

Windward Advisors, LLC

What's the Harm in Selling My Business to a Company that Contacts Me, Unsolicited, Indicating an Interest in Acquiring My Company?

The answer to that question may be “none”. However, for the savvy business owner, the method for determining just how serious a buyer may be is to engage in a formal sale process. This newsletter addresses a common occurrence we have witnessed, in which many owners, when approached by an unsolicited party, jump at the opportunity to directly negotiate with the one party to sell their company. While it may seem as an acceptable strategy, the reality is that owners selling their companies in this manner almost always fail to realize the full value for their businesses. Contrast this approach to that of a public company where accountability rests with the Board and management to make the best decisions on behalf of its shareholders. Rarely would a public company ever sell a company or division without a formal process. So why then are private business owners more inclined to do so?

Because of accountability to others public companies need to ensure, and be able to demonstrate, that they have exhausted possibilities to obtain the highest and best value for its investors. Private companies, on the other hand, where the primary owner(s) are generally accountable only to themselves without any formal oversight, and where they are accustomed to making all of the major business decisions do not feel that same sense of need or, fail to understand their alternatives.

While it can be perceived as flattering to receive an unsolicited offer for one's company, private business owners would be well advised to ask themselves a series of questions prior to taking any offer seriously. For example:

- Why is this party interested in my business?
- What knowledge do they have of my company?
- What knowledge do I have of them?
- What are their intentions with my company, people, etc?
- Are they culturally compatible?
- Will I have an on-going role in the business, and/or do I want an on-going role and ownership?
- Are they a legitimate buyer with the necessary resources to consummate a transaction?
- If this party is interested; are there others that may have a greater interest?
- Who will be responsible for deal term negotiations, information requests, protect confidentiality, oversee due diligence, and negotiate the purchase agreement?

- What demands will be made of my people and what kind of distractions will this transaction impose on my company?
- How much information is it appropriate to share on my business, employees, customers, suppliers and operations, and at what time?
- *How do I know that the offer I am receiving is competitive in terms of price and terms?*

Although some of the questions may be able to be answered in part, or in full, the last question can not be answered without soliciting other offers. The variation in offers can be surprisingly wide when a larger universe of potential acquirers is included.

Case Study:

A company that was sold in a formal auction process several years ago, in which materials were drafted, a potential buyer's list developed and a structured sale of the business conducted, had the following results. Each potential acquirer received the exact same information and materials and offers were solicited with strict directives and deadlines for submissions. As is normally the case, the offers varied widely resulting in a bell curve of proposed values. At the lower end of the bell curve were offers at low values. In the middle of the curve, where most offers generally appear, offers were received that reflected more of a "textbook" type of valuation and approach. At the upper end of the bell curve, however, offers were received that were clearly much higher than all others - and this is of course where the attention was focused. *To add some relevancy, the range of values in this situation ranged from \$67 to \$100 million.*

What then, gives rise to this variance and range of values? The reasons can be many, including timing, the status of the capital markets and internal availability of capital, availability of staff to pursue acquisitions, competing projects, the degree of strategic fit with long term plans, etc. They can also be influenced by strategic initiatives including a desire for product, customer, or geographic expansion and diversity, or even as a defensive maneuver. *The fact is, you will probably never really know what the drivers may be for potential acquirers in any given situation and thus the need to have as broad a process as possible to ensure the best possible results.*

In the above situation and in addition to the wide range in values, there were also structural differences in terms of payment and other terms that needed to be analyzed and compared. In this situation, when the deal was finally agreed and the party chosen, the offer that suited the best interests of the seller resulted in a transaction at a value of \$87 million with a 7% retained equity interest. *In this scenario, had the low bidder been an unsolicited and accepted offer a \$33 million, or almost a third of the value received, would have been left "on the table."*

In the example above the impact of running a formal sale process is obvious. Having said that, however, there is no reason why a party who has indicated an unsolicited interest in acquiring a company may not be included on the potential buyer's list in a formal sale process.

The fact that a company receives an unsolicited offer is indicative that the company may be of interest to others, and in certain situations a formal process may be managed in which the party making the unsolicited offer could be provided a brief opportunity in which to make an offer that would be considered pre-emptive.

To date, however, our experience has indicated that unsolicited parties provided an opportunity to submit pre-emptive offers seldom render the party that ultimately acquires the business. *A formal sale process helps ensure that:*

- The seller's have the opportunity to review alternatives and options with various parties and can be selective in choosing the best offer that meets their needs and provides the most acceptable value,
- The company does not disclose highly sensitive information until such time as is necessary to commence formal diligence, and then only to the most attractive potential buyer chosen and after a formal letter of intent has been formally accepted,
- The knowledge of the competitive process helps ensure negotiating leverage for the seller,
- The seller and its management are insulated from managing a sale process and can remain focused in managing and running the business and,
- **The competitive process helps ensure that the highest and best values and terms are received.**

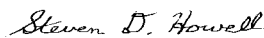
If you, or someone you know, has been approached on an unsolicited basis and is considering a possible absent running a formal process, we would strongly encourage you, or them, to reconsider their options and would be pleased to have the opportunity to discuss the merits in more detail. *While there are fees for managing a sale process, it can pale in comparison to the value that may be left behind!*

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