

To: Registrants for How to Avoid the Deal from Hell,
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Our Top 10 M&A Deal-breakers

When M&A deals fall apart once a letter of intent (LOI) is signed, the problem can usually be found in one or more of the following classic “deal-breakers.”

In some deals, these factors are non-events; in others one or more take on a life of their own and drive the deal into disarray.

The order of their appearance below is not relevant. They can strike at the heart of the deal and come seemingly from left field.

While these are characteristic of the government services industry, they largely apply across many sectors.

1. **Differences in valuation expectation linger deep into negotiation.** While seller may have agreed to a certain price and terms in the LOI, they did so without a strong conviction that such a price truly represented the company’s worth. When detailed terms emerge in negotiations that erode the ability for seller to truly realize such value, seller may summarily walk from the transaction.
2. **Non-disclosure of material items at the appropriate time.** When seller and buyer purposely hide – or do not fully disclose – critical facts about their company, the transaction or post-deal desires, the sudden discovery of these facts tends to create mistrust that spoils negotiation.
3. **Merged indirect rate structures can cause profitability concerns.** By the post-LOI stage buyer has calculated its basis for price and major terms, while not necessarily understanding how the merged indirect rate structures will interact on the profitability of contracts for the acquirer and the acquired firm post-transaction. Should the integrated rate structures unduly

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affect one or both firms' margins, the parties may find the proposed deal impractical.

4. **Deal fatigue overwhelms.** At times, the parties, despite their huge time investment to date, lose interest in the transaction when it drags interminably. Figuring that sheer length of negotiation foreshadows a less-than-desired outcome, buyer or seller walks from the transaction.
5. **Forces external to the transaction change the deal dynamic.** Say, a public company - and party to the transaction as a buyer - finds itself the subject of a shareholder suit or gets introduced to another, more attractive deal during negotiation. The result could be that the deal goes south, even though no overt problem had arisen in negotiation.
6. **Un-meshable personalities.** Deals can fall apart due to relationship 'snags' at any point and involving any two parties, whether among attorneys, company principals or investment bankers.
7. **Cultural gaps become evident.** Only after the LOI do buyer and seller truly start to understand the way each operates. 'Culture' is a collection of factors - work hours, benefits, workspace, employee empowerment, values, response to ethics issues, and decision-making authority. Even if the price and terms are right, unduly wide cultural differences can undermine a deal.
8. **Lack of conviction to close.** A seller who really didn't want to sell at that time will more than likely disengage when the negotiation become difficult - a victim of old fashioned cold feet. A buyer that did not self-acknowledge it was more a tire-kicker will lose its motivation to close as well.
9. **Resistance to sharing deal risk.** The paperwork behind every deal memorializes the point along the continuum where transaction risk is allocated to buyer and seller. If one - or both - parties are unwilling to collaborate in accepting their fair share of risk, the deal stands a decent chance of imploding.
10. **Unexpected departure of key employees during deal diligence.** In many cases the seller/founder -who may have pocketed most or all of the proceeds - will be leaving at closing

or shortly after supporting a transition. That leaves key executives of the seller to ensure that the seller lives up to buyer expectations post-transaction. If these executives begin to leave during deal negotiation, the buyer will assess its likelihood of deal success in a different light.