

**Due Diligence Checklist:  
Acquisition of a Government Contractor<sup>©</sup>  
(Annotated)**

**By**  
**Charles V. McPhillips**  
Kaufman & Canoles, P.C.  
P.O. Box 3037, Norfolk, Virginia 23514  
Tel: 757-624-3178 • [cvmcphillips@kaufcan.com](mailto:cvmcphillips@kaufcan.com)

No.	Item Description	Reference	Notes	Review
1.	<b>GOVERNMENT CONTRACTS</b>			
1.1	Provide a list of every Government contract.	Anti-Assignment Act, 41 U.S.C. § 15  FAR Subpart 42.12  48 CFR § 42.1204	Consider novation issues. The contracting Officer may determine that a novation is not in the best interest of the Government and hold the seller to the contract. Are subcontracts needed before novation obtained?  However, novation is typically not required in a stock purchase as long as the Target remains in control of its assets and continues to perform the contract. Will Change of Name Agreement be necessary? Will any other formal agreement with the Government be necessary? 48 CFR § 42.1204(b).	Review all open Government contracts and subcontracts and all completed contracts for which final payment was received in the last 6 years. Pay special attention to Section H of the contract schedule, which includes non-standard provisions on fees, warranty, etc.
1.1(a)	Identify each Government contract with a Buy American Act clause or Buy American restrictions.	FAR 25.101, 41 USC Chapter 83	BAA items must be manufactured or assembled in the U.S. and must have greater than 50% domestic content.	
1.1(b)	Provide a list and copy of every Government subcontract.			Make note of assignment, change of control, choice-of-law and "flow-down" provisions in major subcontracts. Are all <b>mandatory</b> flow-down clauses properly included? Are there any conflicts with Buyer's teaming agreements?  If the transaction results in a change in the subcontractor, the Government's consent may be required.
1.1(c)	Provide a list and copy of every pending bid or proposal, together with		The Government will be concerned that the Target	Will the Target's "intended approach to performance", including the Target's technical

No.	Item Description	Reference	Notes	Review
	the Company's proposal files.		company which submitted the bid or proposal will be the same company that receives the work and performs the contract. <u>See Lockheed Martin Integrated Services, Inc.</u> , B-410189.5; B-410189.6; (September 27, 2016); <u>Wyle Laboratories</u> , B-408112.2 (December 27, 2013).	<p>approach, resources, personnel and management capability cited in its proposal, be changed as a result of the acquisition? Does the Target rely on a parent company's resources to perform its contracts? Will the acquisition affect fully burdened labor rates or G&amp;A rates on cost-reimbursement contracts? Will key management and technical employees referenced in the proposal remain with the Target post-acquisition? Will employees with necessary personnel security clearances remain with the Target post-acquisition? Would a contract award on any pending bid create an OCI for the Buyer?</p> <p>Review the Target's proposal file to assess the quality of data supporting its certifications of compliance with TINA, BAA, equal employment and affirmative action, size status, set-aside status, etc.</p>
1.1(d)	Provide a list and description of all bids and proposals on Government contracts and subcontracts in which the Company has shared or will share price or cost information with a competitor or on which either the Company or a competitor agreed not to bid.			
1.1(e)	Provide a list and copy of every Teaming Agreement.	FAR Subpart 9.6	Restrictions in Teaming Agreements may prevent certain work from transferring over post-merger.	
1.1(f)	Provide a list and copy of every Joint Venture Agreement.			

