

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 7**

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Index No. 41294/1986

**In the Matter of the Liquidation of
MIDLAND INSURANCE COMPANY**

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**MIDLAND INSURANCE COMPANY
REQUEST FOR PROPOSALS AND
BIDDING PROCEDURES**

Pursuant to an order dated _____, 2009 (the “Plan Approval Order”), Eric R. Dinallo, Superintendent of Insurance of the State of New York in his capacity as Liquidator of the Midland Insurance Company, a New York insurance company in liquidation (the “Liquidator”), received from the Supreme Court of the State of New York, County of New York, IAS Part 7 (the “Receivership Court”) approval of a Plan of Liquidation (the “Plan”) under which the Liquidator is authorized to sell the assets of Midland Insurance Company (“Midland” or the “Company”). The Plan Approval Order approved a form of Purchase Agreement, Claims Servicing Agreement and Purchaser Reinsurance Agreement and other ancillary agreements attached to the Plan (collectively, the “Purchase Agreement”) and also approved this Request for Proposal and Bidding Procedures.¹

I. OVERVIEW

- (a) The Liquidator will conduct an offering process in which Qualified Bidders (as defined below) will submit Initial Bids (as defined below) until the time designated below.
- (b) The Liquidator will conduct an auction among certain selected bidders who have submitted acceptable Initial Bids at the time and place designated below.

II. BIDDING PROCESS

In order to complete the two processes described in Section I above, the Liquidator will:

- (a) contact and receive indications of interest from any person or entity potentially interested in purchasing the Company’s assets (each a “Potential Bidder”);
- (b) examine each Potential Bidder to determine whether, in the Liquidator’s sole discretion, the Potential Bidder has the financial strength and other pertinent qualifications relevant to the

¹ Capitalized terms which are used herein and not otherwise defined shall have the meaning ascribed to them in Appendix A attached to this Request for Proposals.

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consummation of the purchase and, ultimately, the success of the Plan; and, if so, enter into a confidentiality agreement with the bidder and qualify the bidder to begin due diligence investigations (each so qualified Potential Bidder is referred to herein as a “Qualified Bidder”);

(c) assist each Qualified Bidder in conducting its respective due diligence investigation of the assets and liabilities of the Company;

(d) accept bids from Qualified Bidders (the “Initial Bids”) until 5:00 p.m. (prevailing Eastern Time) on _____, 2009;

(e) based upon the Initial Bids, determine in his sole discretion which Qualifying Bidders will be permitted to participate in an auction of the assets of the Company (the “Auction”) (each bidder selected to participate in the Auction is referred to herein as an “Auction Bidder”);

(f) based upon the Initial Bids and negotiations with Qualified Bidders, determine the highest and best Initial Bid prior to the Auction;

(g) designate the highest and best Initial Bid as the opening bid (the “Opening Bid”) at the Auction to be held on _____ at _____:00 ____ p.m. (prevailing Eastern Time) at _____; and

(h) select the Highest Bidder (as defined below) and the Back-Up Bidder (as defined below) at the conclusion of the Auction and in his sole discretion seek confirmation of such bid from the Receivership Court immediately thereafter.

The steps outlined above are collectively referred to herein as the “Bidding Process.” Any person or entity who wishes to participate in the Bidding Process must provide the required evidence of financial strength and other pertinent qualifications and be designated a Qualified Bidder. Except as provided by applicable law or court order, neither the Liquidator nor his representatives shall be obligated to furnish any information of any kind whatsoever relating to the liabilities and assets of the Company to any person or entity who is not a Qualified Bidder and who does not comply with the participation requirements below.

III. PARTICIPATION REQUIREMENTS

(a) In order to obtain confidential information, a Potential Bidder must: (1) execute a confidentiality agreement (“CA”) in substantially the form attached hereto as Exhibit A, (2) provide financial and other information to be determined by the Liquidator that demonstrates that the Potential Bidder has the financial and operational resources to perform the obligations under the Purchase Agreement and the Plan, as well as a record of high ethical standards and conduct; such information to include, without limitation, audited and current unaudited financial statements, evidence of operational capability and requisite intellectual capital and biographical affidavits of the principals,² and (3) identify a legal entity that is, or will be, an insurance company or reinsurance company domiciled in the State of New York that will be the Purchaser under the Purchase Agreement. The CA and the financial information shall be delivered to: (i)

² If a Potential Bidder is comprised of a consortium of multiple entities, then this information may be needed for each participating entity.

