

# AHERN ADVISORY

## The Due Diligence Process

Over the last several weeks, I've received numerous telephone calls and emails from sellers indicating that;

- "I've received a letter of intent."
- "I don't know how the process works."
- "Can you help me?"
- "What is the cost associated with such assistance?"

My typical response; are you sure this is a legitimate offer? Are you sure that the buyer has the financial ability to purchase your business? Are you sure that, at the end of the day, you are going to receive full payment?

I'm amazed how many times a seller is contacted by an "alleged buyer";

- That buyer is introduced by a third party.
- The third party validates that the buyer has the financial ability to acquire the seller;
- The buyer asks for a substantial amount of financial and operational data, but;
- The seller does not ask for financial information to support that the buyer has the financial ability to do the deal.

### Rule #1:

- If you don't know the Buyer;
- If you're not familiar with the company;
- If it's a "private investor", confirm that they have the funds available to purchase your business.
  1. Ask for a personal financial statement.
  2. Ask for a corporate financial statement.
  3. Ask for a letter of credit from a bank.

However, if you ask for a letter of credit from a bank, be very careful that you review the wording so you're able to determine that the buyer is not going to leverage your assets to do the deal.

Recently, I was approached by a personal friend who asked me if it was ok to ask a buyer for that type of information? Yes! That is your responsibility, your obligation and that's part of your due diligence process.

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Accredited Member  
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Consultants Inc.

March 28, 2011

**If you're dealing with a public company or a well known private carrier, that's been in business for years, these types of questions are not as material as when you're dealing with an unknown commodity or unknown intermediary and they're requesting a substantial amount of information without validating the Buyers ability to perform; ask questions!**

1. Who is the Buyer?
2. What is their financial ability/prove it, and;
3. Their previous trucking expertise.

**Don't be caught up in a scam; it happens and you need to be cautious.**

**Assuming that you receive a legitimate letter of intent, you need to assemble your own due diligence team that should consist of:**

- An accountant that understands the tax ramifications;
- A law firm that has been extensively involved in transportation deals, and;
- A transportation expert to walk you through what to release, when to release and the deal structure.

**Don't go to your local attorney, that's never sold a trucking or logistics company and expect him to be able to handle your deal.** He/she may be the kindest and nicest person in the world, but they don't have the expertise or the knowledge to get this type of deal done. **That doesn't mean they're not a good attorney or that they're not knowledgeable in the law,** but what you need to look for is;

- Deal makers, not deal breakers!
- The same is true for an accountant or transportation analyst.

**It's important to understand that, as a seller, you must dictate to your representatives, what they are to do for you!**

- They should not negotiate on your behalf; but they should provide you with advise and direction.
- They should not provide you with negativity, but;
- They should provide you with an overview of your exposures, risks, and rewards.

**Many times deals fall apart because the lawyers or the accountants from both sides don't get along.** Many times, the people that were hired to get the deal done are the very people that are directly responsible for the deal falling apart.

**When you decide to sell your business, you need to look at it from an objective third party standpoint; you can't let your personal emotions get in the way of good judgment.** Recently, I received a telephone call from a friend, who I've known for a number of years. He indicated that;

- One of his clients decided to sell the business, and;
- His client elected not to utilize him for the sale of his business.

**As he started discussing the business, my comment was; you have no experience in that industry and I think your client made the right decision.** Initially, my friend got very mad at me. However, after further review, he indicated that I was probably right.

**For most of us, our business is our retirement account. For most of us, we've spent a number of years building up the business. We've gone through our highs and lows and now we want to receive a rate of return for our business.** The most important thing to do; once a purchase price has been established, and once you're ready to let go, is to assemble a team that is proactive – **a team that is going to get the deal done, not kill the deal.**

**In closing, I receive telephone calls every day from sellers indicating that:**

- I received a letter of intent.
- Can you help me?

**The answer: if you want some advice, I will be happy to provide it to you at a nominal fee. However, you must understand that I am going to look at the transaction from an independent third party position.** I will ask a lot of questions, I will want to make sure that the funding is available to do the deal, and I am going to want to make sure that the standstill agreement is not too long. **What you don't want to do is; be tied up for 180 days where you cannot talk to any third parties once you receive a letter of intent.** In most letters of intent, you should be able to close within 45 – 90 days (depending on the revenue size) from the time that a letter of intent is issued.

**In closing, do your own due diligence. Make sure that you have a legitimate buyer and make sure that you have a sound "team"** to assist you in getting the deal done. **Recognize that 60% - 70% of transportation deals are asset sales,** so be prepared to structure a deal in such a way that it will be a win situation for all parties.

**QUOTE OF THE WEEK:**

**"The person who believes in nothing but himself lives in a very small world"** (Author Unknown)