



Expanding your Company Through Acquisition

Presented by:

Gloria Larkin, TargetGov

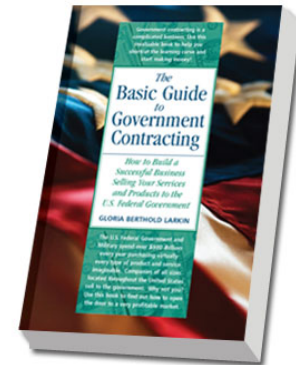
Kimi Murakami, PilieroMazza

Presenter: Gloria Larkin

CEO, Founder



- Nationally recognized federal contracting business development expert
- Author of *The Basic Guide to Government Contracting*
- Consultant & Trainer
- Clients have won \$4+ billion in federal contracts
- Quoted in Wall Street Journal, Washington Post, INC Magazine, Bloomberg
- Educational Foundation Board Chair Emeritus for WIPP.org
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Presenter: Kimi Murakami



Kimi Murakami

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Kimi Murakami advises clients on corporate, business and nonprofit matters, and specializes in mergers and acquisitions for government contractors. She provides counsel on corporate transactional matters for businesses including asset and stock acquisitions, mergers, and corporate restructuring. Kimi also has experience in government regulatory matters such as novations of government contracts, small business size, affiliation and recertification issues, and structuring joint ventures for 8(a) concerns and other small business government contractors.

Before Getting Started

- Live Webinar
- Will Be Recorded
- Email questions to –
Questions@TargetGov.com
- Link will be sent to recording and slides
- Please Take Our Survey

Overview

- What makes a good Target?
- How do you Locate Good Targets?
- How Do you Determine Price?
- Deal Structures and Risk Mitigation
- Post-Deal Issues

What Makes a Good Target?

- Assess your Company Needs
 - Past Performance?
 - Vehicles?
 - Personnel?
- How Much are you Willing to Pay?
 - Options for payment
- Need for Past Performance?
- Assess Impacts on your Business?
 - Small Business Status
 - Firm Culture
 - Working with Target's Owner?

How Do You Locate Targets?

- Known Competitors
- Geography
- Professional Associations
- Small Business Representatives
- USASpending.gov
- Federal Procurement Data System
- Customer Recommendations
- Consultants, Attorneys, M&A Firms

Determining a Fair Price

- Full Companies
 - Full Valuation
 - EBITDA Multiplier
 - Pure Negotiation
- Individual Assets
 - Naked Vehicles
 - Liabilities
- Specialized Services
- Past Performance
- Contract Types

Discounts to Purchase Price

- Small Business Contracts
 - How much backlog at risk?
 - Specific Set-Aside requirements?
 - Lack of ability to control the seller
- Minority Interest
- Known Liabilities
 - Financial
 - Past Performance/CPARS
 - Claims
- Regulatory Compliance Risk

THE DEAL

Stages of M&A Transactions

- Pre-Transaction Planning
 - NDA
 - Letter of Intent – Present Effect Rule
- Deal Structure
 - Asset or Stock Purchase or Merger
 - Affiliation Issues
- Due Diligence
- Document Drafting
 - Representations and Warranties
 - Indemnification
- Closing
- Post Closing Matters
 - Novation
 - Recertification
 - Notifications

Structuring the Deal: Asset Purchase

- Avoid Liabilities
- Novation Required for Contracts
- Recertification
- Past Performance not Guaranteed

Structuring the Deal: Stock (Equity) Purchase

- All known (and unknown) liabilities to Buyer
- Higher level of Due Diligence
- No Novation required (generally)
- Recertification
- Generally receive Past Performance
- Convertible Debt

Structuring the Deal: Merger

- Similar to Stock Purchase
- Novation may be Required
- Change of Name Procedure
 - By operation of law exception
- Recertification

Letter of Intent

- Non-binding
- Present Effect Rule (for affiliation)
 - SBA treats LOI as though rights have been exercised
 - Affiliation issue
- Binding provisions
 - Confidentiality
 - Exclusivity