No.	Item Description	Reference	Notes	Review
1.1(g)	Provide a list and copy of every Mentor-Protégé Agreement.	13 CFR §§ 124.520, 125.9		
1.2	Provide a list of every GSA Federal Supply Schedule (FSS) and Multiple Award Schedule Contract.	FAR Part 38 MAS Desk Reference: <a href="http://www.gsa.gov/poortal/category/100755">http://www.gsa.gov/poortal/category/100755</a>	The risk to be evaluated is any liability under the " Price Reduction" clause. Has the Target given the <b>Government</b> "most favored customer" pricing?	Examine the adequacy of the Target's systems and training practices for compliance, including its commercial sales practices disclosure statement (CSP-1) and the timeliness of reporting price reductions.
1.2(a)	Provide a list of all IDIQ Contracts and Blanket Ordering Agreements.	FAR Subpart 16.5	How much has actually been funded under these contract vehicles?	
1.2(b)	Provide a list of all contracts under which the Company furnishes commercial items to the Government.			Review the Target's published price list and discounting practices for consistency with the pricing given to the Government.
1.2(c)	Provide all GSA OIG Audit reports on all GSA Schedule Contracts		For up to 2 years following contract award, the Government may audit Target's compliance with disclosure requirements and, for up to 3 years following final payment, the Government may audit compliance with the "Price Reduction" clause in the contract.	
1.3	Provide copies of all agreements or other documents relating to the Company's engagement of agents, consultants or brokers utilized in obtaining sales to the Government or to any foreign government entity.			

No.	Item Description	Reference	Notes	Review
1.3(a)	Disclose all payments, gifts, kickbacks or other items of value given to any U.S. or foreign government official or political party representative.	FAR 52.203-7 Foreign Corrupt Practices Act (FCPA)		
1.3(b)	Provide copies of all agreements with foreign sales agents, brokers and other intermediaries. Provide description of compensation plans for each such intermediary.		If the compensation plan or expense-reimbursement provisions are unusual, FCPA red flags must be considered.	
1.3(c)	Provide records of all expenses paid or reimbursed on behalf of foreign government officials.			
1.4	Provide a list of every Government contract awarded pursuant to any type of small business set-aside program.	13 CFR §§ 125.2-3; FAR 19.502-2		<u>Caution:</u> Acquisition "agreements in principle" create affiliation risk under the SBA's "present effect rule." A letter of intent may therefore cause a change in size status.
1.4(a)	Provide a list of every Government contract awarded on the basis that the Company qualifies as a small business, an 8(a) concern, an SDVO SBC, a HUBZone small business, or WOSB.	FAR 2.101; <a href="#">FAR Subpart 4.11</a>	Size re-certification required within 30 days following the Closing. <u>See</u> 13 CFR § 121.404	Review small business size, ownership and control compliance. Government required to terminate 8(a) contracts unless waived by SBA Administrator based on certification from contracting agencies that termination would "severely impair attainment of the [procuring] agency's program objectives or missions". Waiver must be requested before closing.
1.4(b)	Provide a list of every Government contract awarded on the basis of a sole source and without competition.	FAR 2.101, 6.302		
1.4(c)	Provide a list and copy of each certification by the Company as to its size status.	<a href="https://www.sba.gov/offices/headquarters/operations/resources/4210">https://www.sba.gov/offices/headquarters/operations/resources/4210</a>	The Target is required to re-certify its size status within 30 days following the acquisition	
1.4(d)	Provide a list and copies of all size protests, size appeals and size	Basic information: <a href="https://www.sba.gov/c">https://www.sba.gov/c</a>		

No.	Item Description	Reference	Notes	Review
	determinations concerning the Company.	ontracting/getting-started-contractor/make-sure-you-meet-sba-size-standards/size-protests-size-determinations-appeals		
1.4(e)	Identify all affiliates of the Target and all other companies in which there is any common ownership, management, control or family relationship. Identify all companies to which or from which financial assistance (including bonding support) is provided.			
1.5	Provide a list of every Small Business Innovative Research (SBIR) funding agreement to which the Company is a party.	13 CFR § 121.702; FAR 2.101	Consider whether acquisition will take Target plus affiliates over 500 employee threshold or result in less than 51% ownership and control by U.S. citizens or permanent resident aliens.	
1.6	Provide a list of every Government contract which includes a "key personnel" clause and identify the key personnel designated in such contract.	FAR 1237.110		
1.6(a)	Provide documentation of E-Verify system compliance on all employees.			
1.7	Provide a list of every Government contract which is a cost disclosure or cost reimbursable type contract.	<u>FAR Part 31</u> ; FAR Subpart 16.3	Fixed price contracts that are awarded non-competitively or exceed certain thresholds are still subject to cost disclosure and	Review Target's cost reports for unallowable cost categories.  Review award fee determinations to assess trends in the Government's evaluation of the

