

**Sample Post-Closing Legal Integration Checklist
Government Contractor Acquisition¹**

Holland & Knight, LLP

September 2019

	Item	Responsible Party	Status/Notes	Completed?
A.	Strategy and Planning (pre-Closing)			
1.	Ensure that due diligence is conducted with an integration mindset, with due diligence reports highlighting in a clear manner important post-closing matters, tasks and risks			
2.	Review overall acquisition integration plan; ensure and confirm overall integration strategies, objectives and desired approach (e.g., full, partial or staged integration, “tone and touch”)			
3.	Review due diligence reports and Disclosure Schedules for items to include in legal integration plan			
4.	Identify key priorities and time-sensitive items and tasks			

¹ This checklist is an example of the post-closing legal matters to be considered in connection with the acquisition of a government contractor. It emphasizes typical post-Closing matters particular to government contractor businesses, and is not intended to be comprehensive (e.g., SEC reporting matters are not covered and there is no specific environmental section). As circumstances may vary widely, you are cautioned not to consider this list as legal advice or in any manner comprehensive or authoritative, and to use it only as reference material. You should carefully consider the specific circumstances of any transaction, acquired company/business and buyer to address the post-Closing legal matters that will need be addressed for any particular acquisition.

	Item	Responsible Party	Status/Notes	Completed?
5.	Identify legal integration team and assign roles and responsibilities, including those for acquired company legal team and outside counsel. Determine other departments that will be involved with or lead certain legal integration items (e.g., HR)			
6.	Identify entities that will be involved in the integration, any entities that will not be integrated, and liabilities to be isolated or not assumed			
7.	Prepare draft legal integration plan and timeline, including items for Day 1, ~5-10 days post-closing, ~30 days post-closing, ~90 days post closing, “nice-to-haves”, etc.			
8.	Review legal integration plan with relevant stakeholders, including non-legal management; receive feedback and revise as necessary			
B.	Day One Actions²			
1.	Implement changes to directors and officers; execute applicable board and equityholder resolutions for same			

² These are examples of typical Day One items – some may be non-applicable, others may need to be added. This section does not include transaction-specific Day One actions typically set out in the purchase agreement and related documents, such as payment of employee retention and success bonuses, terminations, new executive employment agreements, roll-over equity matters, etc.

	Item	Responsible Party	Status/Notes	Completed?
2.	Adopt new organizational documents (articles/charters, bylaws, operating agreements, etc.) as needed; execute applicable board and equityholder resolutions and make applicable filings with state or other jurisdictions			
3.	Implement changes to fiscal year ends			
4.	Implement changes to registered offices and make appropriate filings			
5.	Implement changes in powers of attorney/authorized personnel with respect to financings and bank accounts			
6.	Implement any entity conversions and/or tax elections (e.g., corp to LLC)			
C.	Government Contracts – Novations and Other Matters			
1.	Confirm what contracts will require novation (if any)			
2.	Prepare Pre-novation Agreement			
3.	Determine contracting officer to whom novations will be submitted (e.g., Administrative Contracting Officer or lead contracting officer?)			

	Item	Responsible Party	Status/Notes	Completed?
4.	Gather supporting materials for novation packages: <ul style="list-style-type: none"> • Three signed copies of novation agreement • Purchase agreement • Evidence of capabilities to perform • Bill of sale or other document effecting the purchase • Documents evidencing approvals (e.g., board resolutions, shareholder approvals) • Audited financial statements from both parties before and after the transaction • Legal Opinion • Statements relating to facility clearance or bonds, if applicable 			
5.	Finalize novation packages and prepare cover letter explaining any deviations from the documents required by the Federal Acquisition Regulation (FAR)			
6.	Submit novation packages			
7.	Respond to Government questions and requests regarding novation requests			
8.	Update SAM registration			
9.	Prepare and submit notices to contracting agencies pursuant to FAR Clause 52.215-19			

