

Government Contract Novations - Processes, Pitfalls, and Best Practices

Mergers, acquisitions, and corporate restructures in government contracting require more than a signed deal. Under **FAR 42.12**, government contracts do not automatically transfer to a new owner. A formal novation process must be completed and approved before contracts legally move to the successor entity. Below are highlights from our recent government contract novations webinar featuring [Meaghan Clark](#).

WHY NOVATIONS MATTER

- Selling a company does NOT automatically transfer government contracts.
- The government must determine whether the transfer is in its best interest.
- The original contractor remains **liable** until novation is approved.
- The government has full discretion to approve or deny the request.

WHAT THE GOVERNMENT EVALUATES

- **Financial capability** (audited financials and stability)
- **Technical capability** and management systems
- A clear, seamless transition plan
- Risk to **performance** and **mission continuity**

COMMON PITFALLS

- Invoicing confusion – You cannot bill under the new name until it is approved.
- Year-end timing delays (fiscal year funding priorities)
- Incomplete or poorly organized novation packages
- **Subcontract assignment clauses** blocking transfer
- Small business status changes impacting eligibility or subcontracting plans



SUBCONTRACT RISK: THE OVERLOOKED DEAL BREAKER

- Many subcontract agreements contain **assignment clauses** requiring prime contractor approval.
- If not properly negotiated, these clauses can prevent **contract transfer, reduce revenue value**, or force the acquired company to remain as a **subsidiary**.

BEST PRACTICES

- Conduct **contract-by-contract due diligence** before closing.
- Negotiate assignment clauses early in subcontract agreements.
- Treat the novation package like a proposal - demonstrate capability and reduce risk.
- Communicate proactively with contracting officers and prime contractors.
- Plan for months – not weeks – to complete the process.

BOTTOM LINE

A successful novation protects both the **acquisition deal** and **contract performance**. Proactive planning, complete documentation, and risk mitigation are essential to ensuring the government maintains confidence in continued performance.



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