No.	Item Description	Reference	Notes	Review
			FAR Part 31 costs principles (and Truth in Negotiation Act (TINA) when certified costs or pricing data are submitted).	Target's contract performance.
1.7(a)	Provide a list and description of every cost reimbursable Government contract (a) which contains an overhead or a G&A rate ceiling or cap on (b) under which the Company is reimbursed only for an agreed-upon portion of its allowable costs.	FAR 16.306 (cost plus fixed-fee contract)		
1.7(b)	Provide a list of every Government contract awarded in the past 5 years that was negotiated based on cost and pricing data that the Company certified as being current, complete and accurate.		TINA will cover such Government contract, even if fixed price.	
1.7(c)	Provide a list and description of any changes in cost accounting practices by the Company during the past 5 years with respect to its pending bids and proposals for Government contracts.			
1.8	Provide a copy of pre-award and post-award audit reports or notices issued by the Defense Contract Audit Agency (DCAA) or the Inspector General's office of any agency.	FAR Subpart 42.1	DCAA website: <a href="http://www.dcaa.mil/">http://www.dcaa.mil/</a>  Incurred costs audits shed light on the reasonableness, allowability and allocability of the Target's direct and indirect costs charged on its Government contracts.	Internal audit reports and reports on liabilities related to audit reports may also be helpful.  Government audits include (a) compliance with FAR part 31 cost principles, (b) "defective pricing" audits under TINA, (c) CAS compliance, (d) contract terminations and (e) requests for equitable adjustments.  Consider notification requirements under FAR 52.215-19 if the transaction will change the

No.	Item Description	Reference	Notes	Review
				<p>valuation of the Target's capitalized assets in its accounting records.</p> <p>Important to determine if DCAA has issued any "Form 1s" to the Target regarding disallowed contract costs or any Form 2000 to any investigative agencies.</p>
1.8(a)	Provide copies of certified proposals for indirect rates and copies of any rate agreements pertaining to forward pricing, provisional, or final indirect costs rates.	FAR Subpart 42.7 (indirect costs); Subpart 42.17 (forward pricing)		Important to review internal accounting mechanisms that produce certified rates, while excluding unallowed costs.
1.8(b)	Provide a copy of any advance agreement on costs.	FAR 31.109	Advance agreements cannot override expressly unallowable costs under FAR Part 31.	Review Target's internal controls used to develop certified rates, especially the handling of unallowed costs.
1.8(c)	Provide list of all CAS-covered contracts and copies of all documents relating to compliance with Cost Accounting Standards (CAS), including any CAS Disclosure Statements.	48 CFR chapter 99 FAR 52.230-1 <a href="http://www.dcaa.mil/cas.html">http://www.dcaa.mil/cas.html</a>	A CAS-covered Buyer acquiring a small business will need to comply with CAS for future contracts awarded to the Target.  Small businesses are exempt from CAS.	
1.8(d)	Provide a copy of any certification or agreement describing special categories of costs allocated or charged to Government contract.			
1.8(e)	Provide a Schedule of Unallowed Costs.	FAR 31.205-6	Unallowed compensation costs include change-of-control payments, golden handcuff payments and the like.	
1.8(f)	Provide documentation of internal practices related to compliance with	10 USC § 2306a; 41 USC §§ 3501 et seq.;	Later-determined "defective" data that was used for the award can entitle government to a price	



