% of the Cost Value of the Merchandise sold during the Gross Rings Period applicable to each of the Closing Stores.
10. The successful Bidder shall be required to provide the Trustee and/or Receiver with not less than 10 days advance written notice ("**Vacate Notice**") of its vacating of a Closing Store (as to each such Closing Store the "**Vacate Date**"). A bidder's obligations to pay all Expenses, including "Occupancy Expenses", for each Closing Store subject to a Vacate Notice shall continue until the Vacate Date for such Closing Stores.
11. The successful Bidder shall utilize the Company's existing point-of-sale system for recording all sales of goods in the Closing Stores to insure accurate sales audit functions, as well as accurate calculations of the Recovery Amount, if any.

# Selected Terms and Conditions on Which bidders Should Submit Proposals (cont'd)



12. The Successful Bidder may use the Company's trade name and logo type in connection with advertising and promotion of the Sale; provided, however, the form and content of all advertising and promotional material is subject to the Trustee's and/or Receiver's prior approval, which approval shall not be unreasonably withheld or delayed.
13. Bidders' proposals may also include a proposal for the right to "augment" the Merchandise at the Closing Stores with additional goods procured by the Bidder. Any proposal which includes an augmentation component should also clearly identify the amount of any additional consideration to be received by the Trustee and/or Receiver in consideration of its permitting the Successful Bidder to augment the Merchandise as part of the Sale.
14. Each Bidder may also include as part of its proposal an offer to assist the Trustee and/or Receiver in its disposition of the Company's owned FF&E located in the Closing Stores. Each such proposal should conform to the following:
  - a) The Successful Bidder will exercise normal and prudent care of cash registers and all other store equipment, office equipment, fixtures, furniture, etc. at the Closing Stores all of which shall remain the property of Company;
  - b) Each Bidder may include in its proposal a proposed fixtures disposition fee, which fee should be calculated based upon a percentage of net recoveries thereon by the Trustee and/or Receiver; and
  - c) At the election of the Trustee and/or Receiver, the Successful Bidder will sell such fixtures and other store equipment owned by the Company during the course of or after the conclusion of the liquidation sale, if so requested by the Trustee and/or Receiver.
15. Richter is also prepared to consider a purchase proposal for the FF&E. Any Bidder who desires to make such a proposal should include all pertinent terms thereof in its initial proposal.
16. Unless otherwise provided in any Court order, the bidders shall comply in all material respects with the terms and provisions of any leases and other occupancy agreements for any of the Closing Stores, as well as federal, provincial, and local laws, ordinances, rules and regulations and with terms of any licenses or permits obtained.

# Selected Terms and Conditions on Which bidders Should Submit Proposals (cont'd)



17. Bidders should provide for an employee incentive bonus plan for those Company employees to be utilized in connection with the Sale. The amount of the incentive being offered to retained employees, and the timing of payment, should be set forth with specificity in the proposal.

## **Additional Conditions**

18. All bids must also be made for the benefit of, and be open for acceptance by the Trustee and/or Receiver.

19. Any Accepted Proposal, will be subject to the approval of the Company's first ranking secured operating lender and the Court.

AS NOTED ABOVE, RICHTER RESERVES THE RIGHT TO ACCEPT OR REJECT ANY OR ALL PROPOSALS SUBMITTED IN RESPONSE TO THIS REQUEST FOR PROPOSALS AND/OR WITHDRAW ANY OR ALL OF THE CLOSING STORES AT ANY TIME IN ITS DISCRETION PRIOR TO EXECUTION OF A DEFINITIVE AGREEMENT.

Any requests for additional information or clarification of the matters addressed herein shall be directed to Richter Advisory Group Inc.

Yours truly,

**Richter Advisory Group Inc.**

Trustee to the bankruptcy of Effigi Inc.