

American Staffing Association ExecuVision 2023

Buyer Side Considerations in M&A

Sample Due Diligence Request List

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SAMPLE DUE DILIGENCE REQUEST LIST FOR STOCK/MEMBERSHIP INTEREST PURCHASE

The following is a preliminary list of documentation and other information relating to [] (the “Company”), requested for due diligence purposes by [] (“Buyer”) and its counsel. References to the Company should be deemed to be to its subsidiaries and affiliates as well, and the information provided should include the corporate information, materials and descriptions of and regarding the Company’s subsidiaries and affiliates as well. If any of the items listed below are inapplicable to the Company, please let us know.

A. Corporate Structure

1. **Stockholders/Members.** List the current stockholders/members and the number of outstanding shares/membership interests/units held by each stockholder/member. Provide copies of any shareholder agreements or operating agreements. List any restrictions on sale or other transfer which are applicable to stock/membership interests.
2. **Subsidiaries/Affiliates.** List all entities (including their organizational jurisdiction) in which the Company owns (directly or indirectly) any capital stock, membership, partnership, or other ownership interest, and include an organizational chart.
3. **Jurisdictions.** List all jurisdictions in which the Company does, or has within the past five (5) years done, business. List all jurisdictions in which the Company is qualified to do business and provide copies of filings of authorization to do business in such jurisdictions and fictitious name or DBA registrations.
4. **Offices.** List all Company offices.
5. **Options.** List and provide copies of all outstanding rights, subscriptions, warrants, calls, unsatisfied preemptive rights, options or other agreements of any kind to purchase or otherwise receive stock, phantom stock, stock or membership interest appreciation rights, membership interests, units, or similar rights, from the Company, or any other right to receive a monetary payment based on a change of control of the Company.
6. **Charter.** Provide a copy of the Company’s Articles of Incorporation and By-Laws, Articles of Organization, or similar constituent documentation, and all amendments thereto.
7. **Minute Books and Transfer Ledgers.** Provide copies of the Company’s Minute Books, Stock/Unit Transfer Ledgers, outstanding stock certificates/unit certificates and cancelled stock certificates/unit certificates. If the Minute Book is not up to date, indicate briefly and provide copies of documents regarding (i) the corporate history of the Company, (ii) list of original shareholders/members, (iii) transactions whereby shareholders/members were bought out, (iv) transactions whereby new shareholders/members purchased stock or membership

interests/units, (v) any acquisition by the Company of the assets or stock/membership interests/units of any other company, (vi) any corporate loans, and (vii) any other relevant corporate matter which would normally be reflected in the Minute Book.

8. **Organization Chart.** Provide corporate and management charts for the Company, including title, function and responsibility.

B. Compliance with Laws

1. **Permits.** List and provide copies of all licenses, permits, orders or approvals by any governmental or regulatory body of the Company's business (collectively, "Permits").
2. **Permit Violations.** List and provide copies of all violations in respect of any Permit and any proceedings, pending or threatened, to revoke or limit any Permit.
3. **Litigation.** Provide a list, description (including, if applicable, a description of any insurance protection) and copies of complaints in all legal, administrative or arbitral proceedings or claims, pending or threatened, involving the Company or any of its properties or assets. Include the magnitude of the Company's liability (or damages sought by the Company) in each instance, as well as any disputes with employees, workers, vendors or customers. List and describe significant past litigation or claims involving the Company.
4. **Judgments.** List and provide copies of all judgments, injunctions, awards or decrees against the Company.
5. **Equal Employment Opportunity/Wage & Hour Matters.** List and provide copies of any administrative charges or court complaints pending before the U.S. Equal Employment Opportunity Commission, U.S. Department of Labor, or any federal, foreign, state or local court or agency concerning alleged employment discrimination, unpaid wages, or any other matters relating to the employer of labor.
6. **Indemnification.** Provide a list, description (including, if applicable, a description of any insurance protection) and copies of complaints in all legal, administrative or arbitral proceedings, pending or threatened, against any director, officer, or manager, of the Company which may give rise to a claim against the Company for indemnification of such director, officer, or manager. Include the magnitude of the Company's liability in each instance. Provide copies of all indemnification contracts with directors, officers, and managers.
7. **Company Forms and Policies.** Provide copies of all onboarding and reference checking forms, anti-discrimination/anti-harassment policies and forms, training manuals, policy manuals, safety training policies and procedures to reduce worker injuries, social media policies, paycheck information forms, and all other legally required forms, polices and manuals.