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New York Liquidation Bureau, 123 William Street, New York, NY 10038-3889, Attn: John Pearson Kelly; and (ii) Bingham McCutchen, LLP, One State Street, Hartford, CT 06103, Attn.: Harold S. Horwich.

(b) If the Liquidator determines that a Potential Bidder is financially and otherwise qualified to properly perform the obligations under the Purchase Agreement and achieve the purposes of the Liquidation Plan, and such Potential Bidder has provided an executed CA, the Potential Bidder will become a Qualified Bidder and will be given access to a confidential data room that will contain detailed information about the Company's policyholder liabilities, the Company's investment assets, and the Company's reinsurance recoverables (collectively, the "Information"). The Liquidator reserves the right to restrict access to Information to any Qualified Bidder who may have a conflict of interest with the Company.

(c) Qualified Bidders who wish to submit Initial Bids shall comply with the requirements of Section IV below. The Initial Bid must include, among other items listed in Section IV, a mark-up of the Purchase Agreement with any changes in the terms of the Purchase Agreement that the Qualified Bidder wishes to propose and a completed copy of the Midland Bid Form in the form of Exhibit B.

(d) The Liquidator, in consultation with his professional advisors and other appropriate persons, will review the Initial Bids, and in his sole discretion will select a limited number of bidders to participate in the Auction ("Auction Bidders"). Prior to the commencement of the Auction, the Liquidator may select additional Auction Bidders. Based upon the Initial Bids and other criteria that the Liquidator deems appropriate, the Liquidator shall select a single Auction Bidder as the opening bidder in the Auction.

IV. REQUIREMENTS FOR AN INITIAL BID

An Initial Bid must:

(a) include a completed Midland Bid Form, a blank version of which is attached hereto as Exhibit B, including four elements to be provided by the Qualified Bidder:

- (1) The proposed Opt-In Guaranteed Percentage that the Qualified Bidder agrees to pay to Opt-In Holders with respect to their resolved Claims. The Opt-In Guaranteed Percentage will be multiplied by the amount of the Opt-In Holder's Allowed or Determined Claim to establish the guaranteed recovery for that Claim. The Opt-In Guaranteed Percentage may increase based on lower than anticipated Administrative Expenses, but in no event shall decrease.
- (2) The Purchaser's Fixed Profit and the Policyholder's Percentage or Multiple Policyholder's Percentages.
- (3) The amount that the Qualified Bidder proposes to establish as a reserve for unallocated loss adjustment expense for all Policyholder Claims (the "LAE Reserve").

