

1. Record Nr.	UNINA9910820215403321
Titolo	Best Practices in the Acquisition of a Government Contractor // edited by Todd R. Overman and Damien C. Specht
Pubbl/distr/stampa	Chicago, Illinois : , : American Bar Association, , [2021] ©2021
ISBN	1-64105-961-3
Edizione	[Second edition.]
Descrizione fisica	1 online resource (279 pages)
Disciplina	346.73/023
Soggetti	Government purchasing - Law and legislation - United States Public contracts - United States
Lingua di pubblicazione	Inglese
Formato	Materiale a stampa
Livello bibliografico	Monografia
Nota di contenuto	Intro -- Title Page -- Copyright Page -- Series Page -- Contents -- Chapter 1 : Introduction -- Chapter 2 : The Due Diligence Process -- A. Confidentiality Agreements -- 1. Process Issues -- 2. Types of Nondisclosure Agreements -- 3. Substance of a Confidentiality Agreement -- B. Composition of the Due Diligence Team -- 1. Initial Diligence -- 2. Comprehensive Diligence -- 3. Additional Team Members for Government Contracts -- 4. Organizing the Diligence Team -- 5. Issues Concerning the Diligence Team -- 6. Performing Diligence on the Acquirer -- C. The Data Room -- 1. Electronic vs. Physical Data Rooms -- 2. Working with the Target's Data Room -- 3. Restricted Material -- 4. Review of Sensitive and Classified Information -- 5. Follow-up Inquiries -- 6. Interviews as Part of the Diligence Process -- 7. The Diligence Report -- 8. How to Use a Diligence Report -- D. Developing a Government Contracts Due Diligence Document Request -- 1. Contracts and Related Information -- 2. Proposal Files -- 3. Asset Lists -- 4. Claims, Disputes, Litigations, and Investigations -- 5. Government-Approved Systems -- 6. Compliance Program Documentation -- 7. Environmental Issues -- 8. Employment Law Issues -- 9. Export Controls -- 10. National Security Issues -- 11. Antitrust Issues -- Chapter 3 : Scope of Government Contracts Review -- A. Methods of Selling to the Government -- 1. Fixed-Price vs. Cost-Reimbursement Contracts -- 2. Federal Acquisition Regulations (FAR)

Part 15 vs. FAR Part 12 -- 3. Indefinite Delivery/Indefinite Quantity, Blanket Purchase Agreement, and Governmentwide Acquisition Contracting Vehicles -- 4. Foreign Military Sales/Foreign Military Financing -- 5. Other Transaction Authority Agreements -- B. Contracting Parties -- 1. US Government Prime Contracts -- 2. Subcontracts under Government Prime Contracts -- 3. Teaming Agreements.

4. State and Local Contracts -- Chapter 4 : Cost Issues Particular to Government Contracts -- A. "Cost-Disclosure" Contracts -- B. Allowability Cost Principles under FAR Part 31 -- 1. Applicability of the Cost Principles -- 2. General Requirements -- 3. Certification of Indirect Costs -- 4. Allowability Issues That Frequently Arise in Acquisitions -- C. Allocation under Cost Accounting Standards -- 1. List of Standards -- 2. Applicability -- 3. Exemptions -- 4. Cost Accounting Standards Board Disclosure Statements -- 5. Noncompliance and Voluntary Changes -- 6. Consideration of Changes in Applicability -- 7. Post-Closing Changes to the Acquiring and the Acquired Companies' CAS Disclosure Statements -- D. The Truthful Cost or Pricing Data Act-Overview -- 1. Disclosure of the Potential Acquisition -- E. Government Audit Rights -- 1. Nature and Scope of Government Audit Activities -- 2. Types of Government Audits -- 3. Role of the Defense Contract Audit Agency -- 4. Role of Inspectors General and Investigative Organizations -- 5. Role of the Department of Justice -- F. General Services Administration (GSA) Schedule -- 1. Principal Risks of General Services Administration Schedule Contracts -- 2. Transferring the General Services Administration Schedule Contract to the Acquiring Company -- Chapter 5 : Claims, Disputes, and Bid Protests -- A. Contractor Claims Against the Government -- 1. Requests for Equitable Adjustment -- 2. Claims -- 3. Risks of Requests for Equitable Adjustment and Claims -- B. Government Claims Against the Contractor -- 1. Claims under the Contracts Disputes Act -- 2. The False Claims Act -- 3. Criminal Matters -- C. Labor and Employment Obligations -- 1. Service Contract Act -- 2. Equal Employment Opportunity -- D. Disputes Arising Out of Subcontracts -- E. Bid Protests -- Chapter 6 : Adequacy of The Target's Compliance Program. A. Overall Company Compliance Program and Internal Controls -- B. Present Responsibility -- 1. Debarment and Suspension -- 2. Past Performance on Competitive Procurements -- C. Existing Arrangements for Classified Contracts -- 1. Assessing a Company's Existing Compliance Program -- 2. Identification of Foreign Ownership, Control, or Influence and Security Issues Arising from the Acquisition -- 3. Integration of the Target into a Corporate Structure -- D. Foreign Sales -- E. Export Control Compliance -- Chapter 7 : Other Risk Areas -- A. Assignment and Change of Control Provisions -- 1. Prime Contracts -- 2. Subcontracts, Joint Venture Agreements, and Teaming Agreements -- 3. Transaction Considerations -- B. Warranties and Indemnities -- 1. Warranties -- 2. Statutory Indemnities -- 3. Contractual Indemnity for Liability to Third Persons -- C. Organizational Conflicts of Interest -- 1. Federal Acquisition Regulations and Defense Acquisition Regulations Coverage of Organization Conflicts of Interest -- 2. How Organizational Conflicts of Interest Can Arise in Mergers and Acquisitions Transactions -- 3. Mitigation of Organizational Conflicts of Interest -- D. "Revolving Door" Restrictions -- 1. Relationship Between the "Revolving Door" Restrictions and the Procurement Integrity Act -- 2. Overview of "Revolving Door" Restrictions -- 3. How "Revolving Door" Issues Can Arise -- E. Political Law Considerations -- 1. "Pay-to-Play" Rules -- 2. PAC and Campaign Finance -- 3. Lobbying and Foreign Agents Registration Act -- 4. Gifts and Ethics -- F. Intellectual Property under

