

Out of the blue: Unsolicited offers for your company

What private owners should do when offers for their businesses suddenly arrive

There is no doubt that we are in a seller's market for privately held companies.

Demographic trends are driving the supply: As 76 million baby boomers reach retirement age, an estimated 7 million business owners are expected to exit their companies. A robust stock market, strong U.S. economy, healthy corporate cash reserves and stable interest rates are all contributing to the demand.

Private equity groups, which were responsible for 27 percent of U.S. mergers and acquisitions in 2006 also amassed buyout funds totaling more than \$100 billion according to Thomson Financial. And in the first quarter of 2007, U.S. mergers and acquisitions reached \$439 billion and fueled 65 percent year-over-year growth in high-yield lending according to Thomson and Reuters Loan Pricing Corp.

With all this merger and acquisition activity, the owners of successful privately held companies enjoy an enviable position. In fact, private company owners increasingly find themselves faced with unsolicited buyers.

Oregon is home to almost 200,000 companies, perhaps half of which have been under the same ownership for 20 years or more. So when an unsolicited buyer knocks on the door with an offer to buy the company, many owners are understandably pleased. For those owners, I offer the following advice.

First, decide if you want to sell. For some owners, the decision is purely financial; they are prepared to sell when the price and other terms are right. For others, the decision is also related to professional objectives, retirement goals and health-related issues.

Remember that selling a company is an emotionally charged and often intense process that takes months to complete and can distract you from the focus that made your company successful. So don't invest your time unless you



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Paul
Keller

are ready; the presence of an unsolicited buyer does not necessarily mean the time is right.

Second, recognize that the unsolicited buyer is not the only prospective buyer for your company. Rather, an unsolicited buyer may be a clue that your company would be attractive to many potential acquirers. In an active market, there is always demand for good companies — particularly those with

strong gross margins, loyal customers and attractive growth potential.

Manufacturing companies (especially those with proprietary products), business services companies and distribution companies with recurring revenues are all attractive to many buyers.

Third, take control of the process. The goal of the unsolicited buyer is generally to dictate the timing and terms of the sale. A well-intentioned buyer might also argue that exclusive negotiations can yield a market-value transaction while minimizing your confidentiality risks. But the first buyer that approaches you may not be the best buyer.

Your company might be one of several acquisition "targets" being considered by the buyer, and the person who contacted you may not have the authority to make the final decision — at least not alone.

Even if the unsolicited buyer is, by coincidence, the ideal acquirer for your company, you can maximize the benefits of a sale by (confidentially) engaging multiple buyers. Moreover, the presence of multiple buyers allows you to consider other factors like career opportunities for your employees and the future treatment of your customers and suppliers. If you are confident in your decision to sell then you have significant negotiating leverage; use it to maintain control.

Fourth, recognize that the unsolicited buyer probably knows very little about the details of

your company. You need to provide information about the company in order for the unsolicited buyer or others to formulate a sense of value. Provide enough information for a buyer to ap-

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preciate the company's past and understand its future. Take care to protect your confidential information and guard your competitive advantages while openly disclosing any issues that might be perceived as negative, since disclosure later could derail a transaction or worse, become the basis for litigation. Educate buyers early to avoid wasting time with those whose investment criteria are inconsistent with the realities of your company.

Finally, seek professional help. Your CPA or a professional wealth adviser can help assess the financial impacts of a sale. A professional M&A firm can assist with a market valuation and create value by confidentially engaging multiple prospective acquirers while minimizing the demands on your time. And you are going to need the assistance of an experienced attorney.

An unsolicited offer can be an unexpected first step toward the sale of your company. Take your time, be clear about your objectives and maintain control of the process. That approach will ultimately reward you — now or in the future — with a successful transaction.

Paul Keller is a partner in ASG Partners, a merger and acquisition firm specializing in the sale of privately owned manufacturing, distribution and service businesses. He can be reached at 503-223-2886 and at paul@asgpartners.com.