

## Annotated

# Due Diligence Checklist: Acquisition of a Federal Contractor<sup>©</sup>

By

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**Due Diligence Checklist: Acquisition of a Federal Contractor<sup>®</sup>**

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No.	Item Description	Reference	Notes	Review
<b>1.</b>	<b>GOVERNMENT CONTRACTS</b>			
1.1	Provide a list of every Government contract.	<a href="#">Anti-Assignment Act, 41 U.S.C. § 15</a> <a href="#">FAR Subpart 42.12</a> <a href="#">48 C.F.R. § 42.1204</a>	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.	<a href="#">FAR 25.101,</a> <a href="#">41 U.S.C. Chapter 83</a>	BAA items must be manufactured or assembled in the U.S. and the cost of domestic components must exceed 50% of the cost of all the components.	
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 mandatory flow-down clauses properly

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				<p>included? Are there any conflicts with Buyer’s teaming agreements?</p> <p>If the transaction results in a change in the subcontractor, the Government’s consent may be required.</p>
1.1(c)	Provide a list and copy of every pending bid or proposal, together with the Company’s proposal files.		<p>The Government will be concerned that the Target company which submitted the bid or proposal will be the same company that receives the work and performs the contract. See <u>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>	<p>Will the Target’s “intended approach to performance”, including the Target’s technical 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			

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	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.	<a href="#">FAR Subpart 9.6</a>	Restrictions in Teaming Agreements may prevent certain work from transferring over post-merger.	Determine if “subcontractor” teaming agreements are enforceable under recent case law. How solid is the Target’s work-share under existing teaming agreements? Are any of the Target’s teams in competition with the Buyer’s teams? OCI risks?
1.1(f)	Provide a list and copy of every Joint Venture Agreement.	13 C.F.R. § 121.103	The main risk to evaluate is affiliation. Contract-specific or general?	Review compliance with SBA exceptions to general affiliation. 13 C.F.R. § 103(h)
1.1(g)	Provide a list and copy of every Mentor-Protégé Agreement.	<a href="#">13 C.F.R. §§ 124.520, 125.9</a>		
1.2	Provide a list of every GSA Federal Supply Schedule (FSS) and Multiple Award Schedule Contract.	<a href="#">FAR Part 38</a> MAS Desk Reference: <a href="http://www.gsa.gov/port al/category/100755">http://www.gsa.gov/port al/category/100755</a>	The risk to be evaluated is any liability under the “Price Reduction” clause. Has the Target given the Government the “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.	<a href="#">FAR Subpart 16.5</a>	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.

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1.2(c)	Provide all GSA OIG Audit reports on all GSA Schedule Contracts		For up to 2 years following the contract award, the Government may audit the Target's compliance with disclosure requirements and, for up to 3 years following the 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.			
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.	<a href="#">FAR 52.203-7</a> 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.			

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1.4	Provide a list of every Government contract awarded pursuant to any type of small business set-aside program.	<a href="#">13 C.F.R. §§ 125.2-.3;</a> <a href="#">FAR 19.502-2</a>	<u>Caution:</u> Acquisition “agreements in principle” create affiliation risk under the SBA’s “present effect rule.” An inartfully drafted 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.	<a href="#">FAR 2.101;</a> <a href="#">FAR Subpart 4.11</a>	Size re-certification required within 30 days following the Closing. See <a href="#">13 CFR § 121.404</a>	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.	<a href="#">FAR 2.101, 6.302</a>		
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/obd/resources/4210">https://www.sba.gov/offices/headquarters/obd/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 determinations concerning the Company.	Basic information: <a href="https://www.sba.gov/contracting/getting-started-contractor/make-sure-you-meet-sba-size-standards/size-protests-size-determinations-appeals">https://www.sba.gov/contracting/getting-started-contractor/make-sure-you-meet-sba-size-standards/size-protests-size-determinations-appeals</a>		

