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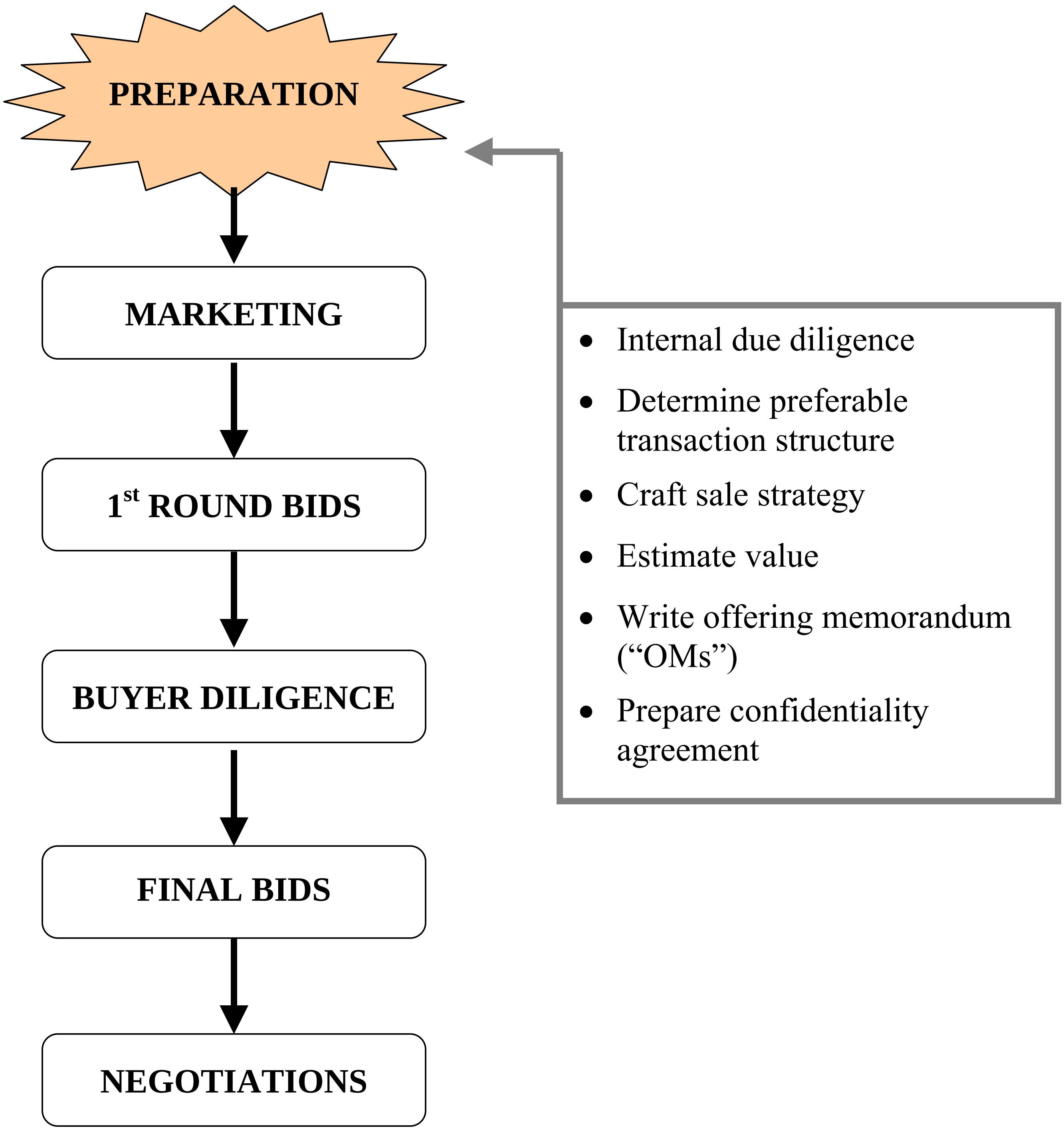