Buyer's Due Diligence

Review of Target's:

- Corporate Records
- Registrations, Licenses, and Permits
- Financial Reports and Tax Matters
- Bank Financing
- Commercial Contracts
- Employee Matters
- Insurance
- Intellectual Property Issues
- GOVERNMENT CONTRACTS

Representations and Warranties

- Avoid qualifiers (knowledge, written notice)
- No undisclosed liabilities
- Taxes filed, accurate, and complete
- Good title to all assets
- IP Rights valid, no infringement
- Compliance with all laws
- Employment and Benefit Plan Issues
- No legal proceedings or claims
- Specific Gov Con Issues

GOVERNMENT CONTRACT CONSIDERATIONS

Buyer's Due Diligence

Reviewing Government Contracts

- Are these Set-Aside contracts?
 - Are any 8(a) contracts?
- Are there any Pending Proposals?
 - Re-competes?
- Are there Affiliation Issues?
- What kind of Work is Performed?
 - Import/Export Issues?
 - Security clearances?
- Other Types of Contracts?
 - Cost Reimbursement/Fixed Price
 - Prime vs. Subcontract
 - Teaming Agreements and Joint Ventures

Small Business Set-Aside Contracts

- Transferable? Generally, yes.
- If SB 8(a) Set-Aside, however, generally, no.
 - Ownership and control by the 8(a) individual
 - SBA approval of change of ownership prior to signing purchase agreement
 - Request for waiver of termination for convenience
- Program Status: SDVOSB, WOSB, HUBZone

Affiliation

- Small Business Size Status – Valuable Asset
 - NAICS code for primary industry
 - Size status = average annual revenue for 3 most recently completed fiscal years or employees over the past 12 completed months
- Affiliation – Impact on size
 - Size status = average annual revenue or employees PLUS your affiliates' average annual revenue or employees
- Who are your Affiliates?
 - All about control. SBA will find affiliation when one firm has the power to control the other or when both firms are controlled by a third

Type of Work Performed

- Import/Export
 - Military/ Defense: ITAR (DDTC) – State Department
 - Mixed Use: EAR (CCL) – Department of Commerce
- OCI Issues
 - Mitigation Measures
- Data Rights
 - Limited Rights vs Unlimited Rights
 - Government Purpose Rights

Security Clearance

- Does Buyer have Security Clearance at same level or higher as required by the NISPOM
- Seller's Diligence Materials subject to Confidentiality
 - NDA
 - “clean room” with limited access
 - Summaries vs. documents

Non-US Buyer

- Foreign Ownership, Control, and Influence
 - Mitigation Measures
- Committee on Foreign Investment in the United States
 - Exon-Florio Amendment

Other Contract Considerations

- Term of the Contract
 - Re-compete?
- Compliance Programs/Internal Controls
- DCAA Accounting Issues
- Labor and Employment
 - Key employees critical to performance
 - Service Contract Act Compliance

Other Agreements

- Pending Proposals
 - Transferable?
 - Recertification Issue
- Subcontracts
- Teaming Agreements
- Joint Ventures

Post Closing – Novation

- Anti-Assignment Act prohibits transfer of government contracts
- Novation process provides the exception that allows for the transfer of government contracts
- Transfer of all assets necessary for performance – not just the contract
- Novation as a condition subsequent
- Interim period between closing and novation
 - Subcontract
 - Invoicing and Payment
- Rescission and Unwind

Post Closing

- Notification of Change of Ownership
- Consents
- Recertification
 - For stock purchase – within 30 days after closing
 - For asset purchase and merger – within 30 days after novation

Wrap Up and Other Resources

- Check our websites: www.targetgov.com and www.PilieroMazza.com for additional Information on our services
- **Contact the Presenters:**
 - glorialarkin@TargetGov.com
 - kmurakami@pilieromazza.com
- Join Preferred Client lists
 - [TargetGov Sign Up](#)
 - [PilieroMazza Sign Up](#)
- **General Questions:**
 - Questions@targetgov.com
- **The Basic Guide to Government Contracting** By Gloria Larkin