8. Covid-19.

- a. Has the Company complied with all Covid-specific federal, state, and local employment laws, including workplace safety and paid leaves of absence?
- b. Provide copies of all Covid-19 safety procedures and reopening plans, and remote work policies and procedures (including tracking of hours of nonexempt employees and payment of overtime).
- c. Provide a list of all employees who have been diagnosed with Covid-19 and describe how the Company has responded regarding paid/unpaid leave.
- d. Describe and detail any reductions in force (layoffs or furloughs) or compensation austerity programs.
- e. Has the Company experienced a WARN event? If yes, provide details.
- f. List and provide copies of all Covid-19 related claims, and indicate the magnitude of the Company's liability in each instance.

C. Contracts

List and provide copies of the following Contracts. As used herein, "Contracts" means contracts, commitments, agreements, financing arrangements, loans, understandings, plans, leases, instruments, policies, permits, licenses or other binding arrangements (written or oral) or ongoing negotiations to which the Company is a party or by which its assets or properties are bound:

1. Contracts with any current or former officer, director, manager, stockholder, member, or consultant (or with any entity in which any of the foregoing is a controlling person).
2. Contracts between the Company and its customers, contractors or vendors.
3. Contracts with any labor union or association representing any worker.
4. Confidentiality and non-disclosure agreements.
5. Principal documents relating to any acquisitions or dispositions of businesses or assets by the Company in the last five (5) years.
6. Joint venture Contracts.
7. Contracts under which the Company agrees to indemnify any party or to share the tax liability of any party.
8. Contracts that can be canceled without liability, premium or penalty only on ninety days' or more notice.
9. Contracts containing (a) covenants of the Company not to compete in any line of business or with any person or entity in any geographical area, or (b) covenants of

any person or entity not to compete with the Company in any line of business of in any geographical area.

10. Contracts which contain restrictions with respect to payment of dividends or distributions in respect of the Company's capital stock or membership interests.
11. Contracts relating to the borrowing of money.
12. Contracts evidencing indebtedness owed to the Company.
13. Any other Contracts, whether or not made in the ordinary course of business, pursuant to which payments may be expected (or required) to be made or received by the Company after the transaction with Buyer has closed.
14. Guarantees provided by the Company or by any stockholder or member of the Company for the benefit of the Company.

D. Personnel Matters

1. **Benefit Plans.** List all bonus, profit sharing, pension, life insurance, health insurance, vacation policy, sick day policy, and other worker benefits plans provided by the Company to the Company's workers. Describe any potential liabilities under any pension plan.
2. **Worker Contracts.** List and provide copies of all Contracts of the Company with all current workers.
3. **Personnel Handbooks.** Provide copies of any current personnel policy handbooks, brochures and other worker literature.
4. **Staff Workers.** List the name and title of each staff worker who is currently engaged in the business and provide copies of the personnel file of each such worker, including performance evaluations, the present compensation (including bonuses and all fringe benefits) and the aggregate annual compensation since [_____] (including all bonuses and fringe benefits).
 - a. For staff workers who are sales personnel, also list or provide the following:
 - i. Name;
 - ii. Date of engagement;
 - iii. Base and commission percentage;
 - iv. Schedule of business generation since [_____] and
 - v. An assessment of whether such employee will stay with the Company following the transaction with Buyer.
5. **Temporary Workers.** List all temporary workers who currently work for the Company or who worked for the Company since [_____] and their pay rates.
6. **Independent Contractors.** List all temporary workers, staff workers or corp-to-corp contractors being paid, or who have within the past five (5) years been paid,

as an independent contractor for services rendered to the Company, their pay rates and provide copies of all 1099's issued by the Company to such workers.