Government Contracts -- 1. Technical Data and Computer Software -- 2. Patents -- 3. Other Transaction Authority Agreements -- 4. Cooperative Research and Development Agreements -- G. Small Business Issues -- 1. Overview of Small Business Requirements in Federal Procurement. 2. Impact of Acquisition on Small Business Status and Contracts -- H. Terminations -- 1. Convenience-Fixed-Price Contract -- 2. Default-Fixed-Price Contract -- 3. Cost-Reimbursement Contracts -- I. Defense Federal Acquisition Regulation Supplement (DFARS) Business Systems -- 1. Overview of DFARS Business System Clauses and Applicability -- 2. Criteria by System -- 3. Government Audit, System Determination, and Withhold Practices -- 4. Subcontracting Considerations -- J. Cybersecurity -- 1. Overview and Applicability -- 2. Safeguarding Information -- 3. Cyber Incident Reporting -- 4. Subcontracting Considerations -- 5. Cybersecurity Maturity Model Certification Program -- Chapter 8 : Acquisition Documents and Pre-Closing Activities -- A. Nature of the Acquisition -- 1. Structure of the Acquisition -- 2. Nature of the Target (Public vs. Private) -- 3. Economics of the Transaction (Deal Consideration) -- 4. Ancillary Agreements -- B. Representations and Warranties -- C. Disclosure Schedules -- D. Covenants Between Signing and Closing -- E. Conditions to Closing -- F. Classified Business -- Chapter 9 : Antitrust Requirements -- A. Overview -- B. Contemplating Potential Merger or Acquisition-Antitrust Due Diligence -- C. Negotiating the Merger Agreement-Antitrust Risk Provisions -- D. Determining Merger Filing Requirements -- 1. US and Rest of the World Reportability Requirements -- 2. Merger Review Outside the United States -- E. HSR Filing and Review Process -- 1. Managing the Creation and Flow of Deal Documents -- 2. Filing Preparation and Coordination-Failure to File -- 3. Merger Review Process and Timing -- F. Substantive Antitrust Review of Mergers and Acquisitions -- 1. Horizontal Mergers -- 2. Vertical Mergers -- G. Coordination of Multiple Government Investigations -- H. Consent Decrees and Litigation -- 1. Consent Decrees. 2. District Court Litigation -- I. Pre-Closing Activities and Integration Efforts-"Gun Jumping" -- Chapter 10 : The Committee on Foreign Investment in the United States Approval for Foreign Ownership and Investment -- A. The Exon-Florio Amendment, as Amended -- B. CFIUS's Risk Analysis -- C. CFIUS Jurisdiction and Voluntary vs. Mandatory Filings -- 1. Investment Jurisdiction -- 2. Mandatory Filing Requirements -- 3. Real Estate Jurisdiction -- D. Whether to File -- E. Two Ways to File with CFIUS -- 1. CFIUS Notices -- 2. Declarations -- Chapter 11 : Existing Contracts-Dealing with the Anti-Assignment Statutes -- A. Applicable Law -- B. Case Law -- C. Regulations -- D. Contract Novations -- 1. Federal Acquisition Regulations -- 2. Transition Arrangements Pending Novation -- E. Change of Name Agreements -- F. Effect of Acquisition on Bids and Proposals -- Chapter 12 : Issues for the Combined Company -- A. Guarantee of Performance of an Acquired Subsidiary -- 1. Existing Guarantees -- 2. Future Guarantees-General Considerations -- 3. Alternatives to a Guarantee -- 4. Government Contract Considerations -- 5. Legal Issues in Negotiating Guarantees -- B. Restructuring -- 1. Allowability of Restructuring Costs -- 2. Capturing Restructuring Costs -- 3. Restructuring Agreements -- C. Cost Accounting Issues -- 1. Cost Accounting Standards -- 2. Effect of Acquisition on Cost-Reimbursement and Incentive Contracts -- 3. Stepped-Up Basis and Goodwill -- 4. Other Costs-Acquisition of Intangible Capital Assets -- 5. Intercompany Transfers -- 6. Pension Costs -- Appendix 1: Glossary of Acronyms -- Appendix 2: Sample Confidentiality Agreement --

Appendix 3: Sample Due Diligence Checklist -- Appendix 4: Sample
Due Diligence Document Request -- Appendix 5: Government
Contracts Representations and Warranties -- Appendix 6: Basic
Novation Agreement, FAR 42.1204(l).
Appendix 7: Sample Truncated Novation Agreement.
