Article - Mistakes Made by Architectural and Engineering Firms Attempting to be Acquired or Selling on Their Own – Part II.

Many have grown to rely on Stonemill Partners and our expertise when selling or buying an Architectural or Engineering firm. Our articles and other information resources have proven to be invaluable in transition planning and being represented for acquisition.

It is in that spirit that we offer the following content related to something we hear often:

This is the second in a series of short articles that will help in your planning as well as help to as a base for your conversations with us.

1. Having an inadequate understanding of market comparables. A well-informed seller will have an understanding of the competitive landscape, as the buyer will be asking many questions about how the seller is differentiated in the marketplace. To avoid having unrealistic selling price expectations, the seller needs to understand how other comparable companies are being valued in the marketplace. If your competitors have sold for multiples of 3.5 times EBITDA, you will need a compelling rationale why you should be valued much more than the typical multiple of the day.

2. Not negotiating the key terms of the deal in a letter of intent (LOI). A selling company's bargaining power is greatest prior to signing a letter of intent. This is the point of negotiation, typically. Buyers will typically require an exclusivity provision prohibiting the seller from talking to any other buyers for a period of time, after the LOI is accepted. The key terms to negotiate in the letter of intent include the following:

The purchase price, and how it will be paid out to the seller.

Any adjustments to the price and how these adjustments will be calculated (such as for working capital adjustments at the closing or for a "cash free/debt free" deal).

The scope and length of any exclusivity provision (It's usually in the best interests of the seller to keep this as short as possible, such as 30 days).

The non-binding nature of the terms (except for confidentiality and exclusivity).

3. Failing to negotiate and agree upon a favorable acquisition agreement. One key to a successful sale of a firm is having a well-drafted acquisition agreement protecting the seller as much as possible. Here are some of the key provisions included in the acquisition agreement:

- Conditions of closing: (a seller will ideally want to limit these to ensure that it can actually close the transaction quickly).

- Adjustments to the price (a seller ideally wants to avoid downward adjustment mechanisms based on working capital adjustments, employee issues, etc.).
- The milestones for earn outs and/or contingent, future purchase price payments.
- Where stock is to be issued to the selling stockholders, the extent of rights and restrictions on that stock (such as registration rights, co-sale rights, rights of first refusal, Board of Director representation, etc.).
- The nature of the representations and warranties (a seller wants these qualified to the greatest extent possible with materiality and knowledge qualifiers). Intellectual property, financial and liability representations and warranties are the primary areas of focus here.

4. Not appreciating the fact that time can kill deals. The longer an M&A process drags on, the higher the likelihood that the deal will not happen, or the terms will change. The seller and the seller's lawyer must have a sense of urgency in getting things done, responding to due diligence requests, turning around red-line markups of documents.

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