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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.			
1.4(f)	Provide a list of all small-business awards containing FAR clause 52.219-9, Small Business Subcontracting Plan	FAR 19.301.2(e)	Consider whether contracting officers may require submission of subcontracting plans as a result of new affiliation.	Determine if any of the Target’s contracts contain FAR clause 52.219-9 requirements for a Subcontracting Plan. Also, where applicable, confirm that subcontractors have provided written certification of their size and socio-economic status.
1.4(g)	Provide documentation of compliance with the Limitation on Subcontracting Rules applicable to small-business and socio-economic set aside contracts.	13 C.F.R. § 125.6	Seek to confirm compliance with 50% limitation on subcontracting based on amounts paid by the government to the Target for supplies or products (other than when non-manufacturer rule applies).  85% subcontracting limitation for general construction and 75% for specialty construction.	Awards to subcontractors that are “similarly situated” to the prime do not count against the limitation unless they have (1) further subcontracted work to non-similarly situated entities or (2) ceased to qualify as small. Work performed for the Target by “independent contractors” may count against the 50% limitation on subcontracting.  Penalties are severe for noncompliance: fines equal to the greater of \$500,000 or the excess amount spent on subcontracting.

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1.5	Provide a list of every Small Business Innovative Research (SBIR) funding agreement to which the Company is a party.	<a href="#">13 C.F.R. § 121.702;</a> <a href="#">FAR 2.101</a>	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.	<a href="#">48 C.F.R. § 1237.110</a>		
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.	<a href="#">FAR 31;</a> <a href="#">FAR 16.3</a>	Fixed price contracts that are awarded non-competitively or exceed certain thresholds are still subject to cost disclosure and FAR Part 31 costs principles (and Truthful Cost or Pricing Data Act, still commonly referred to as “TINA”) when certified costs or pricing data are submitted.	Review Target’s cost reports for unallowable cost categories.  Review award fee determinations to assess trends in the Government’s evaluation of the 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 or (b) under which the Company is reimbursed only for an agreed-upon portion of its allowable costs.	<a href="#">FAR 16.306</a> (cost plus fixed-fee contract)  <a href="#">FAR 16.301-2</a>		

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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.		The Truthful Cost or Pricing Data Act (still commonly referred to as “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.	See also Section 1.8(e) below re: CAS disclosure statement.		
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.	<a href="#">FAR 42.1</a>	DCAA website: <a href="https://www.dcaa.mil/">https://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 <a href="#">FAR part 31</a> cost principles, (b) “defective pricing” audits under TINA, (c) CAS compliance, (d) contract terminations and (e) requests for equitable adjustments.  Consider notification requirements under <a href="#">FAR 52.215-19</a> if the transaction will change the valuation of the Target’s capitalized assets in its accounting records.  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.

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1.8(a)	Provide copies of certified proposals for indirect rates and copies of any rate agreements with respect to forward pricing, provisional rates, or final indirect costs rates.	<a href="#">FAR 42.7</a> (indirect costs); <a href="#">FAR 42.17</a> (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.	<a href="#">FAR 31.109</a>	Advance agreements cannot override expressly unallowable costs under <a href="#">FAR 31</a> .	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.	<a href="#">48 C.F.R. §9904</a> (Cost Accounting Standards) <a href="#">FAR 52.230-1</a> (Cost Accounting Standards: Notices and Certification) <a href="https://www.dcaa.mil/Home/CAS">https://www.dcaa.mil/Home/CAS</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 under <a href="#">49 C.F.R. §9903.201-1</a> .	
1.8(d)	Provide documentation pertaining to any Contractor Purchasing System Review by DCMA or other cognizant federal agency.	<a href="#">FAR 44.302</a>	A CPSR is required when the contractor's sales to the Federal Government (directly or indirectly through subcontracts) are expected to exceed \$50 Million in the next 12 months, excluding competitively awarded fixed price contracts and sales of commercial items.	Review Target's CPSR reports.
1.8(e)	Provide a copy of any (i) CAS disclosure statement or (ii) certification or agreement describing special categories of costs allocated or charged to Government contract.			

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1.8(f)	Provide a Schedule of Unallowed Costs.	<a href="#">FAR 31.205</a>	Unallowed compensation costs include change-of-control payments, golden handcuff payments and the like.	
1.8(g)	Provide documentation of internal practices related to compliance with and Truthful Cost or Pricing Data Act (still commonly referred to as “TINA”).	<a href="#">10 U.S.C § 2306 (a); 41 U.S.C §§ 3501 et seq.;</a> <a href="#">FAR 15.407-1</a>	Later-determined “defective” data that was used for the award can entitle government to a price 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.	<a href="#">FAR 9.5</a>	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.  See <a href="#">FAR Subpart 9.506</a> for procedures in dealing with an OCI.  See <a href="#">FAR Subpart 9.508</a> for examples of OCIs.	Confirm that any necessary OCI mitigation plans are in place – e.g., physical segregation, restrictions on computer access, firewalls, etc. based on the General Rules of <a href="#">FAR Subpart 9.505</a> .  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.