7. **Management.** List all directors, officers, and managers, of the Company.
8. **Cut-offs.** Provide a description of the Company's policies regarding worker termination, including payment of vacation, sick and holiday pay and other benefits, bonuses and commissions.
9. **Allegations Against Officers, Managers, and Workers.** Detail any allegations made against any officer, manager or worker concerning criminal activity, violation of laws or unethical or illegal business practices.
10. **Labor Disputes.** List any union organization attempts, labor disputes or work stoppages or slowdowns due to labor disagreements, requests for representation pending and any grievance or arbitration proceedings pending and any charges or complaints of unfair labor practices.
11. **Workers' Compensation and Unemployment.** Provide a detailed description of the Company's workers' compensation and unemployment insurance experience, experience ratings, claims and payments, during the past five (5) years.

E. **Assets**

1. **Real Estate.**
 - a. List of all real estate owned or leased.
 - b. Provide copies of any mortgages and accompanying promissory notes or other documents relating to the financing of land and improvements at each site.
 - c. List all real property leases with respect to each site or leases of personal property at such sites in which the Company is either a lessor or lessee, and provide copies of such leases.
 - d. Provide copies of any environmental tests, studies or reports with respect to any site and notices of any violations or alleged violations of environmental rules or regulations.
2. **Equipment.** List all equipment, including computer hardware, used in connection with the Company's business. For each piece of equipment, provide the following:
 - a. The date of purchase;
 - b. Whether the equipment was purchased new or used;
 - c. Whether the equipment is owned or leased and, if leased, a copy of each lease;
 - d. Description and agreements relating to installment sales, financing arrangements and security interests; and

- a. Equipment maintenance agreements.
3. **Liens.** Provide a list of all liens or encumbrances on any assets (including liens on real property, equipment, tangible property, or intangible property) owned by the Company.
4. **Insurance.** Provide a list and brief description (specifying the insurer and the policy number or covering note number with respect to binders) of all policies or binders of fire, liability, errors and omissions, product liability, workers' compensation, disability, unemployment, business interruption, cyber liability, vehicular, key man, health, life, dental, vision, or other insurance, any bonding and fidelity bonds held by or on behalf of the Company, and the Company's standing in connection with each such insurance policy or bond, including any known inaccuracy in any application, any failure to pay premiums when due or any similar state of facts that might form the basis for termination of any insurance policy or bond. Provide a summary of claims experience during the past five (5) years.
5. **Information Technology.**
 - a. Provide a list of all software applications used in the Company's business, including the following information: name, functional summary, business function(s) supported, technical specifications, custom or vendor supplied, and principal subject matter.
 - b. Provide a description of back-up and off-site information storage programs.
6. **Intellectual Property.** Provide the following in regard to the Company's intellectual property:
 - a. A schedule listing all patents, patent applications, trademarks, service marks, trade or brand names, copyrights, domestic or foreign, licenses, franchises or concessions that relate to or are employed in the Company's business, including all information on registrations and/or applications and status thereof.
 - b. All documents, contracts and agreements, including form agreements, with directors, officers, workers, advisors, contractors, consultants, agents or third parties relating to:
 - i. ownership of and rights to the Company's intellectual property;
 - ii. confidentiality and non-disclosure of proprietary information;
 - iii. assignment of inventions; and
 - iv. non-competition and non-solicitation.
 - c. All licenses, assignments or other contracts that may involve the creation, license, assignment or other use of any intellectual property relating to the Company's business, operations or prospects.

- d. All searches, reports, conclusions or opinions from internal or external consultants or legal counsel concerning the validity, value, freedom to use and enforceability of the Company's intellectual property rights.
 - e. All pending or threatened infringement claims asserted by or against the Company or challenges to the intellectual property rights of the Company.
 - f. Any data privacy breaches, including the Company's response to such breaches and the magnitude of the Company's liability in each instance.
7. **Potential Acquisitions and Dispositions.** Provide a description of any current plans or negotiations relating to potential acquisitions or divestitures and provide copies of all documents relating thereto.
 8. **Bank Accounts.** List all accounts with banks and other financial institutions, and safe deposit boxes, including the intended purpose and signatories on them. Provide copies of all statements from banks and other financial institutions for the past five (5) years.
 9. **Security Deposits.** List all security deposits provided by or on behalf of the Company.
- F. **Financial Structure**
1. **Financial Statements.** Provide copies of all Company financial statements (audited and unaudited) for the last five (5) years, including all monthly and quarterly statements.
 2. **Auditors' Letters.** Provide all auditors' inquiry letters and replies for the last five (5) years.
 3. **Payroll and Billing Registers.** Provide copies of the Company's payroll and billing for the past six (6) months, including corp-to corp and 1099 payments.
 4. **Accounts Receivables.** Provide an aging report and describe, with respect to each account, the bad debt history, credit approval process and collection procedures.
 5. **Financing.** Describe and provide documents relating to all financing arrangements utilized by the Company, including a history of use and repayment.
 6. **Budgets and Projections.** Provide any budgets, projections and business plans prepared by the Company in the previous twenty-four (24) months.
 7. **Accounts Payable and Other Liabilities.**
 - a. Provide an accounts payable listing.
 - b. Provide a list of known and potential liabilities not on the balance sheet and an estimated value for each.
 8. **Deferred Revenue.** Provide a summary of any deferred revenue.

