

Special Edition

How to Sell Your Company in a Down Market – Part 8

In last newsletters, I described how and when to release information in the sales process. I explained that;

- Selling a company is a very emotional process.
- You need to be mentally prepared to sell your business before you actually put the company up for sale, and;
- Once you've made the decision to sell the business and assuming it is properly priced;
- I outlined what information to release and;
- When to release that information.

I also discussed the issuing of a LOI and how the process works. This week, I am providing a sample “due diligence” check list. **This “due diligence” check list is a sample document of what a transportation Buyer might ask for** should they be interested in purchasing a company;

- This list is not meant to be all encompassing, but;
- It represents years of my experience in dealing with various Ahern customers.

The more detailed information you prepare the likelihood that a transaction will close. Reviewing my list may seem overwhelming, at first, but this information is necessary to complete the process of selling a business.

In reference to the section requesting financial information, you must provide a P & L statement and a balance sheet for each of the operating years requested. Additionally, be prepared to include all “add backs” that you and your family members take out of the business each year such as;

- Salary.
- Bonus.
- Dividend distribution.
- Personal expense accounts.
- Any family members that may be on the payroll that doesn't work at your company.
- Key man insurance/life insurance.
- 401K, pension, profit sharing, etc.

This information will provide a Buyer with a “true” financial picture of the profitability of your business. It's important to recognize you are your own best salesmen. The more financial information you can provide to a Buyer, provides him the ability to intelligently value your business.

In closing, the attached “due diligence” check list provides you an outline to utilize in the sale of your business.

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Ahern & Associates, Ltd.

Accredited Member
National Bureau of Certified
Consultants Inc.

April 7, 2009

Sample Due Diligence Check List

Item/Description	Notes	Received	N/Avail.	N/App.
1. Corporate Records				
A. Copies of the charter, bylaws, or equivalent organizational documents of the Company, as amended to date.				
B. A list indicating the outstanding equity interests of the Company and the percentage ownership held by directors, officers, employees and agents.				
C. Copies of all minutes of meetings and written consents of the board of directors, and committees thereof, and of the Company.				
D. List of the officers and directors (or equivalent positions) of the Company, along with a history of change in such positions in the past four years.				
E. List of all corporations, associations, companies and partnerships in which the Company owns any of the voting securities. The list should include the number of authorized securities, and the number of issued and outstanding securities held by the Company. Include certified copies of the charters, articles of incorporation and by-laws, all as amended, of such companies in which the Company owns 50% or more of the voting securities.				
F. Copies of all documents related to the formation of the business and other agreements by which predecessor operations were conveyed to the business.				
G. Corporate history of the business, including a summary of key historical developments (i.e., formation, change of ownership, acquisitions, divestitures, restructurings, etc.) during the past five years.				
H. Organizational chart showing the corporate structure of the Company.				
I. List of jurisdictions where the Company is organized, qualified as a corporation or other entity (whether domestic or foreign), has offices, conducts business, or owns or leases assets of properties.				

2. Other Corporate Matters				
A. Documents and agreements evidencing borrowings, available borrowings or other financing arrangements, whether secured or unsecured, including loan and credit agreements, indentures, promissory notes, mortgages, other evidence of indebtedness, interest rate hedging agreements and all guarantees with respect to the foregoing and including all compliance certificates, waivers and amendments relating thereto.				
B. Security agreements and financing statements representing security interests relating directly or indirectly to the assets of properties of the Company (including all mortgages, liens (tax or other), conditional sales agreements, pledges, sale and leaseback arrangements, installment purchases, capitalized leases and material equipment leases).				
C. If prepared, provide any summaries or outlines of financial covenants in such debt instruments, leases and other agreements and instruments.				
D. Notices of default or noncompliance from lenders during the past twelve months.				

