Three Stages in a Buyer's Process

Stage 1

Part 2: The OFFERING

This information is provided as a **general** guide for the processes in buying an existing business. The steps indicated are placed in a chronological order to indicate procedure that should be completed prior to closing and taking over ownership. Some of the steps are **required by law.** The list is **not all inclusive** and other steps may be necessary.

STAGE 1 (Parts 1, 2 and 3)
Finding and Valuing, Offering, Due Diligence

This is a series of actions that allow you ample time to review all information PRIOR TO BUYING. It is a right of the buyer to obtain information and seek disclosure of facts already presented by the seller. It is your right as a buyer to be informed. Take the necessary time to complete the process to your satisfaction.

STAGE 2
Financing

A separate series of actions is required to obtain the financing. Some of the required information for banks is included in the due diligence processes and will "overlap". Usually the financing steps will take place prior to accomplishment of full due diligence, but remember that obtaining necessary financing is usually a prerequisite before a seller is willing to disclose all operational information. If you cannot finance the business, the seller is not willing to share all the information with you.

STAGE 3 (Parts 1, 2 and 3)
Operational Licensing and Closing

The legal transferring of ownership, title and equity in the business. Includes all of the necessary steps prior to your first day of ownership so that you can operate legally in Idaho. The steps should take place during the financing and due diligence stages and do overlap in both areas. As an example, you must have your federal identification number prior to accepting any SBA loans; therefore, you will need to file for the number early in the process so that you can close on the indicated date of closing. Another example is insurance. It is necessary to obtain insurance information for financial proforma as well as liability protection during ownership.

*This information is provided by **Kip F. Moggridge** of Arthur Berry & Company for general use. For questions you may contact Kip at 208-336-8000. Please consult an attorney or accountant for legal or financial assistance.*

The most difficult buying decisions you will make are: "When should I offer and how much?" In order to make a rational decision about something as serious as "buying your business", I would suggest that you consider the following:

1. What to Offer and When? The initial questions I receive stem from when to offer and what is a fair price? Remember that no decision is made without information. Ask for the most current information available but be prepared to make an offer on the information given. As an example, I might have 1/2 of the current year's profit and loss and a complete previous tax year information. It is to your advantage to offer on the information provided (1/2 year) with contingencies for price changes, should the current information be different. Give yourself some areas for final negotiations.

In business operations, the day-to-day incomes and expenses will change your offer anyway so "don't be hesitant or too tardy to offer" – remember, the offer is not the purchase, it is only an agenda to purchase later. I see many individuals holding off in the offer process awaiting minute information only to lose out on the due diligence process to another individual. Another point in support of early offers suggests that sellers are somewhat reluctant to provide up to the minute information (which can cost accountant's time and money) only to find out that the buyer wasn't very serious.

If you are interested in the business, offer early and ask for as much time and due diligence as you want and believe me, you will get all the time and information you need...just remember that offering isn't buying.

How much to offer varies with the amount of investment (capital/cash) you are willing or capable of investing. There are many formulas and ratios that express an appropriate return on your down payment after a normal return on the business. Other concerns to buy or not to buy are within you and are the motivation to be your own boss and control your own future. Please let the agent express some financial information and investment criteria that you might not have thought of.

2. Ask for Information. Initially you need tax statements and current income and profit and loss records. Three to five years are best. Build a proforma using year-to-year totals expressed in percentages. Look at trends. Ask questions of the sellers but don't be surprised if they are not too helpful at this stage. They are usually busy running their business and they really do not know who you are or if you are really serious. Use what they give you but don't pester them.

3. Make an Offer and Remember "Offering is not Buying". The actual buying will take place only after you have considered all the relevant information. The buying process requires several steps, the first being **an agreement to sell** called a Purchase and Sale Agreement. Additional documents outlining the final buy will come later. The offer should be in the form of a Contingent Purchase and Sale Agreement

4. Draft a Contingent Purchase and Sale Agreement. Which is a contractual "agenda" of important contingent actions taken by the buyer and seller that might end in a sale. Buying a business should take a fair amount of due diligence time and the agreement(s) should spell out all of the concerns, referred to as contingencies and conditions of sale, from both the buyer and seller that will be analyzed, reviewed and approved prior to a final sale. Your broker/agent or representative should assist you with professional advice as to what is appropriate for contingencies. Remember to ask for a clarification of agency. You will most likely agree that the agent representing the client (seller) also provides professional services to you the customer (buyer), but you should remember that in most instances the agent is representing the seller.