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- (4) Amounts to be reflected on the opening balance sheet of the purchasing entity, including: (i) the amount to be established as capital and surplus of the purchasing entity as of the Closing Date, (ii) the proposed amount of Disputed Claim Reserve and (iii) the proposed amount of the Reinsurance Recoverables that the Qualified Bidder intends to reflect on the SAP financial statements of the purchasing entity as of the Closing Date for purposes of calculating Profit.
- (b) be accompanied by a Purchase Agreement marked to show the variations from the Purchase Agreement that are requested by the Qualified Bidder (the “Bidder’s Modified Purchase Agreement”) and affirm that the Qualified Bidder is prepared to enter into the Bidder’s Modified Purchase Agreement upon conclusion of the Auction;
- (c) affirm that the entity that will be entering into the Purchase Agreement as Purchaser and performing the Purchaser’s obligations under the Purchase Agreement is, and shall at all times be, an insurance company or reinsurance company domiciled in the State of New York, and shall state such entity’s NAIC Company Code Number (or provide proof that one has been applied for);
- (d) affirm that such Qualified Bidder is financially capable of capitalizing the Purchaser to consummate the transactions contemplated by the Bidder’s Agreement;
- (e) affirm that such Qualified Bidder has no regulatory constraints in consummating the transactions contemplated by the Plan and the Purchase Agreement;
- (f) be accompanied by a statement of all known actions, suits, proceedings or investigations of any kind pending or threatened against the Qualified Bidder or its officers or directors before any Governmental Authority, that, if adversely determined, might, either in any case or in the aggregate: (i) have a Material Adverse Effect or (ii) materially impair the right of the Qualified Bidder to consummate the transactions contemplated by the Plan and the Purchase Agreement, or (iii) result in any substantial liability not adequately covered by insurance for which adequate reserves are not maintained on the balance sheet of the Qualified Bidder in accordance with GAAP or SAP (as applicable), or for which adequate reserves are not maintained on the consolidated balance sheet of the Qualified Bidder.
- (g) affirm that such Qualified Bidder’s proposal to purchase the Company’s Assets on the terms indicated in its Initial Bid, including its proposal to enter into the Bidder’s Modified Purchase Agreement, is irrevocable until the conclusion of the Auction and expiration of the period described in Section IX below;
- (h) acknowledge that the Qualified Bidder does not request nor does the Initial Bid entitle such Qualified Bidder to any transaction or break-up fee, expense reimbursement, or similar type of payment unless the bid of such Qualified Bidders is selected as the Opening Bid (as defined below);
- (i) fully disclose the identity of each entity that will be participating with a Qualified bidder (“Participating Entity”) either by: (i) providing debt or equity financing to any Qualified Bidder, (ii) controlling (as defined in New York Insurance Law Section 1501) a Qualified Bidder, and the complete terms of any such participation, or (iii) performing the requirements of the Parent

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under the Parental Support Agreement.

- (j) confirm that the Qualified Bidder has completed all of its due diligence;
- (k) not contain any due diligence or financing contingencies of any kind;
- (l) state a projected closing date no later than ten (10) business days after the Sale Approval Order becomes a Final Order and all conditions precedent to the Purchaser's obligations to close shall have been fulfilled;
- (m) include evidence of authorization and approval from such Qualified Bidder's, and any Participating Entity's, board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Bidder's Modified Purchase Agreement; and
- (n) provide for an earnest money deposit equal to \$_____ (the "Deposit") to be made within five Business Days of notification that the Qualified Bidder has been selected as an Auction Bidder. The Deposit must be in the form of a wire transfer or a cashier's check from a major U.S. bank, or other good funds deemed acceptable by the Liquidator in his reasonable judgment. The Deposit shall be held in escrow by an escrow agent selected by the Liquidator in his sole discretion, with interest to accrue to the benefit of the Auction Bidder. Unless the Auction Bidder is ultimately selected as the Highest Bidder (as defined below) or the Back-Up Bidder (as defined below), the Deposit, plus any interest accrued thereon, shall be returned to the Auction Bidder (with any bank wire fees subtracted from the deposit amount) as provided in Section IX below. In the event that an Auction Bidder becomes the Highest Bidder, the Deposit shall be returned at the time of the Closing.

V. INITIAL BID DEADLINE

A Qualified Bidder who desires to make an Initial Bid shall deliver written and electronic copies of its bid materials to:

- (a) The New York Liquidation Bureau, 123 William Street, New York, NY 10038-3889, Attn: John Pearson Kelly (jkelly@nylb.org); and
- (b) Bingham McCutchen, LLP, One State Street, Hartford, CT 06103, Attn.: Harold S. Horwich (harold.horwich@bingham.com), so as to be received by no later than 5:00 p.m. (prevailing Eastern Time) on or before _____, 2009 (the "Initial Bid Deadline").

VI. REVIEW OF INITIAL BIDS

The Liquidator shall review all submitted bid materials and shall notify bidders whether they will be Auction Bidders no later than ___ days after the Initial Bid Deadline. The Liquidator reserves the right to reject any bid if such bid is on terms that are materially more burdensome or conditional than the terms of the Purchase Agreement.