E. Agreements regarding obligations or liabilities of the Company as a guarantor, surety, co-signer, endorser, co-maker, indemnitor or otherwise in respect of the obligation of any other person or entity.				
F. Agreements by which the Company is obligated or required to provide, or under which the Company is currently providing, funds in the forms of a loan, capital contribution or otherwise.				
G. Loan agreements, notes and guarantees between the Company and any of its directors, officers, managers, equity holders, employees or affiliates.				
H. Documents relating to any other material liabilities and obligations of the Company, whether or not fully reflected or reserved against in the most recent consolidated balance sheet.				
I. List or description of any security interests in personal property, including any UCC or similar foreign filings.				

3. Contracts				
A. All material agreements relating to the business of the Company, including without limitation, all material commitments, service agreements, distributor agreements, OEM agreements, contracts with governmental entities, operating agreements, supply or requirements contracts, licensing agreements, capital and operating leases, consulting and management services agreements, sales representative agreements, agreements with independent contractors and agreements between affiliates.				
B. Agreements, described in Para. 3.A above, that are not yet executed, but are currently being negotiated, including, any letters of intent, memoranda or understanding or similar documents.				
C. Contracts involving directors, officers, managers or equity holders; contracts involving payments by or to the Company or any other party of more than \$25,000; and contracts with a remaining term of more than 180 days.				
D. Forms of warranties and guarantees provided to customers.				
E. Copies of any documents, agreements or letters of intent relating to acquisitions completed since the Company was acquired by its current owners.				
F. Any confidentiality or nondisclosure agreements to which the Company is a party.				
G. Any agreements containing noncompeting provisions or in any way restricting the business of the Company (including those applicable to any equity holder, officer, key employee or director of the Company).				
H. Documents relating to any recapitalization of the Company.				
I. Summary of pending claims for indemnification under any contract.				
J. Documents relating to joint venture or partnership arrangements.				

4. Sales and Marketing				
A. Complete customer list for the prior 3 years, including revenues from each.				
B. Sales by service category for the last 3 years, and anticipated changes over next 3 years.				
C. Sales by distribution channel for each of the past 3 years, and anticipated changes over next 2 years.				
D. List of new customers, products/services in most recent year, and anticipated new customers, products/services in the next year.				
E. Target new accounts for next 2 years.				
F. List of suppliers or customers who have recently curtailed or threatened to curtail business with the Company.				
G. Present pricing policies for business lines.				
H. Gross margin analysis by service provided for the past 3 years.				
I. Copies of any sales and marketing plan.				
J. Back-log schedule				

5. Industry and Competition				
A. List of primary competitors.				
B. Describe how the Company differentiates its services: quality, price, location, availability.....				
C. Estimated revenues, earnings and financial condition of top competitors.				

6. Tax Matters				
A. Tax returns for the five latest closed and all open years (federal, state and local).				
B. Audit and revenue agents' reports (federal, state and local).				
C. Settlement documents and correspondence for the past 4 years.				
D. Agreements waiving the statute of limitations or extending time.				
E. Notices, assessments, deficiencies or adjustments (proposed or final).				
F. Agreements, consents, elections and waivers made or filed with any taxing authority that are in effect.				
G. Description of any pending or threatened audits or disputes with any taxing authority.				

7. Financial/Accounting				
A. Any management letters or special reports by accountants of auditors, including any internal control weaknesses memoranda, for the last four fiscal years.				
B. Letters of counsel in reply to auditors' letters for last four fiscal years.				
C. Management representation letters to auditors for last four fiscal years.				
D. Any material internal strategic reports or business plans of the Company prepared in the past four years.				
E. Consultants' and management reports and marketing studies prepared in the last four years.				
F. Finalized version of the audited financial statements (including the opinion of the Company's auditor) for the last four fiscal years.				

G. Any internal financial statements, including income statements, for the last four fiscal years. Monthly financial statements for the previous two years.				
H. Projected financial statements for next three years.				
I. Accounts receivable aging by customer.				
J. Accounts payable aging by vendor.				
K. If available, Inventory Audit Reports for the past two years.				
L. List of all material capital expenditures for prior five years and all anticipated future capital expenditures, including table showing which future expenditures are already committed.				
M. Listing and description of any extraordinary or one time expenses over the past five years.				
N. schedule describing any material adverse change, if any, within the last calendar year, in the assets, liabilities, earnings, business, or labor relations of the Company, or any accident, damage, destruction or loss to property of the Company, whether or not covered by insurance, to the extent such change or event could materially and adversely affect the business or the operations or property of the Company.				
O. Any business plan and other documents describing the current and/or currently expected business of the Company.				

