Purchasing an existing construction company — is it a smart business move?

Construction Law

By PAMELA J. SCHOLEFIELD

Question:

We are a small corporation with a C-8 (concrete) license. We have been looking for ways to expand our business, and a business broker approached us with the idea of buying out an existing construction company in our area. His says that we can "instantly" expand if we buy a company that is already established. This makes sense to us, but after several months of looking over some of the available businesses, we've found a number of small general contracting businesses up for sale for little more than their equipment value. These contractors are obviously victims of the economy and are not what we had in mind. We did come across one business owner who wants to retire due to deteriorating health issues. He also has a couple projects already going and a few others ready to start in the next few months. The price is right, and we are excited about starting off with some good projects.

Another attraction is that the business is a turn-key operation and will include all trucks and equipment, building lease, yellow-page advertisements, some of his employees who want to stay on, and all current business licenses, including his general contractor's license. The owner will help train our personnel for a month or so since we only do concrete work. We think with this training and our own experience we can easily take over his business. The broker suggested that we set up a limited liability company with the same name as the other owner has been using to purchase the new business, and then we can hit the ground running with the projects that are in the works. Eventually, we would like to change the name to something similar to our current business. Is there anything else we should be taking into consideration?

Answer:

The business broker is doing you no favors with his suggestions of how to go about this because he obviously does not know, or possibly does not care, about the many issues that you need to evaluate. Your proposed venture, while seemingly straight forward, could be a Pandora's Box.

First, many brokers and business attorneys do not know that a contractor can only be one of the following business types: sole ownership, partnership, limited partnership, corporation or a joint venture. You cannot set up an LLC (limited liability company) as he suggested because the Contractor's State License Board ("CSLB") does not issue licenses to LLC's.

Also, many brokers and attorneys don't know that the general contractor's license isn't up for sale. It is not like a liquor license that can get sold to the new owners along with the business assets and trade name. This is because of the need for a qualifier.

Even though, in general, a contractor's license is associated with the business and not necessarily the qualifier (i.e. the person who passed the test and qualifies to hold a license), the license itself is not "for sale." The business is only able to obtain a license (and license number) because an individual is acting as the qualifier for the business. But, if that particular individual leaves the company, they cannot take the license with them because it belongs to the company. Except in the case of a sole proprietorship, where the individual qualifier is the business. In the case of any other business entity, after the qualifier leaves they disassociate from the license and the company would have to hire a new qualifier within 90 days of that individual leaving the company (be aware that it often takes longer than 90 days for the CSLB to process the paperwork). And, that individual would have to get a new license issued to them if they wanted to start their own business.

Further, a license issued to one business entity is not transferrable to another business, except possibly in the case of a corporation. If the corporation's registration number assigned by the California Secretary of State remains the same after the sale of the business, the same license can be used. The officers and the qualifying individual do not necessarily have to remain the same, but, as I explained, if the qualifying individual does not remain, then they must be replaced with another qualifier within 90 days.

So, whether or not you can even keep and use the contractor's license of the company you are buying depends on (1) the type of entity the business is, and (2) if it is a corporation, whether or not you are doing a stock purchase and truly taking over the entire business.

If the current business is a sole proprietorship, the contractor's license cannot be part of the deal. Once the current owner gives up ownership of the business, the license goes with him.

If the current owner was healthy enough and wanted to remain active for a while, you could use him as the qualifier for the new business as either an RMO (Responsible Managing Officer) or RME (Responsible Managing Employee). As an RMO he must own 20 percent of the new company and have direct supervision and control of the construction operations. If the current owner maintains at least 50 percent ownership, then his actual license and number can be transferred to a new corporation upon proper application to the CSLB. If the current owner was to remain involved as RME, then he must be regularly employed by the company and actively involved in the operation of the business at least 32 hours per week (or 80 percent of the total business operating hours per week, whichever is less).

But, in your case, it looks like you will have to hire someone who has a current general contractor's license and make them the qualifier, or find someone with the required experience, and have them apply and take the test. Either of these options could take several months to process with the CSLB. If you end up owning a construction company with no qualifier, it is the same as doing work without a license. Thus, not having both a qualifier and a valid license in place when you take over the business could subject your new company to severe financial penalties.

Aside from this licensure issue, there are other business considerations you should take into account, which I will address in next week's column.

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Home Depot to close 15 underperforming stores

By HARRY R. WEBER
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ATLANTA (AP) — It's been 4 1/2 years since former Home Depot Chief Executive Bob Nardelli's bold prediction that the home improvement retailer could sustain "unlimited growth" without significantly affecting sales at established stores.

That statement was made during much better economic times.

The Atlanta-based company, under different leadership, a different growth philosophy and amid an ailing housing market, put the brakes Thursday on some of its future expansion plans and said it would do what was previously unthinkable — close 15 of its underperforming flagship stores.

It is the first time the world's largest home improvement store chain has ever closed a flagship store for performance reasons. The move, to be completed within the next two months, will affect 1,300 employees.

The company reiterated its intention to open 55 new stores in the 2009 fiscal year, though it will no longer pursue the opening of roughly 50 U.S. stores that have been in its new store pipeline, in some cases for more than 10 years.

"By building fewer stores, in the best locations, and making sure our existing stores are profitable, our company will be in a much stronger competitive position," said CEO Frank Blake, who took over for Nardelli in January 2007.

Nardelli, now the chief at automaker Chrysler LLC, had other ideas on Nov. 18, 2003, when he told The Associated Press that The Home Depot Inc.'s robust new store growth would continue unabated and suggested the retailer may one day expand into Europe and Asia.

The company has added about 600 stores since then, but has scaled back new store growth in the last few years. Its only stores outside North America are a dozen in China, and those were obtained through an acquisition.

See **Home Depot** on 35C