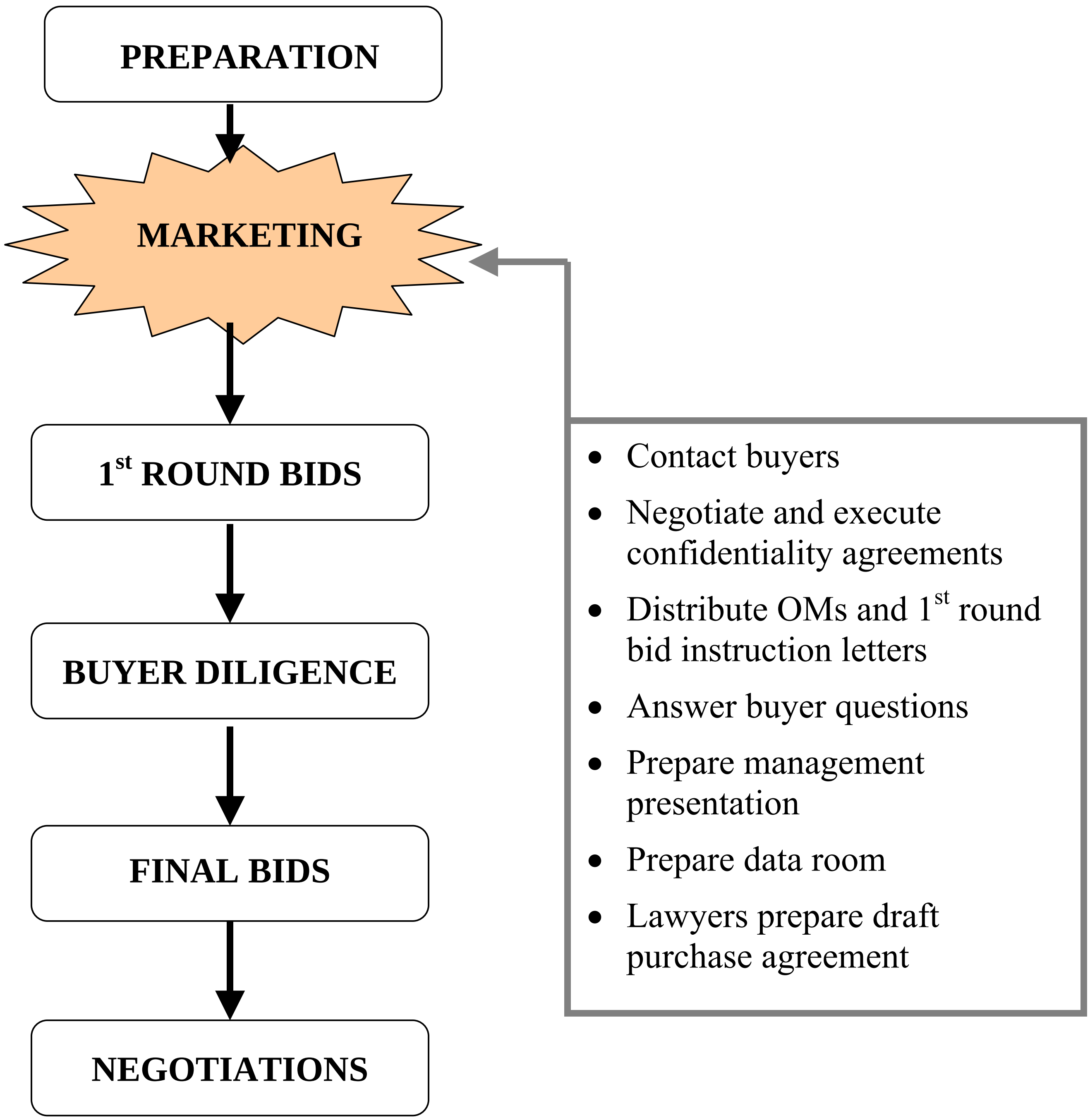