9. **Prepaid Amounts.** Provide a list of all prepayments.
10. **CARES Act.** Provide copies of any PPP, EIDL, or other CARES Act loan documents.

G. Tax Matters

1. Provide copies of the Company's federal, state and local returns for the last five (5) years, including income, sales and use, real property, capital gains, franchise and others.
2. Provide copies of all payroll tax reports and labor reports filed in any jurisdiction for the last five (5) years.
3. Provide a detailed schedule of any deferred taxes, including the employer's share of social security taxes.
4. Provide copies of any audit and revenue agents' reports.
5. Provide copies of any settlement documents and correspondence for the last five (5) years.
6. Provide copies of any agreements waiving statutes of limitations or extending time.
7. Provide copies of all tax sharing, tax funding, tax allocation, tax indemnity and other similar agreements entered into by the Company with any subsidiaries or affiliates.
8. List all liens on properties or assets of the Company imposed as a result of the delinquent payment or nonpayment of any tax or other governmental charge. List all unpaid assessments for additional taxes.
9. Identify and provide copies of all tax elections the Company has made under the CARES Act or similar laws.

H. Miscellaneous

1. **Consents.** List all consents required to consummate the transaction with Buyer.
2. **Management Letters.** Provide copies of all management letters from the Company's independent public accountants for the last five (5) years concerning the Company's control systems, methods of accounting, etc. and action taken by the Company in response thereto.
3. **Customer Lists.** List the fifteen (15) largest customers for each of the three (3) most recent fiscal years, a description of any indication that any such customer intends to stop or decrease the rate of purchasing services and a description of any request by any such customer, or indication by such customer that it intends to change the terms or prices at which such customer purchases services from the Company. Additionally, for each customer provide the following:
 - a. The percentage of the Company's (i) revenue and (ii) gross profit represented by such customer;

- b. The Company worker who originated the customer account and the worker who is responsible for the account;
 - c. The commission rate on the customer account;
 - d. The mark-up on the customer account;
 - e. Whether the customer contract contains a Change of Control clause;
 - f. The payment terms for the customer account and the payment history;
 - g. Rebates existing for the customer account; and
 - h. The customer's temporary to permanent conversion policy and summary of such conversions by that customer.
4. **Customer Promotions.** Describe any customer promotion, rebates, pricing programs or similar programs, whether oral or written.
5. **Marketing and Promotional Materials.** Provide copies of the Company's current promotional and marketing materials.
6. **Related Transactions.** List all significant interests that current or former officers, directors, stockholders, employees or consultants have, directly or indirectly, in customer or supplier businesses.
7. **Related Obligations.** List all inter-company obligations, between the Company and any subsidiary or affiliate, and between the Company and any current or former officer, director, manager, stockholder, member, worker, employee or consultant.
8. **Customer Complaints.** Provide all documentation relating to customer complaints since [_____].
9. **Material Disclosures.** Provide any other document or information not otherwise requested which, in your judgment, could be material to the understanding of the Company or which you believe should be considered and reviewed in making disclosures regarding the business and financial condition of the Company, to a prospective acquirer.

This Sample Due Diligence Request is provided for informational purposes only. It does not constitute legal or tax advice. Recipients should consult with their own legal and tax counsel before taking any actions based on the information contained in this document.