

M&A

Contractor buys come with strings

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Congratulations! You just bought a company that provides great opportunities to sell goods and services to the full range of commercial customers. But wait — there is one small contract with the federal government that went largely unnoticed. Surprise! You are now a federal contractor.

So why does that matter? Such entrance into the world of contracting brings reporting obligations for both the acquired company and, very possibly, all the affiliated companies that comprise your entire operation. The same holds true for those of you in real estate who acquire (or foreclose on) a property that has any leases with the General Services Administration.

Specifically, federal regulations apply to all contracts in excess of \$100,000 and the most significant affirmative action obligations apply to federal contractors who have fifty or more employees. Contractor typically must comply with certain regulations and reporting standards pertaining to equal opportunity/anti-discrimination policies, as well as affirmative action for minorities and women, veterans, and individuals with disabilities. Enforcement of these requirements is handled by the Labor Department's Office of Federal Contract Compliance Programs.

How sweeping are these requirements? They could extend beyond the federal contractor to other entities under the corporate umbrella. To determine that, OFCCP analyzes and balances five factors:

1. whether the specific entity and the federal contractor have common ownership;
2. whether they have common directors and officers;
3. whether one entity has de facto day-to-day control over the other through policies, management or supervision of operations;
4. whether the personnel policies of the two entities emanate from a common source; and
5. whether the operations of the two entities are dependent upon one another.

Simply put, the more remote the ownership and the less control over management and operations, the less likely the federal government will be able to successfully argue that the affiliate group, as a whole, is a government contractor.

The lesson to be learned here is clear: If a target company or property has any government contracts or GSA leases, you need to work with someone knowledgeable in government contracting and OFCCP regulations to help structure the deal *before* you close, so as to minimize any unanticipated consequences.

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