No.	Item Description	Reference	Notes	Review
	Truth in Negotiations Act (TINA).	FAR 15.407-1	reduction.  Disclosure of the pending acquisition may be required under TINA when it will cause a change in the indirect cost pool of the Buyer and/or Target on current or proposed work.	
1.9	Provide a list and description of every Government contract or RFP which contains an Organizational Conflict of Interest (OCI) provision that could restrict the Company from performing certain work in the future.	FAR Subpart 9.5	OCI may exist, e.g., if the Target (a) evaluates bids, proposals or performance of Buyer, (b) provides systems engineering or prepared government specifications for Buyer's procurement opportunity, or (c) obtained proprietary information of Buyer's competitor.	Confirm that any necessary OCI mitigation plans are in place – e.g., physical segregation, restrictions on computer access, firewalls, etc.  Review pending bids and proposals of Target for potential to create new OCIs.  Review OCI clauses to determine if Buyer or Target will be restricted from delivering items engineered or designed by Target.
1.9(a)	Provide a list and description of every Government contract or bid under which the Company could be found to have an OCI if it were affiliated with the Buyer.	FAR 2.101; 9.502(c)	Consider what OCI mitigation plan might be necessary, such as a "firewall." Firewalls may not be adequate to mitigate "impaired objectivity" OCIs, but are normally adequate for "unfair access to information" OCIs.  OCI may result when factors create an actual <i>or potential</i> conflict of interest on the instant contract, or when the nature of the work to be performed on the instant contract creates an actual <i>or potential</i> conflict of interest on a future acquisition.	Identify the business division within Target and the Buyer that might generate OCI issues. For example, does the Target provide technical services to a client to which the Buyer supplies products? Should such division be divested as part of an OCI mitigation plan?  Has the Contracting Officer issued any written determinations concerning the Target's OCI mitigation?
1.9(b)	Disclose all personal conflicts of		"Covered employee" performs	Confirm that PCIs have been disclosed to

No.	Item Description	Reference	Notes	Review
	interest of "covered employees"		acquisition functions closely associated with governmental functions.	contracting Officers. Review financial investments or personal relationships that would impair the covered employee's ability to act impartially and in the Government's best interests.
1.10	Provide a list and description of every Government contract which requires the Company to maintain a facility security clearance.	DoD 5220.22-M National Industrial Security Program (NISPOM) 2-1  NISPOM 1-302(g)(5)  32 C.F.R. § 117.56(b)(v)	If the Buyer is subject to Foreign Ownership, Control, or Influence (FOCI), the Target must notify the cognizant security agency (usually DSS) upon entry into <i>discussions</i> for a sale. A substantial minority position can create FOCI. If applicable, a FOCI mitigation plan should be submitted to DSS prior to the closing.  A greater than 5% of foreign ownership interest or 10% foreign voting interest is considered substantial in dealing FOCI.  Failure to identify a 5% foreign owner may allow DSS to find the Target ineligible for a FCL.	Review the Target's facility security clearances (FCLs) as well as the personnel security clearances (PCLs) of key management, including the facility security officer. Also review the annual inspection reports by DSS for each cleared facility.  Review the Target's form DD-254 (contract Security Classification Specifications) and SF-238 (Certificate of Foreign Interests) filings.
1.10(a)	Provide copies of all documents describing the Company's policies and procedures with respect to the handling of classified information, including all facility clearance documents, personnel clearance documents, memoranda or other documents related to actual or alleged security violations, and any other documents describing		Unless FOCI results, stock purchase will generally avoid the need for a new FCL.  FCLs do not transfer with asset sales, however.	

No.	Item Description	Reference	Notes	Review
	the Company's requirements for the possession or utilization of classified information.			
1.10(b)	Provide a list and description of all required facility security clearances of the Company and personnel security clearances for its employees.	NISPOM 2-1, 2-2	FCLs will likely recommend an "Exon-Florio" filing with the Committee on Foreign Investments in the United States (CFIUS) if Buyer is a foreign person. DSS will notify CFIUS of FOCI mitigation status if the parties have not made a CFIUS filing. If an acquisition involving a foreign interest is finalized prior to having the FOCI mitigation plan approved, DSS will invalidate an existing facility clearance until an acceptable FOCI mitigation plan is in place.	If Buyer is subject to FOCI, then a mitigation plan will required. Review mitigation plans to include: - Board Resolutions - Security Control Agreement - Proxy Agreements or Voting Trust.
1.10(c)	Provide a list and description of all certificates pertaining to ownership by foreign interests.	NISPOM 2-3	DSS FOCI FAQs: <a href="http://www.dss.mil/isp/foci/foci_faqs.html">http://www.dss.mil/isp/foci/foci_faqs.html</a>	
1.10(d)	Provide copies of all e-FOCI applications submitted to Defense Security Services (DSS) or the Department of Energy (DOE).	32 C.F.R. Part 117, Subpart C	FOCI mitigation plan should be in place at time of any CFIUS filing.	
1.11	Provide documentation of the company's cybersecurity program, specifically compliance with FAR basic requirements.	FAR Subpart 4.19		

