



PROFORMA PARTNERS

IN THE BUSINESS OF SELLING YOUR BUSINESS | SINCE 1987

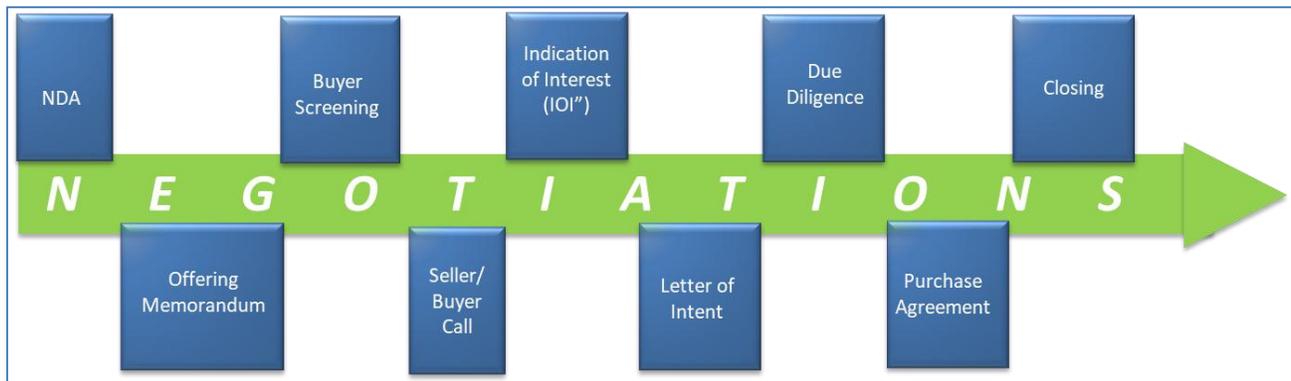
Acquisitions

Buyer Process Guide

The purchase of a business can take many forms, but this guide is designed to share a “typical process” for a smaller business (probably less than \$5mm purchase price +/-). Please bear in mind that, unless you have signed a written Buyer Agency agreement with us, Proforma Partners, LLC and all of its brokers, agents, or representatives represent the Seller.

It’s important to secure legal and accounting advice during the process of buying a business.

Buying A Business—High Level Process:



Inquiry and NDA

Once you identify one of our listings that is of interest, you will be asked to sign a “Non-Disclosure & Confidentiality Agreement.” It’s important that competitors, suppliers, employees, and customers, amongst others, not know about a potential sale. It can create unnecessary uncertainty that can harm the business. It’s important both ethically and legally to honor the “NDA.”

Initial Information

Once you sign the NDA, you will receive the book on the business commonly called an Offering Memorandum (“OM”) or Confidential Information Memorandum (“CIM”). The OM is a 20-40 page pdf document that shares significant, confidential details on the business such as history, operations, and financials.

Buyer Qualification

Prior to talking with the business owner, the Proforma Partners advisor will talk with you to ensure you understand the business, answer your initial questions, and that it has the potential to be a good fit. You may be asked to provide financials or a bank letter as well.



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Call With the Owner

Assuming it looks like a good fit, the Proforma Advisor will arrange a call with the owner so you can get the “first person story” on the business. Following the call, additional questions can be addressed and more detailed information, such as company prepared financial statements or tax returns can be provided.

Offers—“A Trust But Verify Process”

Once you’ve decided you’re interested and want to make an offer, the deal is a “trust but verify” process. You will make an offer based on the information provided to you up to that point.

Trust—the IOI and LOI

Indication of Interest

Your initial offer, often in the form of an *Indication of Interest* (“IOI”) will be based on trusting the initial information provided, such as the *Offering Memorandum* or *Confidential Information Memorandum*, company financial statements, tax returns, answering questions, and an initial introductory call with the owner. Your IOI letter would typically be very brief and is an informal, non-binding proposal. The IOI should contain at minimum:

- The value you are initially placing on the business.
- How you would structure the offer (all cash, request a seller note for a portion, etc.).
- How you would finance it (cash, bank financing, request a seller note, etc.).
- 4 or 5 top items of importance to you in the deal.

The goal is to ensure the parties are in agreement on the “big” things, such as price and deal structure, before investing excessive amounts of time and money in a more detailed effort that may involve CPA’s attorney’s etc. Naturally, you should consult such professionals at any point you deem appropriate.

Letter of Intent:

Following discussion around the IOI and agreement to major terms, the purpose of the LOI is to set the rules of the deal. The LOI terms will govern how the parties proceed with things such as due diligence, handle major contingencies such as financing, timelines for a binding purchase agreement draft, and the closing date goal. While an “IOI” might be a page or less in length, or even be a simple email outlining the proposal, the LOI will typically be 3-5 pages and provide the basis of major terms for the initial draft of the purchase agreement. The LOI itself will be non-binding regarding most provisions but does layout the “rules of the deal” that will be followed, typically until closing unless a binding purchase agreement is signed prior to that point. Negotiations can take place at each stage until closing.

In-person visits with the owner, if any, typically take place after the LOI is accepted. This is important to safeguard the business owner’s time and disruption until a potentially acceptable offer has been drafted.