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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.	<a href="#">FAR 2.101</a> ; <a href="#">FAR 9.502</a>	<p>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.</p> <p>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.</p>	<p>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?</p> <p>Has the Contracting Officer issued any written determinations concerning the Target’s OCI mitigation?</p>
1.9(b)	Disclose all personal conflicts of interest of “covered employees”	<a href="#">FAR 3.1106</a> ; <a href="#">FAR 52.203-16</a>	“Covered employee” performs acquisition functions closely associated with inherently governmental functions.	Confirm that PCIs have been disclosed to 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.	<a href="#">D.O.D. 5220.22-M - National Industrial Security Program (NISPOM) 2-1</a> <a href="#">NISPOM 1-302(g)(5)</a> <a href="#">32 C.F.R. § 117.56(b)(v)</a>	If the Buyer is subject to Foreign Ownership, Control, or Influence (FOCI), the Target must notify the cognizant security agency 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 the Defense Counter-intelligence and Security Agency (DCSA) prior to the closing.	<p>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 DCSA for each cleared facility.</p> <p>Review the Target’s form DD-254 (contract Security Classification Specifications) and SF-238 (Certificate</p>

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			<p>A greater than 5% of foreign ownership interest or 10% foreign voting interest is considered substantial in dealing FOICI.</p> <p>Failure to identify a 5% foreign owner may allow DSS to find the Target ineligible for a FCL.</p>	of Foreign Interests) filings (or civilian agency equivalents).
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 the Company’s requirements for the possession or utilization of classified information.	<a href="#">NISPOM 1-300</a>	<p>Unless FOICI results, stock purchase will generally avoid the need for a new FCL with the approval of the “Cognizant Security Agency” (e.g., DCSA or Department of Energy).</p> <p>FCLs do not transfer with asset sales, however. Consider whether the Buyer will have an FCL in place in order to acquire the classified contracts.</p>	
1.10(b)	Provide a list and description of all required facility security clearances of the Company and personnel security clearances for its employees.	<a href="#">NISPOM 2-1; NISPOM 2-2</a>	If the Target has FCLs, a filing with the Committee on Foreign Investments in the United States (CFIUS) will likely be necessary if Buyer is a foreign person. DCSA will notify CFIUS of FOICI mitigation status if the parties have not made a CFIUS filing. If an acquisition involving a foreign interest is finalized prior to having	<p>If Buyer is subject to FOICI, then a mitigation plan will required.</p> <p>Review mitigation plans to include:</p> <ul style="list-style-type: none"> <li>- Board Resolutions</li> <li>- Security Control Agreement</li> <li>- Proxy Agreements or Voting Trust.</li> </ul>

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			the FOCI mitigation plan approved, DCSA will invalidate an existing facility clearance until an acceptable FOCI mitigation plan is in place.	
1.10(c)	Provide a list and description of all certificates pertaining to ownership by foreign interests.	<a href="#">NISPOM 2-3</a>		
1.10(d)	Provide copies of all e-FOCI applications submitted to Defense Counterintelligence and Security Agency (DCSA) or the Department of Energy (DOE).	<a href="#">32 C.F.R. §117, Subpart C</a>	FOCI mitigation plan should be in place at time of any CFIUS filing.	
1.10(e)	Identify any “critical infrastructure,” “critical technologies” or “sensitive personal data” that the Target owns, produces, services, designs, fabricates, develops, maintains or collects.	Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA)	FIRRMA expanded the scope of CFIUS review under the Exon-Florio Provision to include non-controlling investments in U.S. businesses involved in critical technologies, critical infrastructure or sensitive personal data.	
1.11	Provide documentation of the company’s cybersecurity program, specifically compliance with FAR basic requirements (plus, in the case of DOD or other agencies, DFAR or other agency-specific requirements).	<a href="#">FAR 4.19</a>	For a list of safeguarding requirements and procedures, see <a href="#">FAR Subpart 52.204-21 (b)</a> . <a href="#">DFAR 252.204-7012</a> .	
1.12	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	<a href="#">FAR 9.4</a> GSA FAQs: <a href="http://www.gsa.gov/port al/content/192903">http://www.gsa.gov/port al/content/192903</a>	It is crucial to rule out any material risk that the Target will be suspended or disbarred. If a manager, supervisor or employee	Review System for Award Management (SAM) for Excluded Parties List System Database of suspended and debarred contractors: <a href="https://www.sam.gov">https://www.sam.gov</a>