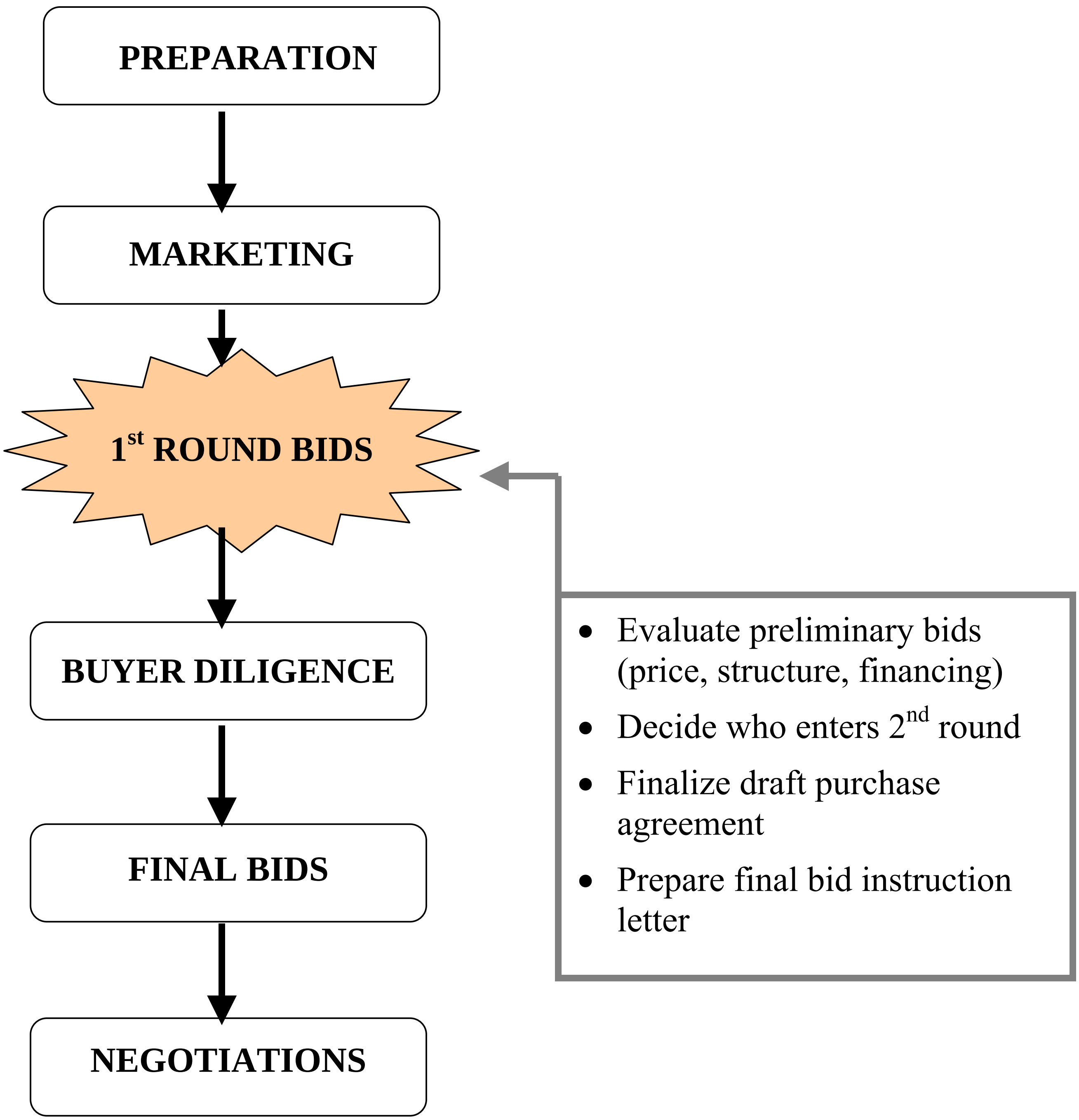
PREPARATION: FIND ANSWERS TO POTENTIAL ISSUES