No.	Item Description	Reference	Notes	Review
1.12	<p>Provide a list of all directors, officers, employees or affiliates who have been suspended or who are debarred from doing business with the U.S. Government or who have been declared non-responsible or ineligible for U.S. Government contract.</p> <p>Provide copies of all correspondence, notices and other documents pertaining to any actual or threatened suspension or debarment of the Company or any of its affiliates.</p>	<p>FAR Subpart 9.4</p> <p>GSA FAQs:  <a href="http://www.gsa.gov/poortal/content/192903">http://www.gsa.gov/poortal/content/192903</a></p> <p><u>10 USC § 2408</u></p>	<p>It is crucial to rule out any material risk that the Target will be suspended or disbarred. If a manager, supervisor or employee has been convicted of fraud or other felony in connection with a DOD contract, the Target could receive a criminal fine of up to \$500,000 for keeping such individual on the payroll.</p>	<p>Review System for Award Management (SAM) for Excluded Parties List System</p> <p>Database of suspended and debarred contractors: <a href="https://www.sam.gov">https://www.sam.gov</a></p>
1.12(a)	<p>Disclose any FCA civil or criminal liability that could result in suspension or debarment.</p>	<p><u>FAR Subpart 9.4</u></p>		
1.12(b)	<p>Disclose all activities in which there is any probability that any of the following criminal offenses could have occurred: fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, false statements or claims, tax evasion, criminal tax violations, receipt of stolen property.</p>			<p>Review the Target's compliance policies and programs in such areas such as FCPA, export controls, etc.</p>
1.13	<p>Provide a list and description of every Government contract performance assessment report.</p>	<p>FAR subpart 42.15</p> <p><a href="https://www.cpars.gov">https://www.cpars.gov</a></p>	<p>Past performance evaluations can predict the Target's ability to compete in future.</p>	<p>Consider whether the experience, resources or past performance of the Target's affiliates were integral to the Target's evaluation.</p>
1.13(a)	<p>Provide a list and description of all procurements in which the Contracting Officer determined that the Company or any of its team members was "nonresponsible".</p>		<p>The Contracting Officer must determine that an offeror is "responsible" before it may be awarded a Government contract.</p>	<p>Assess whether the Target will continue to satisfy the "responsibility" standard without its current team members, affiliates, management, etc.</p>
1.13(b)	<p>Provide a list and description of any cost item in excess of \$50,000 or group</p>			

No.	Item Description	Reference	Notes	Review
	of cost items in excess of \$50,000 in the aggregate incurred or invoiced by the Company which has been questioned or disallowed or otherwise is the subject of a formal dispute.			
1.13(c)	Provide a list and description of any monies presently due on any Government contract or subcontract that are being withheld or set off or subject to an attempt to withhold or set off.	FAR Subpart 32.6		
1.13(d)	Provide a list and description of any expenditures, costs or obligations incurred in excess of any applicable limitation of Government liability, limitation of cost, limitation of funds or similar clause in any Government contract or subcontract.		Example limitation of liability clauses: FAR 52.246-23 to -25	
1.13(e)	Provide a list and description of any incurred costs that have been disallowed by the Government in the past 5 years.	FAR Subpart 42.8		
1.13(f)	Disclose all instances of defective pricing (not current, accurate or complete) that could entitle the Government to a price reduction.	Truth in Negotiations Act (TINA), 10 U.S.C. § 2306(a) and 41 USC § 254(b).		
1.14	Provide provisional billing indirect cost rates currently in effect on any Government contract.	FAR 42.704		Review the Target's reserves available to cover negative audit adjustments for "unsettled" fiscal years.
1.15	Provide a list and description of any	False Statement Act		Review records on Excluded Parties List