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	<p>or who have been declared non-responsible or ineligible for U.S. Government contracts.</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>	<a href="#">10 USC § 2408</a>	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.	
1.12(a)	Disclose any FCA civil or criminal liability that could result in suspension or debarment.	<a href="#">FAR 9.4</a>		
1.12(b)	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.			Review the Target's compliance policies and programs in such areas such as FCPA, export controls, etc.
1.13	Provide a list and description of every Government contract performance assessment report.	<a href="#">FAR subpart 42.15</a> <a href="https://www.cpars.gov">https://www.cpars.gov</a>	Past performance evaluations can predict the Target's ability to compete in future.	Consider whether the experience, resources or past performance of the Target's affiliates were integral to the Target's evaluation.
1.13(a)	Provide a list and description of all procurements in which the Contracting Officer determined that the Company or any of its team members was "non-responsible".		The Contracting Officer must determine that an offeror is "responsible" before it may be awarded a Government contract.	Assess whether the Target will continue to satisfy the "responsibility" standard without its current team members, affiliates, management, etc.

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1.13(b)	Provide a list and description of any cost item in excess of \$50,000 or group 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.	<a href="#">FAR Subpart 32.6</a>		
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: <a href="#">FAR 52.246-23 to -25</a>	
1.13(e)	Provide a list and description of any incurred costs that have been disallowed by the Government in the past 5 years.	<a href="#">FAR Subpart 42.8</a>		
1.13(f)	Disclose all instances of defective pricing (not current, accurate or complete) that could entitle the Government to a price reduction.	Truthful Cost or Pricing Data Act (still commonly referred to as "TINA"), 41 U.S.C. § 3501 <u>et seq.</u>		
1.14	Provide provisional billing indirect cost rates currently in effect on any Government contract.	<a href="#">FAR 42.704</a>		Review the Target's reserves available to cover negative audit adjustments for "unsettled" fiscal years.

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1.15	Provide a list and description of any 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.	<a href="#">False Statement Act</a> (18 U.S.C. § 1001) provides for criminal penalties for false oral, written, sworn, and unsworn statements  Statute of Limitations (SOL): 5 years from completion of the act.		Review records on Excluded Parties List 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 furnished 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): <a href="#">18 U.S.C. § 287</a> ; Civil FCA: <a href="#">31 U.S.C. § 3729</a>  <a href="#">FAR 52.203.13</a>	Statute of limitations for FCA civil actions is generally 6 years from the date of the violation, but could be extended to 10 years in certain circumstances. <i>See</i> <a href="#">31 U.S.C. § 3731(b)</a> .  Knowing failure to make a mandatory disclosure is grounds for suspension or debarment. Reporting requirement remains in effect for 3 years following final payment.	

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No.	Item Description	Reference	Notes	Review
1.	<b>GOVERNMENT CONTRACTS</b>			
1.15(c)	Provide copies of any documents with respect to “qui tam” actions against the Company.	Civil FCA, <a href="#">31 U.S.C. § 3729</a>	Target will face liability if it knowingly or 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 and other statutes.	
1.15(d)	Provide copies of all documents describing any actual or threatened whistleblower action against the Company.	<a href="#">FAR Subpart 3.9</a>		
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.	<a href="#">FAR Part 33</a> (Protests, Disputes, and Appeals)	Obligation to continue performance during pending claim outlined in <a href="#">FAR 33.213</a>	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.

