Hot Topics in Government Contracts, Mergers, Acquisition, and Transactions
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Introductions

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Lifecycle of a Deal

• Corporate strategy
• Identifying parties
• Pre-diligence considerations
• Due diligence process and logistics
• Due diligence
• Definitive deal documents
• Post-close integration
Corporate Strategy

• Overall goals
• Growth
• Divestiture
• Merger/Acquisition
• Joint venture
• Strategic partnership
Identifying Parties

- Counterparty pool
- Closely negotiated
- Auction process
- Foreign investment as consideration
Pre-diligence Considerations

• Buy-side structuring
• Sell-side structuring and pre-sale diligence
  • Carve out
  • Subsidiary
  • Identifying concerns and remedying where possible
  • Planning for private equity versus strategic buyer
Diligence Process and Logistics

• Antitrust considerations
• Multi-step processes
• Disciplined approach
• Composition of deal team
• Export control issues
• Classified materials issue
• Planning for possibility of broken deal
Diligence Involving Government Contractors

• Determining scope and tethering to business case
  • Personnel and skills
  • Contracts and pipeline
  • Customer relationships
  • Intellectual property
Diligence Involving Government Contractors

• Past performance
• Prior deals and residual issues (such as lingering novations)
• Organizational conflicts of interest
  • Three types
  • Self-diligence
  • Timing
  • Synergies versus limitations
Diligence Involving Government Contractors

• Key personnel
• Small business matters
  • Impact on prospective business
  • Legacy compliance questions
Diligence Involving Government Contractors

• IP and Data Rights
  • IP/data rights clauses target has accepted in its prime and subcontracts
  • Source of funds to develop software/products
  • Understanding target policies and procedures for protecting IP/data (e.g., marking requirements)
Diligence Involving Government Contractors

• Supply Chain
  • Domestic preferences; e.g.,
    • BAA/TAA
    • Specialty metals
  • Berry Amendment
• Detection and avoidance of counterfeit parts
• Flowdowns, reps and certs
Diligence Involving Government Contractors

• Cybersecurity and information safeguarding
  • Contract clauses
    • DFARS safeguarding
    • Other restrictions/standards (civilian agencies, state and local, etc.)
• Evaluation of cybersecurity protections, SSPs and POAMs
• Past incidents/data breaches?
Diligence Involving Government Contractors

• GSA Schedule
  • Commercial Sales Practices (CSP) disclosures
  • Price Reduction Clause compliance
  • IFF payments
  • TAA compliance
  • Assessments and audits
Diligence Involving Government Contractors

- Regulatory Approvals and Notices
  - CFIUS
  - Industrial Security/DSS
  - DDTC/BIS
  - Others
Diligence Involving Government Contractors

• DCAA and Cost Matters
  • Policies, procedures, and systems
  • Incurred cost audit backlog/open rate years
  • Indirect rate ceilings and contract specific terms
  • DCAA/cognizant audit agency history and relationship
  • Treatment of costs incurred for M&A activity
Diligence Involving Government Contractors

• Cost Accounting Standards
  • CAS triggers resulting from combination
  • Cost accounting practices – CASB DS
  • Potential cost impacts
  • Contractor business systems
Diligence Involving Government Contractors

• Rate Sustainability
  • Composition of pools and bases
  • Pipeline analysis (duplicative?)
  • Forecasted current and future rates pre and post-merger
  • Effects of CAS coverage
Diligence Involving Government Contractors

• Labor and Employment Issues
  • Quality of existing compliance infrastructure
  • Potential violations and possible historical exposure
  • DOL audit history
  • Employee environment
  • Likelihood of higher risk consequences of non-compliance
Definitive Deal Documents

• Asset purchase
• Stock purchase
• Joint venture
• Novations and planning for period after close while novation is pending
• Past performance
• ABA market survey
Post-Close Integration

• Planning and coordination, mindful of antitrust issues
• Communication with customers
• Maximizing synergies
• Lessons learned
Questions and Discussion