

## BUSINESS WIND-DOWN: **THE AUCTION PROCESS**

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When a business nears the end of its life cycle, it will become necessary to wind-down operations and liquidate assets. Liquidating the “hard” assets may require conducting a sale through an auction process. This article provides a framework outlining the auction process, key considerations regarding the auction sale agreement, and items to be considered in the auction planning process.

The process of liquidating assets through an auction includes:

- Selecting an Auctioneer
- Negotiating an Auction Agreement
- Planning and Coordinating Pre-Auction Activities
- Conducting the Auction
- Post-Auction Settlement and Delivery

### SELECTING AN AUCTIONEER

Prior to searching for an auctioneer, the company should prepare a detailed description of assets to be sold, including any related liens. These assets can include personal property such as machinery and equipment, real property, inventory, receivables and intellectual property. A current or old appraisal with descriptions is the best starting point for the asset listing. Fixed asset registers from the accounting system typically lack the necessary information and are generally not useful. In the event there is not sufficient asset information available, a good auction firm will be able to quickly develop a usable inventory of assets to be sold.

To initiate the auction process, the company must locate a firm that will provide an organized process to market, inventory, prepare, sell and account for the assets. Most importantly, a qualified auctioneer will provide valuable input into what is the right type of sale process to be used and the type and duration of the marketing efforts.

References from industry, company financial and legal advisors, and bank representatives may be excellent sources for auctioneer referrals.

For a company that has industry-specific machinery and equipment, an auctioneer experienced in selling these types of assets is highly recommended. Knowledgeable auctioneers will be able to provide a fairly accurate opinion of recoverable value and how different sale processes will affect these values. They will also know how to reach potential buyers and provide a bidding vehicle to get them to participate in the sale. This will result in a competitive process that maximizes value.

A good auctioneering firm will be experienced in several types of sale methods including:

- 1) On-site auction with or without simultaneous web cast for on-line, real-time bidding
- 2) On-line auction where bids on sale items are received for a specified period of time
- 3) Liquidation/Private Negotiation/Private Treaty arrangements which are sales negotiated between the auctioneer and the buyer
- 4) Sealed Bid Sales

As the chart depicts below, each of these sale methodologies lend themselves to optimizing the sale value depending on the type and liquidity of the assets, the number of potential buyers and other factors.

### OPTIMUM SALE PROCESS VS. ASSET CHARACTERISTICS

	ASSET-DEGREE SPECIALIZED	NUMBER OF POTENTIAL BUYERS	ASSET LIQUIDITY	MARKETING / SALE TIME	MARKET POTENTIAL (**)
1) On-site auction	Low	High	High	Short	Narrow
2) On-line auction	Low	High	High	Short	Narrow
3) Liquidation/Private Negotiation/Private Treaty	High (*)	Low (*)	Low	Longer	Narrow
4) Sealed Bid Sales	High	Low	Low	Limited time available	Broad

(\*) Limited current need/demand, however, need could arise/increase over time (and value may increase over time)

(\*\*) Range of potential selling price

To prepare an accurate and effective proposal, the auction firm will need to inspect the assets to be sold. After the inspection is complete, the proposal can be prepared and typically includes the recommended sale process(es), marketing approaches, time and budget, and commission structure.

The costs identified in the proposal may vary in amount from firm to firm. While cost is one factor, the following criteria will generally be the differentiating factors in the final decision.

- 1) Diversity of sales methods & technology and related experience
- 2) Experience in the sale of the type of assets, industry and product knowledge
- 3) Reputation / success record
- 4) Internal vs. external marketing staff
- 5) Financial stability



## NEGOTIATING AN AUCTION AGREEMENT

Before the final selection of an auctioneer, it is important to understand the terms and conditions stipulated in the auction proposal and the proposed auction agreement. Typically, auction terms will:

- Identify the sale process(es) to be used
- Document who is responsible, and at what amounts, for:
  - o fee structure, guaranteed sale or outright sale to auction firm
  - o establishing how sale price minimums are applied to assets being sold (reserves), if any, will be handled
  - o up-front costs such as promotion and marketing, travel, etc.
  - o costs associated with auction preparation, including prepping, organizing, binning, grouping of assets, bin identification/tagging
  - o costs incurred in facilitating the auction, such as seating, sound system, internet, signage, etc.
  - o costs and responsibilities associated with collecting and accounting for sale proceeds
  - o costs and responsibilities associated with asset disconnect, shipping preparation and removal
  - o disposition of unsold assets
- Specify dates and time the auction will be held (based on an assessment of what timing is right for the seller and potential purchasers)
- Identify the type of access required by the auctioneer pre- and post-auction, and what seller resources are needed (e.g. forklift, crane operator, mechanics, security and others)
- Define responsibility for lien clearance and payment of personal property taxes
- Define commission structure and who pays: Is it included in the auction sale price (Seller's Commission) and paid by the seller or added to sale price (Buyer's Premium) and paid by the buyer?
- Specify who controls the release of assets purchased and who is responsible for collection of payment from the buyer
- Identify payment terms for the buyer to the auctioneer, and from the auctioneer to the seller
- Define responsibility for recording the collection of deposits/final payments and auction-related disbursements
- Identify the dates and times available, as well as deadlines, for asset removal by purchasers
- Identify responsibility for utility disconnects, packaging/staging for shipment, and authority for the release of assets to buyers
- Additional terms such as responsibility for insurance coverage, indemnification, use of premises, and representation and warranties should also be addressed