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<b>1.</b>	<b>GOVERNMENT CONTRACTS</b>			
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 U.S.C. §§ 3729-3733.  Forfeiture of Claims Act, <a href="#">28 U.S.C. § 2514</a> .	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, <a href="#">41 U.S.C. §§ 7101-7109</a> .  <a href="#">FAR 52.233-1</a>		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?
1.16(c)	Provide copies of all correspondence, notices, records and other documents relating to past, pending, threatened or potential bid protests, requests for equitable adjustment or other claims or litigation arising out of Government contracts or Government subcontracts for the past 6 years. Include any notices regarding current or potential threats of termination, 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?

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1.16(d)	Provide copies of any cure or “show cause” notices issued to the Company within the past 5 years (or comparable notifications in the case of a FSS Contract for commercial items).	<i>See, e.g., FAR “Default Clause” <a href="#">52.249-8</a>.</i>		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.	<a href="#">FAR Part 49</a>		Ensure requirements followed after notification of termination. <i>See</i> <a href="#">FAR 49.104</a> .
1.17	Provide a copy of the Company’s Code of Business Ethics/Conduct regarding the conduct of its employees on Government contracts.	<a href="#">FAR Subpart 3.10</a> <a href="#">FAR 52.203</a>	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 program in place and internal control system.	Review annual certifications from employees of their training and adherence to the policy.  Review sources: employee handbook, additional written company policies.  <i>See</i> fraud reporting information on break room posters, company hotline, website, etc.
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 and OSHA requirements.	<a href="#">BAA</a> : 41 U.S.C. §§ 8301 et seq.  Service Contract Act ( <a href="#">SCA</a> ): 41 U.S.C. §§ 6701 et seq.  Davis Bacon Act ( <a href="#">DBA</a> ): 40 U.S.C. §§ 3141 et seq.  Walsh Healey Act ( <a href="#">WHA</a> ): 41 U.S.C. §§ 6501 et seq.	Noncompliance with prevailing wage determination can result in withholding of contract payments in order to recover underpayment of wages as benefits.	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.

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		<p>Occupational Safety and Health Administration (OSHA) regs. can be found in <a href="#">29 CFR part 1910</a>.</p> <p>Labor requirements are also addressed in <a href="#">FAR part 22</a>.</p>		
1.17(b)	<p>Provide copies of the Company's 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><a href="#">Executive Order 11246</a></p> <p><a href="#">FAR 52.222-26</a></p>	<p>If Target has 50 or more employees and government contracts or subcontract of \$50,000 or over, it must have a written affirmative action program. <i>See</i> <a href="#">41 CFR 60-2</a>.</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>Review Target's practices for compliance with 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><a href="#">FAR Part 45</a></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>	

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1.18(a)	Provide copies of all policies and procedures for receiving, handling and accounting for Government Furnished Property (GFP) or Government Furnished Equipment (GFE).		The use of voluntary consensus standards in the management of Government property is allowed ( <a href="#">FAR Subpart 45.103</a> ; <a href="#">FAR Subpart 11.1</a> ).	
1.19	Provide documentation of any approvals of the Company’s purchasing system or other systems given by Defense Contract Management Agency (DCMA) or other cognizant agency.	<a href="#">FAR Subpart 42.2</a> Contractor Purchasing System Review (CPSR) Guidebook <a href="https://www.dcma.mil/Portals/31/Documents/CPSR/CPSR_Guidebook_062719.pdf">https://www.dcma.mil/Portals/31/Documents/CPSR/CPSR_Guidebook_062719.pdf</a>	DCMA website: <a href="http://www.dcma.mil/">http://www.dcma.mil/</a>	DCMA reviews could include Target’s purchasing, timekeeping, billing, pricing and GFP and GFE inventory systems.
1.20	Provide documentation of compliance with Executive Compensation Reporting Requirements.	<a href="#">FAR Subpart 4.14</a>	See <a href="#">FAR Subpart 52.204-10</a> for covered “executives” and covered “compensation.” See <a href="#">FAR Subpart 31.205-6</a> for allowable and reasonable compensation.	Review may include compensation plan and associated policies and procedures or employee handbook; bonus plans; support for bonus or incentive compensation decisions; salary surveys relevant to the industry and geography.
1.21	Provide a list, job title, and job description of each employee who is a former government official and identify his/her former government capacity.	<a href="#">18 U.S.C. § 207-208</a> “Revolving door” provisions found in <a href="#">18 U.S.C. §§ 207-08</a> (representational prohibitions) and <a href="#">41 U.S.C. §§ 2101 et seq.</a> (Procurement Integrity Act) ( <i>see also</i> <a href="#">FAR 3.104</a> )	Goal is to confirm compliance with “Revolving Door” restrictions  See <a href="#">Pub. L. 115-91 § 1045</a> for Department of Defense (“DoD”) prohibition on revolving door practice.  See <a href="#">E.O. 13770</a> for restrictions on lobbying imposed on Executive agency appointees.	Review each job description and assess the likelihood that duties may involve government interaction or provision of behind-the-scenes support for government interaction, which may potentially trigger revolving door restrictions.  Review post-government employment (PGE) letters obtained by covered former government officials in acquisition capacities.