	Item	Responsible Party	Status/Notes	Completed?
10.	<p>Confirm any required contract consents that have not been sought and required contract notices that have not been made under government contracts (e.g., subcontracts, teaming agreements):</p> <ul style="list-style-type: none"> • consider if Disclosure Schedules are complete and have been updated through Closing • review any contracts that could not be reviewed in diligence due to security classifications or other reasons 			
11.	Confirm any contract consents sought pre-Closing, but not yet obtained (i.e., as a result of a material consents closing condition)			
12.	Confirm internal parties/departments responsible for obtaining outstanding consents and making outstanding notices (legal, customer-facing, etc.)			
13.	Deliver outstanding consent requests and notices; conduct follow-up to obtain and negotiate as needed			
14.	Determine scope of post-closing contractual obligations review			
15.	Conduct post-closing contractual obligations review and integrate with/update relevant company databases and systems			

D.	Non – Government Contracts - Notices and Consents; Obligations Review			
1.	<p>Confirm any required contract consents that have not been sought and required contract notices that have not been made</p> <ul style="list-style-type: none"> • consider if Disclosure Schedules are complete and have been updated through Closing • review any contracts that were/could not be reviewed in diligence 			
2.	Confirm any contract consents sought pre-Closing, but not yet obtained (i.e., as a result of a material consents closing condition)			
3.	Confirm internal parties/departments responsible for obtaining outstanding consents and making outstanding notices (legal, customer-facing, etc.)			
4.	Deliver outstanding consent requests and notices; conduct follow-up to obtain and negotiate as needed			
5.	Determine scope of post-closing contractual obligations review			
6.	Conduct post-closing contractual obligations review and integrate with/update relevant company systems			
7.	To extent not completed in due diligence, conduct JV review; determine if changes to JV agreements needed			

E.	Small Business and Set-Aside Contracts			
1.	Determine whether transaction causes contractor to lose small business size status in all North America Industrial Classification System (NAICS)			
2.	If 8(a) contract, submit waiver request to Small Business Administration prior to closing			
3.	If small business set-aside contracts, provide post-closing notice pursuant to FAR 52.219/Small Business Size Representation			
4.	If IDIQ or GWAC vehicle (e.g., ALLIANT, OASIS), review contract for specific provisions regarding notice or consent			
F.	Security Clearances			
1.	Purchase by foreign owners requires Defense Counterintelligence and Security Agency (DCSA) approval before closing. <ul style="list-style-type: none"> • Special Security Agreement • Security Control Agreement • Proxy Agreement or voting trust 			
2.	If foreign ownership control or influence (FOCI) is present, prepare submission for DCSA post-closing: <ul style="list-style-type: none"> • Updated SF 328 • Updated Key Management Personnel List • Proposed mitigation measures 			

3.	If no FOCI, notify DCSA and update SF 328			
G.	ITAR			
1.	If foreign ownership, notice to the Directorate of Defense Trade Controls (DDTC) 60 days prior to closing			
2.	Notify DDTC within 5 days of closing; submit registration information for new entity or existing registration statement (may be done earlier); obtain transfer of existing licenses and agreements			
3.	If no foreign ownership, notice to DDTC within 5 days of closing			
H.	CFIUS			
1.	If CFIUS applies to transaction, approval must be received before closing: <ul style="list-style-type: none"> • Once CFIUS accepts the submission, it has 30 days to determine whether to conduct an investigation • The investigation period is 45 days, but can be extended 			
2.	Mitigation measures under CFIUS will likely match those for DCSA (see Section F above)			

I.	Organizational Conflicts of Interest			
1.	Determine whether there are overlapping General Services Administration Schedule contracts and, if so, develop plan with respect to indirect rates and potential migration of one contract to the other			
2.	Check IDIQ and GWAC contracts to determine if there are provisions prohibiting more than one contract per corporate family			
3.	Identify existing OCI mitigation plans and determine whether operational changes must be made			
4.	Identify which contracts of both parties include parents, affiliates and subsidiaries in their scope. Determine whether any of those contracts creates an OCI situation. Notify the relevant agency, and propose mitigation plan			
J.	Tax			
1.	Confirm list of open federal, state, local and foreign tax audits has been updated and is accurate; ensure responsible parties and advisors have been notified of the transaction			
2.	Confirm that files and data exist and are accessible with respect to tax attributes of acquired company (particularly before any entity restructuring) – NOLs, tax credits, goodwill, other tax losses, asset valuations			