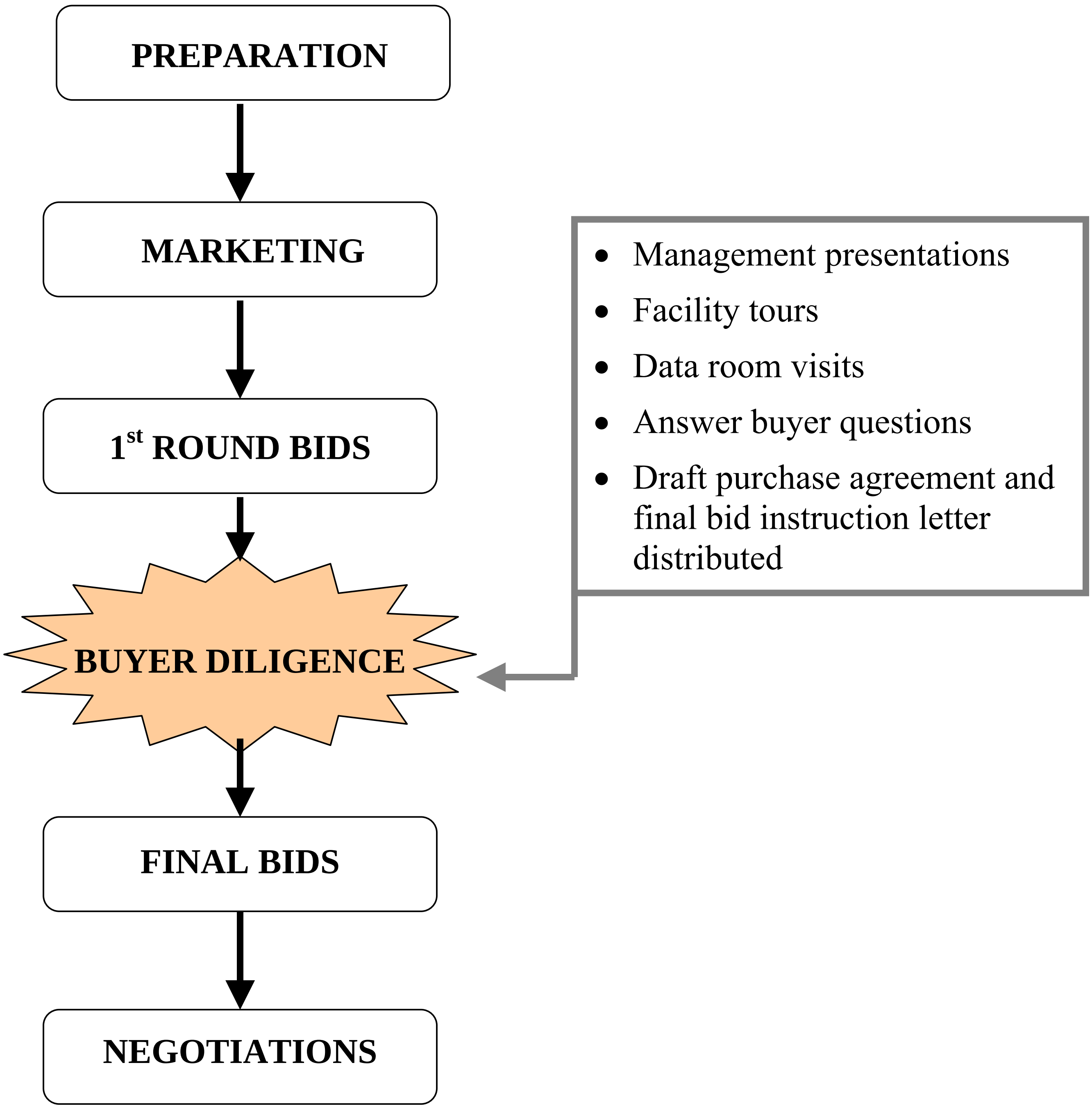
MARKETING: CREATE EXCITEMENT



1ST ROUND BIDS: PICK LIKELY FINISHERS



BUYER DILIGENCE: MANAGEMENT TELLS THE STORY



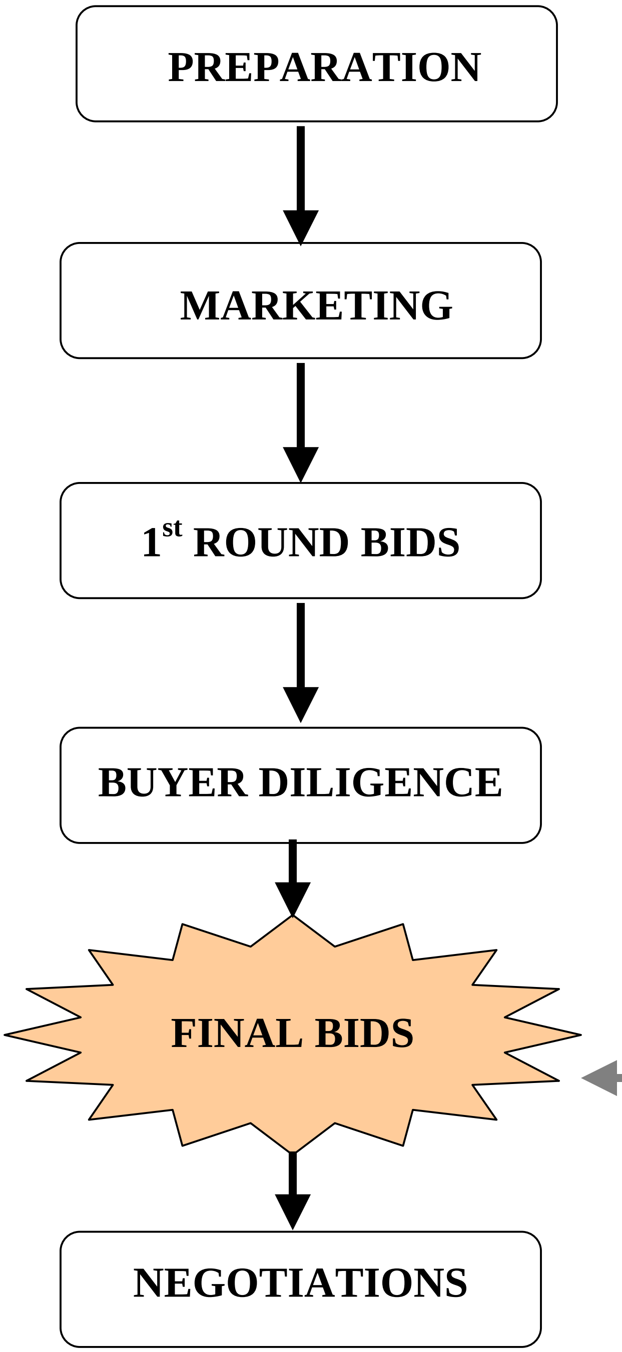
WHAT IS A TYPICAL DATA ROOM?

- The Data Room generally includes target company internal corporate