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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, <a href="#">22 C.F.R. parts 120-130.</a>	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. <a href="#">22 C.F.R. § 127.12.</a>	Review Shipper Export Declarations (SEDs) to confirm that required licenses were acquired prior to export.
1.22(b)	Provide copy of export control compliance program and a list of all countries to which products or services are exported. Identify any foreign nationals with access to the company's technology or software code.		The issue is "deemed exports" of U.S. technology, software and data through access given to foreign nationals.	Do any foreign nationals have access to any of the Target's controlled software, technology, or data?
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.			

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1.22(d)	List all countries into which export sales are made, directly or indirectly.			Compare this list against countries subject to U.S. or international sanctions and controls administered by the Office of Foreign Assets Control and those typically requiring export licenses under the EAR or ITAR.
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).	<a href="#">FAR 3.104-4</a> <a href="#">41 U.S.C. §§ 2101-07</a>		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.	<a href="#">FAR 52.227-11</a> <a href="#">FAR 27.404-2</a> <a href="#">10 U.S.C. § 2320</a> <a href="#">DFARS 252.227-7013-14</a>	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.	<a href="#">FAR 27.404-3</a> <a href="#">10 U.S.C. § 2320</a> <a href="#">FAR 52.227-14</a>	The Government gets a royalty-free license in such copyrighted data delivered by Target.	

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1.23(d)	Identify and describe all technical data and software by category of government license: limited, unlimited and government-purpose.	<a href="#">FAR 52.227-13</a>	The Government gets an unrestricted license in patented inventions first conceived or reduced to practice in the performance of a government contract. Moreover, the Government gets “unlimited rights” in data and software developed entirely at the Government’s expense (DFARS rule) or first produced (FAR rule) under a government contract and “government-purpose rights” in data and software developed under both private and government expense (mixed expense).	Review the scope of the Government’s “unlimited rights” to grant rights to competitors or “government purpose” rights to use the software or data within the Government or by authorizing others outside the Government to use such items for government purposes (e.g., in a re-procurement).
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”.		See <a href="#">FAR 52.227-14</a> and <a href="#">DFARS Part 252.227</a> for standard government clauses creating intellectual property frameworks for ownership.	
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.	<a href="#">FAR 52.227-14</a>		Determine if the Target has adequately resolved its rights in technical data and software developed at its own expense.

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1.24	Provide copies of all unexpired warranties furnished to the Government or Prime contractor. Provide copies and summary of all outstanding warranty claims	<a href="#">FAR 46.710</a> <a href="#">FAR 52.246-17</a> <a href="#">FAR 52.246-18</a> <a href="#">FAR 52.246-19</a> <a href="#">FAR 52.246-20</a> <a href="#">FAR 52.246-21</a>	Warranty clauses may be modified and negotiated.	Review all unexpired warranties and outstanding claims for Target's exposure.
1.25	Classified Materials		Some diligence may have to occur in a Secure Compartmentalized Information Facility (SCIF)  See <a href="#">DFARS Subpart 204.73</a> for DoD cybersecurity regulations and see related FAQs: <a href="https://www.acq.osd.mil/dpap/pdi/docs/FAQs_Network_Penetration_Reporting_and_Contracting_for_Cloud_Services_(01-27-2017).pdf">https://www.acq.osd.mil/dpap/pdi/docs/FAQs_Network_Penetration_Reporting_and_Contracting_for_Cloud_Services_(01-27-2017).pdf</a>	