3.	Determine if opportunities exist for tax-reducing intercompany IP transfers			
4.	Conduct review to determine if franchise, real estate, transfer or other similar taxes can be minimized/eliminated (e.g., check share par value of acquired company entities).			
K.	Entity Structure and Management			
1.	Integrate acquired entities into organizational chart (update any existing entities as necessary). If subsidiary database is kept, enter new entities			
2.	To the extent not done on Day One, determine officers, directors and/or managers of acquired entities: <ul style="list-style-type: none"> • If foreign subsidiaries, confirm any residency/nationality requirements • Confirm necessary subsidiary signatory authorities are filled and powers of attorney are appropriate 			
3.	Prepare and execute appropriate entity resolutions and actions to effect changes in officers, directors and/or managers: <ul style="list-style-type: none"> • Update D&O insurance to reflect changes • Consider any changes to contractual indemnities needed 			
4.	Confirm possession of all corporate minute books for acquired entities and update as needed			
5.	Confirm all acquired entities are in good standing and qualified to do business in all required jurisdictions; make necessary filings to bring entities into good standing/qualify			

6.	<p>In accordance with overall business integration plan, and in coordination with tax department/advisors, conduct subsidiary review and determine subsidiaries to be retained and eliminated, including:</p> <ul style="list-style-type: none"> • Subsidiaries that can merged out of existence or otherwise eliminated, including dormant entities • Subsidiaries that cannot be merged out of existence/eliminated due to open audits, IP, restrictions on or issues with asset transfers, contractual or other reasons <p>Consider particularly any novation requirements from proposed subsidiary restructuring and related risks and timing considerations</p> <p>Consider also any intended tax benefits/preservation of tax assets in any entity restructuring</p>			
7.	Finalize subsidiary restructuring plan and timeline, coordinating with tax and other relevant departments			
8.	Effect subsidiary restructuring plan; prepare all necessary documents, registrations, resolutions, etc. for the same.			
L.	Employee Benefits			
1.	If pre-closing equity awards were converted into buyer equity, confirm appropriate/required notices and communications made to acquired company employees regarding new equity (e.g., number of shares/units, strike prices)			
2.	Confirm ongoing Purchase Agreement compensation and benefit			

	obligations			
3.	Confirm if all acquired company plan regulatory or other filing and reporting requirements have been met and make any needed remedial filings and reports			
4.	In accordance with overall integration plan and Purchase Agreement obligations, determine employee benefit plans to be retained, consolidated, or terminated/eliminated: <ul style="list-style-type: none"> Consider contractual restrictions, economic effects (e.g., early termination penalties), notice requirements, tax and regulatory requirements 			
5.	Obtain required corporate approvals to consolidate or terminate plans			
6.	Revise plan documents and summaries for consolidated plans			
7.	Confirm any acquired company intercompany agreements related to the cost allocation of employee benefit/equity awards and amend same as necessary			

8.	<p>In accordance with overall integration plan, confirm compensation, bonus and equity plans going forward:</p> <ul style="list-style-type: none"> • If maintaining acquired company bonus plans, confirm funding obligations, cash flow needs, tax considerations and accounting treatment • If implementing buyer or new plans and/or beginning acquired company employee participation in plans, in coordination with HR, deliver and communicate plan documents, including plan summaries, to acquired company employees and ensure execution of all required plan documents and agreements • Coordinate with plan trustees, administrators, etc. and with HR regarding acquired company employee enrollment and participation and update relevant documentation for the same 			
9.	Confirm required annual employer contributions, if any, for retained acquired company employee benefit plans, and confirm such contributions are current.			
10.	Confirm if there are any plan funding obligations triggered by the transaction or otherwise deficient, and if so, determine funding source/remedy			
M.	Employment			
1.	Determine if new offer letters are required/advisable for acquired company employees, including in connection with entity integration restructuring plan. If so, in coordination with HR, prepare, circulate and organize execution. Note that in-person/webcast informational sessions may be necessary/advisable.			