8. Employee Matters				
A. Collective bargaining agreements, employee representative agreements, union agreements (including materials and correspondence relating to any disputes or litigation), or other material labor contracts of the Company.				
B. Employment policy manuals and employee handbooks.				
C. Employee headcount summary by location and function.				
D. Confidentiality and trade secret agreements signed by any employees.				
E. Employee benefit, bonus, pension, retirement, post employment, profit sharing, incentive compensation, option, equity and other plans (including any terminated plan). Please include for each such plan: (1) the operative plan documents, (2) the most recent Summary Plan Description, and (3) for each plan required to file such report, the two most recent annual reports (U.S. Form 5500)				
F. Any notice provided to the U.S. department of Labor indicating that the Company maintains or maintained an unfunded plan. Any notice or other regulatory correspondence with any governmental entity (domestic or foreign) related to any employee benefit plans.				
G. Employment, consulting, separation and non-compete agreements with officers, directors or employees of the Company, and a schedule of all employees who are not terminable at will.				
H. List of all officers, full-time and part-time employees and respective current salaries or hourly wage rates. Include brief bios of key employees.				

I. Any indemnity agreements with managers, directors or officers.				
J. Documents relating to labor disputes, requests for arbitration, grievance proceedings, etc. (pending and for the past four years).				
K. List of employees currently on COBRA (or other similar plan) with details of effective dates and the expenses associated.				
L. Documents relating to any employee disputes, issues or claims, including but not limited to, wage claims, administrative charges, internal investigations, arbitrations, and/or court proceedings (pending and for the past three years).				
M. List of any disciplinary problems, employee disputes and/or claims including any purported sexual harassment claims and/or EEO claims (pending and for the past four years).				

9. Real Property				
A. A schedule of all real property leased or owner, or previously owned, by the Company (including addresses, square footage, acreage and mortgages).				
B. Lease agreements and all related agreements relating to the real property identified in section 5.A above.				
C. Title insurance policies for all such properties.				
D. Title searches and surveys and maps or diagrams for all such properties.				
E. Purchase and sale, option, or other acquisition or divestiture agreements with respect to any real property purchased or sold by the Company.				
F. List of any liens, encumbrances, security interests or charges currently held by other persons in any of such properties, including all documents, agreements and instruments relating thereto (such as deeds of trust, mortgages, promissory note, and mechanics liens).				
G. List of known title defects with respect to all such properties and defaults under leases, trust agreements and other agreements with respect to such properties.				
H. List of construction in progress, with original cost, unpaid amounts, description of progress and expected completion dates, cost overruns, existing and anticipated disputes. Include copies of construction contracts.				

10. Information Technology				
A. Service, maintenance and support contracts.				
B. Data processing agreements, development agreements, web site and application hosting agreements, electronic commerce agreements, co-location agreements, data warehousing agreements, replication agreements and any other IT-related agreements.				
C. A list of all shareware, freeware and open source software used by the Company and copies of all associates license agreements.				
D. Web site terms of use and privacy policies.				
E. Description of EDI systems or other inventory tracking software.				
F. Network diagram and other documents describing the network hardware and configuration, including the LAN, WAN, email systems, remote access systems, etc.				

11. Intellectual Property and Related				
A. List, and provide documentation regarding, all patents, copyrights, trademarks, service marks and domain names, including filings with the U.S. Patent and Trademark Office and the U.S. Copyright Office.				
B. A list identifying all material trade secrets of the Company.				
C. List and description of all other material proprietary information or intellectual property owned or used by the Company (e.g., manufacturing and production processes and techniques, marketing materials containing intellectual property, etc.)				
D. Royalty and license agreements to which the Company is a party.				
E. Research and development, joint development, strategic partnership, collaboration and alliance agreements.				
F. Technology assignment, sale and transfer agreements, including agreements transferring a security interest in intellectual property.				
G. From and executed employee invention assignment agreements, invention disclosure agreements and confidentiality agreements.				
H. License and technology transfer agreements and other agreements of the Company regarding technology with founders, corporate partners or other parties, including agreements transferring a security interest in intellectual property.				

