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desperate measures

jack garson

Business is hard, and companies are reaching for results. In the process, some businesses take dangerous shortcuts and risk dire consequences.

Government gold rush: As business has dropped off in the private sector, more and more companies are lured by the prospect of easy money at the government trough. One of the prime targets is work set aside for minority and disadvantaged businesses. The problem is that plenty of companies that don't qualify want to get into the act.

All too often, businesses that don't qualify want to set up new companies with a person – who meets the standards – as a figurehead. These businesses don't really want this person to run the new company. So they ignore the rules or attempt to disguise the real situation.

Short-term benefit ultimately yields a long-term disaster.

In other instances, a large business enters into a contract with the government and then subcontracts a portion of the work to a local, small, disadvantaged business to satisfy the requirements of the government contract. But then the large company fails to provide the disadvantaged business with any meaningful work. In essence, the big company is merely creating the appearance that it is satisfying the requirement of appropriately subcontracting with the disadvantaged company.

Too many companies treat the legal requirements for government contracts as if they were speeding on an empty highway. If no one will notice, then it must be OK.

But increasingly, those days are over. Governments at all levels – nationally and locally – are auditing companies for compliance with these legal requirements. And the penalties for violations can be severe. Non-compliant companies face not merely the loss of their contracts but also prohibitions on doing business with the government in the future and even criminal prosecution that can result in fines and imprisonment.

In some cases, all of these sanctions can be avoided with careful planning. Yet there are cases where the government requirements just don't fit your business model. Yes, sometimes you just need to say, "No, that doesn't work for me," despite the lure of what seems like easy money. Don't base your business decisions merely on the likelihood of getting caught violating the law. That's gambling, not planning.

Easy money: Similarly, the private sector presents still other temptations that threaten to break the backs of companies. Consider the vast industry that rushed into existence to take advantage of the foreclosure crisis. Talk about an opportunity gone awry by the failure to follow rules and common sense. As I write this column, half a dozen large financial institutions are entering into a $25 billion settlement because of robo-signing foreclosure documents, submission to courts of improper affidavits to advance the foreclosures and other defects in the determination of who should lose their homes and how. Even with this settlement, these companies are still exposed to lawsuits and criminal prosecution by homeowners and government agencies. Further, there are countless other companies either lining up to enter into similar settlements or huddling with their attorneys about plans to defend against the potential avalanche of lawsuits to come.

Desperate measures: In other cases, companies haven't been reaching for riches. On the contrary, they are bending over backwards just to stay in business. In the process, they jeopardize those very businesses. Consider the beaten down real estate sector. Many businesses are hesitant to renew their leases, much less expand. As a result, landlords are entering into agreements that provide short-term benefits and long-term headaches. In some cases, landlords agree to lease space to a tenant, then offer the tenant special rights. For example, the tenant might insist on the right of first refusal to lease any other space near their own premises. When the landlord grants this right, in the future, the landlord must negotiate the terms of a new lease with a prospective new tenant, but then stop and allow the first tenant to match the deal. Yet prospective new tenants don't want to waste their time negotiating deals that can be "cherry-picked" away by an existing tenant that holds a right of first refusal. With so much space available on the market, a tenant hunting for new space will often avoid these properties and negotiate where there is no risk of losing the deal to another tenant with a right of first refusal.

Granting tenants other special provisions, such as exclusive use rights – in essence, a monopoly on a particular use – can similarly prevent landlords from entering into new leases in the future. The lesson here is that you must understand the ramifications of what you are signing. Landlords that reach too far to cut deals may be cutting themselves off from far more lucrative deals in the future.

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Low, low prices: This desperation for business produces similar consequences throughout the business world. For example, particularly aggressive customers often insist on prices far below prevailing rates – sometimes even below a company's cost to provide the product or service. In response, companies that are hungry for business reluctantly agree to these deals out of desperation. They justify these decisions for a variety of reasons, such as the desire to keep their workforce employed or just to provide cash flow until better deals arrive. But these businesses may have made a bargain that can backfire. In the future, some of these companies may have the opportunity to sell to very large organizations or to the government under terms that require these businesses to provide these new mega-customers the lowest price that they have provided to anyone else. Because these businesses have given cut-rate pricing before, they must do it again – or lose the opportunity to enter into those large new contracts. That short-term benefit ultimately yields a long-term disaster.

Businesses that are struggling to get to the light at the end of this recessionary tunnel are faced with tough decisions all of the time. Sometimes they enter into a contract with small, high-maintenance customers that chew up all of their time and then the company is too busy to take advantage of a great new opportunity. Other times they sign contracts that impose tremendous risks, such as obligations to protect the other party against dozens of potentially bad outcomes.

This economy, while healing, still presents challenges. Doing business in it is a balancing act. But you will make better decisions when you understand all of the potential consequences. Step back. Consider the long term and how your decision today fits into your company's future. The best decisions are made with an understanding of what you need to do to survive today and still thrive in the future. CEO