governance, legal, operating, financial, human resource and environmental documents.

- The Data Room is typically assembled by the Seller or its legal counsel and is often located at the Seller's offices or the law firm.

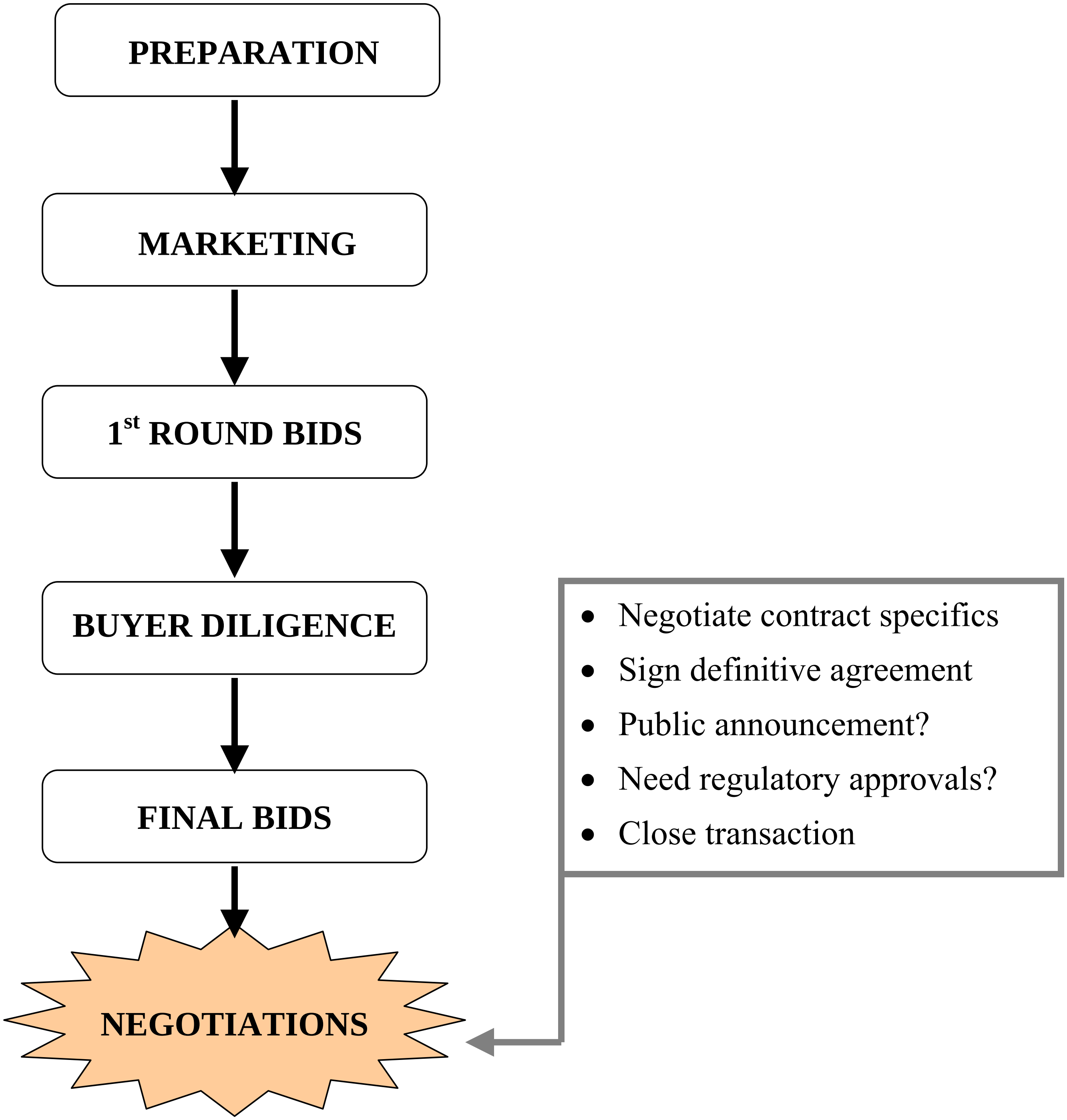
- Methods now exist to place the Data Room securely online.