No.	Item Description	Reference	Notes	Review
	administrative, civil or criminal investigation, audit or proceeding initiated against the Company or any of its employees alleging any irregularity, misstatement or omission under any Government contract or subcontract during the past 5 years.	(18 USC § 1001) provides for criminal penalties for false oral, written, sworn, and unsworn statements  Statute of Limitations (SOL): 5 years from completion of the act		System located on SAM website.
1.15(a)	Provide a list and description of any voluntary disclosures to the U.S. Government with respect to any alleged irregularity, misstatement or omission relating to any Government contract or subcontract.			
1.15(b)	Provide copies of any mandatory disclosures that have been made by the Company to any government agency with respect to knowledge of fraud, conflict of interest, bribery, illegal gratuities, or any violation of the civil or criminal False Claims Act.	Criminal False Claims Act (FCA): 18 USC § 287; Civil FCA: 31 USC § 3729  FAR 52.203.13	Statute of limitations for FCA civil actions is generally 6 years. <u>See</u> 31 USC § 3731(b).  Knowing failure to make a mandatory disclosure is grounds for suspension or debarment. Reporting requirement remains in effect for 3 years following final payment.	
1.15(c)	Provide copies of any documents with respect to "qui tam" actions against the Government.	Civil FCA, 31 USC § 3729	Target will face liability if it knowingly (recklessly) submitted a false claim or false statements to support a claim. Review the Target's internal policies and training practices to ensure compliance with the Procurement Integrity Act.	
1.15(d)	Provide copies of all documents	FAR Subpart 3.9		

No.	Item Description	Reference	Notes	Review
	describing any actual or threatened whistleblower action against the Company.			
1.15(e)	Describe all internal "whistleblower" or similar reports, whether or not they ripened into mandatory disclosures. Provide copies of all internal investigation reports.			
1.16	Provide a list and description of any past, pending, threatened or potential (a) bid protests in which the Company was or is the protesting party, (b) bid protests in which the award to the Company was or is protested and (c) claims or requests by the Company for equitable adjustment on any Government contract or subcontract.	FAR Part 33 (Protests, Disputes, and Appeals)	Obligation to continue performance during pending claim outlined in FAR 33.213	Review bid protest files for potential problems with key customers. Also, pending or potential bid protests may affect projected revenues and costs of Target.  Review any procedures in place to ensure claims asserted by the Target are not false or fraudulent, risking FCA liability.
1.16(a)	Provide a list and description of any past, pending or outstanding claims or protests against the Company or U.S. Government or any prime contractor, subcontractor, vendor or other third party relating to any Government contract, subcontract, Bid or Teaming Agreement.	(FCA), 31 USC § 3729-3733  Forfeiture of Claims Act, 28 USC § 2514	Under the Forfeiture of Claims Act, any fraud attempted in asserting a claim will result in forfeiture of the claim and liability for the Government's costs.  Review the Target's internal controls in certifying claims and payment requests (invoices) submitted to the Government.	
1.16(b)	Provide a list and description of any pending or threatened disputes between the Company and the U.S. Government or any prime contractor, subcontractor, vendor or other third party with respect to a Government contract or subcontract.	Contract Disputes Act, 41 USC § 601, et seq.  FAR 52.233-1		Review any actual or threatened FCA actions and the Target's internal procedures to avoid such claims. Does the Target carry any reserves for such claims? Could any pending or threatened FCA claims result in suspension or disbarment? Are there grounds for any such claims?