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A binding “Purchase Agreement” may happen soon after the LOI as well depending on the process for a particular listing, or it may be signed closer to or at closing.

Buyer Profile

As part of your offer, be prepared to provide a profile of your qualifications including work or business experience and an indication of your financial capacity. Preparing a “Buyer Profile” is a good step for any buyer: your experience, financial capacity, and what you are looking for in a business.

You should also consider speaking with a lender early on to develop that relationship and understand their processes and qualifications for an SBA business and possibly real estate acquisition loan (“7a” and or “504”). Each deal can vary depending on your experience, available equity, collateral, and SBA loan limits and qualifications which can vary over time with changes in legislation or policies. The lender you work with is up to you, and talking with a couple or three different ones is advisable. A Proforma Partners advisor can suggest a lender referral as well. Often a lender has already looked at one of our clients with another buyer and may have helpful familiarity with the business. An advisor can also suggest legal or accounting referrals as needed.

Verify—Due Diligence

Once your offer is made and accepted via your LOI, that offer is subject to your satisfactory verification of the information you have trusted to get to this step. This is where you proceed with “Due Diligence” to take a deeper dive into the business prior to finalizing a Purchase Agreement (PA) and closing.

Review: Offer, Acceptance, Due Diligence, Closing

1. **Indication of Interest (IOI)** – This is the buyer’s initial proposal—a very high-level outline of a possible deal. It is based on the general information that was provided initially and does not obligate anyone to action.
2. **Letter of Intent (LOI)** – This is the Buyer’s more formal initial offer. Many buyers may start here rather than with an IOI. Most of its provisions are typically non-binding. It’s a good faith agreement between the parties to proceed towards the deal as outlined, but each provision is subject to additional negotiation by buyer or seller as the discovery process proceeds.
3. **Negotiations** – Your IOI or LOI may or may not be accepted; subject to negotiation.
4. **Agree to LOI**—Finalize Terms of the Deal and get agreement on the LOI. A typical LOI might be 3 – 5 pages. It may also have provisions for a commitment fee from the Buyer at some point in the process.
5. **Due Diligence**—This is where you get to ask for pretty much anything you want—within reason—to use to verify the information that got you to this point. Examples are tax returns, bank statements, payroll ledgers, major contracts, etc. The buyer may also choose to engage an outside accounting firm to help validate the financial information.



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6. **Prepare Purchase Agreement Draft**—At some point during due diligence, the Buyer’s draft of the formal binding offer and agreement, prepared by the Buyer’s attorney, will be provided to the Seller. Additional negotiation will occur on the greater details in the PA. The PA may be 25+ pages with multiple exhibits—it represents EVERY aspect of what the deal and agreement is for the purchase transaction. Earnest money may be a part of this process if a commitment fee wasn’t part of the LOI.
7. **Financing**—All applications for financing should be in shortly after the LOI is executed. A Proforma Partners advisor will assist you if needed as you engage banks and stay actively engaged to support financing. Plan for a minimum 6-to-8 week process with your bank.
8. **Closing**—Once due diligence is complete, typically 30 – 60 days after the LOI is signed, financing is in place, and the Purchase Agreement has been finalized, closing can be scheduled. Generally, this is 8-10 weeks after the LOI is signed, though it can go slower or faster. The Seller’s Proforma Partners advisor will stay connected to you, your other advisors, and your bank to help ensure the pieces of the puzzle come together for closing.
 - a. **Ancillary Documents**—There are many additional documents to prepare and processes to be followed for closing. These are largely handled by the bank and attorneys. Once all final documents are complete, closing can occur, either in person, or, more often, virtually. There may be one or two documents that require a “wet signature.”
 - b. **Signing**—Once all documents are signed and reviewed by seller, buyer, and bank attorneys, proceeds are wired to the various parties.
9. **Attorney/Escrow Attorney**—Depending on the deal, it may close through a third-party attorney to ensure that all the “t’s” and “i’s” are appropriately crossed and dotted, or the parties’ respective attorneys may cooperate to take care of closing.

As it relates to IOI’s, LOI’s, PA’s and Due Diligence (DD), the timing of these parts of the process can vary. DD can take place under the LOI, with the PA executed later or even executed at or near closing, it just depends on the terms agreed to and the comfort level of the parties.

The parties pay their own expenses. Be sure you properly utilize CPA’s and Attorneys in your process. Trying to save a couple thousand dollars or more by *not using an attorney or CPA when you should can cost you many times that down the road.* You should never sign a Purchase Agreement that has not been reviewed by your attorney.

THIS OUTLINE IS A GENERAL BUSINESS PRINCIPLES GUIDE FOR EDUCATIONAL PURPOSES AND IS NOT INTENDED TO PROVIDE, OR SUBSTITUTE FOR, COMPETENT LEGAL, TAX, OR ACCOUNTING ADVICE.

IMPORTANT LEGAL NOTICE: Different brokerage relationships are available and can vary by state, but which typically include Buyer Agency, Seller Agency, or status as a Transaction Broker. PROFORMA PARTNERS, LLC AND ITS AGENTS REPRESENT THE SELLER AS A SELLER’S AGENT, unless specifically disclosed otherwise in writing.