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In selecting Qualified Bidders to be Auction Bidders, the Liquidator shall take into account, among other things: (a) the bidder's proposals set forth in Section IV(a) hereof, (b) the ability of the Qualified Bidder to close the proposed transaction, (c) the likelihood, extent and impact of any potential delays in closing, (d) the ability of the Qualified Bidder to perform the proposed transaction, (e) the net economic effect of changes to the Purchase Agreement, if any, contemplated by the Bidder's Modified Purchase Agreement, (f) the net benefit to the Midland estate, and (g) any other consideration that the Liquidator determines, in his business judgment, to be material. From the Initial Bids designated by the Liquidator, the Liquidator shall select the highest and best bid which shall be the Opening Bid at the Auction. The Liquidator's selection of Auction Bidders and the Opening Bid shall be in his absolute discretion and will be final.

VII. THE AUCTION

The Auction shall take place starting at _____:00 _____.m. (prevailing Eastern Time) on _____, 2009 at the New York Liquidation Bureau, 123 William Street, New York, NY 10038-3889, or at such other place, date and time as may be designated in writing by the Liquidator in a notice to be given to all Auction Bidders not later than ten (10) business days prior thereto. The Auction shall be governed by the following procedures:

- (a) Only the Liquidator and Auction Bidders and their authorized representatives (and the professionals for each of the foregoing) shall be entitled to attend and be heard at the Auction.
- (b) Each Auction Bidder shall appear at the Auction either in person, or through a representative who presents, at or prior to the Auction, documentation of authorization, acceptable to the Liquidator and his professional advisors in their reasonable judgment, of such representative to participate in the Auction on behalf of such Auction Bidder, and to execute all documents related thereto.
- (c) Only Auction Bidders shall be entitled to make bids at the Auction.
- (d) Bidding shall commence with the Opening Bid and shall proceed in minimum increments determined by the Liquidator. The minimum increments will be expressed as an increase in the Opt-In Guaranteed Percentage and is likely to be approximately one-half of one percentage point for the first bid after the Opening Bid and approximately one-quarter of one percentage point for each additional increment.
- (e) The Liquidator reserves the exclusive right, in his business judgment, to make one or more adjournments in the Auction to, among other things: (i) facilitate discussions between the Liquidator and individual bidders; (ii) allow individual bidders to consider how they wish to proceed, and (iii) give bidders the opportunity to provide the Liquidator with such additional evidence as the Liquidator in his business judgment may require to establish that the bidder either has sufficient internal resources, or has access to other resources, to consummate the proposed transaction at the Highest Bid (as defined below) level.
- (f) The Auction shall continue until there is only one bid that the Liquidator determines in his business judgment, after consultation with his professional advisors, is the highest and best bid made at the Auction (the "Highest Bid").

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- (g) The Auction Bidder submitting such Highest Bid (the “Highest Bidder”) shall, within three business days of the conclusion of the Auction, execute the Bidder’s Modified Purchase Agreement with such modifications as shall be acceptable to the Liquidator and the Highest Bidder to reflect the terms of the Highest Bid.
- (h) The bid that the Liquidator determines is the highest and best bid from all bids received at the Auction, other than the Highest Bid, shall be designated the “Back-Up Bid” and the Auction Bidder submitting it shall be the “Back-Up Bidder” who shall become the Highest Bidder if the Highest Bidder fails to consummate a transaction as described in Section X below.
- (i) Unless otherwise agreed to by the Liquidator, the Bidder’s Modified Purchase Agreement as executed shall provide for a closing date that no later than ten (10) business days after the Sale Approval Order becomes a Final Order and all conditions precedent to the Purchaser’s obligations to close and to the Liquidator’s obligations to close shall have been fulfilled.
- (j) The Liquidator or his professional advisors may announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction.
- (k) All bidders at the Auction shall be deemed to have consented to the personal and subject matter jurisdiction of the Receivership Court and waived any right to a jury trial in connection with any disputes relating to the Auction and the Purchase Agreement. The Receivership Court shall have exclusive jurisdiction over matters related to the transactions contemplated by this Request for Proposals and the Auction.
- (l) If the bidder that makes the Opening Bid is not the Highest Bidder and the Liquidator closes a Purchase Agreement with another Auction Bidder, the Liquidator will compensate the maker of the Opening Bid for its properly documented actual and reasonable expenses up to \$500,000.

