

## **Strategic Considerations in Acquisitions by Government Contractors of Non-Contractor Companies**

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Generally, government contractors have a clear understanding of the primary transactional issues when acquiring other contractors. However, insufficient attention is often given to the special risks present when contractors acquire commercial or international entities. Due diligence applied in commercial entity acquisitions is substantially different from the diligence required when the acquiring company is a government contractor. The standard representations and warranties obtained in acquisitions not involving government contractors are not sufficient to cover post-closing exposure when the acquiring entity is a government contractor. Additional, and heightened, diligence is essential to avoid having a commercial acquisition jeopardize the core government contracting business.

Government contractors acquiring non-government contractors should consider:

- The impacts of the deal on cost accounting issues and government contracting rates (especially where the deal is premised on future success rather than current target revenues or when the financial records of the acquired entity are deficient);
- Foreign ownership/access issues when the government contracting business engages in sensitive, restricted, research and development, and classified contracting;
- Culture and assimilation issues that increase risk of whistleblower actions or misconduct;
- Ethical differences that increase risk of fraud actions, suspensions and debarments;
- Corporate ethics and compliance program needs;
- Size and ownership status recertification issues;
- Security clearance issues arising out of senior personnel lacking necessary clearances; and,
- Employment agreement issues that at least consider the potential for organizational conflicts of interest

In acquisitions of commercial entities by government contractors, Shulman Rogers teams government contract lawyers with the M&A lawyers. This approach provides clients with focused and specialized due diligence, risk assessment and deal structuring designed to minimize post closing risks to the acquiring company's core government contracting business.

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