No.	Item Description	Reference	Notes	Review
1.16(c)	Provide copies of all correspondence, notices, records and other documents relating to past, pending, threatened or potential contract appeals, bid protests, requests for equitable adjustment or other claims or litigation arising out of Government contract or Government subcontracts for the past 6 years. Include any threatened or potential bid protests, claims or litigation and any notices regarding past, current or potential threats of default, potential defaults, default terminations, product liability claims or warranty claims. Include any claims of "changes" that the Company lost because of inadequate Government authorization or a cost ceiling in the Government contract.			Determine if any significant costs were disallowed because a "change" was not authorized by the Contracting Officer.  Are there any significant costs for which the Target has not pursued reimbursement?
1.16(d)	Provide copies of any cure or "show cause" notices issued by the Company within the past 5 years.		Cure notice not always required. See FAR 52.249-8(a)	Determine if the Target has fixed the problem cited in a cure notice.
1.16(e)	Provide a list and description of any notice to suspend work, stop work order or notice of termination for convenience, or termination for default issued to the Company within the past 5 years.	FAR Part 49		Ensure requirements followed after notification of termination. See FAR 49.104.
1.17	Provide a copy of the Company's Code of Business Ethics/Conduct regarding the conduct of its employees on Government contracts.	FAR Subpart 3.10 FAR 52.203	Code of Ethics/Conduct must be in place within 30 days of contract award over \$5 million or performance period of 120 days or more.  Must have ethics training	Review annual certifications from employees of their training and adherence to the policy.  Review sources: employee handbook, additional written company policies.  <u>See</u> fraud reporting information on break room posters, company hotline, website, etc.



No.	Item Description	Reference	Notes	Review
			program in place and internal control system.	
1.17(a)	Provide all correspondence and other documents relating to the Company's compliance with the Service contract Act, the Davis-Bacon Act, the Walsh-Healey Act, OSHA requirements and "Revolving Door" prohibitors.	<p>BAA: 41 USC §§ 8301 et seq.</p> <p>Service Contract Act (SCA): 41 USC §§ 6701 et seq.</p> <p>Davis Bacon Act (DBA): 40 USC §§ 3141 et seq.</p> <p>Walsh Healey Act (WHA): 41 USC §§ 6501 et seq.</p> <p>Occupational Safety and Health Administration (OSHA) regs. can be found in 29 CFR part 1910</p> <p>Labor requirements are also addressed in FAR part 22</p> <p>"Revolving door" provisions found in 18 USC §§ 207-08 (representational prohibitions) and 41 USC §§ 2101 et seq. (Procurement Integrity Act) (<u>see also</u> FAR 3.104)</p>	<p>Noncompliance with prevailing wage determination can result in withholding of contract payments in order to recover underpayment of wages as benefits.</p> <p>Consider whether an ethics opinion shall be obtained for key personnel.</p>	Review the Target's wage and fringe-benefit records to confirm compliance with DOL prevailing wage determinations. Determine if the Target employs any former government officials subject to "Revolving Door" restrictions.
1.17(b)	Provide copies of the Company's	Executive Order	If Target has 50 or more	Review Target's practices for compliance with

No.	Item Description	Reference	Notes	Review
	<p>affirmative action plan and other government contract compliance plans.</p> <p>Provide all Equal Employment Opportunity (EEO)-1 reports.</p> <p>Provide all evaluations or notices from the Office of Federal Contract Compliance Programs (OFCCP).</p>	<p>11246</p> <p>FAR 52.222-26</p>	<p>employees and government contracts or subcontract of \$50,000 or over, it must have a written affirmative action program.</p> <p>Identify Target's compliance officer with sufficient authority to enforce implementation.</p> <p>If company is public, Sarbanes-Oxley Act requirements will also apply.</p>	<p>Executive Order 11246, FCPA, export controls, etc.</p>
1.18	<p>Provide a schedule of all equipment, information and property furnished by the Government, including a description of the Company's property control systems.</p>	<p>FAR Part 45</p>	<p>GFP Guidelines:  <a href="http://www.acq.osd.mil/dpap/pdi/gfp/">http://www.acq.osd.mil/dpap/pdi/gfp/</a></p> <p>FAQs:  <a href="http://www.acq.osd.mil/pepolicy/general/faq.html">http://www.acq.osd.mil/pepolicy/general/faq.html</a></p>	
1.18(a)	<p>Provide copies of all policies and procedures for receiving, handling and accounting for Government Furnished Property (GFP) or Government Furnished Equipment (GFE).</p>			
1.19	<p>Provide documentation of any approvals of the Company's purchasing system or other systems given by Defense contract Management Agency.</p>	<p>FAR Subpart 42.2</p>	<p>DCMA website:  <a href="http://www.dcma.mil/">http://www.dcma.mil/</a></p>	<p>DCMA reviews could include Target's purchasing, timekeeping, billing, pricing and GFP and GFE inventory systems</p>
1.20	<p>Provide documentation of compliance with Executive Compensation Reporting Requirements.</p>	<p>FAR Subpart 4.14</p>		
1.21	<p>Provide a list, job title and job description of each employee who is a</p>	<p>18 USC § 207</p>	<p>Goal is to confirm compliance with "Revolving Door"</p>	