2.	Determine if new employees need to/should sign new Confidentiality/NDAs/Assignment of Inventions Agreements, and if so, in coordination with HR, prepare, circulate and organize execution. Note that in-person/webcast informational sessions may be necessary/advisable.			
3.	With HR, coordinate distribution and acknowledgement by new employees of buyer/combined company policies and procedures. Note that in-person informational/webcast sessions may be necessary/advisable.			
4.	<p>In coordination with HR and overall integration plan, confirm any termination/severance plans and:</p> <ul style="list-style-type: none"> • Analyze potential liability issues (e.g., WARN Act, ADA, age-discrimination, collective bargaining) • Analyze avenues for mitigation of severance liabilities • Determine any notice requirements, waiting periods, local law considerations and requirements • Prepare any termination/severance agreements and in coordination with HR, circulate and arrange for execution 			
5.	To extent not completed, conduct review and analysis of existing acquired company employee employment, severance and change of control agreements and update relevant databases and systems; consider if harmonization with buyer employment agreements is advisable and analyze related risks and liabilities			

6.	<p>To extent not completed, conduct review and analysis of existing acquired company independent contractor agreements and update relevant databases and systems:</p> <ul style="list-style-type: none"> • Determine if termination or amendment of IC agreements is desired/beneficial and costs/benefits/risks of same; arrange for termination or amendment of IC agreements as appropriate 			
7.	<p>If acquired company collective bargaining agreements exist:</p> <ul style="list-style-type: none"> • Determine when agreements are subject to renewal • Determine notice, representative consultation and other obligations • Analyze representative relationship/bargaining environment (cooperative, hostile, neutral) 			
N.	Litigation and Claims			
1.	<p>To extent not done, update Disclosure Schedule lists of claims and actions (pending and threatened); confirm access to all litigation files and coordinate integration with existing databases and systems</p>			
2.	<p>Analyze/confirm status and strategy with respect to all matters, including:</p> <ul style="list-style-type: none"> • Costs and other barriers to settlement • Budgets, timelines and key milestones • Projected disposition(s) and range of potential liability • Needed postponements, changes in strategy or counsel • Insurance coverage (review policies; ensure provider confirmation of coverage terms and limits) 			

3.	Confirm all outside counsel have been informed of the acquisition and any new procedures, approval and consultation requirements			
4.	Designate internal and external, as applicable, lead for each matter			
5.	In connection with any entity restructuring (pre- or post-closing) affecting entities with pending matters, ensure proper opposing side, court, arbitrators, mediators and other third party notices are made			
O.	Intellectual Property			
1.	Confirm list of acquired company patents, trademarks, service marks and other IP registrations has been updated and is accurate; input data into appropriate systems and databases (e.g., patent docket)			
2.	Determine if additional registrations are needed/potentially beneficial: <ul style="list-style-type: none"> • Consider registrations for trade and service marks used but not registered • Consider patent audit of acquired company for patentable inventions not time-barred • If new branding will be utilized, determine new registrations required and make registrations 			
3.	Determine if any registrations can be eliminated			

4.	Determine patent strategy and coordination going-forward: <ul style="list-style-type: none"> • Ensure inventions/patent procedures are unified and/or coordinated • In accordance with overall integration plan, discuss patent strategy/philosophy with key acquired company personnel • Determine opportunities to license existing patents 			
5.	Review acquired company license agreements and consider necessary/beneficial changes (e.g., elimination of redundancies, update in seat numbers, opportunity to renegotiate license terms?)			
6.	In coordination with IT, conduct legal review of acquired company website/portions of website that will be maintained and or accessible to/through buyer site			
7.	Determine if updates to domain name registrations are needed			
8.	Review any intercompany license or other IP agreements and make any needed changes to eliminate redundancies, reconcile or to reflect changes in entity structure			
P.	Cybersecurity and Data Privacy – Government Contracts Considerations			
1.	Determine which contracts contain the Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.204-7012 or other cyber requirements.			
2.	Determine whether compliance program meets the DFARS standards (e.g., System Security Plan, compliance with NIST			