### PLANNING AND COORDINATING PRE-AUCTION ACTIVITIES

As mentioned above, the company will prepare a list of assets to be included in the auction. Company-owned assets versus leased assets versus assets with liens must be identified. Leased assets may be sold with the lessor's written approval along with a consignment agreement. A UCC search should be performed to determine any liens that may exist. For assets that have liens, negotiations with the lien holder will be necessary. Cure amounts may need to be determined with the creditor along with an agreement allowing for the sale of the asset(s) and terms and conditions specifying the requirements for removal of the lien. Also, a review of the personal property tax bills and payments should be performed as these potential liens will not be identified by the UCC search. The auction company should perform these tasks as normal operating procedures.

The auction firm should be responsible for the organized grouping and tagging of assets to be offered for sale. In addition, the auctioneer will be responsible for the preparation of the catalog and promotional material. The auctioneer will promote the auction, notify potential buyers of the time and place of the auction define on-site and on-line auction rules and provide other information necessary for the fair and successful execution of the auction.

The assets need to be secured and protected from damage. The company and auction firm need to coordinate responsibility and costs related to securing the facility. Locks and security codes should be changed. If the facility is unoccupied, security guards or other precautions maybe necessary.

In preparation for auction day, the following logistical issues must be planned:

- Communications, sound systems, and stage for presentation
- Accommodation for internet bidding
- Posting of auction rules and procedures
- Buyer parking, entrance and registration
- Security of cash received during the auction
- Implementation of cash procedures to record the individual transactions
- Food and beverage, if needed
- Establishment of policies and responsibilities for payment and release of assets to purchasers

### CONDUCTING THE AUCTION

Most activities on auction day will be managed and controlled by the auctioneer. Company personnel may be required for some of the logistical items planned for above. Company personnel should be on site to assist the auctioneer with facility- related issues, monitor the auction process, and provide support where needed.

### POST-AUCTION SETTLEMENT AND DELIVERY

At the conclusion of the auction, the company or auctioneer will coordinate with the purchasers for removal of the sold assets. Utility disconnection, de-rigging, packaging, and loading of the assets will require coordination with each buyer. Receipt of full payment and written authorization for the release of purchased assets should be required prior to the issuance of a bill of sale and release of assets to the purchaser.

### SUMMARY

Once the decision to liquidate some, or all, of a company's assets is made, planning for a sale is critical to ensure maximum value for the stakeholders. While the company may have alternative sale methods available, the use of an experienced auctioneer should be explored.

Each company will have its own specific needs and objectives underlying the decision to sell assets. In certain situations, the sale of assets through the auction process may be the best alternative. For further assistance with understanding of, and planning considerations for, the auction process, please contact Scott Smith at HYDRA Professionals, LLC (248-766-0885) or Robert Levy at Hilco Industrial, LLC (248-254-9999)



#### ABOUT HYDRA PROFESSIONALS

*HYDRA is a premier business advisory firm to companies in transition across multiple industry sectors. HYDRA's Certified Turnaround Professionals have helped more than 100 companies stabilize their operations, fortify their balance sheets and work out long-term solutions with their customers and creditors. HYDRA specializes in identifying significant opportunities to improve businesses and developing and implementing solutions to achieve positive results. HYDRA is based in Farmington Hills, Michigan. [www.hydraprof.com](http://www.hydraprof.com)*

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#### Hilco Industrial

#### ABOUT HILCO INDUSTRIAL ("HILCO")

*Hilco is one of the most successful firms of international industrial auctioneers, liquidators and appraisers in the world. Hilco specializes in accurately valuing, and converting idle capital equipment into cash through a multitude of creative sales methodologies and disposition channels including Auction, Liquidation, Private Treaty and Sealed Bid Sales. Hilco provides its clients with a turnkey asset liquidation solutions and financial arrangement that suits their tolerance for risk by providing fee based, guaranteed minimum and outright purchase options.*

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*Since May of 2004, Robert has acted as President and Partner of Hilco Industrial, LLC. Hilco maximizes value for clients through the creative marketing and sales program. Hilco is currently handling the liquidation of Motors Liquidation Co., f/k/a General Motors, OldCarco, LLC, f/k/a Chrysler, LLC, and Automotive Component Holdings.*

*Prior to Hilco, Robert Levy was the CEO of Norman Levy Associates. Norman Levy Associates became the largest and most respected firm of its kind, auctioning and valuing billions of dollars-worth of assets. As CEO of the global organization, Robert Levy pioneered asset management technologies designed to increase efficiencies, maximize returns and increase return on investment. Clients included middle market and Fortune 500 Companies in aerospace, automotive, telecom, finance and other industries and governmental entities.*

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