12. Fixed Assets and Related				
A. Fixed asset listing and depreciation schedule.				
B. Schedule of material leased or owned personal property, including machinery, equipment, vehicles, trailers, forklifts, and other material personal property, including a description of each.				
C. Material personal property lease agreements, including master leases, and acquisition agreements, such as purchase and sale, or option, agreements.				
D. Copies of appraisals on fixed assets, if any.				

13. Governmental Licenses, Permits and Regulatory Matters				
A. List of all governmental permits, licenses, orders, exceptions, variances, waivers, consents, approvals, concessions, accreditations, and other authorizations from any governmental authority (foreign, federal, state or local) or any regulatory body (foreign, federal, state or local) that are necessary or material to the business of the company as now conducted or as proposed to be conducted.				
B. Reports, filings and correspondence filed or delivered by the Company with any foreign, federal, state or local regulatory body or authority in the past four years.				
C. Agreements with any federal, state or local governmental agency, or foreign entities.				
D. Documents relating to compliance or noncompliance with any rule, regulation or other mandate from any foreign, federal, state or local governmental agency or any regulatory body.				

14. Insurance				
A. Schedule of insurance policies currently maintained by the Company (including key man, directors and officers liability, errors and omissions, workers' compensation and product liability policies) indicating the nature of the coverage, the policy limits, annual premiums, term, cancellation notices or premium increases.				
B. Copies of all insurance policies referred to in section 10.A above.				
C. Schedule of pending, possible and prior (since January 1, 2003) insurance claims.				
15. Litigation				
A. Schedule of all pending or threatened claims, litigation, arbitration, governmental or administrative proceedings or inquiries.				
B. Copies of complaints, orders and other significant documents in pending matters involving claims of \$25,000 or more or seeking injunctive or other equitable relief involving the Company.				
C. Consent decrees, judgments, other decrees or orders or settlement agreements to which the Company is a party or is bound.				
D. Opinions of counsel as to pending litigation involving the Company.				

16. Environmental				
A. Schedule of all environmental permits.				
B. Information with regard to claims relating to or violations of, or notices thereof, or compliance with, environmental laws and regulations relating to the Company.				
C. Copies of all environmental audit or inspection reports relating to the Company or its respective leased, owned, or previously owned properties, with complete street addresses for such properties.				
D. Any and all documents sent to or filed with (including all correspondence) any governmental agency relating to any environmental manner.				
E. Schedule containing the date of each material improvement made to any building or structure. Please indicate on this schedule which buildings and structures contain any lead-based paint or asbestos, if any.				
F. List of any underground storage tanks on any property owned or leased by the company.				

17. Shareholder Information				
A. List of the current equity holders of the Company.				
B. Copies of the stock and equity registers and ledgers and warrant and option registers and ledgers of the Company.				
C. Copy of any buy-sell agreement between shareholders.				
D. Equity option or purchase plans, phantom stock or other equity related incentive plans, and forms of option or purchase agreements, which have been or may be used thereunder.				
E. Voting trust, proxies, equity holder or other similar agreements covering the voting or transfer of the Company's securities.				
F. Agreements containing preemptive rights or rights of first refusal or assigning such rights.				

18. Miscellaneous				
A. A list of all known third party consents required as a result of the proposed transaction.				
B. Reports from consultants, appraisals or other reports prepared by experts within the past three years.				
C. Any other documents or information which, in your judgment, are significant with respect to the Company or any portion of their business or which should be considered and reviewed in making disclosures to prospective investors regarding the business, financial condition and results of operations of the Company.				

QUOTE OF THE WEEK: “Besides pride, loyalty, discipline, heart, and mind; confidence is the key to all the locks.”