FINAL BIDS: AND THE WINNER IS…



- Evaluate final bids (price, structure, financing requirements, contingencies)
- Refine bids, if necessary
- Review mark-up purchase agreement
- Do you trust the buyer? Have they secured financing?
- Select the winner

NEGOTIATION: NUMEROUS ISSUES TO RESOLVE



SELL-SIDE STRATEGY

Customize the sales process to fit the specifics of the situation

- Number of potential buyers
- Confidentiality limitations
- Potential for operational disruption
- Complexity of story
- Timeframe limitations

SALES PROCESS ALTERNATIVES

	Public Auction	Controlled Auction	Targeted Solicitation	Negotiated Sale
Typical # of Potential Buyers	20+	5 – 20	3 – 7	1 – 3
Disclosure	OM – public disclosure	OM – no public disclosure	Management presentation only	No formal materials
Bidding Procedures	2-step process	2-step process	1-step process	Early exclusive negotiations
Typical Timeframe	6+ months	6+ months	5+ months	3+ months

FACTORS TO SUCCESS

- Process is the foundation of a successful sell-side assignment
  - Quality of Information
  - Information dissemination
  - Confidentiality
- However, process is not the sole determinant of a successful sale
  - Intangible factors (managing the client)
  - Strategic factors (auction strategy)
  - Target performance
  - Negotiating skills

VALUATION CRITERIA

- ► General Economic Outlook
- ► Nature and History of the Industry
- ► Nature and History of the Company
- ► Earnings Capacity
  - Normalized Earnings
  - Historical and Projected Earnings

SALE PROCESS FACTORS AFFECTING VALUE

- ► Selling the "opportunity"
- ► Near-term financial estimates are "in the bag"
- ► Realistic long-term projections
- ► Understanding the buyer's synergies
- ► Integrity of the process
- ► Timely and complete information flow
- ► Anticipating buyer issues: having answers
- ► Flexibility – process does not equal formula
- ► Surprises – time typically not on the seller's side

SALE CONTRIBUTIONS

- ► Terms & conditions
- ► Should the deal be an asset sale, a stock sale, or a merger? A stock sale with an Internal Revenue Code Section 338(h)(10) election?
- ► The choice of deal structure usually affects buyer and seller differently (and may well have an impact on deal pricing), so deal structure negotiations are best handled at the earliest stages.
- ► In the "typical" middle-market M&A deal, there are three main factors driving the choice of deal structure: (1) allocation of liabilities, (2) consents, and (3) tax considerations.

