



FED GOV CON
Webinar
Wednesdays
2020 Series

JSchaus & Associates

Washington DC

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About Our Webinars:

- Every Wednesday;
- Complimentary;
- Recorded;
- YouTube & our Website;
- No Questions





About Us:

Professional Services for Federal Contractors

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- SBA 8(a);
- Proposal Writing;
- Pricing;
- Contract Administration;
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About Our Speaker:

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M&A – Understanding Novation Agreements

Wednesday,

December 16, 2020

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What, When and Why?

- The Assignment of Claims Act prohibits government contractors from assigning government contracts to third parties (41 U.S.C. § 15(a) and FAR § 42.1204)
- Exception in the case of a government contractor's sale of its assets to a third party and the assets include government contracts
- Novation is the process by which the Government agrees to allow company "B", the transferee, to step in the shoes of the transferor, company "A", and perform the contracts previously held by company "A"

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What, When and Why?

- Novation agreement is the document signed by the Government, company **A** and company **B**, and represents the Government's approval of the transfer of the contract(s) from company **A** to company **B**
- Novation agreement executed *after* company **B**'s acquisition of company **A**'s contracts has been completed

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Government Novation Considerations

- Whether transferee (company B) has the financial and other resources required to perform the contract(s)
- Whether the transferee (company B) can be considered “responsible”
- Whether the sale/acquisition of the government contracts was “legal”
- What happens if transferee (company B) screws up

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Novation Package

- Company A must request that agency “novate” contracts to company B
- Request made to the Contracting Officer
- Package of documents must be submitted
 - Signed Novation Agreement
 - Asset Purchase Agreement
 - Contracts
 - Evidence of company B’s “capability to perform”
 - Balance Sheets of company A and company B

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Contents of Novation Agreement

- Company B assumes all Company A's obligations and liabilities under the transferred contracts
- Company A waives all rights against the Government under the transferred contracts
- But Government does not waive claims against Company A
- Company A guarantees performance of the transferred government contracts and payment of any liabilities associated with the transferred contracts
- Company B ratifies all prior acts of Company A

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Novation Key Issues

- Novation permitted when it is in the best interests of the Government
- Completely discretionary on the part of the agency/CO
- Transfer of contracts vs. transfer of “assets”
- Agency will not consider or approve novation until the deal has been closed
 - Transaction documents must address risk associated with CO approval
 - Transaction documents must address performance/privity issues during the period between execution of documents and execution of novation agreement
 - Transaction must include indemnities regarding performance



THANK YOU!
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