VIII. SALE APPROVAL

The consummation of the transactions contemplated by the Purchase Agreement entered into in connection with the Highest Bidder will be subject to approval by the Receivership Court. Within five business days of the conclusion of the Auction, the Liquidator shall file appropriate pleadings requesting the entry of an order (the “Sale Approval Order”) approving the Highest Bid and the Back-Up Bid.

IX. PROCEDURES REGARDING BIDS

(a) By submitting an Initial Bid, each Qualified Bidder agrees that its proposal to purchase the Company's assets on the terms indicated in its Initial Bid, including, but not limited to, its proposal to enter into the Bidder's Modified Purchase Agreement, is irrevocable until the conclusion of the Auction, and, if the Qualified Bidder is chosen as the Highest Bidder or the Back-Up Bidder at the Auction, the proposal shall remain irrevocable until the closing of the transactions contemplated by the Plan and the Purchase Agreement.

(b) In the event that a Qualified Bidder is selected to be an Auction Bidder and participates in the Auction, but such Auction Bidder does not submit the Highest Bid or the Back-Up Bid at the Auction, or the Liquidator determines not to proceed with the Purchase Agreement, the Liquidator shall return the Auction Bidder's Deposit and accrued interest thereon to such Auction Bidder (with any bank wire fees subtracted from the deposit amount) promptly following either (i) the Closing, or (ii) the decision by the Liquidator not to proceed with the Purchase Agreement, but in no event more than fifteen (15) days following the entry of the Sale Approval Order.

(c) In the event that the Highest Bid is approved by the Receivership Court pursuant to the Sale Approval Order and such order becomes a Final Order, the Liquidator shall execute a Purchase Agreement in form and substance satisfactory to the Liquidator and the Highest Bidder.

(d) In the event that the Highest Bidder, or in the event of the default of the Highest Bidder, the Back-Up Bidder fails to consummate the transaction contemplated by the Bidder's Modified Purchase Agreement (and any mutually agreed changes thereto), because of its material breach, its failure to perform, or its failure to proceed in good faith, such bidder's Deposit shall be retained by the Liquidator and the Liquidator will have recourse to the applicable bidder for \$_____ as liquidated damages, which the bidder agrees are reasonable compensation for a breach of its obligations to consummate the transaction.

X. FAILURE TO CONSUMMATE PURCHASE; BACKUP BIDS

Following approval of the Highest Bid pursuant to the Sale Approval Order, if the Highest Bidder fails to consummate the approved transaction pursuant to the terms of the Highest Bid for any reason, other than a default by the Liquidator, the Back-Up Bid shall be designated by the Liquidator as the new Highest Bid, and the Back-Up Bidder shall become, upon such designation, the new Highest Bidder; provided, however, that the Back-Up Bidder shall only be obligated to remain as the new Highest Bidder for a period of [] days after the entry of the Sale Approval Order. After such [] day period expires, if the transaction has not yet been consummated (other than as a result of the Back-Up Bidder's failure to proceed in good faith), such bidder shall have the option to terminate its obligations upon written notice to the General Counsel of the Liquidator and thereupon shall be entitled to a full refund of its Deposit.

XI. RESERVATION OF RIGHTS; DEADLINE EXTENSION

The Liquidator reserves his right to modify or impose, at or prior to the Auction, additional customary terms and procedures with respect to the Auction, including, without limitation, extending any deadlines set forth herein and/or canceling the Auction and rejecting all bids if, in the Liquidator's judgment, no bid represents a fair and adequate price on terms that would be in the best interests of the creditors of the Midland estate.

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**EXHIBIT A
CONFIDENTIALITY AGREEMENT**

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**EXHIBIT B
MIDLAND BID FORM**

Guaranteed Opt-in Percentage: % of Determined Claims.

Variation in Opt-in Percentage based on increase or decrease of Cash and Investment Assets per million dollars: ___% per million dollars.

Purchaser's Fixed Profit:

Purchaser's Percentage:

Policyholders' Percentage:

LAE Reserve:

Original Disputed Claim Reserve:

Original Reinsurance Recoverable Amount:

Surplus as regards policyholders of the Purchaser (calculated according to SAP) immediately prior to the Closing Date:

[]

By _____

Its:

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Appendix A
Definitions