No.	Item Description	Reference	Notes	Review
	former government official and identify his/her former government capacity.		restrictions	
1.22	Provide a list of all products on the U.S. Munitions List (USML) or related defense services or license agreements and copies of all ITAR registrations with the Director of Defense Trade Controls, U.S. State Department.	United States Munitions List (USML) includes electronics, communications equipment, navigation technology, computer security, some computer hardware and software with military applications. ITAR, 22 C.F.R. parts 120-130.	Section 122.4 of International Traffic in Arms Regulations (ITAR) requires 60-day advance notice to DDTC if Buyer is foreign person.	
1.22(a)	Provide copies of all International Traffic in Arms Regulations (ITAR), Export Administration Regulations (EAR) or Office of Foreign Assets Control (OFAC) licenses required for the Company's export transactions. Provide Export Control Classification Number (ECCN) or United States Munitions List (USML) classification for all articles, services, technical data and software exported.		Consider whether there is a need for voluntary disclosure of any prior violations.	Do any foreign nationals have access to any of the Target's controlled products, technology, or data?
1.22(b)	Provide copy of export control compliance program and a list of all			

No.	Item Description	Reference	Notes	Review
	countries to which products or services are exported. Identify any foreign nationals with access to the company's technology or software code.			
1.22(c)	Identify, segregate and withhold all technical data that may not be lawfully "exported" or transferred to the Buyer (if a foreign person) or to any foreign person representing the Buyer.			
1.23	Intellectual Property – Identify and describe all Intellectual Property produced or used in connection with a Government contract or subcontract.			
1.23(a)	Identify and describe all current "contractor bid or proposal information" protected from disclosure under the Procurement Integrity Act (PIA) or Freedom of Information Act (FOIA).			Review Target's methods and practices taken to protect against release or disclosure of such information.
1.23(b)	Identify and describe all intellectual property, technical data and software developed exclusively at private expense.	FAR 52.227-11 FAR 27.404-2	The Government gets only "limited rights" in data and "restricted rights" in software developed exclusively at private expense.	
1.23(c)	Identify and describe all intellectual property, technical data and software developed produced or modified using government funds or at mixed expense.	FAR 27.404-3	The Government gets a royalty-free license in such copyrighted data delivered by Target.	
1.23(d)	Identify and describe all technical data and software by category of government license: limited, unlimited and government-purpose.	FAR 52.227-13	The Government gets an unrestricted license in patented inventions first conceived or reduced to practice in the performance of a government	

No.	Item Description	Reference	Notes	Review
			contract. Moreover, the Government gets "unlimited rights" in data and software developed entirely at the Government's expense under a government contract and "government-purpose rights" in data and software developed under both private and government expense (mixed expense).	
1.23(e)	Identify and describe all agreements with current and former employees, contractors and vendors protecting or granting the Target proprietary rights in intellectual property, "data", "technical data" and "software".			
1.23(f)	Provide copies of all invention disclosure reports filed with the Government.			
1.23(g)	Provide examples of standard markings of company-owned intellectual property, data, technical data and software delivered to the Government.			Determine if the Target has adequately resolved its rights in technical data and software developed at its own expense.
1.24	Classified Materials		Some diligence may have to occur in a Secure Compartmentalized Information Facility (SCIF)	
1.25	Provide copies of all unexpired warranties furnished to the Government or Prime contractor.	FAR 46.710 FAR 52.246-17-21	Warranty clauses may be modified and negotiated.	Review all unexpired warranties and outstanding claims for Target's exposure.

<b>No.</b>	<b>Item Description</b>	<b>Reference</b>	<b>Notes</b>	<b>Review</b>
	Provide copies and summary of all outstanding warranty claims			