	800-171), develop Plan of Action if necessary			
3.	If there will be shared systems, understand where covered information is located within the system and document			
4.	If cloud service provider, review agreement for compliance with DFARS requirements.			
Q.	Insurance			
1.	Confirm/ensure buyer insurance broker has received required notices and is up to date on the acquisition			
2.	Confirm that acquired company tail policies have been obtained as desired			
3.	Conduct review and coordinate with broker(s) to determine if any additional policies/coverage should be obtained, and determine any needed changes to buyer policy limits and retentions			
4.	Confirm proper coverage for new/changed personnel under D&O, legal malpractice, and other relevant policies			
5.	Ensure brokers and carriers are notified of pending litigation and claims matters as required			

R.	Compliance and Risk Programs			
1.	Using existing due diligence reports, conduct compliance/risk assessment of acquired company (anti-bribery, corruption, political/government relations, anti-trust/competition, exports and defense articles, security clearances, FAR/govcon compliance, conflicts of interest, document retention, environmental).			
2.	Assess adequacy (including adequacy of responsible personnel) of both buyer and acquired company compliance programs (e.g., will acquisition subject buyer to new regulatory regimes?); make necessary adjustments in compliance policies, programs and personnel			
3.	Determine if compliance training (e.g., FCPA) for buyer or acquired company employees is required/advisable; conduct training and obtain appropriate certifications			
4.	In accordance with overall integration plan, integrate compliance policies and programs and communicate the same and relevant changes as needed. Ensure integration assigns appropriate monitoring/reporting functions and roles.			
5.	If compliance failures have been uncovered (pre- or post-closing), analyze risks, take action to halt ongoing conduct, and plan and execute remedial measures.			

S.	Real Estate			
1.	Confirm that all required notices and consents to assignment/change of control have been obtained under acquired company leases and if not, make or obtain			
2.	Determine if any sublease of acquired company property is contemplated; if so, prepare and negotiate subleases as necessary			
3.	Conduct lease review to determine if leases can/should be renegotiated or terminated (near-term or future) and note important milestones (option periods, etc.); key terms (including assignment/change-of control in connection with any entity restructuring) and unusual terms or obligations			
T.	Legal Department Integration			
1.	In accordance with overall integration plan, assess future legal needs and operation of combined company legal department, including: <ul style="list-style-type: none"> • specific skill sets needed; • headcount expectations; • existing skill sets of legal departments; • job and title expectations; • location issues (need for personnel to physically be at certain offices); • relative compensation; and implement changes as necessary/desired			

2.	In accordance with overall integration plan, revise legal department budgets, including outside counsel fees, additional in-house support, IT needs, malpractice insurance, travel expenses, bar expenses			
3.	Assess best practices among legal departments and implement changes as beneficial			
4.	Confirm outside counsel used by acquired company and ensure possession/access to engagement letters and current billing rates and arrangements. Notify outside counsel of transaction, new policies and procedures, and have them execute new engagement letters as necessary			
5.	Conduct assessment of outside counsel and determine if they will continue or be terminated			
6.	For terminated outside counsel, ensure request for and receipt of all relevant files			
7.	Assess whether matters being handled by outside counsel could be done more effectively in-house, and related practical considerations (cost, skill-sets, workload)			
8.	Confirm possession/access to all unpaid legal invoices as of closing; conduct assessment of same			
9.	Confirm acquired company process for legal invoices and make necessary changes to procedures, including approvals, POCs and receipt personnel			

10.	<p>Records retention:</p> <ul style="list-style-type: none">• confirm location of acquired company files and documents; assess file storage needs• ensure combined company's records retention policies have been circulated and have been/will be implemented• ensure that acquired company files have been scanned/backed up in accordance with applicable disaster recovery policies and procedures• confirm that document/electronic file preservation directives are appropriately in place for ongoing litigation, audits and investigations			
-----	---	--	--	--