TERMS AND CONDITIONS

- ► Purchase price — upfront and/or earn-out?
- ► Purchasing assets or stock?
- ► Assuming all liabilities?
- ► Consideration — cash, stock, and/or seller note?
- ► Buyer funding — cash from balance sheet or borrowing? Lock-up period?
- ► Management retention?
- ► Extent of reps and warranties?
- ► Timing?

ALLOCATION OF LIABILITIES

- All else being equal, from an "allocation of liabilities" standpoint, a buyer of a company will prefer an asset deal.
- In an asset deal, a buyer assumes specific liabilities (either identified generally by category or specifically by creditor and/or amount), leaving the unassumed liabilities behind in the target.
- The seller, of course, would usually prefer a stock deal or merger where the buyer would purchase the equity of the target and inherit all of the liabilities of the target.
- A seller will argue that a buyer should be neutral on this issue, both because appropriate purchase price adjustments can be made up front for known liabilities, and also because the seller, in either a stock or asset deal, can provide warranties and indemnities with respect to unknown liabilities.
- The utility of this approach rests heavily on the credit-worthiness, going forward, of the seller — a risk that many buyers resist taking on (at least on an unsecured basis).
- Buyers should be wary, in an asset purchase, of relying too heavily on leaving behind the seller's unassumed liabilities. Some state courts have adopted a "*de facto* merger" doctrine to protect "innocent" third party creditors. Under certain conditions, the courts may treat the deal as a merger, and hold the buyer liable for all of the seller's liabilities, despite the terms of the parties' asset purchase agreement.

CONSENTS

- It is fairly common for contracts to prohibit assignment of the contract without the consent of the parties.However, contracts prohibiting direct assignment are sometimes silent on whether a "change in control" of a contract party is prohibited.Thus, unless state law otherwise dictates, the number of consents from a target's contract relationships may be less burdensome under a stock as opposed to asset transaction.While regulatory and governmental approvals are less likely to depend on whether an M&A deal is structured as a stock or asset deal, the tests, thresholds or standards for compliance with applicable filings or approvals may be impacted by the choice.

TAX CONSIDERATIONS

- Tax is often the most significant financial factor in determining M&A deal structure.
- The choice of structure for an acquisition or disposition involving U.S. taxpayers — whether individual shareholders or corporate taxpayers - will impact how the aggregate tax burden attributable to the deal is allocated among the various participants.
- Since that tax burden, in dollar terms, can often represent a material portion of the overall deal consideration, the choice of structure influences pricing.
- In general, M&A structures are either taxable or "tax-free" transactions.

TAXABLE TRANSACTIONS

- In a taxable transaction, the buyer purchases the assets or stock of the target, typically for cash, assumed debt and/or seller note, and the target and possibly the target shareholders will realize taxable gain or loss on the transaction.
- Often, an asset transaction is preferred by a buyer, as it will allow for a favorable "step-up" in the target's tax basis.
- However, U.S. tax laws also allow the parties in certain stock transactions to elect to have that transaction treated as an asset purchase for tax purposes - this election is often referred to as a "Section 338(h)(10) election."

"TAX-FREE" TRANSACTIONS

- Though normally referred to as "tax-free transactions" or "tax-free reorganizations," the second category of transaction may be most appropriately described as "tax deferred."
- These transactions must be structured consistently with very specific tax requirements to achieve the desired tax treatment.
- In such a transaction, generally the buyer acquires stock of the target in exchange for stock in the buyer; the transaction is a "tax-free exchange" resulting in no immediate gain or loss to the target or its shareholders.Instead, the shareholders "carry over" their basis in their old stock to the new stock and realize taxable gain or loss only on a taxable disposition of the new shares. The tax attributes of the target (including the tax basis of assets) remain unaffected.
- In such a case, the value of the target to the buyer would be less because greater taxes would be due on future company operations due to the lower tax basis.

MENKE M & A SERVICES

- Help determine best sale strategy
- Identify potential buyers
- Assist in creation of marketing documents
- Approach potential buyers
- Coordinate buyer due diligence process
- Request and negotiate Letters of Intent
- Advise in the selection of the final buyer
- Negotiate final terms and conditions