

# Unsolicited Offers: How Should Owners of Fire, Security, and Safety Companies Respond?

by Jim Mullens

There is a frequent question that Bundy Group receives from business owners in the fire, security, and safety market today: “I keep getting phone calls from buyers, and I am receiving unsolicited offers for my business. What should I do? Should I seriously entertain these unsolicited offers? Or, if I am going to talk to one, does it make more sense to hire Bundy Group and run a competitive process?”

Bundy Group wanted to analyze the key questions and unpack the positives and considerations of accepting an unsolicited offer versus running a competitive process managed by an investment banker.

## **Question: What is the common unsolicited offer situation?**

A buyer, which could mean a strategic buyer or a financial sponsor (i.e., private equity, family office, independent sponsor), already active in the fire, security, and safety industry approaches a business owner and expresses interest in acquiring or investing in the company. Usually after the owner provides some base level of company information (e.g., financials), the buyer then submits an offer known as a Letter of Intent (LOI), which will likely have an exclusivity provision in it. If the owner signs the LOI, which includes the exclusivity period, the owner cannot talk to any other buyer during that specified timeframe.

## **Question: Is this a formal Letter of Intent? Or is this really a preliminary Indication of Interest (IOI)?**

First, it is important to understand the difference between a Letter of Intent and an Indication of Interest.

### *Indication of Interest:*

- An offer and valuation provided based on partial, but not complete, selling company information.
- A buyer has committed minimal time and resources to this point as a means of hedging its bets until they have the owner under exclusivity.
- An IOI gives the owner an idea where a buyer might close a deal at in terms and value and structure, but there is a low degree of certainty that the buyer will actually close on those terms.

### *Letter of Intent:*

- The buyer has a strong understanding of, and experience in, the fire, security, and safety industry. Furthermore, the buyer can demonstrate its M&A track record in the sector.
- An offer that has “teeth” to it, meaning that the buyer has completed all critical due diligence regarding the company and is providing a well-educated offer. Critical due diligence is defined as a buyer’s assessment of such key company aspects as commercial and financial stability, growth opportunities, and strength of management. Critical due diligence is the deciding factor regarding if a buyer will 1) submit a Letter of Intent; 2) close on a transaction; and 3) close on a transaction based on the terms in the LOI.
- The buyer has demonstrated commitment to the opportunity without being under any form of exclusivity arrangement. This includes spending significant time reviewing company information, asking thoughtful questions, and committing buyer employees and resources to the opportunity.
- The risk of a buyer retrading on valuation and terms, or walking away from the transaction, is lower because the buyer only needs to complete confirmatory due diligence. Confirmatory due diligence involves the buyer and its transaction advisors reviewing financial information (tax returns, trial balances), legal-related matters (past, present, and future), and operations.

**Question: What do I do with this unsolicited offer?**

That is ultimately an individual choice for an owner, but there are many factors to take into account when deciding. Before outlining two avenues that can be pursued, it should be noted any owner has the option of turning the offer down and staying focused on the business and growth.

*Option I: Accepting the unsolicited offer*

**Positives:**

- Can potentially secure a closed deal and achieve valuation and walking-away-money goals.
- Possible to achieve these objectives in a relatively short timeframe.
- Avoid some transaction costs (e.g., investment banker, transaction accounting) by accepting the unsolicited offer.
- Avoid the time and effort required to run a competitive marketing process.

**Considerations:**

- Significant chances that owner is leaving money on the table.
- Probability of a buyer closing on the terms in the Indication of Interest / Letter of Intent are lower.
- Probability of a buyer closing on the transaction is lower.
- Owner will end up devoting the same time and resources in a non-solicited discussion as a full process...but just in different ways.
- The buyer has control of the discussions and the negotiating leverage, from beginning to end.

*Option II: Pursuing a competitive process instead of accepting the unsolicited offer*

The owner informs the unsolicited-offer-making buyer that he will be hiring an investment banker and will run a competitive process. It is a likely option for the buyer to participate in that process.

**Positives:**

- In a disciplined sales process, the seller is securing the negotiating edge. This process typically includes an Indication of Interest round, management meetings, and then a Letter of Intent deadline date.
- Any incremental deal costs should be

paid back to the seller multiple times over through value creation in the sale process.

- Competition fleshes out “the right answer for any owner, which means:
  - 1) value is optimized
  - 2) best fit is accomplished
- “Certainty to close” is higher in the transaction. Through this process, the owner will be selecting a buyer that has completed critical due diligence and stands a much higher probability of closing on the transaction and at the terms stated in the Letter of Intent.

**Considerations:**

- There can be more upfront costs (transaction accounting, investment banker) and time investment for an owner relative to the early phases of a non-solicited discussion.
- If the owner doesn’t hire an investment banker with a proven track record in the fire, security, and safety market, then the owner risks not achieving a better position relative to an unsolicited offer.
- There are no guarantees that by running a competitive process an owner is arriving at a better outcome.

**Question: Why hire an investment banker that is focused on the fire, security, and safety industry?**

- A quality industry-focused investment banker can pay for themselves, often multiple times over, by delivering significant value to the owner.
- The investment banker can help reduce time commitments by the management team by quarterbacking the sale process, vetting the buyers, managing buyer-seller conversations, and making this an arm’s length transaction.
- An investment banker with extensive experience in the fire, security, and safety industry will know the best buyers, the multiples that they can be pushed to pay in a competitive process, and what a diligence process will look like with those groups. In addition, these buyers know they will have reputational risk with that investment banker for future industry deals should they not put a good foot forward on the current deal they are evaluating.

- The investment banker can serve as an insurance policy in a process. This means that the certainty to close with an investment banker is higher and maintaining agreed upon terms is more likely. Should a buyer attempt to re-trade in price and/or terms, then the owner and his investment banker can exit the buyer from the process and select another buyer that has already been through the competitive process and that strongly desires the business.

**Summary**

An unsolicited offer can create a decision point for an owner. Accepting the offer could lead to a closed deal within a short timeframe. However, it could lead to a lot of heartburn and headaches (i.e., extended due diligence period, price re-trade, blown deal).

Tabling the unsolicited offer and pursuing a competitive process does require some more upfront commitment by the owner but increases the odds of a substantially better outcome. And, of course, the owner can elect to reject both paths and maintain full ownership of the business.

There is one final point that the Bundy Group team would provide on unsolicited offers. The buyer groups that are aggressively submitting unsolicited offers in the fire, security and safety market almost always hire investment bankers to then sell their portfolio companies and subsidiaries in a competitive process. Maybe that is a good indicator on the optimal path to take if you are an owner? ■

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